GENERAL AGREEMENT ON

TARIFFS AND TRADE

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UNITED STATES IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS

Report of the Working Party

1. The Working Party was established by the Council on 15 July 1986, with the following terms of reference:

"To examine the twenty-eighth annual report (L/5981) submitted by the Government of the United States, under the Decision of 5 March 1955[1], and to report to the Council".

When informing the Council of the Working Party's terms of reference, the Chairman said that he understood these would permit the Working Party to make appropriate recommendations. The Council took note of this statement (C/M/201).

2. The Working Party met on 29 and 30 October 1986 and 5 March, 3 and 30 April and 30 June 1987, under the chairmanship of H. E. Ambassador Julio A. Lacarte (Uruguay), with Mr. Manuel Olarreaga (Uruguay) acting as alternate chairman.

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-eighth annual report on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended[2], and on the reasons for the maintenance of those restrictions on the basis of the report (document L/5981); and with the assistance of the representative of the United States, the Working Party reviewed the action taken by the Government of the United States under the Decision of 5 March 1955. In response to requests by members of the Working Party at the first meeting, the representative of the United States provided additional information which was issued as document L/5981/Add.1.

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[1] BISD 3S/32

[2] Import restrictions or fees pursuant to Section 22 currently in effect include cotton of specified staple lengths, cotton waste and certain cotton products; peanuts; certain dairy products; sugar and syrups, and certain sugar-containing articles.

4. In his opening statement the representative of the United States presented the annual report for examination. He added that the report covered the period October 1984-September 1985. The only Section 22 Proclamation that had been issued after those discussed in the report was Proclamation 5425 of 6 January 1986. This Proclamation permitted the import of certain cheeses from Uruguay under the authority of the Trade Agreements Act of 1979. It did not affect allocations from other supplying countries.

5. The representative of the United States gave an account of other measures taken since the period covered by the report affecting Section 22 products, especially the provisions of the 1985 Food Security Act. He reported on successive reductions in the support price for milk and the introduction of a "whole-herd buy-out" programme which was aimed at inducing farmers to quit dairying for a minimum five-year period. This was, he said, proving successful in reducing herd size and milk production. The 1985 legislation also provided for a 25 per cent acreage reduction in cotton. This was made mandatory as a condition for receiving programme benefits, and over 90 per cent of farmers were participating. Target prices and loan rates were also being reduced. Controls on peanut production, begun in 1977, were being continued, only peanuts within a quota equal to national edible use receiving full support.

6. The United States representative affirmed that his Government had complied with both the letter and the spirit of the waiver (Decision of 5 March 1955). There were problems in the agricultural sector, but these were not caused by one country and could not be solved unilaterally. That was why the United States so actively supported the new Round of Multilateral Trade Negotiations and why, together with several of the contracting parties represented on this Working Party, it had worked so hard at Punta del Este for a meaningful mandate for the agricultural negotiations. The United States had said both in private and in public that it was willing to discuss all agricultural programmes and policies in the new Round.

7. Members of the Working Party described the production control measures taken by the United States as lukewarm. They expressed a general sense of frustration at the lack of progress in removing the waiver, which they said was a temporary privilege, not a right, and should not be open-ended. After thirty years the waiver should be coming to an end. One member urged that a date be fixed for its removal, perhaps the end of 1987. Several members joined in the hope that the Uruguay Round would provide a context in which to eliminate the waiver, though they emphasized that they did not regard it as a subject for negotiation; the United States had given nothing in exchange for the grant of the waiver in 1955 and other contracting parties should not be expected to pay for its removal. One member also said the Working Party should examine as well whether the United States could not achieve the aims of Section 22 in other ways than using the waiver, ways which would be consistent with GATT provisions. Were the particular border measures in use at present essential to meet these policy aims? Another member repeated the continuing obligation on the United States to keep its use of the waiver under review and to remove restrictions where possible. This review should continue during the negotiations of the Uruguay Round.

8. The representative of the United States repeated that his Government was prepared to discuss all programmes and policies in the Uruguay Round. He could not prejudge its outcome, but all must work together in ending the need for the waiver. One member of the Working Party queried this statement, asking how other contracting parties could help correct United States internal problems which resulted from US policies. It depended on the United States re-orienting their policies along the right lines. In this they could be assured of the support of their partners in the Working Party.

9. Considering the specific product chapters of the United States report members of the Working Party requested improvements in the statistical information provided. It was generally felt that the data for the different product groups should be presented in a uniform manner, following the format used in Spec(84)9/Add.1, and updated as far as possible. In particular, members of the Working Party criticized the amalgamation of statistics for domestic consumption and exports of peanuts, unclear headings in the dairy products tables, and unnecessary detail at the expense of basic trade data concerning sugar. The United States representative provided this additional information and clarification (document L/5981/Add.1). Introducing this document, the representative of the United States noted that the cotton data which had been presented only in text of the report was now shown in tabular form and that the peanut table now showed consumption and exports separately. He also made it clear that in the dairy section of L/5981 (p. 16) CCC stocks were represented by the heading "uncommitted supplies", and the heading "USDA removals" indicated CCC purchases minus sales for unrestricted use.

