

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Committee on Trade in Industrial Products

Working Group 5

REPORT OF WORKING GROUP 5 ON NON-TARIFF BARRIERS

Examination of Items in Part 5 of the Illustrative List (Charges on Imports)

1. Working Group 5 was established by the Committee on Trade in Industrial Products in December 1960 to explore possibilities for concrete action in reducing or removing non-tariff barriers on the following subjects in the Illustrative List (Annex I to L/3298): prior deposits, administrative and statistical duties, restrictions on foreign wines and spirits, special duties on imports, discriminatory taxes on motor cars, credit restrictions for importers, variable levies and fiscal adjustments, either at the border or otherwise. The Group met from 9 to 11 June and 10-11 December 1970 under the Chairmanship of Mr. S.R. Pasin (Turkey).

2. As with other Groups, this Group had in mind the general terms of reference in regard to the exploratory nature of its work on possible solutions. It wished to emphasize that in many cases the views recorded were only tentative at this stage and that all delegations reserved fully their right to supplement and clarify their positions when the report was presented for discussion in the Committee on Trade in Industrial Products.

3. The special interests of developing countries in some of these problems were taken into account by the Group and are reported in the individual sections of this report, especially Sections I and VII.

I. PRIOR DEPOSITS

4. It was noted that a number of countries maintained prior deposit schemes and that the device had now been in use in one country or another for some fifteen years. In the course of 1970, however, some countries had eliminated their prior deposit systems while others had relaxed their schemes to some extent.

5. There was general agreement that prior deposit schemes constituted a restriction on trade. The degree of restriction depended, as stated by the representative of the International Monetary Fund, on a variety of factors, including the amount of the deposit required, the cost of financing, the time for which deposits were held, the duration of the scheme, the products and country sources to which it applied. Complex prior deposit systems could give rise to discriminatory practices.

6. It was also generally agreed that there should be appropriate consultation under GATT whenever prior deposits were used. Consultation with the International Monetary Fund would be included.
7. Many countries felt that too little was known of the way in which prior deposits worked to take a general position on the question of the use of such measures. In addition there were technical points upon which relatively little expert research had been done such as the restrictive effect they could have upon small as compared with large exporters in view of the greater difficulty for the former of obtaining needed additional capital, and the relationship between effects on exporters in countries having relatively plentiful capital and effects elsewhere. Expert studies under way in other international organizations might throw some light on these points. In this connexion it was noted that a study had been recently prepared in the OECD on the use of various import measures, including prior deposits, in cases of balance-of-payments difficulties. Some delegations therefore considered it necessary that such studies should reach a more advanced stage before GATT could usefully take any position in this field.
8. Some countries considered that a study might usefully be made of the question of defining the circumstances in which the use of prior deposits might be appropriate. The objective would be to limit recourse to such measures in circumstances other than those defined, which might, for example, be cases of balance-of-payments difficulties where use of this measure avoided the use of other and possibly more restrictive measures.
9. Some delegations considered that the precise status of prior deposit measures in relation to the General Agreement should be clarified so that their use is controlled and limited. In the absence of such clarification they believed that the provisions in the General Agreement would be undermined.
10. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, some delegations considered that it should be possible to go somewhat beyond ensuring consultation, in the direction of establishing guidelines for use of this type of measure with a view to limiting its incidence and harmful effects. Some guidance of this kind might help to provide somewhat greater discipline and order in the present grey area between those schemes which constituted exchange control practices, and thus came within the purview of the International Monetary Fund, and the more conventional types of restriction for which provision was clearly made by GATT provisions.
11. Most countries preferred to await the outcome of studies in progress in other international organizations or in GATT as to the restrictive effect on trade before they pronounced themselves on the question of guidelines.
12. Developing countries considered that the case for use of prior deposits by them was substantially different from that of developed countries and also urged that when developed countries used such schemes the products of interest to developing countries should be excluded in conformity with Article XXXVII.

Possible solutions

13. It was agreed that the most desirable solution to the problem of prior deposits would be their elimination as soon as possible.

14. Some delegations favoured arrangements for timely notification of prior deposit schemes to the CONTRACTING PARTIES and for appropriate consultation in such cases along the lines of the provisions of Articles XII and XVIII:B. Other delegations considered that import deposit schemes should be notified and dealt with on a case-by-case basis. Still other delegations believed that countries invoking balance-of-payments justification for import deposits should consult in the GATT Balance-of-Payments Committee. Some delegations, however, could not pronounce themselves on these questions until they know whether prior deposits should be regarded as possible legally-accepted instruments in this field.

