

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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REPORT OF THE COMMITTEE ON BALANCE-OF-PAYMENTS RESTRICTIONS ON EXTENSION OF THE URUGUAYAN WAIVER ON IMPORT SURCHARGES

1. The Committee, in the course of its consultation with Uruguay under Article XVIII:12(b), reported upon in document BOP/R/45, also examined the Uruguayan request for a further extension of the waiver of 8 May 1961 relating to Uruguay's import surcharges. This report should be read in conjunction with that document.
2. The Committee noted that the waiver had originally been granted by a Decision of 8 May 1961 and had been successively renewed by Decisions of 20 July 1963, 31 January 1964, 23 March 1965, 14 September 1965 and 26 July 1968 until the end of the last regular session of the CONTRACTING PARTIES in 1969. At their twenty-sixth session, the CONTRACTING PARTIES, in response to a request by Uruguay for a further extension and on the recommendation of the Council, decided on 20 February 1970 that the Government of Uruguay be authorized to maintain the surcharges then applied by it until 1 August 1970 (L/3357). The CONTRACTING PARTIES considered at the same time that a careful and detailed examination of the surcharges and of the balance-of-payments reasons for their maintenance was essential, which could most advantageously be carried out in conjunction with Uruguay's consultations under Article XVIII:12(b) in 1970.
3. At the meeting of the Committee on 18 June 1970, the representative of Uruguay reiterated the necessity for his Government to continue maintaining, for a limited period of time, the import surcharges to take care of the transitional period while a comprehensive review of the import régime was being carried out and while a stringent stabilization plan was being implemented with a view to reducing inflationary pressures and redressing the balance-of-payments disequilibrium (see statement in Annex II). The Committee also noted the written communication which the Uruguayan authorities had submitted in February 1970 and which had formed the basis of the CONTRACTING PARTIES' action at the twenty-sixth session (L/3345).
4. In the context of an Article XV consultation between the CONTRACTING PARTIES and the International Monetary Fund the Fund advised that "in regard to the import surcharges, the Fund expects that the balance-of-payments and fiscal needs for import surcharges of the magnitudes presently maintained will be considerably diminished as the policies framed by the Uruguayan authorities prove successful".
5. In discussing the Uruguayan request, members of the Committee recalled various points which had been raised in previous discussions of the waiver, in particular the exemption from the import surcharge for goods transported to Uruguay in Uruguayan bottoms which, in the view of some contracting parties, was contrary to the terms of

the waiver and prejudicial to their economic interest. Some members pointed out that this disposition was economically unsound as the resultant diversion from the cheapest means of transport meant higher prices and an additional burden on the balance of payments. Inasmuch as Uruguayan ships were not available on all sea lanes, certain supplying countries might find themselves at a disadvantage for having to use non-Uruguayan ships and thus having to bear the additional incidence of the surcharge. Some members recalled that they had been unable to support the extension of the waiver in the past on account of this discriminatory element in the surcharges legislation. They still held the view that this element ought to be reduced or eliminated.

6. The representative of Uruguay reaffirmed his Government's consistent position that the practice involved no contradiction with Uruguay's obligations under the General Agreement which, indeed, had nothing to do with shipping. Uruguay was merely exercising its legitimate right to promote the development of a particular branch of the economy, and its right as a developing country to protect its shipping industry had been recognized, inter alia, by the Shipping Committee of UNCTAD. In support of the Uruguay contention, a member of the Committee pointed out that in the GATT context, in so far as exporting countries to the Uruguayan market enjoyed equal treatment, there could be no question of "discrimination" in terms of Article I or Article XIII of the Agreement.

7. In response to the criticisms regarding the possible discriminatory effects arising from the lack of Uruguayan shipping on particular routes, the Uruguayan representative thought that the point had, to a large extent, been taken care of in the relevant legislation, the present situation of which he described as follows:

- (a) With a view to improving the legal provisions under which, since 1963, goods carried in ships flying the Uruguayan flag had been exempt from surcharges, the Executive promulgated a Decree (No. 539/69) on 30 October 1969 under which all imports carried by sea, river or lake must enter the country in ships flying the national flag (Article 1). Where there is no national ship in the traffic or where such a ship has no available cargo space, goods may enter the country in other ships subject to an additional surcharge of 5 per cent (Article 2). If they enter the country in a foreign ship when a Uruguayan ship has available space, the additional surcharge will be at the rate of 10 per cent (Article 3). Articles 5-6 of the Decree provide for releases from the above provisions in specified cases, viz:
- (i) where agreements or conventions exist with the countries of origin of the goods, in the percentages indicated therein;
 - (ii) where national ships participate in Lines Conferences, in which case foreign ships belonging to the Conference are also eligible to carry imports as if they were ships belonging to Uruguayan lines;
 - (iii) where the imports are covered by provisions of diplomatic law;
 - (iv) where duly ratified treaties of international law are in existence.