10. Members of the Working Party observed that the cotton chapter of the United States report showed a trend towards increasing production and decreasing imports. The waiver had not led to a better internal balance of supply and demand for cotton - it had in fact assisted United States exports. United States producers were encouraged by Government subsidies and Section 22 protection to produce export surpluses to the detriment of efficient, low-cost exporters. The adjustment programmes described concerned the international market, not the United States domestic situation. The representative of the United States commented that under his country's multi-year farm legislation, cotton prices had been pitched too high, leading to increases in production. However, the recent price cuts should lead to a more realistic market orientation.

11. One member of the Working Party recalled that when the United States was still a member of the International Dairy Products Council it had supplied to that body information about its dairy adjustment plans and forecast their effects on production patterns. He requested the United States representative to seek similar information concerning cotton for the use of this Working Party. Another member put the following questions to the United States representative:

(a) Could the United States indicate, for as many years as possible, the total yearly United States dollar cost of its cotton support programmes?

(b) Could the United States quantify the depressing effect its cotton programmes had had on world prices?

(c) Which were the countries whose exports of cotton were being adversely affected because of United States cotton programmes?

(d) Did the United States believe that cotton shared the "specific characteristics of agriculture" to the same extent as other agricultural commodities, e.g., foodstuffs? (The questioner thought it did not, as there were substitutes available and cotton was not essential to food security.)

12. In reply, the representative of the United States said that his Government did not subscribe to the "specific characteristics of agriculture" argument. There were problems relating to agricultural trade, and cotton was an agricultural commodity which, like others, had problems which must be addressed. Upland cotton programme expenditures had averaged 639 million dollars per year during financial years 1980-1984 (October-September). Financial year 1985 costs were 1.6 billion dollars. Financial year 1986 costs were 2.1 billion dollars. Cotton programme costs were projected at 1.4 billion dollars for financial year 1987 and 740 million dollars for financial year 1988. He said that the new United States cotton programme should not have any depressing effect on world prices for cotton. World prices would move in relation to world supply and demand conditions. United States cotton prices now more closely followed world prices. Under the previous United States cotton programme, the price support loan rate set a floor on United States prices and consequently supported world prices. The new United States marketing loan programme had removed this floor. Lastly, all cotton exporters were affected by the United States cotton programme. Major non-socialist competitors were Pakistan, Australia, Egypt, Sudan and Paraguay. A member of the Working Party took issue with the statement that United States cotton programmes should not have any depressing effect on world prices on cotton - given that some 1 billion dollars were pumped into the industry annually, he thought this must have some impact on United States production levels and trade.

13. A member of the Working Party took up a further point of principle. The 1955 Decision was taken, he said, in order to enable the United States to tackle its surplus stock problem. He saw no improvement in that situation today, as the information presented in the report on peanuts and cotton showed. Had the whole purpose of the waiver not changed? It was now a means of supporting surplus production destined for export. Did the United States interpret the waiver as giving them the right to protect programmes which produced for export?

14. The question of consistency between the aims of the waiver and what it now in fact protected was also raised concerning dairy products. A member of the Working Party invited United States comment on the statistical tables in the report which showed production considerably in excess of that needed to assure "future needs" in the domestic market. He also queried why the United States believed dairy imports would displace domestic production (p. 12 of the report refers); was this fear of subsidized imports, or just of competition? If subsidized imports were the concern, would not the United States be adequately protected against them by the countervailing duty or antidumping provisions of the General Agreement? Members commented that for dairy products, as for others, the waiver was now acting as an export incentive programme. They stated that the United States should try to reduce the problems resulting from its own internal policies rather than export its surpluses. The obligation to export dairy products imposed by the Food Security Act 1985 would worsen the world over-supply problem which was used to justify United States import controls. It was a vicious circle. The recently announced Dairy Export Incentive Programme had the potential to seriously undermine the fragile world dairy market. The quantities announced as being available under the programme (i.e., 140,800 tons of butter and butteroil, 372,500 tons of milk powder, and 73,000 tons of cheese) represented substantial shares of total world trade. The United States was granted a temporary waiver to give it time to get its house in order, a temporary respite from world market competition particularly in respect of dairy products. But that was 32 years ago. The Working Party now saw with dairy products that not only had the United States not been able to put its house in order but was even implementing new export subsidy programmes while still sheltering its producers behind the Section 22 waiver.

15. The representative of the United States said that, given the problems in world trade at present, the United States did not find it possible to replace the waiver with other measures as suggested. He recalled his Government's recent price cuts for milk, and the other adjustment measures he had described. He conceded that the United States still had over-capacity in dairy production. It could not solve the problems of the world dairy market, but did allow some imports (e.g. cheese) and would relax controls as circumstances warranted. A member of the Working Party observed that the limited cheese quotas to the United States market were concessions which had been negotiated and paid for in previous MTNs.

