

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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CONTRACTING PARTIES
Fourth Session

REVISED DRAFT

WORKING PARTY "D" ON QUANTITATIVE RESTRICTIONS

DRAFT REPORT TO THE CONTRACTING PARTIES

TERMS OF REFERENCE

1. The Working Party was appointed at the 11th meeting of the Fourth Session with the following terms of reference:

To explore the application of the provisions of the agreement to

- (a) quantitative import restrictions, and
- (b) quantitative export restrictions

which are being applied for protective, promotional or other commercial purposes; and

to recommend action for the review provided for by Article XII: 4 (b) and other action under the Agreement as may be appropriate.

I. QUANTITATIVE EXPORT RESTRICTIONS

2. Preliminary to its discussion, the Working Party established the following provisional list of provisions of the Agreement as being relevant to the problem of quantitative export restrictions:

Article XI; Article XIII; Article XIV, paragraphs 2, 4 and 5; Article XV, paragraph 9 (b); and Article XX.

3. The Working Party then proceeded to examine several types of export restrictions which are being applied for protective, promotional or other commercial purposes and appear to fall outside the exceptions provided for in the Articles of the Agreement listed above, namely:

- (i) export restrictions used by a contracting party for the purpose of obtaining the relaxation of another contracting party's import restrictions;
- (ii) export restrictions used by a contracting party to obtain a relaxation of another contracting party's export restrictions on commodities in local or general short supply, or otherwise to obtain an advantage in the procurement from another contracting party of such commodities;

- (iii) restrictions used by a contracting party on the export of raw materials, in order to protect or promote a domestic fabricating industry by assuring an ample supply of materials; and
- (iv) export restrictions used by a contracting party to avoid price competition among exporters.

General Considerations

4. In the discussions of the Working Party, there emerged three important general

points, viz:

- (a) In the case of each of these four practices, it is assumed for the purpose of this discussion that the practice is maintained for the purposes described, and is not justified on other grounds for which the General Agreement specifically permits export restrictions to be used.
- (b) During the period of provisional application of the General Agreement, contracting parties may be entitled under paragraph 1 of the Protocol of Provisional Application or of the Annex Protocol of Accession (which requires contracting parties to apply Part II of the Agreement "to the fullest extent not inconsistent with existing legislation") to maintain certain export restrictions required by existing legislation which are not consistent with Part II of the Agreement.
- (c) Nothing in the Agreement confers rights on a non-contracting party, but it is recognised that relations between a contracting party and a non-contracting party may, in certain circumstances, affect the contractual obligations between contracting parties.

Given these three significant qualifications, certain useful conclusions can be reached with respect to the types of export restrictions listed above in their relation to the provisions of the Agreement.

Discussion of Type (i)
Obtaining Import Restriction
Relaxation

5. Three variants of this practice were mentioned at various stages of the Working Party's deliberations:

- (a) Tying-in export licences for certain specific commodities with the grant by another party of import licences for certain other specified products of the exporter;
- (b) In the course of negotiating lists of exports and imports in bilateral agreements, requiring commitments to permit the import of certain stated products as a quid pro quo for including on an export list certain other products; and
- (c) Employing the threat of export restrictions as a bargaining weapon for obtaining the relaxation of import restrictions.

6. As regards method (a), in particular, the Working Party could not find any provisions in the Agreement which would

justify the linking of the issue of export licences for a particular product with the purchase by another contracting party of any other particular product.

7. More generally, in each of the three cases, a contracting party through the use of export restrictions would be seeking to obtain from another contracting party the relaxation of balance-of-payment import restrictions. It was pointed out that the obligations of the contracting parties to one another regarding the use of balance-of-payment import restrictions were governed by Articles XII to XIV of the Agreement. It was agreed that the use of export restrictions as a bargaining weapon to obtain the relaxation of import restrictions was inconsistent with the provisions of the Agreement. However, whether any particular export restriction could justly be regarded as having the assumed purposes would depend upon the facts in each particular case.

Discussion of Type (ii)
Procuring Short Supply
Items

8. The suggestion was made that export restrictions of this nature, although otherwise appearing to be prohibited by the Agreement, would in some circumstances be justified under the provisions of paragraph II (a) of Article XX. The Working Party discussed the proviso to that paragraph requiring the observation of the principle of equitable shares for all contracting parties in the distribution of the international supply of a product in local or general short supply, and noted that the word "equitable" is used in paragraph II(a) of Article XX and not the word "non-discriminatory" which is used in Article XIII.

