

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REPORT OF THE SUB-COMMITTEE ON PROTECTIVE MEASURES

1. The Sub-Committee on Protective Measures held its fourth session on 2 and 4 November 1981, under the Chairmanship of Ambassador Hill (Jamaica).
2. In his introductory remarks, the Chairman drew attention to the Sub-Committee's terms of reference, as determined by the CONTRACTING PARTIES in November 1979 (L/4899). These required it to examine 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 thereof, such examination being without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies. The Chairman also recalled that, both in the course of the Sub-Committee's work and during the consideration of its reports in the Committee on Trade and Development, developing countries had emphasized the importance they attached to the work of the Sub-Committee, particularly because, among other things, of current protectionist pressures. He expressed the hope that the co-operative and pragmatic approach developed at past meetings of the Sub-Committee would again be maintained so that there would be useful discussion and examination of the issues and problems brought to the attention of the Sub-Committee, having regard to its terms of reference.
3. The Sub-Committee had before it two notifications received from governments in response to GATT/AIR/1746: a notification by Australia was circulated as document COM.TD/SCPM/W/12 and a "reverse" notification from Chile as document COM.TD/SCPM/W/10. In addition, the secretariat had put together in COM.TD/SCPM/W/11 certain information on a number of measures that could be of interest to the Sub-Committee. The information contained in the secretariat note was presented, as indicated in its paragraph 4, in accordance with the understanding reached at the first session of the Sub-Committee that the inclusion of measures in secretariat documents for the Sub-Committee would be without prejudice to views delegations might have regarding the desirability of taking up for examination any such measures or on whether they fell within the Sub-Committee's terms of reference.
4. The Sub-Committee organized its work by first taking up the notifications made by governments, followed by discussion and examination of a number of measures referred to in the secretariat document, including also developments with regard to certain measures examined at its earlier meetings.

Australian notification (COM.TD/SCPM/W/12)

5. The representative of Australia said that the decision to increase the general rate of import duty on parts for hand-propelled vehicles or vehicles of a kind drawn by animals, not being parts (other than wheels) for golf buggies, had resulted from an Industries Assistance Commission (IAC) review, at the request of the Australian Government, of the levels of protection affecting a number of industries, including that producing hand-propelled vehicles or vehicles of a kind drawn by animals. This classification included hand-propelled vehicles such as wheelbarrows, hand trucks, shopping trolleys and shopping jeeps, and animal drawn vehicles such as trotting gigs, drays, sulkies and the like. The IAC had recommended that the general tariff on these items be reduced from 43 per cent to 25 per cent. It had also recommended that the general tariff on parts for these vehicles be set at the same level of 25 per cent, this being seen as an equitable and economically efficient allocation of protection between parts and whole vehicles. The Australian Government considered that imports from developing countries were unlikely to be affected by the increased tariff on parts because the GSP rate had been left unchanged at 10 per cent. Total imports of the items notified were provisionally estimated at just under \$A 198,000 in 1980/81.

Chilean notification (COM.TD/SCPM/W/10)

6. The representative of Chile, noting that some of the measures notified by his authorities might not strictly fall within the Sub-Committee's terms of reference, expressed the hope that delegations whose countries were applying the restrictions might provide to the extent possible, additional information on the restrictions notified and on the possibilities for their liberalization. His delegation would also be ready to discuss these measures bilaterally with the delegations concerned.

7. The representative of Japan, referring to the suggestions of the Chilean representative for dealing with the measures covered by the Chilean notification, said that his delegation was in favour of having informal talks bilaterally with the Chilean delegation in order to seek a fuller understanding of the nature and contents of the measures taken by the Japanese Government through furnishing necessary information to the Chilean delegation.

