

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/238

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CONTRACTING PARTIES

Ninth Session

Working Party 6 on the United States Waiver

DRAFT OF REPORT TO THE CONTRACTING PARTIES

1. The Working Party was asked to examine the request by the United States for a waiver of its obligations under the Agreement with respect to the use of Section 22 of its Agricultural Adjustment Act (of 1933), as amended, and to report its recommendations thereon to the CONTRACTING PARTIES. The reasons why the waiver was requested are set out in W.9/315 and the statement by the United States representative in the plenary meeting is recorded in SR.9/33. The Working Party used as a basis of discussion a draft waiver submitted by the United States delegation (W.9/170) and considered a number of amendments proposed by other delegations with a view to clarifying the text or to providing more safeguards in the event that the CONTRACTING PARTIES should decide to grant the requested waiver.¹ The text of a draft Decision resulting from the deliberations of the Working Party is given in Annex I.
2. Many of the amendments suggested by members of the Working Party were incorporated in the draft Decision. Certain others, which were regarded by some members of the Working Party as of major importance, were not included. For example, in the view of certain delegations, any waiver granted should be of defined scope and apply only to those products which were actually under restriction; action by the CONTRACTING PARTIES in regard to any other products which might be restricted in future under the law in question should be limited to the giving of an assurance that sympathetic consideration would be given as the cases arose. It was proposed by several members that the waiver should be granted for a limited period of time or that it should be stipulated as a condition that restrictions applied under it shall be eliminated by a specified date. The United States representative considered, however, that if either of these amendments were incorporated in the waiver it would not suffice to meet the need for which it was requested. Section 22 requires the President of the United States to act in certain defined circumstances. An amendment adopted in 1951 provides that no international agreement entered into shall be applied in a manner inconsistent with the provisions of Section 22. The waiver was required in order to remove any possible inconsistency between the obligations of the United States under the General Agreement and that Section so as to permit the fulfilment of this Congressional mandate. In the light of

¹ Including the proposals by Australia (W.9/183), Canada (W.9/186), Cuba (W.9/185) and the United Kingdom (W.9/187).

this explanation the Working Party agreed not to include the conditions referred to above in the draft Decision.

3. While agreeing to it being noted in the Decision that it was the intention of the United States Government to continue to seek a solution of the problem of surpluses of agricultural commodities, the United States representative was unable to accept the suggestion that as a condition of the waiver the United States Government should undertake to adopt measures to remove the underlying causes of the situation which necessitates the application of restrictions under Section 22. The position of the United States representative was that many of the underlying causes were beyond the control of his Government and that the measures contemplated would in many cases require legislative action by the Congress. It was therefore beyond the competence of the United States Administration to promise their adoption.

4. In submitting the annexed draft Decision, the Working Party was, however, unable to submit at the same time an agreed recommendation regarding its adoption. On the one hand, it generally recognized the real need on the part of the United States for such a waiver, and of the requested scope; it noted particularly the practical reasons given by the United States representative during the plenary discussion. It also noted the careful and limited use which the United States had made of Section 22 in the past. On the other hand, however, several members of the Working Party expressly reserved their position, particularly in view of the fact that the conditions referred to in paragraphs 2 and 3 above were not included. The following paragraphs are intended to record the agreed views on the intent and purpose of some of the provisions of the draft Decision.

5. It should be noted that throughout this proposed Decision the term "restrictions" as defined in paragraph (b) of the second recital (containing the statement by the United States), covers both fees and quantitative limitations.

6. By the draft Decision, a waiver would be granted to the United States of its obligations under the provisions of Articles II and XI of the Agreement to the extent necessary to permit the operation of Section 22. The reference to Article II was intended to cover the cases where a fee was imposed under Section 22 on an item on which the United States has assumed an obligation under that Article, in excess of the rate of duty set forth in Schedule XX annexed to the Agreement. In requesting that the imposition of such fees be covered by the proposed waiver rather than resorting to the procedures of Article XXVIII, the United States Government had in mind that any fees imposed for the purposes of Section 22 would be of a temporary nature and would be subject to change at short intervals, within the limits provided for in that law, according to circumstances. It was considered undesirable to disturb the general stability of the tariff bindings under the Agreement for the purpose of securing such temporary derogations as required by the implementation of Section 22.

7. In the clause beginning with the word "DECIDE" it is stated that "the text of Section 22 is annexed to this Decision." The purpose of this is to define the substantive provisions of the law to which the waiver would refer.

8. In paragraph 2 of the Conditions and Procedures it is stated that the United States will, in accordance with Article XXII of the Agreement, accord to any interested contracting party the fullest notice and opportunity, consistent with the legislative requirements of the United States, for representations and consultation. Here the reference to the United States "legislative requirements" is intended to cover the cases where the President of the United States is required by law to take a decision on an application for action under Section 22 within a time limit; it is not intended that the scope or character of the consultations contemplated by Article XXII of the Agreement would be in any way limited.