9. In respect of this type of restriction, general agreement existed on the following statements:

- (a) Apart from the provisions of paragraph II(a) of Article XX, the practice referred to was inconsistent with the provisions of the Agreement.
- (b) Although the requirement of paragraph II(a) of Article XX relates to the total international supply and not to the supply of an individual contracting party, nevertheless if a contracting party diverts an excessive share of its own supply to individual countries (which may or may not be contracting parties) this will defeat the principle that all contracting parties are entitled to an equitable share of the international supply of such a product.
- (c) What would not be regarded as an equitable share if it were the result of a unilateral allotment by a contracting party could not appropriately be defended as equitable within the meaning of paragraph II(a) of Article XX simply because it had been the consequence of an agreement between two contracting parties.
- (d) The determination of what is "equitable" to all the contracting parties in any given set of circumstances will depend upon the facts in those circumstances.

Discussion of Type (iii)
Promoting a Domestic
Fabricating Industry

10. It was noted at the outset of the discussion that the Agreement contains no provision which would justify the use of export restrictions with the stated motivation.

11. However, it was pointed out that restrictions on exports to assure essential quantities of domestic materials to a domestic processing industry might be justified under paragraph I (i) of Article XV when associated with a governmental stabilization plan involving the maintenance of a lower price for the material than prevails on the world market, provided restrictions were non-discriminatory, did not operate to increase the exports of or the protection afforded to the domestic industry and adhered to the other limitations contained in the preamble to Article XX. The Working Party agreed that the exemption of export restrictions associated with governmental stabilization plans contained in paragraph I (i) of Article XX might, in certain circumstances, be difficult to interpret, since a stabilization plan which maintains the domestic price at a level below the world price will inevitably afford some advantage to the domestic industry; paragraph I (i) refers to an increase in the protection afforded to the industry by the export restriction, but it may be difficult in practice to distinguish between the effects of the stabilization plan and the effects of the restriction.

12. The Working Party concluded that the Agreement does not authorize the imposition of restrictions upon the export of a raw material in order to protect or promote a domestic industry, whether by affording a price advantage to that industry for the purchase of its materials, or by reducing the supply of such materials available to foreign competitors, or by other means. However, it was agreed that the question of the objective of any given export restriction would have to be determined on the basis of the facts in each individual case.

13. There was some discussion of certain cases mentioned by one delegation in which, on the one hand, a country would be maintaining export restrictions on a raw material which had the effect of promoting a domestic industry processing that material, and on the other hand would be maintaining a prohibition or a severe restriction on imports of the finished product. There was general agreement that in such a case a contracting party, in considering whether the export restrictions were justified by Article XX: I(i), would have to give close examination to the question whether those export restrictions in fact operated to increase the protection afforded to the domestic industry.

Discussion of Type (iv)
Avoiding Price Cutting

14. The Working Party discussed a wide variety of circumstances in which exportation may be restricted in order to maintain the export price. The cases discussed included a commodity whose value might be greatly reduced if its supply to the world market were not controlled and a commodity whose world price was liable to be impaired by the collusive action of importers.

15. The Working Party concluded that where export restrictions were in fact intended for the purpose of avoiding competition among exporters and not for the purposes set out in the exception provisions of Articles XI and XX, such restrictions were inconsistent with the provisions of the Agreement.

II. QUANTITATIVE IMPORT RESTRICTIONS

16. The following provisions of the Agreement were considered by the Working Party as those under which the application of quantitative import restrictions could most usefully be examined for the present purpose:

Article XI; Article XII; Article XIII; Article XIV and Annex J; Article XV, paragraph 9 (b); Article XVIII; Article XIX; and Article XX.

17. In discussing the application of the Agreement to import restrictions applied for protective, promotional or other commercial purposes, the Working Party devoted its main attention to two points, viz:-

- (a) The fact that balance of payments restrictions almost inevitably have the incidental effect of protecting these domestic industries which produce the types of goods subject to restriction, and of stimulating the development of these industries. Any consequent development of uneconomic production could interfere with the process of removing balance of payments restrictions as and when the justification for such restrictions under the Agreement disappeared.
- (b) The evidence (derived inter alia in the course of bilateral trade negotiations) (1) of the administration of import restrictions in some countries in a manner calculated to afford undue protection, beyond the normal protection accorded by tariffs or subsidies, to domestic industries, and (2) of pressure exerted by industrial interests in some countries on their governments to administer import restrictions in such a manner.