16. A member of the Working Party urged the group to concentrate on the fundamentals of its mandate - to look in detail at whether or not the United States had kept to their engagements made at the time the waiver was granted. He was not satisfied that the Working Party had been able to do this. The United States should have come to the Working Party with some constructive ideas. He would not accept the defence that some important aspects were outside the mandate of this Working Party. The United States had developed its export capacity in dairy products instead of tackling the problem of over-production. This was not a resolution but a displacement of the problem. The United States surpluses were a result of the failure

of their domestic policies. He did not see even a chance of progress in ending the waiver in the Uruguay Round as long as these policies remained unchanged. Another member stated that the problems cited in 1955 to justify the granting of the waiver had not been solved by it - they had in fact worsened. This undercut the United States arguments for maintaining the waiver, which were essentially the same as in 1955.

17. One member of the Working Party requested more precise data on commercial dairy exports. He also asked what became of Commodity Credit Corporation (CCC) withdrawals - did any skimmed milk powder withdrawn by the CCC go to casein manufacture?

18. The representative of the United States replied that in May 1986 the CCC sold 385,000 pounds of non-fat dry milk to be converted into casein. Although additional invitations for the sale of non-fat dry milk for conversion into casein were issued on 14 August and 30 October 1986, no additional offers had been received.

19. In response to the question what, if any, programmes were under consideration, other than those reported by the United States, to adjust supply and demand for dairy products, the United States representative stated that although some dairy farmer cooperatives had expressed support for a quota plan, it was unlikely that Congress would pass such legislation. The dairy termination programme had played a major part in reducing purchases under the price support programme. During July-November 1986, USDA removals of dairy products were equivalent to 966 million pounds of milk - down 76 per cent from the 3,990 million pounds purchased during the same period the previous year.

20. On the subject of sugar and products containing sugar, a member of the Working Party said that other members' remarks about the export-incentive effects of the waiver were even more true for this sector. Since the introduction of the United States sugar programme and import fees under Section 22, there had been a dramatic increase in United States exports of refined sugar to Canada. This had come about because refiners were able to draw back the import fees on export of the refined article, and hence reduce their prices for sale into Canada. Duty drawback itself was unexceptionable, but in combination with the Section 22 fees it was having a perverse effect which did not meet the intent of the waiver. The United States should consider the impact of this. The representative of the United States noted these comments carefully, and replied that since the import fees on raw sugar had been removed on 1 April 1985, there should no longer be a problem. The Working Party member who had raised the issue observed that as drawback could be claimed for up to five years after import there was a continuing effect - there was also the possibility that fees could be reimposed.

21. Other members of the Working Party said that sugar support arrangements in the United States had resulted in steadily shrinking imports of sugar. The United States was the world's largest importer. Over the last six years annual imports had fallen from 6 million tons to a bare 1 million tons in 1987. We were faced with what was really an

outrageous situation where the United States through import quotas which it justified for itself in one way or another was heading towards self-sufficiency, but only because the price structure of sugar in the United States was actually reducing consumption in favour of alternative sweeteners. If the United States industry was in any way comparable in efficiency to external producers the demand would be much larger. It was farcical that in one of the largest and most prosperous countries in the world, policies were followed which were not in the interests of efficient producers in either the United States or outside it, or indeed of consumers in that country.

22. It was noted that the United States Government had ordered in the 1985 Food Security Act that import quotas were to be regulated so as to operate the sugar programme at no net cost to the United States. Thus imports were being made to bear the cost. However, there was no limit on substitute (corn-based) sweeteners which had already captured more than half the sweetener market. These products were, in fact, heavily subsidized through the low prices of their raw material maintained by United States Government cereals programmes. The outlook was for further pressure to reduce sugar import quotas. This could have harmful effects on developing countries. All the regulatory measures fell on the back of exporters to the United States, and because nothing was done to control substitute products, these measures were ineffective in adjusting the balance of supply and demand for sugar. Furthermore, a member of the Working Party noted, measures taken to restrict sugar imports could lead to trade distortions further downstream - for example if compensation were offered in other agricultural commodities for cuts in sugar quotas. Another member of the Working Party noted that it was becoming a feature of the United States waiver that products protected by it were being exported under other programmes. He asked the United States to give an undertaking not to make further subsidized export sales of sugar while using the waiver to control sugar imports. He also asked for assurances that the United States administration would continue to make its sugar programme more market-oriented and reduce excessive levels of protection.

23. Another member amplified the point that it was the effectively subsidized production of artificial corn-based sweeteners, not imports, which was the real threat to United States sugar programmes. He asked when the production support of these alternative sweeteners began, and what the competitive impact was on sugar. Was the production of artificial sweeteners part of the production which the United States deemed necessary to protect by a waiver?

24. The representative of the United States commented that most of these points had been covered in previous working parties. There was no formal price support programme for corn-based sweeteners - they had a natural price advantage, but the limit of substitution had nearly been reached. Even were there restrictions on artificial sweeteners in the United States market, the difference between the United States loan rate for sugar (18c/lb) and the world price (6c/lb - below the cost of production practically everywhere) would mean there would still be an incentive to

ship all the world's sugar to the United States so that the United States Government would have to buy up the entire domestic production. Thus even in the absence of competition from high-fructose corn sweeteners there would still be a need to protect the United States sugar programme.