8. The representative of Canada doubted the necessity of including in a "reverse" notification the Canadian measure on footwear because this had already been notified under Article XIX in document L/4611 some four years ago. He added that in 1980 the Canadian Government had decided to extend for a further year the duration of the measure and to request the Canadian Anti-Dumping Tribunal to examine whether injury might be caused to the Canadian industry if the quotas were to be removed. The Canadian Government was expected to announce this month its response to the report the Anti-Dumping

Tribunal had presented on this question. He said that consultations had been held with a number of delegations in response to Canada's Article XIX notification. He noted also that quotas were allocated to Canadian importers who were free to import from whatever source that they wished.

9. The representative of Norway said that the Nordic countries felt that the Chilean notification fell outside the Sub-Committee's mandate. They had found that some of the information notified was not factually correct and were prepared to enter into consultations under appropriate procedures available in GATT to provide the necessary clarifications.

10. The representative of Switzerland said that, since the measures notified concerning Switzerland were based on an ordinance of 1953, they fell outside the mandate of the Sub-Committee. Nevertheless, he was prepared to discuss the matter with the delegation of Chile. He expressed the hope that this notification together with that presented by Argentina to the third session of the Sub-Committee would not set precedents for such notifications to future meetings.

11. The representative of Austria also expressed the view that the Austrian measures notified did not fall within the terms of reference of the Sub-Committee. Nevertheless, he would request his authorities to respond to the notification.

12. The representative of Chile expressed his appreciation for the information furnished by the delegations who had spoken and for the indications concerning opportunities to discuss the measures further.

Discussion on points arising out of secretariat note, COM.TD/SCPM/W/11

13. The representative of the European Communities said that he found the footnote to paragraph 3 of COM.TD/SCPM/W/11 anomalous in the light of the affirmation in paragraph 3 that restraints based on inter-industry agreements were not dealt with in the note. He also noted that the guidelines for the Sub-Committee's work required that the secretariat should verify from official sources the information provided.

14. In regard to the information contained in paragraph 5 of COM.TD/SCPM/W/11, concerning Italian deposit requirements for purchases of foreign exchange, the Chairman noted that this measure had been examined in the Committee on Balance-of-Payments Restrictions on 13 October 1981. At that meeting, the Italian representative had said that the rate of deposit had been reduced

to 25 per cent on 1 October 1981, would be further reduced to 20 per cent on 1 January 1982 and to 15 per cent on 1 February 1982, and would be abolished at the end of February 1982. This schedule thus replaced that indicated in paragraph 5 of COM.TD/SCPM/W/11. He added that on 1 October 1981 some further payments had been exempted from the scheme, namely payments for non-ferrous metals, certain energy products and agricultural products covered by specific European Community regulations. The Committee on Balance-of-Payments Restrictions, in its conclusions, had, inter alia, noted that the deposit scheme, though monetary in form, had some effects on trade and urged the Italian authorities to remove the measure as soon as possible. The representative of Italy confirmed the information given by the Chairman concerning the revised schedule for phasing out the deposit scheme.

15. With respect to EEC measures on certain mushrooms (paragraphs 6, 12 and 13 of COM.TD/SCPM/W/11), the representative of the European Communities said that the measure concerning preserved cultivated mushrooms falling under tariff position 20.02A had been notified in document L/5207 of 21 October 1981. The elements of the new régime applicable to this item were essentially the same as those under the quarterly régimes in force during the first three quarters of 1981. He recalled that the tariff on this item was not bound in GATT. Concerning the measure applicable to cultivated mushrooms prepared or preserved in vinegar or acetic acid within sub-heading 20.01C, he said that the measure had been published in the Official Journal No. L/234 of 20 August 1981 and would be communicated to the CONTRACTING PARTIES. This measure had been taken to avoid the circumvention of the measures already in force concerning preserved mushrooms and mushrooms in brine by the importation of substitutable products.

16. The representative of the United Kingdom speaking on behalf of Hong Kong, noting the information which had been provided with respect to the new regulations affecting mushrooms, said that his authorities were still examining these regulations. He stated that his authorities continued to have reservations about the compatibility of the measures with the provisions of the General Agreement.

