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Committee on Trade and Development
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REPORT OF THE SUB-COMMITTEE ON PROTECTIVE MEASURES

1. The Sub-Committee on Protective Measures held its first session on 1 and 2 July 1980, under the Chairmanship of Ambassador Hill (Jamaica).
2. In his introductory remarks, the Chairman recalled that the Sub-Committee had been established at the March 1980 meeting of the Committee on Trade and Development, in accordance with the Decision of the CONTRACTING PARTIES of 28 November 1979 on the Examination of Protective Measures Affecting Imports from Developing Countries (L/4899). He stated that the task assigned to the Sub-Committee, that of examining any case of future protective action by developed countries against imports from developing countries in the light of the relevant provisions of GATT, particularly Part IV, responded to the invitation made to GATT on this matter in paragraph 8 of resolution 131 adopted at UNCTAD V in Manila. It also responded to the desire that developing countries had often expressed of finding ways of reinforcing the Committee on Trade and Development's procedures for reviewing the implementation of Part IV, especially its standstill provisions. The Chairman added that the Decision of the CONTRACTING PARTIES required the examination in the Sub-Committee of protective measures taken by developed countries against imports from developing countries and noted that the examination was to be without prejudice to the rights of contracting parties under GATT or the competence of other GATT bodies. The Decision also provided that the Sub-Committee would report on its work to the Committee on Trade and Development and through it to the Council. Accordingly, the report of this meeting was being transmitted to the Committee on Trade and Development for consideration at its session on 10 and 11 July 1980.
3. In referring to the dangers of protectionism to the open trading system and to the development efforts of the developing countries, the Chairman noted that the work of the Sub-Committee should be seen in the context of the common determination of governments to resist the use of protective measures. Thus, an important task of the Sub-Committee was to ensure greater vigilance with respect to these matters and to provide for timely discussion of any measures that may be taken.
4. The Chairman recalled that at its March session, the Committee on Trade and Development had discussed a number of aspects relating to the work of the Sub-Committee, including notifications and sources of information, the frequency of the Sub-Committee's meetings, and its procedures for examination

and reporting. The discussions on these points were summarized in paragraph 20 of the note on proceedings of the Committee (document COM.TD/104). He further recalled the understanding at the March meeting of the Committee on Trade and Development that the Sub-Committee, at its first session, would examine any notifications and relevant information made available to it and give such further attention to working out more detailed procedures as might be considered necessary.

5. The Sub-Committee adopted the following agenda for the meeting:

- (i) General statements;
- (ii) The examination of protective measures that delegations might wish to bring up for discussion;
- (iii) Procedures for the Sub-Committee's work;
- (iv) Next meeting of the Sub-Committee;
- (v) Adoption of report.

General statements

6. In referring to the important rôle the Sub-Committee could play in the framework of GATT, a number of delegations stated that in their view the particular focus of the Sub-Committee's work should be the provisions of Part IV, bearing in mind the relevance of other GATT provisions to measures which might be subject to examination. In this respect, some delegations referred in particular to the need to examine measures taken in the light of the commitment provisions of Article XXXVII:1 and also of Article XXXVII:3(b) and (c). Some delegations stated that the work of the Sub-Committee should be problem-oriented and complaint specific, and should be undertaken in response to particular issues raised by developing countries on the basis of their individual interests in measures taken. Some delegations also emphasized the need for the Sub-Committee to avoid unnecessary duplication of work in relation to that being undertaken in other GATT bodies; in particular, it should avoid considering the consistency of measures notified with Parts I to III of the General Agreement. Some delegations expressed the view that the fact that a measure was consistent with the provisions of the GATT should not a priori preclude it from examination by the Sub-Committee, particularly in terms of its trade effects and of the provisions of Part IV.

7. Some delegations expressed the view that the Sub-Committee should have a two-fold rôle: to examine specific measures in the light of the provisions of GATT, particularly Part IV; and to examine the overall problem of protectionism with a view to highlighting trends, for example in individual sectors. Some other delegations indicated that the consideration of the broader issues of protectionism was in their view not provided for in the Sub-Committee's terms of reference. They also noted that the Consultative Group of Eighteen was the preferred body for such consideration, because its informal format and representation allowed for a fuller exchange of views. They also noted that the Consultative Group of Eighteen regularly gave attention to such broader issues in its reviews of recent developments in trade policy and international trade.