25. The member of the Working Party who had raised the point regarding artificial sweeteners replied that while there was clearly not a specific programme to support their production, United States policies for other sectors effectively acted like one. He quoted in evidence from a United States Department of Agriculture publication 'Background to the 1985 Farm Legislation'; "Corn sweetener manufacturers benefit from United States sugar programmes through the higher price they are able to extract for their products and the increased share of the sweetener market they are able to acquire. Because the cost of producing corn sweeteners is much lower than that for sugar, the high sugar support price enables corn sweetener manufacturers to establish their price below the price of sugar, thereby encouraging food and beverage manufacturers to switch to the lower-priced sweeteners".

26. Other members expressed concern over recent indications of pressure within the United States to modify the allocation of sugar import quotas. They called for the principle of non-discrimination to be upheld.

27. The representative of the United States pointed out that the sugar import quotas were not under Section 22. However, he assured the Working Party that the Administration had fought for non-discriminatory application of them and would continue to do so. Several recent proposals in Congress for redistribution of quotas had been rejected. He also reminded the Working Party that the President of the United States had expressed dissatisfaction with the sugar chapter of the 1985 Food Security Act and had said he would seek changes in it in the interests of a better market orientation.

28. There was further discussion of how far the Working Party's mandate permitted it to go in examining policies - like the United States support programme for sugar and the import quotas on sugar - which were not under Section 22 and hence not under the waiver. Several members of the Working Party maintained that measures taken under Section 22, such as the restrictions on mixes containing sugar, could not be discussed properly without considering the programmes which were their justification. The support régime led to distortions in supply and demand which affected the use made of the waiver; it was therefore within the Working Party's scope. Another member criticized the fact that products containing a small amount of sugar were subject to Section 22 quotas while the raw material, sugar itself, was not. There was an obvious economic link between the two, and the Working Party could not consider one without the other. He questioned whether the United States could properly invoke the waiver on processed products without doing so on the raw material from which they were made.

29. The representative of the United States noted that in terms of the Decision of 1955 any article could be place under quota; thus mixes containing sugar could properly be covered by the waiver, irrespective of their state of processing. This Working Party was not, he maintained, the forum for discussing the sugar policies of the United States, or indeed the wider problems of the international sugar market, which the United States was willing to discuss elsewhere as appropriate. One member said his authorities would not move from their position that it was this Working Party's right to discuss United States internal policy affecting the products covered by this waiver. Otherwise the Working Party could not reach conclusions as to whether the United States had applied the waiver correctly. As the waiver had been designed to assist the United States regulate the problem of surplus production, it was legitimate for this Working Party to consider the support programmes which applied to the products involved.

30. The Working Party placed particular emphasis on the import restrictions on certain products containing sugar which the United States had imposed under Section 22 and continued to enforce. Members queried the continuation of these restrictions, as well as the reasons why, and the manner in which they were originally imposed. The United States had submitted that its imposition of zero quotas on dry mixtures containing sugar in Presidential Proclamation 5294 of 28 January 1985 (L/5981 page 17, refers) was emergency action within the terms of the 1955 Decision, and could therefore be taken without a prior report by the International Trade Commission. However members of the Working Party expressed the view that as the ITC had in fact subsequently reported (over a year ago) that most of these products were unlikely to interfere with domestic programmes for sugar, the United States was not justified in maintaining the restrictions. In doing so, it was not fulfilling the terms of the waiver.

31. One member of the Working Party saw the United States action on sugar-containing mixtures as the clearest case of its general failure to respect the letter and the spirit of the waiver - for example, by failing to consult or notify CONTRACTING PARTIES in advance of their action. They had in fact only notified the new measures after three months, and that under pressure from other contracting parties. He asked the United States formally if they could affirm that they had not acted contrary to the terms of the waiver when introducing an import quota for these products, insofar as they did not respect the required procedure, which was to notify CONTRACTING PARTIES beforehand of the measures envisaged. The member proposed that the Working Party's recommendations should include the point that it would be a good sign for the Uruguay Round if the United States removed these controls as part of its enactment of the Punta del Este rollback commitment. The representative of the United States affirmed that his Government had not contravened the terms of the waiver. The actions were taken under the emergency procedures of Section 22 and were notified as soon as possible. The same member of the Working Party questioned why the Secretary of Agriculture had thought emergency action necessary on these products when there was effectually subsidized production of other sweeteners which could have damaging effects in terms of Section 22.

32. The same member went on to ask why the United States Government had imposed a zero import quota for these products while Section 22 stated that such quotas were not to be less than 50 per cent of traditional trade. If the answer was that there was no traditional trade, how did this present a threat to the sugar programme in terms of Section 22, especially since most professional opinion (e.g., the ITC report) had shown this not to be the case?