17. The representative of Switzerland, providing information supplementary to that contained in paragraph 7 of COM.TD/SCPM/W/11, said that with effect from 1 September 1981 imports of soaps and washing preparations as well as raw materials and processed products used in their manufacture had been included in the system of obligatory stocking and had, therefore, been made subject to import licensing. The issue of an import licence was dependent on the conclusion of a contract under which the importer would undertake to build-up reserve stocks of the product in question. The licences authorized the importer to import from all countries without any quantitative or other limitations. The system of obligatory stocking, which had

been introduced in the 1950's, was designed to ensure supplies of the products concerned in certain emergency situations. Some fifteen products considered as essential for meeting the needs of the population or of industry were subject to the system; these products included animal feed-stuffs, motor fuel and other liquid fuels, coffee, sugar, etc. In this context, he informed the Sub-Committee that it was envisaged that tea would be included in the system of obligatory stocking with effect from 1 January 1982. He said that the system had no restrictive effects on imports; it could be expected that during the first year of obligatory stocking imports would increase as stocks additional to normal commercial stocks were being built up. Thereafter, imports should follow the ordinary development of demand. In response to a question, he confirmed that based on previous experience the increase in imports during the first year of application of the system of obligatory stocking could be expected to apply both to soaps and washing preparations and to tea.

18. The representative of the United States, commenting on paragraph 8 of COM.TD/SCPM/W/11, said that the additional duty of 4 cents per pound on imports of high-carbon ferrochromium introduced under a United States Article XIX action applied to imports with a customs value of less than 38 cents per pound of chromium content. He informed the Sub-Committee that an inter-agency group of the United States Government was reviewing the United States International Trade Commission's advice on the future of this measure noted in paragraph 8, and would formulate a recommendation for consideration by the United States President, whose decision was due by 15 November 1981. In regard to the last sentence of paragraph 8 referring to certain anti-dumping actions, he said that, while the United States was always willing to discuss anti-dumping or countervailing duty action, either bilaterally or in the context of the appropriate GATT code, his authorities considered that these actions were not protective measures but responses to unfair trade practices and it was therefore inappropriate to discuss the substance of them in the Sub-Committee.

19. Commenting on paragraph 9 of COM.TD/SCPM/W/11, the representative of the European Communities reiterated the Communities view expressed at the previous meeting of the Sub-Committee that although the information on steel was of background interest, much of it did not relate to specific protective measures.

20. The representative of India, updating the information contained in the notification presented by India to the third session of the Sub-Committee (COM.TD/SCPM/W/7/Rev.1), said that in regard to the United States countervailing duty on public works castings from India, the United States Government, following a review of the countervailing duty order at the request of the Indian Government, had reduced the countervailing duty from 9.3 per cent to 5.4 per cent. In regard to the United States anti-dumping

investigation on public works castings from India, he said the investigation had been closed; the United States authorities had made a final determination on 5 August 1981 that Indian castings were not being dumped in the United States. In regard to the Australian anti-dumping investigation on certain electric motors from India, he said that the Australian authorities had imposed dumping cash securities on this item in September 1981. The Indian Government had not, to the present, been given relevant information that would facilitate representations in relation to this case. He requested greater transparency in regard to such matters.

21. Commenting on Annex II of COM.TD/SCPM/W/11, the representative of Australia reiterated the view of his authorities that anti-dumping and countervailing duty actions were legitimate measures under the GATT as a defence against unfairly priced imports.

22. The representative of Malaysia referred to the Canadian anti-dumping investigation on waterproof rubber footwear listed in Annex II of COM.TD/SCPM/W/11, and said that, in an effort to add value to its production of rubber, Malaysia had engaged in a number of down-stream activities in the rubber sector. He stated that, as a major producer of rubber, Malaysia was in a position to produce rubber products competitively. The representative of Canada noted the comments made by Malaysia and recalled the views previously expressed by his delegation in relation to the rôle the Sub-Committee could play in regard to such measures.