15. Without prejudging the issue of the appropriateness of prior deposits as trade measures for balance-of-payments purposes, several countries also considered it useful to examine the possibility of developing guidelines which might establish principles to be followed as a means of reducing the harmful effects of prior deposit schemes on international trade. These included:

(a) Whether or not regarded as an additional charge on imports inconsistent with Article II as regards bound items, or as a form of quantitative restriction generally inconsistent with Article XI, prior deposit schemes should be used only in the case of balance-of-payments difficulties, and only in circumstances where these measures avoided the use of more burdensome measures.

(b) Prior deposits should be limited in time and should not in any event be continued beyond the period required to overcome the difficulties which caused their imposition.

(c) The rate of deposit should be as low as possible and should be reduced as rapidly as circumstances permit; in addition, deposits should not be kept for an unreasonably long period. In this connexion, it was argued that it might be preferable, from a trade point of view, to have a higher rate of deposit for a shorter period than a lower rate and a system of long duration.

(d) To avoid to a maximum any discriminatory effects, prior deposits should apply without exception, and at uniform rates, to the goods of all countries and to all categories of imports.

(e) In order, however, to avoid adverse effects which the introduction of any such scheme might have on the trade of developing countries, products of interest to them should be exempt from the product coverage.

(f) Prior deposits should be used only in conjunction with internal programmes to restore external equilibrium and, to heighten their anti-inflationary effect, funds accumulated should be sterilized and steps taken, upon termination of the scheme, to avoid inflationary effects of liquidation of the accumulation.

II. VARIABLE LEVIES

16. One notification on a system of variable levies appeared in the Illustrative List. It was recalled that the item in question was among a number of items covering agricultural products which had been referred to the Committee on Agriculture. The Group noted that solutions to the problem of variable levies were under active consideration in that Committee.

17. In this light it was agreed to defer discussion on the item until the possibility for solutions had been explored in the Agriculture Committee.

III. RESTRICTIONS ON FOREIGN WINES AND SPIRITS

18. Discussion centred on the four Illustrative List items regarding taxation of spirits.

19. With respect to the notifications concerning differences in rates of taxation, some countries considered that differences in tax rates as between various alcoholic beverages amounted to a de facto discrimination against their exports and afforded protection to domestic products.

20. Some delegations suggested that progressive tax rates could be applied to alcoholic beverages, as in the case of personal income, because it was a well-established principle that tax should be imposed in accordance with the ability to pay.

21. Reference was made to a system operated by another country, which appeared to the notifying countries to be discriminatory, whereby spirits of less than 100° were taxed on a wine-gallon basis but spirits of 100° or above were taxed on a proof-gallon basis. The practical effect of this system was that spirits imported if already bottled, were taxed on the high wine-gallon basis, whereas domestic spirits as well as bulk imports in casks were taxed on the more favourable proof-gallon basis. Although it had appeared that these were like products in the sense of Article III, this distinction hampered the marketing of spirits imported already bottled and limited the value of tariff concessions. The system also has the effect of affording protection to the bottling industry of the country applying it, by means of internal taxes rather than the tariff. It was pointed out, by the maintaining country, that a number of other countries differentiate in their tariff treatment of alcoholic beverages that are imported in bottles and those that are imported in bulk and in the way, in its view, afford protection to their bottling industries. It was however pointed out by other delegations that such differential tariffs as between the same product at different stages of manufacture were a normal and legitimate feature of national commercial policy.

22. Several delegations held the view that all alcoholic beverages with approximately the same alcoholic content should be regarded as "like domestic products" within the meaning of Article III:2.

23. A related notification regarding the prohibition of one contracting party of the advertising of certain spirits was also discussed by the Group. The notifying countries considered that such discriminatory restrictions on advertising impaired the value of tariff concessions and should be removed. The maintaining country pointed out that this measure had been fully explained in notification 173.2 (COM.IND/W/32).

Possible solutions

24. As regards advertising, in the opinion of the notifying countries, it would be desirable to consider an interpretative note to the first sentence of paragraph 4 of Article III to make it clear that the regulations and requirements mentioned in that paragraph included equal rights of advertising. It was suggested that an explanatory note to Article III:1 should be prepared defining the expression "offering for sale" so as to make explicit that it includes advertising, and also clarifying the phrase "afford protection to domestic production".