9. The purpose of reiterating in paragraph 4 that the obligations of the Agreement are waived without prejudice to the right of the affected contracting parties to have recourse to the appropriate provisions of Article XXIII, is to re-emphasize that point in relation to the imposition of restrictions on additional products and the extension or intensification of existing restrictions. As the first DECLARATION clause indicates, the right of other contracting parties to have recourse to the provisions of Article XXIII is not limited to such cases only, but applies to the Decision as a whole.

10. The annual review provided for in paragraph 6 is intended to cover not only the restrictions maintained by the United States under the Decision but also the extent to which the procedures required by it had been fulfilled.

11. Finally it might be noted that since the Decision refers to the provisions of Articles II and XI of the Agreement, it does not affect the obligations of the United States under any other provisions of the Agreement. In particular, as its obligations under Article XIII are not affected, the United States would acquire no right by virtue of this waiver to deviate from the rule of non-discrimination provided for in that Article.

12. The United States delegation has submitted a schedule showing the products which are at present subject to restriction, either in the form of fees or quantitative limitations, under Section 22. This is annexed to this Report for the information of the contracting parties (see Annex II).

ANNEX I TO THE REPORT

PROPOSED DECISION TO GRANT A WAIVER TO THE UNITED STATES
IN CONNECTION WITH IMPORT RESTRICTIONS IMPOSED UNDER SECTION 22
OF THE UNITED STATES AGRICULTURAL ADJUSTMENT ACT (OF 1933),
AS AMENDED

HAVING RECEIVED the request of the United States Government for a waiver of the provisions of Article II and Article XI of the General Agreement with respect to certain actions by the United States Government required by the provisions of Section 22 of the United States Agricultural Adjustment Act (of 1933), as amended, (hereinafter referred to as Section 22) which are not authorized by the Agreement,

HAVING ALSO RECEIVED the statement of the United States:

- (a) that there exist in the United States governmental agricultural programmes (including programmes or operations which provide price assistance for certain domestic agricultural products and which operate to limit the production or market supply, or to regulate or control the quality or prices of domestic agricultural products) which from time to time result in domestic prices being maintained at a level in excess of the prices at which imports of the like products can be made available for consumption in the United States and that under such conditions imports may be attracted into the United States in abnormally large quantities or in such manner as to have adverse effects on such programmes or operations unless the inflow of such imports is regulated in some manner;
- b) that the Congress of the United States therefore enacted Section 22 which requires that restrictions in the form either of fees or of quantitative limitations must be imposed on imports whenever the President of the United States finds, after investigation, that such products are being or are practically certain to be imported in such quantities and under such conditions as to render ineffective or materially interfere with any programme

or operation undertaken by the United States Department of Agriculture or any agency under its direction with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof, with respect to which such a programme is being undertaken, and has required the President not to accept any international obligation which would be inconsistent with the requirements of the Section;

- (c) that import restrictions can be imposed under Section 22 only when the President finds that imports are having or are practically certain to have the effects for which Section 22 action is required; and then, except as provided by law in emergency situations, only after investigation by the United States Tariff Commission, after due notice and opportunity for hearing have been given to interested parties; that while import restrictions may be imposed in emergency situations before an investigation by the Tariff Commission, the continuance of such restrictions is subject to the decision of the President as soon as the Commission has completed an immediate investigation; and that fees imposed under Section 22 cannot exceed 50 per cent ad valorem and any quantitative limitation of imports under that Section cannot be such as to reduce the quantity of imports of the product below 50 per cent of the quantity entered during a representative period as determined by the President; and that except in the case of those products where it is impracticable to limit production or marketings or the United States Government is without legislative authority to do so, the products on which Section 22 controls are now in effect are subject to limitation upon domestic marketings which in turn affect production;

NOTING:

- (a) that, to help solve the problem of surpluses of products for which Section 22 import quotas now are in effect, the United States Government has taken positive steps aimed at reducing 1955 crops supplies by lowering support price levels or by imposing marketing quotas at minimum levels permitted by legislation; and that it is the intention of the United States Government to continue to seek a solution of the problem of surpluses of agricultural commodities;

- (b) the assurance of the United States Government that it will discuss proposals under Section 22 with all countries having a substantial interest prior to taking action, and will give prompt consideration to any representations made to it;
- (c) that it is the intention of the United States Government promptly to terminate any restrictions imposed when it finds that circumstances requiring the action no longer exist, and to modify restrictions whenever changed circumstances warrant such modification;

The CONTRACTING PARTIES DECIDE, pursuant to paragraph 5(a) of Article XXV of the General Agreement, and in consideration of the assurances recorded above, that subject to the conditions and procedures set out hereunder the obligations of the United States under the provisions of Articles II and XI of the General Agreement are waived to the extent necessary to prevent a conflict with such provisions of the General Agreement in the case of action required to be taken by the Government of the United States under Section 22. The text of Section 22 is annexed to this Decision.

