

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/230

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Special Distribution

CONTRACTING PARTIES

Ninth Session

Review Working Party I on Quantitative Restrictions

REPORT OF SUB-GROUP I-C

I. PROPOSED AMENDMENTS TO ARTICLE XI

1. The Sub-Group considered various proposals for improving the provisions governing the application of restrictions under Article XI, in particular proposals by the Dominican Republic delegation (W.9/128) and by the Danish delegation (L/273). The Sub-Group considered that these proposals contained interesting suggestions but that it was not desirable, at this stage, to amend the provisions of Article XI or related provisions, since most of the points were already covered sufficiently by the existing provisions of the Agreement. On the other hand, it was felt that some of the specific suggestions would complicate unnecessarily the procedures provided for in Article XI while others would duplicate or deviate from the non-discriminatory provisions of Article XIII.

2. The Sub-Group considered, however, that it might be useful to insert in the Working Party's report brief agreed statements which would clarify some of the points that the proposed amendments were intended to cover. It might be useful, for instance, to re-affirm that the maintenance or the application of a restriction which went beyond what would be "necessary" to achieve the objects defined in paragraph 2(b) or 2(c) of Article XI would be inconsistent with the provisions of that Article. This is made clear in the text of those provisions by the use of the word "necessary". Restrictions related to the application of standards or regulations for the classification, grading or marketing of commodities in international trade which go beyond what is necessary for the application of those standards or regulations and thus have an unduly restrictive effect on trade, would clearly be inconsistent with Article XI. Moreover, if import restrictions of the type referred to in paragraph 2(c) were to be applied after the governmental measures referred to in that paragraph had ceased to be in force, those restrictions would no longer be necessary for the enforcement of those measures and would therefore be inconsistent with the provisions of that paragraph.

3. It was also recognized that if restrictions of the type referred to in paragraph 2(c) of Article XI were applied to imports during that part of the year in which domestic supplies of the product were not available, such restrictions would be regarded as consistent with the provisions of the Article

only to the extent that they were necessary to enforce or to achieve the objectives of the governmental measures relating to control of the domestic product. Finally, it was recognised that it would be an abuse of intent of the provisions under paragraph 2(c)(i) of Article XI if the contracting parties were to apply restrictions to processed products exceeding those "necessary" to secure enforcement of the actual measure restricting production or marketing of the primary product.

4. As regards the additional procedural provisions suggested by the Danish and Dominican Republic delegations, the movers of those amendments agreed to withdraw their proposals on the understanding that the Working Party's report would contain the statements reproduced in paragraphs 5 and 6 below.

5. "The requirement that any contracting party applying restrictions pursuant to paragraph 2(c) should give public notice of the quantities or values to be imported should be construed as requiring that contracting party to send a copy of that notice to the CONTRACTING PARTIES (or the Organization) which would circulate this information to all contracting parties concerned."

6. "The Working Party recommends that, whenever practicable, a contracting party intending to introduce restrictions pursuant to paragraph 2(c) of Article XI should give advance notice, on a confidential basis, to interested contracting parties and to the CONTRACTING PARTIES (or the Organization) so as to give them an opportunity for consultation."

7. Regarding the proposed addition of a provision to the effect that the CONTRACTING PARTIES may require a contracting party resorting to Article XI to consult with them, the Sub-Group came to the following conclusion: if the proposed amendment to Article XXII which would enable any contracting party to request the CONTRACTING PARTIES (or the Organization), to call in consultation another contracting party regarding any matter relating to the administration of the Agreement, the need for a special procedure within the framework of Article XI would serve little useful purpose. The proposals for amendments were withdrawn on the assumption that the new text of Article XXII would be approved by the CONTRACTING PARTIES.

8. The Sub-Group examined a proposal by the Swedish delegation (L/275) to insert two interpretative notes to Article XI. One of these would be to the effect that the terms of sub-paragraph 2(a) would cover temporary export restrictions applied to meet a considerable rise in domestic prices of foodstuffs due to a rise in prices in other countries. The Sub-Group was of the view that to the extent that the rise in prices was associated with acute shortages of the products in question, as it normally would be, the action envisaged in the Swedish proposal, whether affecting foodstuffs or other products, was clearly covered by the terms of that sub-paragraph. The other proposed note would indicate that the provision of sub-paragraph 2(c) was applicable to surpluses of grain made available as feeding-stuffs to small holders and similar categories with a low standard of living. The Sub-Group considered that such an interpretative note was also unnecessary; the case is clearly covered by the terms of that provision.

9. Finally, the Sub-Group agreed that it would not be desirable to write into Article XI a procedure for dealing with cases of deviations from the provisions of that Article as the remedy for such cases was already contained in the provisions of Articles XXII and XXIII of the Agreement.