33. The representative of the United States replied that during the representative period (1975-81), which was the last period before sugar restrictions were tightened, there were zero imports of mixes containing sugar. The 1975-81 representative period had been chosen because it was the only period during which the United States sugar market had been relatively open. During that period there was no incentive to import mixtures designed to circumvent controls. This incentive had come in with the reintroduction of sugar quotas in 1982. Responding to the objections that if there had been no traditional trade in mixtures containing sugar it could not constitute a threat to the United States sugar programme, the representative of the United States repeated that there was an economic incentive to import sugar into the United States, due to the continued difference in United States and world sugar prices. After emergency quotas were imposed on imports of certain sugar-containing products in June 1983, imports of articles not subject to quotas rose significantly. Without the emergency quotas imposed on these articles in January 1985 imports of sugar in products would have continued to rise, thus displacing the use of domestic sugar and undermining the domestic programme. The representative of the United States affirmed that there was no requirement when the President must take action once the International Trade Commission had completed its investigation and report. A member of the Working Party drew his attention to paragraph 5 of the Decision of 5 March 1955, which stated that the United States will remove or relax each restriction permitted under this waiver as soon as it finds that the circumstances requiring such restriction no longer exist or have changed so as no longer to require its imposition in its existing form. Therefore, since the ITC report showed that the circumstances did not require restrictions, the President had an obligation either to remove them or to properly justify their continuance.

34. This argument was continued by a member who quoted from the press release on the ITC report, noting that the Commission stated it had 'found that imports of the articles covered by this investigation have neither rendered ineffective or are currently materially interfering with the price support programme for sugar cane and sugar beets. Further, we have determined that such imports will not tend to render the price support programme ineffective. The testimony of the USDA is entirely consistent with our conclusion that the levels of import of articles covered by this investigation have not had a sufficient impact on the programme to satisfy the statutory criteria of "to render or to tend to render ineffective or to materially interfere with the programme"'.

35. The United States representative replied that the President was not required to adopt the Commission's findings (which in any case were not unanimous). It was only part of the information to be considered. Furthermore there was no prescribed time limit within which the President must make his decision. The United States had clearly shown, by the adjustments made to the quotas in May 1985 (GATT document L/5787/Add.1), that it had met its obligations under the waiver by reviewing the circumstances and the restrictions and adjusting them as they could. A member of the Working Party urged that if the President was basing his maintenance of the restrictions on evidence other than the ITC report he should say so, to be consistent with the waiver. This member stated that despite the explanations which had been given, his government could not accept the United States' position on these products.

36. A member of the Working Party recalled that the United States representative had stated that sugar quotas were not under Section 22. Did the United States believe it was in accordance with the waiver to bring in measures under Section 22 for products containing sugar when the quantitative import restrictions on sugar itself were not under this Section? The United States representative said that the United States had had sugar import quotas since 1934; these were under the President's Headnote Authority in the Tariff Schedule of the United States, not Section 22. Under United States legislation it was necessary to have quotas to have the minimum tariff. The quotas had been adjusted when the United States sugar programme was introduced in 1982. However, the sugar-containing mixes were not covered by these quotas, so the United States had had recourse to Section 22 in their case.

37. Members of the Working Party raised the further point that, if sugar quotas were not justified under Section 22, what was the validity of these quantitative restrictions in terms of the General Agreement? The TSUS Headnote which the United States cited as the authority for the measures was indeed included in the country schedules to Article II, but these schedules were a record of concessions between countries. It seemed anomalous for the United States to use them to, in effect, grant itself a waiver from the provisions of Article XI - one which, moreover, had never been through the procedures of Article XXV. Members doubted whether in fact the United States sugar quotas would qualify for any of the exceptions permitted to Article XI. In any case, there was an important question to be answered as to whether the quotas had any real GATT cover.

38. The representative of the United States repeated that he was not prepared to discuss import restrictions maintained under other authorities than Section 22 - e.g., the sugar quotas. There had been GATT consultations in 1982 with interested contracting parties concerning the Headnote, and he did not intend to go into the GATT legality question in this forum. Likewise other questions raised by members of the Working Party which referred to matters other than import restrictions imposed under Section 22, such as the provisions of the Food Security Act with respect to the export of dairy products, the Punta del Este standstill/rollback commitments, as well as the sugar quotas, were viewed by his authorities as not germane to the mandate of the Working Party.

39. Another member of the Working Party commented further on what he described as the United States waiver's de facto protection for the processed food industry. It had never been imagined that the waiver would apply to quantitative restrictions on articles processed from agricultural products which were themselves not under Section 22 quotas, such as sugar. He also asked for some guidance from the United States as to the criteria it used in judging whether to apply waiver protection. What percentage of a Section 22 product did a processed food have to contain to merit import protection? Or was there carte blanche for any such product to be protected - e.g., crème caramel because it contained milk? In this case it was not domestic agricultural production which was being protected, it was the food processing industry. Another member pointed out that on such reasoning cotton shirts could be brought under the waiver. It was suggested that a possible means of defining the application of the waiver in such cases would be for the United States to apply the "like product" test set down in Article VI of the General Agreement. A member also asked whether the United States had any statistical breakdowns of the use of Section 22 quota-controlled primary products in further processing.