8. A number of delegations proposed that the Sub-Committee's reports should contain recommendations to the Committee on Trade and Development and to the Council. Some other delegations stated that as the Sub-Committee's mandate was clear, the Sub-Committee was not expected to make recommendations, it being up to the Committee on Trade and Development to give consideration to the Sub-Committee's reports in the light of its own terms of reference. The view was also expressed that this matter could best be approached in a pragmatic manner: where the Sub-Committee was able to reach consensus this could be reflected in its reports; where it was not able, the reports could contain a summary of the various views, suggestions or observations put forward. In this connexion, a reference was made to the summing-up on this matter by the Chairman of the Committee on Trade and Development at its March meeting.

Examination of protective measures

9. The Sub-Committee noted that no notifications of protective measures taken by developed countries and affecting developing countries had been received from developed or developing countries in response to GATT/AIR/1627 which invited notifications under the procedures agreed at the fortieth session of the Committee on Trade and Development. Without prejudice to its later discussion on procedures, the Sub-Committee proceeded to examine the measures listed on page 4 of the background note prepared by the secretariat - Protective Actions by Developed Countries Against Imports from Developing Countries (COM.TD/SCPM/W/1) - , which included inter alia certain notifications under other GATT procedures, taking into account general statements made under agenda item 1 regarding the Sub-Committee's work.

10. The representative of Australia, responding to questions from delegations, referred to the tariff changes introduced by his Government in respect of certain rubber products. He stated that these modifications had resulted from a report of the Industries Assistance Commission (IAC) dated

October 1979, whose recommendations had been accepted, with only minor modifications, by the Australian Government. The IAC had recommended a long-term general duty rate for most rubber products of 25 per cent and a GSP rate of 15 per cent. In some cases, the IAC had recommended higher duties, which would be phased down to the recommended industry rates. He stressed that on the majority of rubber products duties had been reduced as a result of the Government's decision. Duties had been increased in only a few cases, accounting for 0.4 per cent of imports of rubber products from developing countries in 1978/79. He observed that only two of the ten main suppliers of rubber products for which trade data was given on page 5 of COM.TD/SCPM/W/1 were developing countries and that their trade was in only two of the seven items listed. One developing country had made representations to his Government in respect of rubber cord and thread. Duties charged on imports of this item from developing countries had been lowered. He stated that the report of the IAC on rubber products was available for inspection by any delegation wishing to have additional information.

11. The representative of the European Communities, referring to the Community's measures applied to mushrooms indicated on page 4 of COM.TD/SCPM/W/1, stated that in the notification to the contracting parties, which had been reproduced in document L/4994, it had been indicated that the Commission was prepared to enter into consultations with any contracting party having a substantial interest as an exporter of the products to the EEC market, and that information provided in the Sub-Committee had to be regarded as being without prejudice to any such possible consultations. In explaining the background to the recent measures, the representative of the Communities stated that an earlier Article XIX action on preserved mushrooms had been lifted following assurances of co-operation in respect of supplies to the Community market by principal suppliers. However, the subsequent action of traders in a number of countries had led to requests for licences equal to many times traditional trade volumes and the development of new product lines in an effort to circumvent the bilateral agreements reached. It was because the Community could not expect principal suppliers to co-operate, while other countries continued to have unlimited access to the EEC market, that the measures had been taken. Responding to certain of the points made by the representative of the United Kingdom speaking on behalf of Hong Kong (paragraph 12 below), he stated that he did not regard the action on preserved mushrooms as a ban on imports from Hong King, since licences had already been issued to cover traditional trade volumes. He stressed that the problem had arisen as a result of an effort by the Community to find a constructive remedy, in accordance with the provisions of Article XXXVII:3(c), to a measure affecting the trade interests of certain developing countries. The matter was a complex one and was in his view better pursued through bilateral consultations.

