

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Multilateral Trade Negotiations

SYNTHESIS OF SUGGESTIONS FOR EXTENDING DIFFERENTIAL TREATMENT TO DEVELOPING COUNTRIES IN THE FIELD OF QUANTITATIVE RESTRICTIONS

Note by the Secretariat

Introduction

1. At its meeting held on 4-7 March 1974, Group 3(b) requested the secretariat to prepare a note synthesizing the various suggestions made in the GATT and elsewhere as to the ways in which differential treatment might be accorded to the trade of developing countries. This work was requested in the context of Task 8 of the Programme of Work dealing with quantitative restrictions, including import prohibitions and export restraints affecting industrial products (BTN Chapters 25-99). A summary of the main points and suggestions which have been made in this connexion is contained in the following paragraphs.¹ As background information, a note on the nature and scope of the problem based on discussions in GATT and elsewhere is contained in Annex I.

2. During the preparatory work for the multilateral trade negotiations, various suggestions² relating to the reduction and elimination of quantitative restrictions affecting industrial products were discussed in the Committee on Trade in Industrial Products (particularly Working Group 4) and the Committee on Trade and Development. In addition, recommendations were made by the Group of Three regarding action that could be taken for the removal of restrictions affecting products of interest to developing countries. It may be noted in this context that the present paper deals with proposals made specifically in relation to industrial products which fall within the terms of reference of Group 3(b). The discussions in the Committee on Trade and Development and in the Group of Three on this issue have covered in general both industrial and agricultural products.

¹ An updated list of products subject to restriction of interest to developing countries together with details of the nature of the restriction, duty rates and trade flows is contained in COM.TD/W/203/Rev.1

² For a check list of documents concerned with quantitative restrictions see MTN/2.

Committee on Trade in Industrial Products

3. The main proposals made in Working Group 4 of the above Committee and in the Joint Working Group on Import Restrictions for a solution to the problems of quantitative restrictions have been summarized in document COM.IND/W/99. These proposals envisaged, inter alia, that special attention be given to the elimination of restrictions of special importance to developing countries in an overall programme which could, in the view of some delegations, be directed to the elimination of all types of restrictions. Some delegations however considered that the removal of illegal restrictions should take place without compensation.

4. Working Group 4 has also drawn up alternative texts¹ of possible ad referendum solutions, which aim at the adoption of a programme for the removal of restrictions affecting trade in industrial products. These texts have been reproduced in Annex II. Both texts envisage that priority be given to the removal of restrictions affecting products of export interest to developing countries, including the removal of discriminatory restrictions some of which, it has been noted, have particular application to exports from developing countries. The two texts, however, reflect a difference of approach to certain questions including the treatment of legal and illegal restrictions², export restraints and the acceptance of the proposed solutions by developing countries.

5. The first text provides for the adoption of a programme for the "gradual liberalization and elimination of all restrictions". The second makes a distinction between restrictions which are legal and those which are not and proposes that illegal restrictions should be removed before the beginning of the multilateral trade negotiations. Negotiations would thus concentrate on the removal of those restrictions which are covered either by waivers or the various Protocols of Accession. Countries supporting the second formulation have pointed out that no reciprocity should be expected for the removal of illegal restrictions which should be removed unilaterally. Other countries, including those favouring the first approach, have referred to the difficulties in arriving at a commonly agreed definition of legal and illegal restrictions.

6. With regard to the treatment of export restraints, the first alternative proposes that they be treated on the same basis of quantitative restrictions and provides for their elimination under the programme of liberalization. Delegations favouring the second alternative suggested that the reasons for

¹Spec(73)17 contains a summary of the discussion on the alternative texts which are annexed to this note.

²For information on GATT provisions and procedures relating to quantitative restrictions, delegations may refer to secretariat note COM.IND/W/99.

export restraint arrangements were, in many cases, different from those leading to the imposition of quantitative restrictions. They also pointed out that certain aspects of export restraints may need to be considered in the context of discussions on safeguards.

7. It may also be noted that whereas the first alternative is addressed to developed countries, the second alternative includes both developed and developing countries. In commenting on the second alternative, developing countries have explained that most of the restrictions maintained by them were consistent with the GATT, particularly as Article XVIII¹ provides flexibility in the imposition of quantitative restrictions to cope with balance-of-payments difficulties and other special situations.