Developments with respect to measures examined at the Sub-Committee's earlier meetings (see also paragraphs 15-16 and 20 above)

23. The representative of the United States said a United States Government inter-agency group was presently reviewing the United States International Trade Commission's (USITC) recommendations concerning the United States Article XIX action on preserved mushrooms (COM.TD/SCPM/W/11, paragraph 14) and would be formulating a recommendation for consideration by the President of the United States. The President's decision, once it was made, would be notified to GATT and all contracting parties with a substantial trade interest. In regard to porcelain-on-steel cooking ware, he recalled that the decision to provide import relief through an increase in tariffs in January 1980 under Article XIX (notified in document L/4889 and Add.1) had provided for a review within two years of the effectiveness of relief in promoting adjustment. The USITC had undertaken such a review and evaluated the effect on the United States industry of terminating import relief. On 19 October 1981, at a session open to interested parties, four of the five participating Commissioners had declared their intention to advise the President against terminating relief after two years. He said that an inter-agency group would review the report of the USITC taking into account other relevant factors and formulate a recommendation for consideration by the President. A presidential

decision was due by 17 January 1982 and would be notified to GATT promptly. In regard to the reverse notification by Chile of October 1980 concerning possible legislation in the United States affecting copper (COM.TD/SCPM/W/3), he said that the legislative proposals notified to the Sub-Committee were no longer under consideration, not having been introduced to the Ninety-Seventh Congress. He suggested that in the circumstances this matter could be excluded from future secretariat notes.

24. The representative of Argentina, referring to the reverse notification made by his delegation to the third session of the Sub-Committee (COM.TD/SCPM/W/9), said that his delegation had established bilateral contacts with all the delegations mentioned in the notification and had exchanged views with all of them other than South Africa and Portugal.

25. The representative of the United Kingdom speaking on behalf of Hong Kong recalled that at a previous meeting Hong Kong had expressed concern at the Australian temporary duty on certain soft-sided containers and requested information on progress in reviewing the need to continue to apply this measure. The representative of Australia said that he would convey to his authorities the continuing concern of Hong Kong on this matter. He also said that it would facilitate responses to questions concerning matters previously examined in the Sub-Committee if some advance notice of such questions could be given.

Other matters

26. The representative of the United States said that with effect from 30 June 1981 all aspects of the United States import relief programme on non-rubber footwear had been terminated. He also informed the Sub-Committee that the United States had imposed a tariff increase on ethyl alcohol for fuel use. The principal foreign supplier was Brazil; the Brazilian authorities had requested compensatory adjustments pursuant to the provisions of Article XXVIII.

27. The representative of the United States referred to the views recorded in paragraph 18 of COM.TD/SCPM/1 to the effect that unnecessary duplication of work in the Sub-Committee with that in other GATT bodies should be avoided and 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. He said that there appeared to be some differences of view and vagueness about the terms of reference of the Sub-Committee. In the light of this, he suggested that the Sub-Committee, and the secretariat in preparing for the next session of the Sub-Committee, might consider: to what extent should measures applied consistently with the GATT or measures that were not considered protective be discussed in the Sub-Committee or be included in secretariat documentation for the Sub-Committee;

and, aside from cross-referencing, to what extent should measures that have been in force for some time or have been notified to GATT elsewhere also be included in secretariat papers.

28. The Chairman recalled that these questions had been extensively discussed in the Committee on Trade and Development at the time of the establishment of the Sub-Committee and at the first meeting of the Sub-Committee itself and that a delicately balanced modus vivendi had resulted which had enabled the Sub-Committee to pursue its work in a pragmatic manner in the light of its terms of reference. It was his impression that the considerations raised by the United States delegation had been carefully taken into account having regard to the views of all members. Commenting at the invitation of the Chairman, the representative of the secretariat said that in preparing the documentation for the Sub-Committee the secretariat had attempted to proceed in a manner that would not prejudice the position of any delegation and would allow the discussion to take place on the basis of the views of delegations as to the value, appropriateness or effectiveness of any exchange of views on points covered by the documentation.

Next meeting of the Sub-Committee

29. 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.