- (b) On 13 November 1969, it was announced that operation of the above-mentioned Decree (No. 539/69) was suspended until 4 December 1969 because of the need to analyze the effects of the Decree on the sectors affected by its provisions.
- (c) By Decree 290/970 of 18 June 1970, the provisions of Articles 1 and 4 under (a) of the Decree of 13 June 1963, as modified, were reintroduced with retroactive effect from 13 November 1969; thus the 10 per cent surcharge on imports transported in foreign ships was restored; and
- (d) By Decree 311/970 of 30 June 1970, the exemption from surcharges previously applicable to ships belonging to national lines was extended to ships belonging to foreign shipping lines participating in Line Conferences in which Uruguay took part.

In reply to questions, the representative of Uruguay said that the retroactive effect of the Decree of 18 June 1970 could involve the refunding of surcharges levied since 13 November 1969 on goods imported on ships flying Uruguayan flags, and that the extension of the exemption on 30 June 1970 would not apply to imports transported on ships other than those belonging to the Conference Lines as described in (d) above.

8. Some members of the Committee referred to the fact that exemption from the surcharges also extended to imports of LAFTA origin, and stated that this differential treatment for imports from different sources could not be justified on balance-of-payments grounds, on which the waiver had been granted. In fact the waiver of 1961 specifically required that the surcharges be levied in a manner consistent with the provisions of Article I of the General Agreement. This obligation should take precedence over any obligations that Uruguay might assume in any regional context.

9. In response to questions, the Uruguayan representative stated that the increase in the revenue derived from the surtax from Ur\$4.1 billion in 1969 to Ur\$5 billion in 1970 reflected an increase in imports subject to the surcharges and that there was no change in the rates. As regards the rates of the surcharges, the Decision of 8 May 1961 contained an annex specifying the maximum rates that might be applied under the waiver. The waiver, however, had been amended by a Decision of 14 December 1965 which authorized the maintenance of the surcharges as modified by the Uruguayan Decree of 24 November 1964 which, among other things, provided for higher rates for the surcharges (L/2352). At present the rates ranged from 10 to 300 per cent c.i.f., the highest rate being applicable only to a very few items. There had been no change in the rates since the last consultation in 1968.

10. In reply to enquiries the Uruguayan representative confirmed that the special import tax, which had been increased from 15 to 18 per cent ad valorem by a Decree of 21 December 1967, was in fact not and would not be levied on imports from any GATT country, and consequently could be regarded as of no concern to the CONTRACTING PARTIES.

11. Members of the Committee requested information on the methods and criteria used in fixing the aforos and on any changes in the aforo system or rates since the adoption of the Decision of 25 March 1965. They pointed out that available records did not indicate clearly the status of the changes described in document L/2879 of 31 October 1967 in relation to Uruguay's GATT obligations. The representative of Uruguay undertook to supply details on these points at a later time.

12. For the various reasons adduced in the course of the Article XVIII:12(b) consultation (BOP/R/45) and in the light of the statement of the International Monetary Fund quoted in paragraph 4 above, the Committee considered that the Uruguayan Government should be urged to begin the process of removing the surcharges but that the CONTRACTING PARTIES might justifiably agree to a further extension of the waiver for a limited period. The attached draft decision extending the waiver until mid-1971 subject to the terms and conditions stated therein was presented to the Committee and is presented herewith to the Council for consideration.

ANNEX I

Draft Decision

Considering that the CONTRACTING PARTIES, by Decision of 8 May 1961¹ waived, subject to specified terms and conditions, the provisions of paragraph 1 of Article II of the General Agreement to the extent necessary to allow the Government of Uruguay to apply the import surcharges provided for in its Decree of 29 September 1960, as a temporary measure, taken as part of and in conjunction with its stabilization and development programme, to those items specified in Schedule XXXI enumerated in the table annexed to that Decision on the understanding that the surcharges be levied in a manner consistent with the provisions of Article I of the General Agreement;

Considering that the above-mentioned Decision was successively extended by Decisions of 20 July 1963, 31 January 1964, and 18 March 1964; extended and amended by Decision of 23 March 1965 and further extended by Decisions of 14 December 1965, 17 November 1967, 26 July 1968 and 20 February 1970 until 1 August 1970;