25. It was also suggested that the problem could be tackled by creation of standards in this field and in co-operation with other organizations such as the World Health Organization though any solution on this basis required further detailed examination.

26. As regards taxation, some delegations suggested that all alcoholic beverages should be taxed at a single rate for all price ranges.

27. A number of delegations considered that the best solution lay in the maintaining countries unilaterally altering their taxation systems to eliminate their discriminatory aspects. Some of these delegations also suggested that an attempt be made to define the term "like domestic product" by way of an interpretative note to Article III of the General Agreement. It was noted in this connexion that some of the items on the Illustrative List had been referred to the Working Party on Border Tax Adjustments and had been discussed at its meeting in March. That Working Party had held considerable discussion on the provisions of Article III. Some delegations expressed the view, however, that the problem of drafting an interpretative note to "like domestic products" was somewhat outside the scope of the Working Party and should primarily be dealt with by this Group.

28. Other countries expressed the view that little was to be gained from having a code or interpretative note since the problem did not appear to be a general one. Moreover, in some cases, the legislation and practice complained of predated the General Agreement and so could be justified under the Protocol of Provisional Application. This justification would be unaffected by any interpretative note to Article III and thus would permit the present imbalance to persist, unless maintaining countries undertook a firm obligation to abide by it

irrespective of the rights under the Protocol of Provisional Application. Finally, differences in fiscal treatment applied to imports of spirits which may come under the responsibility of regional governments or authorities and any solutions which might be envisaged should take into consideration the necessity for a solution to this problem.

29. Some delegations suggested consideration of an interpretative note to Article III along the following lines:

"Paragraph 2 of Article III should be interpreted, in the case of alcoholic beverages, to mean that fiscal charges should be based on their alcohol content, or on any other objective criterion which does not entail indirect protection for domestic industries through unreasonable differentiation between products."

30. Some delegations, which were not generally in favour of an interpretative note, considered that if such a note were ever adopted it should take account of individual circumstances of countries and also of their public health policy.

IV. DISCRIMINATORY TAXES ON MOTOR CARS

31. The representative of the notifying country stated that motor vehicle taxes were levied in many countries on a basis that discriminated against exports from his country by imposing a higher tax burden on such exports than domestically-produced vehicles and imported vehicles of comparable value.

32. It was noted that the problem of taxes on motor cars had, in relation to some countries, been dealt with in the Chemicals Agreement in the context of the Kennedy Round in 1967, and that implementation of this Agreement was linked to the abolition of the American Selling Price System.

33. Delegations representing maintaining countries stated that if the majority of countries at present based their taxation system on fiscal horsepower or cylinder capacity, it was generally not desirable to attempt harmonization towards other systems. These systems had existed over a long period and were maintained for fiscal and practical reasons. In several cases, even countries which lacked a domestic motor industry levied tax on the basis in question. Some considered that a higher rate of taxation on large cars could also be justified on the principle that tax should be imposed according to ability to pay. The view was nevertheless expressed by these delegations that changes in the fiscal systems concerned would represent a real concession and not just removal of any sort of discrimination.

Possible solutions

34. Some delegations considered that the solution lay in eliminating the discriminatory effects of the taxes which might be achieved, for example, by assessment of taxes on motor cars on the basis of value. There should also be a single tax rate for motor cars in the same price range with a reasonable spread between the highest and lowest tax rates so that the upper limit is not so high that it unreasonably discourages purchases.

35. The following interpretative note to Article III was also suggested by some delegations:

"Paragraph 2 of Article III should be interpreted, in the case of motor vehicles, to mean that fiscal charges should not be used to afford protection to domestic production, nor be prohibitive in level, nor have a discriminatory effect as among suppliers, and should, to the greatest extent possible, ensure a reasonable rate of progression."

V. CREDIT RESTRICTIONS FOR IMPORTERS

36. The Group considered two different types of problems under Item 511. They were firstly the system which requires government approval for credit payment terms which extend beyond four months, and secondly the non-eligibility of import bills for discount or as security for loans with the central bank.

37. With regard to the first question, the notifying countries stressed that this system of credit approval (standard method of settlement) subjected all imports, whether liberalized or not, to the discretionary authority of government officials. Such control over the import credit terms resulted in the restriction of trade normally transacted on the basis of long- and medium-term credits. Such a control was not exercised in most developed countries and should be eliminated as soon as possible.