DECLARE that this Decision shall not preclude the right of affected contracting parties to have recourse to the appropriate provisions of Article XXIII; and

DECLARE, further, that in deciding as aforesaid, they regret that circumstances make it necessary for the United States to continue to apply import restrictions which, in certain cases, adversely affect the trade of a number of contracting parties, impair concessions granted by the United States and thus impede the attainment of the objectives of the General Agreement.

Conditions and Procedures

1. Upon request of any contracting party which considers that its interests are seriously prejudiced by reason of any import restriction imposed under Section 22, the United States will promptly undertake a review to determine whether there has been a change in circumstances which would require such restrictions to be modified or terminated. In the event the review shows such a change, the United States will institute an investigation in the manner provided by Section 22.

2. Should the President of the United States acting in pursuance of Section 22 cause an investigation to be made to determine whether any existing import restriction should be modified, terminated or extended, or whether restrictions should be imposed on the import of any additional product, the United States will notify the CONTRACTING PARTIES and, in

accordance with Article XXII of the General Agreement, accord to any contracting party which considers that its interests would be prejudiced the fullest notice and opportunity, consistent with the legislative requirements of the United States, for representations and consultation.

3. The United States will give due weight to any representations submitted to it including:

- (a) When investigating whether any existing import restriction should be modified, terminated or extended, representations that a greater volume of imports than is permitted under the import restriction would not have the effects required to be corrected by Section 22, including representations that the volume of imports that would have entered in the absence of governmental agricultural programmes would not have such effects.
- (b) When investigating with respect to import restrictions on additional products, representations with regard to:
 - (i) the effect of imports of any product upon any programme or operation undertaken by the United States Department of Agriculture or any agency under its direction, or upon the domestic production of any agricultural commodity or product thereof for which such a programme or operation is undertaken, including representations that the volume of imports which would have entered in the absence of governmental agricultural programmes will not have the effects required to be corrected by Section 22;
 - (ii) the representative period to be used for the determination of any quota.
- (c) Representations by any contracting party that the portion of a total quota allotted or proposed to be allotted to it is inequitable because of circumstances that operated to reduce imports from that contracting party of the product concerned during the past representative period on which such import quota has been based.

4. As soon as the President has made his decision following any investigation the United States will notify the CONTRACTING PARTIES and those contracting parties which have made representations or entered into consultations. If the Decision imposes restrictions on additional products or extends or intensifies existing restrictions the notification by the United States will include particulars of such restrictions and the reasons for them

(regardless of whether the restriction is consistent with the General Agreement). At the time of such notification the provisions of the General Agreement are waived to the extent necessary to permit such restrictions to be applied under the General Agreement, subject to the review herein provided and, as declared above, without prejudice to the right of the affected contracting parties to have recourse to the appropriate provisions of Article XXIII.

5. 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.

6. The CONTRACTING PARTIES will make an annual review of the action taken by the United States under this Decision. For each such review the United States will furnish a report to the CONTRACTING PARTIES showing any modification or removal of restrictions effected since the previous report, the restrictions in effect under Section 22 and the reasons why such restrictions (regardless of whether covered by this waiver) continue to be applied and any steps it has taken with a view to a solution of the problem of surpluses of agricultural commodities.

ANNEX TO THE PROPOSED DECISIONSECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT (OF 1933),
AS RE-ENACTED AND AMENDED

Section 22 (a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this title or the Soil Conservation and Domestic Allotment Act, as amended, or section 32, Public Law No. 320, Seventy-fourth Congress, approved 24 August 1935, as amended, or any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken, he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify (7 U.S.C. 624 (a)).

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such fees not in excess of 50 per centum ad valorem or such quantitative limitations on any article or articles which may be entered, or withdrawn from warehouse, for consumption as he finds and declares shown by such investigation to be necessary in order that the entry of such article or articles will not render or tend to render ineffective, or materially interfere with, any program or operation referred to in sub-section (a) of this section, or reduce substantially the amount of any product processed in the United States from any such agricultural commodity or product thereof with respect to which any such program or operation is being undertaken: Provided, That no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President: And provided further, That in designating any article or articles, the President may describe them by physical qualities, value, use, or upon such other bases as he shall determine. In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment, the President may take immediate action under this section without awaiting the recommendations of the Tariff Commission, such action to continue in effect pending the report and recommendations of the Tariff Commission and action thereon by the President. (7 U.S.C. 624 (b)).