40. The representative of the United States took note of these points. He stated that Section 22 existed to protect United States commodity support programmes from material interference, and it was this, not the level of processing of a product, which was the criterion for waiver action. Members of the Working Party nonetheless observed that this was applied arbitrarily and inconsistently.

41. The representative of the United States presented his authorities' responses to the various questions raised by members of the Working Party concerning the principles and application of the waiver. He stated that the United States felt it had complied with both the letter and the spirit of the waiver, in keeping to the engagements it had made which were as follows:

- To review, upon the request of any contracting party, whether a change in circumstances would require the termination or modification of any existing import restrictions; if so, to institute a Section 22 investigation;

- To notify the CONTRACTING PARTIES whenever a Section 22 investigation has been instituted and to give any contracting party which considers its interests affected an opportunity for representations and consultation;

- To consider the representations of other governments, including representations concerning possible quota quantities other than those in place or under investigation;

- To notify the CONTRACTING PARTIES whenever a Section 22 Presidential decision has been made, including the particulars of whatever import restrictions may have been imposed and the reasons for them;

- To remove or relax import restrictions when it finds that changed circumstances make doing so possible;

- To report to the CONTRACTING PARTIES changes in Section 22 import restrictions, Section 22 restrictions presently in effect, reasons why those restrictions are applied, and steps taken with a view to a solution of the problem of surpluses of agricultural commodities.

42. As to whether the major reason for the United States' seeking the waiver was to resolve the problem of surpluses, the representative stated that the United States requested the waiver because it sought to put United States participation in the GATT and in the proposed International Trade Organization on the firmest possible footing; and because one paragraph of Section 22 read then, as it reads now, as follows:

- "No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section."

The United States Government considered it essential, to ensure full participation, that any possible inconsistency between United States commitments under the GATT and Section 22 be removed.

43. To the point made by several members of the Working Party that the present effect of Section 22 was the United States' being able to maintain exportable surpluses, the United States representative said the present effect of Section 22 was that imports were prevented from entering the United States at levels which would materially interfere with certain programmes administered by the United States Department of Agriculture. The existence of exportable surpluses of any commodity at any time would be due to a number of circumstances, possibly including United States Department of Agriculture programmes instituted to implement legislation enacted by the Congress; but Section 22 itself would not be the cause of such surpluses. But assuming this was indeed the present effect, members had questioned whether the waiver authorized the United States to restrict imports of commodities which were being produced in the United States in an exportable surplus. The United States representative replied that the waiver authorized the United States Government to take actions which would otherwise conflict with provisions of the General Agreement but which Section 22 required the United States Government to take.

44. The criteria the United States used in determining how far down the line of processing to protect Section 22 commodities were that:

- If imports, in whatever form, were determined to have been interfering materially, or to threaten to interfere materially, with the administration of United States Department of Agriculture programmes, then Section 22 action was required,

and, concerning the question how far down the line of processing did the waiver apply, he stated that the waiver pertained to actions which Section 22 required the United States Government to take. There were no statistics on the use in the production of processed foods of commodities whose import was restricted under Section 22.

45. The United States representative also gave his authorities' response to the question whether the necessary protection for United States agricultural price support programmes could be provided in a manner consistent with GATT articles, thereby obviating the United States need for the waiver. He said that Section 22 existed to protect farm programmes. Market circumstances might change or programmes might change in ways that would make such protection unnecessary in individual instances; but the need for a mechanism would remain. Insofar as the operation of that mechanism could lead to a possible conflict with United States GATT obligations, the need for the waiver would similarly remain.

46. Lastly, reverting to the point made by several members of the Working Party of an ending date for the waiver, he recalled that this issue was considered when the waiver was granted. In the view of the United States, a waiver limited in time would not provide the necessary assurance that an agreement entered into by the United States would not be applied in a manner inconsistent with the requirements of Section 22.

47. Members of the Working Party expressed strong dissatisfaction with the answers given by the United States to these questions, and in particular to their insistence that a number of issues raised by members lay outside the scope of this Working Party. It was recalled that the mandate, as explained in paragraph 6 of the Decision of 5 March 1955, was to examine any action taken under the waiver, not just the United States report, which was simply a tool for the Working Party to use in its work. The United States had given no arguments in response to the points members of the Working Party had raised, simply assertions. A member described the situation as very discouraging and said there was no hope of carrying out any better examination than the previous 27 if the other partner was not ready to collaborate. Another member noted that the waiver had been granted without a time limit by the CONTRACTING PARTIES in the context of the undertaking by the United States that it was its intention to continue to seek a solution to the problem of surpluses of agricultural commodities. This point must be central to the Working Party's deliberations. He appreciated the problem involved with regard to conflict between United States legislation and the GATT, but there was some obligation upon contracting parties to bring their legislation into line with GATT. By saying that the waiver was on the table in the Uruguay Round the United States recognized implicitly that this was possible.