12. The representative of the United Kingdom, speaking on behalf of Hong Kong, stated that the reference to the action by the European Communities on preserved mushrooms in COM.TD/SCPM/W/1 should be treated as a "reverse" notification by Hong Kong since his delegation would have made a notification if the matter had not already been covered in the secretariat note. He stated that the Community had not provided in its notification any justification for the measure. He also noted the statement by the representative of the European Communities that Article XIX had not been invoked. His delegation believed that the action was discriminatory and thus contrary to the provisions of Article I of the General Agreement. Furthermore, the measure was inconsistent with GATT Article XI since, in his view, it entailed a complete ban on imports from Hong Kong. His delegation would not be seeking consultations under Article XIX since it did not believe that the action fell under that provision. He indicated, however, that Hong Kong was considering seeking consultations under Article XXIII because his delegation was of the opinion that certain benefits accruing to Hong Kong under the General Agreement had been nullified as a result of the action. He further stated that he could not accept a justification of the measure on the grounds that traditional trade had been provided for, since the concept of traditional trade did not exist under the GATT. The application of such a concept could lead to a freezing of trade patterns and the exclusion of new suppliers, many of whom were developing countries. Furthermore, he could not accept that the co-operation of major suppliers should be used as a reason for action against Hong Kong. The GATT did not provide for actions against some suppliers to enforce bilateral arrangements that had been negotiated with other suppliers. He expressed the wish that the matter remain on the agenda for the next meeting of the Sub-Committee.

13. Representatives of a number of other developing countries stated that their authorities were studying the consequences for their trade of the Community measures on mushrooms. One of these representatives stated that his delegation was expecting to hold consultations based on Article XIX with the European Communities. These representatives stated that they expected to keep the Sub-Committee informed of the results of any consultations that they might hold.

14. Referring to the measures taken by the United States in respect of porcelain-on-steel cooking ware, the representative of the United States said that his delegation would attempt to respond to specific questions of particular concern to the interested developing countries. He said that detailed information had been provided in document L/4889 and Addendum 1. He noted that the final decision of the United States' President had differed somewhat from the International Trade Commission's recommendations in that the period of relief had been shortened, the additional rate of duty reduced, and tea kettles had been excluded from the scope of the measure. The United States had indicated its readiness to consult with contracting parties having a substantial interest as exporters of porcelain-on-steel cooking ware to the United States under Article XIX:2.

15. Concerning the actions listed in table 2 of the Annex to COM.TD/SCPM/W/1, a point was made by some delegations that anti-dumping and countervailing actions were legitimate responses to unfair trade practices rather than protective measures, and were, therefore, considered to be outside the terms of reference of the Sub-Committee. Other delegations expressed the view that the Sub-Committee should not preclude, a priori, the examination of any measure that restricted imports, since it might have been taken with protective intent.

16. With regard to the actions listed in table 2 of the Annex to COM.TD/SCPM/W/1, the representative of the European Communities stated, without prejudice to the scope of the Sub-Committee's work, that the anti-dumping/anti-subsidy proceedings in respect of mechanical alarm clocks from Hong Kong and the People's Republic of China and in respect of mounted piezo-electric quartz crystal units from the Republic of Korea had been terminated. As regards cotton yarn from Turkey, the investigations were still in progress. In this connexion, he expressed the view that the initiation of such investigations did not constitute a protective action.

Procedures for examination

17. In offering the floor for discussion on this agenda item, the Chairman recalled that the Sub-Committee was expected to give such further attention to working out more detailed procedures as might be considered necessary for the discharge of its mandate.

18. A number of comments were made on the coverage of the Sub-Committee's work. While some delegations doubted that the Sub-Committee was the appropriate forum for discussing anti-dumping and countervailing measures which they saw as responses to unfair trade practices, most delegations were prepared to go along with the view that, if a developing country believed that a measure was protective and affecting its trade, then it could be raised for discussion. Some delegations noted that the taking up of a measure by the Sub-Committee would be without prejudice to the position of any country as to whether the measure fell within the Sub-Committee's terms of reference. This could be expected to be clarified by the Committee's discussion of the measure. There was a general view that unnecessary duplication of work with other GATT bodies should be avoided. Most delegations felt that the taking up of a measure elsewhere did not by itself mean that it could not be taken up for examination in the Sub-Committee, particularly in the light of the provisions of Part IV. In this connexion, the point was also made by some delegations that a large number of countries were not at the present time participating in the Agreements on non-tariff measures resulting from the Tokyo Round.