18. As regards (a) the Working Party has examined the methods by which countries applying balance of payments restrictions can seek to minimise the undesirable incidental protective effects resulting from such restrictions. A number of such methods are employed by different countries and others have been suggested in the course of the Working Party's discussions. The Working Party has not attempted to discuss the question of how far the provisions of the Agreement might require countries to adopt such techniques; but it has taken note in this connection of the provisions of sub-paragraph 2 (b) of Article XII that contracting parties applying restrictions under sub-paragraph 2 (a) shall progressively relax them as conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application, and shall eliminate them when conditions would no longer justify their institution or maintenance under that sub-paragraph. It does, however, suggest that the Contracting Parties should commend these methods to the individual contracting parties as useful methods which countries might where possible employ, in their own interests and in the spirit of the Agreement, in order to stimulate efficiency on the part of their domestic industries and to prepare them for the time when import restrictions can be relaxed or removed.

19. Accordingly, the Working Party draws the attention of the Contracting Parties to the following six measures:

- (i) Avoiding encouragement of investment in enterprises which could not survive without this type of protection beyond the period in which quantitative restrictions may be legitimately maintained;
- (ii) Finding frequent opportunities to impress upon producers who are protected by balance-of-payments restrictions the fact that these restrictions are not permanent and will not be maintained beyond the period of balance-of-payment difficulties;
- (iii) Administering balance-of-payments restrictions on a flexible basis, and adjusting them to changing circumstances, thereby impressing upon the protected industries the impermanent character of the protection afforded by the restrictions;
- (iv) Allowing the importation of "token" amounts of products which otherwise would be excluded on balance-of-payments grounds, in order to expose domestic producers of like commodities to at least some foreign competition and to keep such producers constantly aware of the need ultimately to be prepared to meet foreign competition;
- (v) Avoiding the allocation of quotas among the various supplying countries, as far as balance-of-payment and technical considerations permit, in favour of quotas which may be filled by more than one country or of general licences unrestricted in amount applying to the supplying countries concerned;
- (vi) Avoiding as far as possible narrow classification and restrictive definitions of products eligible to enter under any given quota;

20. As regards (b), the Working Party noted that there was evidence of a number of types of misuse of import restrictions, in particular the following:--

Type (i) The maintenance by a country of balance-of-payments restrictions which gave priority to imports of particular products upon the basis of the competitiveness or non-competitiveness of such imports with a domestic industry, or which favoured particular sources of supply upon a similar basis, in a manner inconsistent with the provisions of Articles XII - XIV and Annex J.

Type (ii) Unnecessary obstacles placed by countries in the way of full utilisation of import quotas, e.g. by administrative delays in the issue of import licences against these quotas. In this connection, the Working Party took note of Article XIII(2)(d), which provides that, "no conditions or formalities shall be imposed which would prevent any contracting party from utilising fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate."

Type (iii) Special restrictions on imports from a particular country imposed, not on balance-of-payments grounds, but as a means of retaliation, e.g. against a country which has refused to conclude a bilateral trade agreement with the country concerned. The Working Party took note in this connection of the non-discrimination provisions of Article XIII and of the limitations imposed by Article XIV and Annex J on the freedom of countries during the post-war transitional period to depart from the provisions of Article XIII.

21. It appeared to the Working Party that insofar as these types of practice were in fact carried on for the purposes indicated above and were not justified under the provisions of Articles XII to XIV relating to the use of import restrictions to protect the balance-of-payments or under other provisions of the GATT specifically permitting the use of import restrictions, they were inconsistent with the provisions of the Agreement, and might appropriately be the subject of complaint to the CONTRACTING PARTIES. Moreover, it appeared to the Working Party that it was not particularly relevant to the Agreement whether such practices were allowed unilaterally or in the course of bilateral negotiations.

III. RECOMMENDATIONS

Recommendations proposed by the representative of the United States:

- 1) That the Contracting Parties approve Section I of this report and endorse its conclusions;
- 2) That the Contracting Parties express their recognition of the fact that these conclusions will be of greatest utility, if officials engaged in the operation of trade controls and in the negotiation of trade agreements are thoroughly familiar with them, and recommend that the contracting parties take all reasonable measures to accomplish that objective; and
- 3) That the Contracting Parties recommend further that the contracting parties review their present systems of export controls for their consistency with the conclusions of this Report.