(c) The fees and limitations imposed by the President by proclamation under this section and any revocation, suspension, or modification thereof, shall become effective on such date as shall be therein specified, and such fees shall be treated for administrative purposes and for the purposes of section 32 of Public Law No. 320, Seventy-fourth Congress, approved 24 August 1935, as amended, as duties imposed by the Tariff Act of 1930, but such fees shall not be considered as duties for the purpose of granting any preferential concession under any international obligation of the United States (7 U.S.C. 624 (c)).

(d) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to sub-section (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section (7 U.S.C. 624 (d)).

(e) Any decision of the President as to facts under this section shall be final (7 U.S.C. 624 (e)).

(f) 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 (7 U.S.C. 624 (f)).

PUBLIC LAW 50, Eighty-second Congress, SECTION 8 (a)

In any case where the Secretary of Agriculture determines and reports to the President and to the Tariff Commission with regard to any agricultural commodity that due to the perishability of the commodity a condition exists requiring emergency treatment, the Tariff Commission shall make an immediate investigation under the provisions of section 22 of the Agricultural Adjustment Act, as amended, or under the provisions of section 7 of this Act to determine the facts and make recommendations to the President for such relief under those provisions as may be appropriate. The President may take immediate action, however, without awaiting the recommendations of the Tariff Commission if in his judgment the emergency requires such action. In any case, the report and findings of the Tariff Commission and the decision of the President shall be made at the earliest possible date and in any event not more than 25 calendar days after the submission of the case to the Tariff Commission.

ANNEX II TO THE REPORT

COMMODITIES FOR WHICH IMPORT CONTROLS ARE NOW IN EFFECT PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT (of 1933) AS AMENDED.

A - Quotas1. Cotton and cotton products

Annual quotas currently are in effect for these items:

(a) <u>Long staple cotton</u> (1-1/8 in. or longer but less than 1-11/16 in.)	<u>Quota</u> 45,656,420 lbs.
(b) <u>Short staple cotton</u> (other than harsh, under 1-1/8 in.)	14,516,882 lbs.
(c) <u>Harsh or rough</u> (under 3/4 inch)	70,000,000 lbs.
(d) <u>Cotton waste</u>	5,482,509 lbs.

2. Wheat and wheat products

(a) <u>Wheat</u>	<u>Quota</u> 800,000 bu.
(b) <u>Wheat products</u> (flour, semolina, crushed or cracked wheat, and similar wheat products)	4,000,000 lbs.

3. Manufactured dairy products (Initial controls effective July 1, 1953.)

Annual quotas have been established for these items:

Butter	707,000 lbs.
Dried whole milk	7,000 lbs.
Dried buttermilk	496,000 lbs.
Dried cream	500 lbs.
Dried skim milk	1,807,000 lbs.
Malted milk and compounds or mixtures of or substitutes for milk or cream	6,000 lbs.
Cheddar cheese ¹	2,780,100 lbs.
Edam and Gouda cheese	4,600,200 lbs.
Blue mold cheese ²	4,167,000 lbs.
Designated Italian type cheese ³	9,200,100 lbs.

¹ Cheddar cheese and cheese and substitutes for cheese containing or processed from cheddar cheese.

² Blue mold (except Stilton) cheese and cheese and substitutes for cheese containing, or processed from, blue mold cheese.

³ Italian type cheeses made from cows' milk in original loaves (Romano made from cows' milk, Reggiano, Parmesan, Provolone, Provotelle, and Sbrino).

4. Peanuts - Annual global quota of 1,709,000 pounds shelled basis, July 1 - June 30.

5. Oats¹ hulled or unhulled and unhulled ground oats (Initial controls effective December 23, 1953.)

Imports are limited to 40,000,000 bus. during the period Oct. 1, 1954 - Sept. 30, 1955.

6. Rye¹, rye flour and meal (Initial controls effective April 1, 1954.)

Imports are limited to 186 million pounds in the period July 1, 1954 - June 30, 1955.

7. Barley¹, hulled or unhulled, including rolled barley, ground barley, and barley malt (Initial controls effective October 1, 1954.)

Imports are limited to 27,500,000 bushels in the period October 1, 1954 - September 30, 1955.

B-- Fees

8. Filberts - During the period Oct. 1, 1954 - Sept. 30, 1955 a fee of 10 cents per pound on imports in excess of 6 million pounds.

9. Almonds² - During the period Oct. 1, 1954 - Sept. 30, 1955 a fee of 10 cents per pound on imports in excess of 5 million pounds.

10. Flax seed² - 50 per cent ad valorem

11. Linseed oil² 50 per cent ad valorem

12. Peanut oil² ad valorem fee of 25 per cent on imports in excess of 80,000,000 pounds.

¹ Seed approved for planting pursuant to the Federal Seed Act is not subject to control.

² Not a listed item in Schedule XX.