19. Some delegations stated that they did not consider action to modify or withdraw GSP treatment as falling within the Sub-Committee's terms of reference, particularly as notification, consultation and review provisions

already existed under the Enabling Clause, in respect of which the primary responsibility for the supervision of implementation lay with the Committee on Trade and Development. Furthermore, some delegations said that the reapplication of m.f.n. duties within the context of autonomous GSP schemes should not be considered as protective measures. Some delegations considered that measures taken before the Decision of the CONTRACTING PARTIES of 28 November 1979 to establish the Sub-Committee did not fall within its mandate, which spoke of the examination of any case of future protective action. One delegation felt that the measures listed in the Annex to document COM.TD/SCPM/W/1 should not have been included. In this respect, it was noted that some of the measures listed in the Annex were taken after November 1979. Certain other delegations expressed the view that measures taken since UNCTAD Resolution 131(V) was adopted in June 1979 would be appropriate for examination in the Sub-Committee if a member so desired. Some delegations believed that the Sub-Committee should also have a rôle in following up developments in respect of measures that it had previously examined.

20. Some delegations urged that developed countries taking protective actions affecting developing countries should endeavour to notify such actions, whenever possible, in advance of their implementation, so that there was a possibility for discussion before the action was taken. One delegation felt that, if it complied with its notification obligations in accordance with other GATT procedures, it would not be necessary to make separate notifications to the Sub-Committee. Some delegations suggested that the Sub-Committee should develop a questionnaire for use by countries introducing protective measures so as to provide a basis of information that would enable the Sub-Committee to assess the impact of such measures on the trade of developing countries in the light of the provisions of Part IV. The questionnaire could request details on such matters as the reason for the measure, the period of its application, the efforts made to exclude developing country trade from its scope and statistical information. As for reverse notifications, one delegation thought it desirable that countries intending to make such notifications consult with the country taking the measure concerned in advance.

21. With regard to sources of information for the Sub-Committee's work, the Sub-Committee re-affirmed the three sources identified by the Committee on Trade and Development at its fortieth session (COM.TD/104, paragraph 20). The Sub-Committee further re-affirmed the understanding reached in the Committee on Trade and Development that it was expected that notifications would be submitted having full regard to the provisions of Part IV and without prejudice to other GATT provisions and that unnecessary duplication would be avoided; and that it was suggested that information on new restrictive measures notified elsewhere in GATT could simply be drawn to the attention of the Sub-Committee by means of a cross-reference to the original notification together with any additional observations having regard to the provisions of Part IV that might be found helpful to the work of the Sub-Committee.

There was a widespread view that the value of discussion in the Sub-Committee would be enhanced if countries taking measures had some advance indication of the points that members might wish to take up in the Sub-Committee. To this end, a large number of delegations felt that, wherever possible, notifications by developed countries and reverse notifications by developing countries of protective measures should be made promptly and, in any case, at least six weeks in advance of a meeting of the Sub-Committee, that such notifications and other documentation to be provided by the secretariat should be circulated at least four weeks in advance and that the secretariat should invite delegations wishing to take up particular notifications or matters referred to in the secretariat documentation to communicate their interest at least two weeks in advance, so that this could be brought to the attention of the country taking the action, and provide the basis for the deliberations of the Sub-Committee. As for the secretariat background documentation, taking into account the comments made the secretariat would continue to provide information on measures which could affect access for products of interest to developing countries in consultation with delegations to ensure accuracy. It was understood that the inclusion of measures in the secretariat document would be without prejudice to views delegations might have regarding the desirability of taking up for examination any such measures or whether they fell within the Sub-Committee's terms of reference.

Next meeting of the Sub-Committee

22. The Sub-Committee agreed that the Chairman, in consultation with delegations and the secretariat, would fix the date for the next meeting of the Sub-Committee, taking into account the points made on frequency of the Sub-Committee's meetings at the March 1980 meeting of the Committee on Trade and Development.