Recommendation proposed by the representative of Belgium:

The Working Party recommends that the report prepared by it be brought by the Governments of the contracting parties to the attention of the officials and departments responsible for establishing, allocating and ensuring the implementation of quotas, and likewise to the notice of the officials responsible for negotiating bilateral agreements.

The Working Party suggests that the contracting parties should recommend to their Governments that they impress on the above-mentioned officials and departments the necessity of taking due note of the provisions of the General Agreement governing the application of quantitative restrictions and of avoiding the abuses mentioned in the report.

The more closely the Governments, officials and departments concerned keep to this recommendation, the greater will be the possibility of ensuring that countries considering themselves adversely affected by the misapplication of the General Agreement will be relieved of the necessity of initiating the procedure for submitting complaints set forth in Article XII, paragraph 4(d) and Article XXIII, paragraph 2.

IV. THE REVIEW OF QUANTITATIVE IMPORT RESTRICTIONS REQUIRED BY ARTICLE XII:4(b)

Proposal by the Chairman of the Working Party:

(1) That this Working Party, in its report to the Contracting Parties on this item in its terms of reference, should draw attention to the close connection between the XII:4(b) review and the XIV:1(g) report and point out that in consequence the Working Party has not felt able to reach any final conclusion on what appears to it to be one aspect of a larger question.

(2) The Working Party should nevertheless suggest to the Contracting Parties a procedure somewhat on the following lines: Assuming that the Contracting Parties complete the first report on XIV:1(g) at this session, the Secretariat be instructed to prepare for submission to the next session of the Contracting Parties a draft questionnaire designed to cover both XII:4(b) and XIV:1(g). In preparing this draft the Secretariat should study the more comprehensive replies to the first Article XIV:1(g)

questionnaire, and take into account the discussion of these replies in the Working Party as well as the relevant provisions of the General Agreement on Tariffs and Trade.

(3) This questionnaire should be considered by the Contracting Parties at their Fifth Session with a view to its being issued to contracting parties about the end of 1950. The replies to this questionnaire would be required in time for a draft report to be prepared for consideration at the Sixth Session of the Contracting Parties as a basis for the second report under XIV:1(g) and the review referred to in XII:4(b).

Proposal by the representative of Belgium:

The Working Party accordingly recommends that the replies should provide, inter alia, the following information:

(1) A general description of the administrative system governing restrictive measures (non-quota licences, global quotas, quotas allocated to certain countries either by bilateral agreements or unilaterally);

(2) A detailed list of the item numbers covered by quantitative import restrictions under Articles XII or XIV. In respect of each item, information should be given for each of the contracting parties as to:

- (i) the number of import licences actually issued during the last reference year (i.e. 1950);
- (ii) whether the allocation as between countries had been previously made (by quota agreement or unilateral decision); particulars of the quota previously allocated for the reference period in question, with reasons for such allocation;
- (iii) the volume of imports for a pre-war reference year to be fixed by the Contracting Parties (1937 or 1938);
- (iv) the volume of imports to be authorized for next year (i.e., 1951);
- (v) estimated additional volume of imports which would have been effected in the absence of restrictions.

(3) Copies of the laws and decrees governing the establishment of import quotas and of the bilateral agreements concluded during the last completed period.

Recommendation proposed by the representative of the United States:

That the Contracting Parties instruct the Secretariat to prepare a questionnaire for consideration at the Fifth Session of the Contracting Parties and for use at an early date thereafter, to determine the nature and extent of existing quantitative restrictions on exports which contracting parties maintain pursuant to the exceptions contained in the provisions of Article XI to Article XX or pursuant to the Protocol of Provisional Application.

Proposal by the representative of Canada:

The Canadian Delegation believes that the review called for under Article XII:4(b) could profitably apply to export restrictions as well as import restrictions. Article XI, 1, prohibits export restrictions as well as import restrictions, and Article XII sets forth exceptions to the general rule which are permissible for countries in balance of payments difficulties. If the review called for in article XII:4(b) covers the whole field of quantitative restrictions on exports as well as imports it will help ensure that legitimate use is being made of the relevant provisions of the Agreement. It will provide information of great usefulness to the CONTRACTING PARTIES in the study of common problems

It is therefore proposed that the Secretariat be instructed by the CONTRACTING PARTIES to collect, assemble and summarize information on the subject of export restrictions and their administration. This may be undertaken in connection with the questionnaire to be used on the corresponding subject of import restrictions under Article XII:4(b).

It is also proposed that the Secretariat make enquiries at the same time to discover to what extent individual contracting parties are complying with the provisions of paragraph 1 of Article X.

