GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fourth Session

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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 Annecy 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 XX 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 assisting 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 those 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 production, and (2) of pressure exerted by certain 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 determime how far the provisions of the Agreement might imply any degree of obligation upon contracting parties to adopt particular 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. The Working Party suggests 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-payments 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, as far as balance of payments and technical considerations permit, the allocation of quotas among supplying countries, in favour of general licences unrestricted in amount, or unallocated quotas, applying non-discriminatorily to as many countries as possible; and

(vi) Avoiding as far as possible narrow classifications 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 to XIV and Annex J. Such restrictions, for example, might take the form of total prohibitions on the import of products competing with domestic products, or of quotas which were unreasonably small having regard to the balance of payments position of the country concerned and to other relevant factors.

Type (ii): The imposition by a country of administrative obstacles to the full utilization of balance-of-payments import quotas, e.g., by delaying the issuance of licenses against such quotas or by establishing license priorities for certain imports on the basis of the competitiveness or non-competitiveness of such imports with domestic industry, in a manner inconsistent with the provisions of Articles XII - XIV and Annex J. 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.

Type (iv): Special restrictions on imports from a particular country of certain products which compete with a domestic industry applied merely because that country has refused to conclude a bilateral trade agreement with the country concerned. In this case the Working Party recalled the provisions on non-discrimination contained in Article XIII and, in particular, the provisions of Article XIII, paragraph 2 (d) where it is stated that: "In cases in which a quota is allocated among supplying countries, the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product." The Working Party also recalled the limitations set by Article XIV and Annex J to possible deviations by the various countries from the provisions of Article XIII during the post-war transitional period. (Belgian proposal)

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 Agreement specifically permitting the use of import restrictions, they were inconsistent with the provisions of the Agreement, and such misuse of import restrictions might appropriately provide a basis for recourse to the procedures laid down in the Agreement for the settlement of disputes. Moreover, it was not particularly relevant to the Agreement whether such practices were determined unilaterally or in the course of bilateral negotiations.

22. The Working Party agreed that there did not appear to be any provision in the Agreement which would justify the imposition by a contracting party of quantitative restrictions on imports of a particular product for the purpose of avoiding an increase in the cost to the importing country of maintaining a price support programme for the like product of domestic origin and not for other purposes provided for in the Agreement.

III. GENERAL CONCLUSIONS AND RECOMMENDATIONS

23. The discussion led the Working Party to conclude that their general review of the problem had served a useful purpose and that further progress could be expected in future from consideration of such actual cases as may be brought before the Contracting Parties in accordance with procedures laid down in the Agreement.

24. The Working Party recommends that the CONTRACTING PARTIES:

(1) Approve Parts I and II of the report and endorse their conclusions;

(2) Recommend that contracting parties review their present systems of quantitative import and export restrictions in the light of the conclusions of the Report; and

(3) Recognize that these conclusions will be of the greatest utility if those responsible for the imposition or the administration of quantitative restrictions, and those engaged in the negotiation of trade agreements, are made thoroughly familiar with these conclusions and with the necessity for administering such restrictions and negotiating such agreements in a manner consistent with the provisions of the Agreement, and recommend that contracting parties take all necessary measures to those ends.

25. In accordance with the last part of its terms of reference the Working Party considered the steps to be taken to implement the provisions of Article XII: 4 (b). The Working Party wishes to draw the attention of the Contracting Parties to the close connection, both in respect of content and procedure, between the review called for under Article XII: 4 (b) and the report required by Article XIV: 1 (g). In consequence the Working Party has not felt able to reach any final conclusion on what appears to be one aspect of a larger question. Nevertheless, the Working Party, pursuant to its terms of reference, wishes to recommend to the Contracting Parties that:

(1) the secretariat be instructed to prepare for circulation among the contracting parties as far in advance as possible of the Fifth Session a draft questionnaire designed to cover the information required both for the second report under Article XIV: 1 (g) and for the review of quantitative restrictions on imports required by Article XII: 4 (b);

(2) in preparing this draft questionnaire, the secretariat

study the more comprehensive replies to the first Article XIV: 1 (g) questionnaire, and give due regard to the discussions of these replies at the Fourth Session and the relevant provisions of the Agreement, and also take into account any suggestions which contracting parties may make;1/

(3) the draft questionnaire be considered by the Contracting Parties at the Fifth Session with a view to its being issued before the end of 1950; and

(4) the replies to the questionnaire be required in time for a draft report to be prepared for consideration at the Sixth Session as a basis for the second report under Article XIV: 1 (g) and for the review under Article XII: 4 (b).

26. The Working Party also came to the conclusion that it is desirable to obtain systematic and comprehensive information on the subject of quantitative restrictions on exports which are maintained under the provisions of Articles XI to XX inclusive and, in addition, any other restrictions on exports which are maintained for commercial purposes. It therefore recommends that:

(1) The secretariat be instructed to prepare a draft questionnaire on export restrictions to accompany the questionnaire proposed in paragraph 25; and

(2) the procedure proposed in paragraph 25 be adopted for the questionnaire and the preparation of a report on export restrictions.

1/ A suggestion submitted by the Belgian delegation is annexed.

ANNEX

Suggestion by the Belgian Delegation regarding the contents of the Questionnaire referred to in paragraph 25 of the Report.

The Belgian delegation suggests that in preparing the draft questionnaire the Secretariat should consider the inclusion of the following:

(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.