38. As to the second question, the notifying countries suggested that, especially for countries having no balance-of-payments difficulties, such discrimination between domestic and import transactions in regard to credit availability should also be eliminated.

39. As to the first question, the representative of the maintaining country said that the purpose of the system was to screen the credit terms of import transactions in order to verify whether they conform to normal commercial practices. In this connexion, he stated that so far as individual transactions were found to be in conformity with normal commercial practices they were approved even if they were financed by credit the term of which extended beyond four months. He also wished to know how other countries were controlling speculative capital transfers in the form of trade credits.

40. In regard to the problem concerning import bills, he said that the central bank of his country had, as from 1 June 1970, made import bills eligible as security for loans to commercial banks. In this context, he pointed out that the importance of this question had been exaggerated in view of the fact that imports into his country were largely financed by foreign banks or suppliers.

41. Some countries stressed that problems concerning these measures should be studied in a broader context, and expressed doubt as to whether the measures in question could appropriately be dealt with without due regard to various aspects of the problem such as the necessity to control speculative capital transfer in the form of trade credits and difference of interest rates between countries.

Possible solutions

42. Some countries maintained that both types of problems were impairing export interests of other countries. The desirability of resolving these problems through removal or modification of the measures was reiterated.

43. Some countries suggested that a solution to the problem concerning the availability of credit to importers would be an interpretative note to Article III of the General Agreement indicating that paragraph 4 of the Article should be understood to include similar access to credit for importers as for domestic producers, with the financial institutions concerned deciding the appropriate rate of interest in accordance with relevant factors such as the degree of risk.

44. It was however pointed out by one delegation that, in view of the fact that the problem in question was not of a general character and that the subject should be studied in a broader context, the solution suggested in the preceding paragraph would not be appropriate. In this connexion reference was made to the fact that the problem was now being examined in the framework of the OECD and that the Group should await the outcome of such examination.

General Comment on Items III, IV and V

45. Since the non-tariff barrier problems referred to in Sections III, IV and V could, in the view of some countries, be solved through interpretative notes to different paragraphs of Article III, the Group briefly discussed the case for an overall review of this Article. Some delegations, however, did not support such a review. Others considered that there might be advantages in tackling the three problems in the general framework of Article III.

VI. FISCAL ADJUSTMENTS EITHER AT THE BORDER OR OTHERWISE

46. The Group considered the notifications in the Illustrative List dealing with the issue of tax adjustments applied to goods entering into international trade in the light of the report by the Working Party on Border Tax Adjustments (L/3464), which had been submitted to the Council and adopted by it. The Group noted that the examination of the notifications in the Working Party on Border Tax Adjustments (document COM.IND/W/29) had not led to any concrete suggestions for solutions to these measures because there had been divergence of views as to the relevance of these notifications to the question of tax adjustments as examined in the Working Party. The Group also noted that there had been a comprehensive discussion of the provisions of the General Agreement in the Working Party on Border Tax Adjustments. This discussion had led to certain agreed positions with regard to the interpretation of the relevant provisions of the General Agreement, which was reflected in certain paragraphs in that Working Party's report (L/3464). This report could be usefully referred to in the course of any future work in this field.

47. The Group further noted that, following the recommendations of the Working Party on Border Tax Adjustments, the Council had agreed that a notification procedure be introduced on a provisional basis whereby contracting parties will report any major changes in tax adjustment legislation and practices affecting

international trade, and in particular to bringing periodically up to date the information contained in the consolidated document on contracting parties' practices (L/3389) on tax adjustments, drawn up in the course of the Working Party's work. Furthermore, the Council had agreed that a consultation procedure, within the scope of the relevant provisions of the General Agreement, be established whereby, upon request by a contracting party, a multilateral consultation could take place on changes in tax adjustments, whether notified or not. The Council had invited the Director-General to consider, at convenient intervals, on the basis of the notifications, and in consultation with interested parties, whether a review of notified changes was called for. The Council had also invited the Director-General to consider after an adequate period of operation, and in consultation with interested parties, whether the provisional notification procedure should be continued, modified or discontinued.

48. The Group considered that the Council's Decisions went some way in the direction of finding a solution to problems connected with tax adjustments. In this way they could also to a certain extent take care of the notifications in Section F of the Inventory. The Group therefore considered that the Decisions of the Council should be seen as an integral part of the non-tariff barrier exercise.