II. TRANSITIONAL PROBLEMS CONNECTED WITH THE ELIMINATION OF
BALANCE-OF-PAYMENTS RESTRICTIONS

10. The Sub-Group considered in detail the type of problems which some contracting parties may have in connection with the elimination of the import restrictions which they have been applying for a number of years for balance-of-payments reasons. The Sub-Group concluded that it would be undesirable to deal with such problems which are essentially of a temporary nature by means of an amendment to the provisions of the Agreement, even in the form of transitional measures. The Sub-Group considered various suggestions in order to give at this Session to the contracting parties concerned the necessary assurances that a reasonable solution for such problems would be found when the need for a special dispensation would arise. It came to the conclusion that the most appropriate solution would be for the CONTRACTING PARTIES to approve at this Session a decision in accordance with Article XXV:5(a). That Decision would waive obligations of Article XI to the extent necessary to allow the temporary maintenance of import restrictions required to overcome these transitional problems subject to the prior concurrence of the CONTRACTING PARTIES in the maintenance of each restriction and to the compliance of the applicant contracting party with certain conditions. The French representative did not see things in the same light and felt that requests for a waiver of Article XI should be considered by the CONTRACTING PARTIES as soon as they were made by the contracting parties concerned and that when considering such requests the CONTRACTING PARTIES should base their action on established precedents.

11. The Annex to this report contains a text of a draft Decision to be submitted to the CONTRACTING PARTIES, as well as a number of statements which it appeared desirable to insert in the Working Party's report in order to clarify some points in the Decision. The adoption of the attached Decision by the CONTRACTING PARTIES does not, of course, preclude any contracting party, if it wished, from availing itself of the provisions of Article XXV:5(a) instead of availing itself of the facilities provided by this Decision.

12. The Sub-Group has not reached a conclusion on the question of the possible application of this Decision to contracting parties which would operate under Section B of Article XVIII. It will submit a separate report on this point.

ANNEX

DRAFT DECISION DEALING WITH THE PROBLEMS RAISED FOR
CONTRACTING PARTIES IN ELIMINATING IMPORT RESTRICTIONS
APPLIED FOR BALANCE-OF-PAYMENTS REASONS

CONSIDERING that all contracting parties have accepted an obligation not to institute or maintain any prohibitions or restrictions on imports other than duties, taxes or other charges, whether made effective through quotas, licences, or other measures, except in so far as resort to such restrictions is specifically provided for in the General Agreement;

CONSIDERING further that deviation from this obligation would impair the value of tariff concessions enjoyed by contracting parties and generally prejudice the interests of contracting parties;

BEING CONVINCED that contracting parties which have been obliged, for balance-of-payments reasons, to maintain restrictions, should, without delay, take all the necessary measures which would enable them to remove all restrictions as soon as they are no longer justified under Article XII or any other provision of the Agreement;

RECOGNIZING, however, that in certain cases restrictions have been maintained during a period of persistent balance-of-payments difficulties spreading over a number of years, and that some transitional measure of protection by means of quantitative restrictions may be required for a limited period to enable an industry having received incidental protection from those restrictions which were maintained for balance-of-payments reasons to adjust itself to the situation which would be created by the removal of those restrictions;

The CONTRACTING PARTIES, acting pursuant to paragraph 5(a) of Article XXV,

A. DECIDE that, subject to the concurrence of the CONTRACTING PARTIES in each case, the obligations of Article XI shall be temporarily waived to the extent necessary to allow the maintenance of a restriction applied on the import of one or more products to meet the exceptional circumstances described in the Preamble above, provided that the application for concurrence in such restriction shall meet the requirements outlined in paragraph 2 below, and that the applicant contracting party is prepared to accept the undertakings set forth in paragraph 3 below, and provided further that the decision to give such concurrence shall be taken by a majority of votes cast.¹

¹ Reservation by Cuba.

1. The applicant contracting party shall communicate its request for concurrence to the CONTRACTING PARTIES before it ceases to be entitled to maintain the restriction under the relevant provisions of the General Agreement to safeguard its external financial position and its balance of payments, and in any case not later than 31 December 1957, provided that CONTRACTING PARTIES may, by a decision approved by the majority specified in paragraph 5(a) of Article XXV, extend the time limit by fixing a later date. That request shall be accompanied by the necessary information to enable the CONTRACTING PARTIES to satisfy themselves that the request meets the conditions laid down in this Decision.

2. The applicant contracting party shall satisfy the CONTRACTING PARTIES:
 - (a) that the restriction has been continuously in force since 1 January 1955, and that its sudden removal would result in serious injury to a domestic industry having received incidental protection therefrom, and that the temporary maintenance of the restriction is necessary to enable the industry to adjust itself to the situation which would be created by the removal of the restriction.
 - (b) that it would not be practicable at the time the request for concurrence is put forward to resort to any measure consistent with the provisions of the General Agreement to achieve the objective set forth in sub-paragraph (a) above; and
 - (c) that, in view of the measures already taken and of those to be taken under sub-paragraph 3(a) below, there is a reasonable prospect of eliminating the restriction over a comparatively short period of time.