Considering that the Government of Uruguay has requested a further extension of the above-mentioned Decision on the grounds of continuing balance-of-payments difficulties;

Having carried out a careful and detailed examination of the surcharges applied by Uruguay for balance-of-payments reasons in conjunction with Uruguay's consultation with the CONTRACTING PARTIES pursuant to Article XVIII:12(b); and

Having consulted fully with the International Monetary Fund and taken into account the assessment provided by the Fund,

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV of the General Agreement and in accordance with the procedures adopted by them on 1 November 1956,

Decide that the Government of Uruguay be authorized to maintain the surcharges at present applied by it, subject to the relevant terms and conditions of the Decision of 8 May 1961 and the successive decisions mentioned above until the end of the first regular session of the CONTRACTING PARTIES in 1971, or until 30 June 1971 whichever is the earlier, it being understood that the Government of Uruguay will submit before 30 March 1971 a report on action taken to reduce or eliminate the surcharges maintained under this Decision.

¹BISD, Tenth Supplement, page 51

ANNEX II

Statement by the Representative of Uruguay on 18 June 1970
on the Extension of the Waiver on Import Surcharges

1. By Decision of 8 May 1961, the CONTRACTING PARTIES authorized the Uruguayan Government to apply import surcharges as a temporary measure and in the context of its stabilization and development programme, in the form and within the limits established by that Decision. This authorization was extended by the Decisions of 20 July 1963, 31 January 1964 and 18 March 1964. The last of these was subsequently extended and amended by Decision of 23 March 1965, which was further extended by Decision of 14 December 1965 until the end of the first regular session of the CONTRACTING PARTIES in 1967.
2. At the twenty-fourth session of the CONTRACTING PARTIES the Uruguayan Government requested an extension for six months of the waiver in force at that time (L/2880 of 2 November 1967). The CONTRACTING PARTIES by Decision of 17 November 1967 (SR.24/11, Pages 147-148) agreed that the Government of Uruguay "be authorized to maintain until 30 June 1968 the surcharges at present applied by it, subject to the relevant terms and conditions of the Decision of 8 May 1961". Thereafter the authorization was further extended by the Decision of 26 July 1968 (L/3051).
3. On 9 February 1970 the permanent delegation of Uruguay sent a communication to the Director-General which has been distributed as L/3345. On 19 February 1970 the Council of Representatives approved a draft decision and recommended to the CONTRACTING PARTIES that the authorization granted to Uruguay be extended for five months, that is to say until 1 August 1970, on the understanding that meanwhile consultations would take place in the Committee on Balance-of-Payments Restrictions.
4. In the consultation now taking place, the present balance-of-payments situation of Uruguay has been described. Within a broad and comprehensive set of economic measures adopted since November 1967, the Government has revoked all import prohibitions (decrees of 6 November and 1 December 1967 and 9 January 1968) and, as the Committee has already been informed, there is no unlawful discrimination of any kind. It has nevertheless been necessary, as will be readily understood, to maintain for the time being a system which, through a rational application of import surcharges, takes account of the present balance-of-payments situation and prevents it from deteriorating.
5. Immediate prospects do not point to any substantial improvement of the balance of payments in the short term, and in order to maintain the development and stabilization policy which has yielded such good results, it is necessary to retain the existing

régime as a temporary measure. In these circumstances the Government cannot at present contemplate eliminating the surcharges which constitute the sole regulating element maintained in conjunction with the consignment régime in Uruguay's import sector, based on freedom to import without any prohibition or discrimination. I repeat, however, that the maintenance of the surcharges is temporary and this has been expressly stated by the Uruguayan Government in the financial and economic programme for the forthcoming period. They will be eliminated when circumstances permit, but today they still correspond to an undeniable reality and to a need that cannot be disregarded.

6. In present circumstances, my Government considers that application of these import surcharges is strictly in accordance with the rules of the General Agreement. Furthermore, the legal basis for the surcharges - the law of 19 December 1959 - has already been examined in consultations with the Committee on Balance-of-Payments Restrictions in 1960, 1962, 1965 and 1968.

7. Having regard to the situation to which I have referred and taking into account the elements resulting from these consultations, my Government, through my intermediary, requests an extension for an appropriate period of the authorization to apply import surcharges, on the understanding that such authorization would be granted, subject to the same conditions established by the Decision of 8 May 1961.