VII. STATISTICAL AND ADMINISTRATIVE DUTIES

49. One representative said that his government had already initiated action towards eliminating the administrative charges and statistical duties applied in his country and hoped that they would be abolished by 1 January 1971. He pointed out, further, that his country's effort should not be interpreted as indirect recognition of an infringement of the GATT rules, but rather as a liberal effort that the government was intending to make in line with the objectives of the General Agreement.

50. It was pointed out that, in addition to statistical and administrative duties, a number of taxes of various kinds (such as port taxes, etc.) were applied to imports by many countries. They were considered as an unnecessary hindrance to trade and were all the more burdensome because of their complexity. Concern was expressed with the multiplicity of such measures which were generally applied for revenue purposes. It was noted that the provisions of Article VIII provided that all such fees should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a tax for fiscal purposes. It was also noted that these provisions stressed the need to reduce the number and diversity of fees and charges.

Possible solutions

51. It was agreed that a solution lay in strict application of Article VIII and also Article II but a difficulty arose in trying to assess the cost of services rendered. It was therefore suggested that, as a first step, a procedure be adopted whereby countries applying such fees should be requested to supply details of revenue from fees of this kind together with expenditure on services rendered each year. Some delegations expressed doubt as to the necessity of such an exercise in view of the fact that the measures in question did not constitute a major hindrance to world trade.

52. Certain countries proposed that wherever possible these fees should be eliminated, but that in any event their total should not exceed some maximum, such as \$10 per shipment, a proposal similar to one made on consular invoices and fees in Group 2. Other countries also pointed out, however, that the establishment of such a maximum could be an incentive for governments to increase the amount of their fees up to that maximum.

53. Certain delegations considered that countries which applied charges of various kinds in addition to other protective measures such as customs duties and quantitative restrictions, should endeavour to reduce the multiplicity of those measures and, in their own interest, simplify the formalities, fees and obstacles to imports which involved costs that were ultimately borne by importers.

54. It was noted that the fees notified were applied mainly by developing countries. Representatives of developing countries pointed out that in some cases it was found necessary to resort to such taxes and duties for fiscal purposes, to raise additional revenue to finance their development expenditure. They therefore found it difficult to accept any suggestions for total elimination of such taxes or to limit them to \$10 per shipment. While generally supporting the proposal in paragraph 52, they expressed some doubts as to how far in practice it would be possible to give precise information on details of revenue and the cost of services rendered each year. They emphasized that any overall solutions to the problems would have to take into account trade and development needs of these countries and as such it might be desirable to refer these suggestions to the Committee on Trade and Development. It was also necessary to ensure that any solution that might be evolved related only to trade in goods and not to invisibles.

VIII. SPECIAL DUTIES ON IMPORTS

55. The Illustrative List contained notifications regarding measures adopted by some countries providing for temporary emergency tariff relief which it was claimed create uncertainty in tariff levels, as well as an item referring to special duties charged by one contracting party with respect to repairs carried out abroad to its ships.

56. The special duty on ship repairs was considered by the country applying it as being a customs duty rather than a non-tariff restriction as alleged by the notifying countries. The notifying countries challenged that interpretation, in view of the fact that the special duty concerned did not appear in the tariff schedules. It had never been mentioned as a negotiable customs duty in tariff negotiations. The special duty, which was charged at a prohibitive rate, should be reduced.

57. As regards the escape clause trade measures and tariff-formulating measures, the maintaining countries considered that they were entirely consistent with GATT and fell outside the scope of the non-tariff barrier exercise. They stressed, furthermore, that the systems operated by their countries were of minimal significance to trade since in only a very small number of cases were restrictions actually invoked.

Possible solutions

58. In this connexion, one notifying country, supported by certain others, submitted the following general proposals with regard to Article XIX which could be implemented either through guidelines or an interpretative note:

- (i) A more precise definition of the concepts "product", "like product" and "directly competitive product", accompanied by some criterion for judging injury or threat of injury.
- (ii) Measures taken under Article XIX should be of as short a duration as possible and in no case should they exceed three years.
- (iii) Some criteria for granting compensation for parties whose trade is affected by Article XIX action should be devised.
- (iv) The time required for investigation prior to Article XIX action should be a reasonably short one, for example ninety days.

59. The question of holding a general review on the operation of Article XIX was discussed. Some countries considered it useful to have such a review, particularly in view of recent developments in world trade.