3. The applicant contracting party shall agree to undertake:
 - (a) to develop and apply appropriate measures designed to ensure the elimination of the restriction within the period referred to in paragraph 2(c) above;
 - (b) to grant to other contracting parties as from the time the concurrence in a restriction is given, a fair and reasonable share of the market for the product concerned and at least to allow imports representing a total share of the market as favourable as that obtaining on the average during the preceding three years, provided that the total restrictive effect of the measure shall at no time during the period for which concurrence has been given exceed the effect of the restriction in force on 1 January 1955; and

¹ One representative reserved his position. Certain other members are seeking instructions on the insertion of the proviso.

- (c) that it will carry out a policy for a progressive relaxation of each restriction and for its elimination before the end of the period referred to in paragraph 2(c) above.

B. DECIDE further that any concurrence which the CONTRACTING PARTIES may give in accordance with this Decision to meet the exceptional circumstances described in the Preamble to this Decision shall be subject to such conditions and limitations of scope or time as they shall determine to be reasonable and necessary, having regard both to the information provided by the applicant contracting party and to the considerations set out in the Preamble. Such conditions and limitations shall include the following:

1. No concurrence shall be given for a period exceeding five years from the date it is granted.
2. No restriction, the maintenance of which is authorized in accordance with this Decision, shall be administered in a way inconsistent with the provisions of the General Agreement relating to the non-discriminatory application of quantitative restrictions, or, in the case of a restriction made effective through state trading, with the provisions of Article XVII of the Agreement.
3. The contracting party concerned shall communicate regularly to the CONTRACTING PARTIES the total amount of the product the importation of which will be authorized by it during the following licensing period in order that they may satisfy themselves that the undertakings required under paragraph 3(b) and (c) of Section A above are being complied with.
4. The contracting party concerned shall further submit an annual report to the CONTRACTING PARTIES in such detail as may be required, and setting out:
 - (a) the progress made in the relaxation of the restriction authorized;
 - (b) the result of the measures taken to ensure the elimination of the restriction;
 - (c) any change it may be proposing in the method of application of the restriction; and
 - (d) if it is found necessary to maintain the restriction, the reasons for such maintenance.
5. On the basis of that report and of any other data which may be submitted to them by other contracting parties, the CONTRACTING PARTIES shall review annually the operation of the restrictions authorized in accordance with this Decision. If in the course

of such a review, they find that the application of any restriction is no longer consistent with the conditions and limitations imposed by them or with the undertakings given by the contracting party concerned in accordance with this Decision the concurrence covering that restriction shall cease to be valid after a date specified by the CONTRACTING PARTIES unless the application of the restriction is brought into conformity with the terms of the concurrence by that date.

√C. The CONTRACTING PARTIES AGREE, that any concurrence given in accordance with this Decision does not preclude the right of contracting parties affected to have recourse to Article XXIII. √

Texts to be inserted in the Working Party's report accompanying
the text of the draft decision

Re paragraph A:1

The intent of paragraph 1 is to indicate that the request for concurrence should be sent to the CONTRACTING PARTIES a reasonable time before the country expects to be in a position to withdraw restrictions for balance-of-payments reasons, in order to give to the contracting parties sufficient time to consider the request before the provisions of Article XII are no longer applicable to the applicant contracting party and thus to avoid any breach of the Agreement through delays in the procedure. It would be reasonable to expect that the request would be made at least one month before the country expects to remove its balance-of-payments restrictions.

Re paragraph A:2(c)

The provision of paragraph 2(c) is intended to limit the benefit of the Decision to restrictions which are clearly of a temporary or transitional nature. It would not, however, exclude from the scope of the Decision cases in which the success of the measures designed to eliminate the restriction would depend to a certain extent on factors beyond the control of the applicant contracting party, when the CONTRACTING PARTIES are satisfied that the assumptions on which the assurances given by the applicant contracting party are based are reasonable.

Re paragraph A:3(c)

The Working Party recommends that, when they approve the text of the Decision, the CONTRACTING PARTIES place on record their agreed interpretation of the provision contained in paragraph 3(c): "The requirement that the applicant contracting party will carry out a policy for a progressive relaxation of each restriction does not necessarily oblige that contracting party to increase automatically each year the amount to be imported, provided that the CONTRACTING PARTIES are satisfied that the policy followed will lead to the elimination of the measure as called for under that paragraph. The provision of that paragraph would not prevent the CONTRACTING PARTIES from waiving that

requirement in an exceptional case where they would consider that the conditions and limitations contemplated in paragraph 4 would render this requirement unnecessary."

Re paragraph B:3

The Working Party recognized that, in certain cases, the licensing arrangements are such that it would not be practicable to communicate in advance the actual amount to be imported during the following licensing period; in such cases, the contracting party would be expected to communicate equivalent information regarding the licensing arrangements for that period.