48. The same member went on to consider how, given the lack of progress to date on resolving the fundamental GATT problem posed by this waiver, the Working Party could make a credible report to the Council on its deliberations. For a report by this Working Party to be credible it would need to contain clear indications of what the future intentions of the United States were to enable CONTRACTING PARTIES to end the waiver. Ideally the Working Party should be able to recommend after more than 30 years, i.e., to recommend with the consensus of the United States, a time-frame in which the waiver could be dispensed with. The United States had said on several occasions and in several fora that the waiver was on the table in the Uruguay Round. That was welcome if it signaled the

intention of the United States to allow the termination of the waiver by the end of the Uruguay Round at the latest. An important element of the MTN would be the United States willingness to roll back its quantitative restrictions on agricultural products whether under cover of the Section 22 waiver or not. This of course also applied to a number of other major agricultural importers. This was not a matter of just saying that such measures, which were inconsistent with the whole thrust of the GATT, were potential negotiating coin. In fact, in his Government's view they were measures falling within rollback provisions of the Uruguay Declaration as measures which should be made consistent with the GATT and for which no compensation should be paid.

49. One member of the Working Party raised the question of symmetry between the United States import restrictions under the waiver and the GATT panel case it was currently pursuing concerning the member's own import restrictions on some of the same products. It was difficult to explain to farmers why the United States restrictions were allowed under GATT and their own called into question. The member's government had been sympathetic to the United States position because of their own policies and because they fully understood the problems that could result from the specific characteristics of agriculture. However the situation had changed in the light of the panel case mentioned above, so he would like to ask the United States representative some questions:

(a) did the United States think that the situation which, it insisted, justified the continuation of the waiver was peculiar to the United States? (In other words, did not the reason why the United States had kept the waiver for 30 years stem from the specific characteristics of agriculture?)

(b) would the United States keep the waiver with regard to peanuts even if the panel made findings contrary to the member's interests and obliged it to follow those recommendations?

He also asked the following questions concerning the administration of restrictions under the waiver:

(a) What was the total import quota, by quantity, for each item under restriction, and what quota had been allocated to each exporting country in recent years?

(b) How did the United States calculate the import quotas and how did it allocate them among exporting countries?

(c) If the import quotas had not increased year by year, why did the United States ask other countries - especially the member's - to increase their imports? The member also asked for the CCCN classification of certain TSUS categories.

50. In reply, the representative of the United States said that the waiver arose from the situation in the United States in 1955 and since. The reasons for seeking it were spelt out in the report of the panel established to review the United States request, and they still applied. It was an explicit provision tailored to United States domestic law pursuant to Article XXV:5 of the General Agreement. There were no so-called "special characteristics of agriculture" within the meaning of GATT provisions. Any decisions on peanuts would be taken on the criteria established in Section 22. He supplied the information requested on CCCN classifications, and concerning the allocation of Section 22 quotas, he said that they were published in the annual report of the United States International Trade Commission entitled "Tariff Schedules of the United States Annotated". They were contained in Part 3 of the appendix. This publication was supplied yearly to the secretariat, along with any updates that might occur. It contained both the quota quantities and the country allocations where these applied. Quotas were not set by some mathematical formula, but at that level which would not interfere with United States programmes. As for distribution of quotas among exporters, with a few exceptions there was no formal allocation. Lastly, in answer to question (c) above, he said the two issues were not related. Without addressing the policies of other governments, the United States restrictions under Section 22 were to prevent material interference with a price support programme operated by the United States Department of Agriculture. They were required, and permitted under the terms of the waiver, to use quantitative restrictions - within certain limits - to achieve this objective. Experience had shown, as evidenced in GATT documents, that the United States had enlarged and removed Section 22 restrictions when conditions so permitted.

51. The representative of the United States said that his Government was giving the problems of world agriculture urgent attention in the new GATT Round. They were not caused by one country alone, and would not be solved by one country - in this case by the United States relinquishing the waiver at this time. They were prepared to enter into a comprehensive process in the MTN that would lead to a situation where the waiver was not needed, and they felt that the appropriate forum to be discussing this was in the multilateral negotiations.

52. A member of the Working Party noted that on various occasions United States representatives had said the reason for the waiver was so they could participate fully in GATT. Therefore, if there had been no waiver would they have had to withdraw from GATT? Furthermore, did the problem presented by the waiver not in fact go beyond agriculture, to a legislative problem in the United States, the fact that they had never ratified the General Agreement? Because the United States had not ratified it, Congress could pass domestic legislation which infringed the General Agreement, and hence obliged the United States to seek a waiver from certain of its provisions in order to be able to participate in GATT. He suggested this was a matter which might be taken up in the Negotiating Group on GATT Articles. The representative of the United States agreed that there would be a conflict between Section 22 and the General Agreement if there was no waiver.

53. The Working Party discussed, without reaching a consensus, whether it should make recommendations to the Council concerning the present use and future treatment of the United States waiver. Certain members submitted drafts for the Working Party's consideration. There was a widespread feeling that after 32 years it was time to make concrete recommendations. This would be the first Working Party report on the waiver to come before the Council in the Uruguay Round, and members of the Working Party saw the United States restrictions as one of the keys to the outcome for agricultural trade in the MTN. Several members emphasized the desirability of recommending a time-frame for the treatment of the waiver in the Uruguay Round. Members recalled the discussions in the Council in 1986 over the terms of reference for the Working Party, noting that then - as now - a number of contracting parties had seen little value in yet another Working Party on this subject unless it produced recommendations. It was in this spirit that several members of the Working Party had agreed to the terms of reference, on the understanding, expressed by the Council Chairman, that they did permit the Working Party to make appropriate recommendations. The United States delegation had assented to that understanding, members maintained.

54. The representative of the United States said that his authorities would not accept agreed conclusions or recommendations. He said that the waiver required only that the CONTRACTING PARTIES review a United States report showing what Section 22 restrictions were in effect, how they had been changed, why restrictions continued to be applied, and what the United States was doing to resolve the problem of surpluses of agricultural commodities. To change that requirement to involve some kind of judgment of whether the Working Party members thought that the United States was doing what it should do to solve the surplus problem would completely alter the nature of the waiver. In effect, it would be a new waiver. The United States originally sought the waiver as assurance to the Congress that GATT obligations would not result in a conflict with United States law. A waiver altered in the manner proposed would not provide such assurance. The United States had made its position clear as to how it proposed to negotiate agricultural support measures and import restrictions in the Uruguay Round. Clearly the bodies set up for the Uruguay Round negotiations were the proper fora for this kind of discussion, and not the report of a Working Party established to review the actions of one government. The representative of the United States assured the other members of the Working Party that he had carefully noted all the issues they had raised and would report them to his authorities.

55. Members of the Working Party were disturbed and disappointed that the United States appeared to have made up its mind against accepting any recommendations whatsoever. This was not, they maintained, consistent with the position of the United States at the time the Working Party's terms of reference were agreed, and this inconsistency was a serious GATT matter. The Council had reached a clear understanding that the terms of reference permitted appropriate recommendations. The United States had not opposed this. Yet they now said that they would not permit the Working Party to

make recommendations. This was different from saying they found one or other formulation inappropriate, and the difference was important. The United States had an obligation to be consistent. The position they had taken in this Working Party left them with a credibility problem, a member observed.

56. Members commented further that if working parties could not make some form of recommendations they were hardly worthwhile. The conclusions suggested were very modest ones, largely reflecting the statements of United States officials and the text of the 1955 Decision. Yet the United States was unwilling even to accept the only substantive recommendation, which was to submit the Working Party's report to the Negotiating Group on Agriculture for its consideration, though they had said many times and in many places that they were ready to put the waiver on the negotiating table. The opportunity presented by this Working Party should be used to assist other GATT bodies in their work - it was to this end that it was desirable to transmit conclusions and recommendations to them. Several members agreed that in fact two kinds of recommendations were needed, specific (e.g., that the United States was not living up to the waiver until it ended or justified certain measures) and general (e.g., on the future treatment of the waiver). These members also saw it as important that the present report should be considered by the CONTRACTING PARTIES with a view to determining recommedations to the United States Government on appropriate action which might obviate continuing indefinite need for the waiver. Members took the United States position as showing that a broad political view had not been injected into this question - it needed to be looked at in the light of wider United States trade policy responsibilities and aims.

57. Most members agreed that the Working Party should have been able to conclude, on the basis of the examination of the Report on the waiver (L/5981 and Add.1), that the continued application by the United States authorities of the waiver granted by CONTRACTING PARTIES in 1955 from certain provisions of the General Agreement:

(a) had done little to facilitate long-term adjustment of affected United States agricultural industries to international competition in line with the undertaking given by the United States at the time the waiver was granted;

(b) had, over the life of the waiver, allowed the maintenance of agricultural programmes which had led to recurring serious imbalances in supply and demand and thus the creation of stocks well in excess of United States requirements and pressure for periodic subsidized exports;

(c) been among the more important factors which had prevented the development of operationally effective GATT rules and disciplines in the field of agriculture generally.

58. These members stated that if these conclusions had been adopted, then in view of the firm and repeated assurances by representatives of the United States Administration that its agricultural authorities were prepared to consider fundamental changes to policies related to the waiver, the Working Party would have recommended that the United States might undertake the review, foreshadowed in the statement to CONTRACTING PARTIES in 1955, of the circumstances that had led to the granting of the waiver with a view to terminating or modifying current restrictions. Such a review would be in line with the spirit of the Punta del Este Declaration on standstill and rollback.

59. The Working Party noted that due to the position adopted by the United States it was not possible to reach unanimous recommendations on future action on the waiver. Most members recommended that their conclusions set out in paragraphs 53 to 59 should be noted by the CONTRACTING PARTIES and that one possible course which would not exclude other options would be that the report be transmitted to the Negotiating Group on Agriculture for its consideration.