Group of Three

8. The Group of Three was requested in 1971 to present for consideration by the Committee on Trade and Development and the CONTRACTING PARTIES proposals regarding the concrete action that might be taken to deal with the trade problems of developing countries having regard to the provisions of GATT and the relevant conclusions of the CONTRACTING PARTIES. In its three reports (1971-1973), the following references relating to industrial products were made in connexion with quantitative restrictions. Details of certain recommendations, addressed specifically to individual countries, may be found in the reports themselves.

(i) The Group recommends that those developed countries still maintaining quantitative restrictions on imports of industrial products (other than textile products) of interest to developing countries establish a programme for the elimination of remaining restrictions at least for all products covered by the Generalized System of Preferences, thereby creating a situation where - when the Generalized System of Preferences is put into effect - exports of industrial products from developing countries will normally meet no barriers in the form of tariffs or quantitative restrictions when imported by developed countries, and
(ii) the Group urges that any discriminatory country classification still maintained to the disadvantage of developing countries be eliminated forthwith.

¹It may be noted that, subject to the appropriate procedures, Article XVIII sets out special provisions for developing countries and recognizes in particular that those contracting parties, the "economies of which can only support low standards of living and are in the early stages of development" should enjoy additional facilities to enable them "to apply quantitative restrictions for balance-of-payments reasons in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development". The Article also permits, subject to certain procedures for notification and consultations, a developing country not in balance-of-payments difficulties to apply quantitative restrictions or take measures which are not consistent with the General Agreement, if it considers that such measures are necessary "to promote the establishment of a particular industry".

Committee on Trade and Development

9. Basing themselves on the provisions of Article XXXVII of Part IV of the General Agreement, the developing countries have pressed in the Committee on Trade and Development for priority action in the removal of restrictions relating to products of export interest to these countries, following item-by-item examination in the Group on Residual Restrictions. In the course of the discussion in the Group on Residual Restrictions¹, it was stated by some developing countries that where, in accordance with the indications given by some developed countries, restrictions on products of interest to developing countries were maintained mainly for the purpose of protecting their domestic industries from competition from neighbouring developed countries, it was only logical, that imports from developing countries should be exempted from the application of such restrictions.² It was also suggested in the Committee on Trade and Development that the time had come for contracting parties to consider individual and joint action to dismantle quantitative restrictions against imports from developing countries on a preferential basis as part of action to be taken in advance of any comprehensive negotiations that might take place among the developed countries for removal of such barriers.³ Since then, and particularly from 1972 onwards, the work of the Committee on Trade and Development has been mainly geared to the consideration of matters of interest to developing countries in the context of preparations for the multilateral trade negotiations. In the course of the discussions delegations from developing countries have put forward proposals for the reduction and elimination of quantitative import restrictions. The suggestions made by Brazil and India were circulated in COM.TD/W/188 and COM.TD/W/187 respectively and the main points advanced by developing countries in general were synthesized in

¹See COM.TD/85.

²Some of the suggestions for special treatment to developing countries would seem to have been made with delegations having in mind the experience of the Code of Trade Liberalization adopted in the past by OEEC countries. The primary obligation under the Code was to liberalize, according to an agreed programme, quota restrictions applying to imports from other member countries and their dependent countries. With regard to other countries it provided that measures of liberalization taken in accordance with the Code should not prevent any member country, if it so desired, from taking measures of liberalization of trade in respect of non-member countries.

³See COM.TD/82.

documents COM.TD/W/198 and L/3873. In particular, delegations from developing countries have proposed that the following elements should constitute an integrated approach for the liberalization of all quantitative restrictions including embargoes and export restraints applied by developed countries on products or product groups of current or potential interest to developing countries.

Standstill

- (i) The principle of standstill concerning quantitative restrictions should be strictly adhered to. In no event should new quantitative restrictions, including embargoes and export restraints or any other trade inhibiting measures, be introduced nor existing restrictions be intensified to the disadvantage of developing countries. The removal of quantitative restrictions should not result in the adoption of other restrictive measures such as variable levies, etc. Any departure from the standstill should be governed by internationally agreed criteria and multilateral consultations and review procedures.

Agreed action programme

- (ii) An agreed action programme should be drawn up containing a list of products or product groups of export interest to developing countries, including agricultural products, subject to quantitative restrictions including embargoes and export restraints which will be included in the trade negotiations.
- (iii) Such an agreed programme should provide for the liberalization of quantitative restrictions including embargoes and export restraints and should consist of the following elements:
 - (a) the immediate removal of all quantitative restrictions including embargoes and export restraints on all products of export interest to the developing countries (including all products covered by Generalized System of Preferences) on a preferential basis;
 - (b) in certain exceptional cases where such immediate removal is not possible, the programme of liberalization might proceed at a slower pace. In the case of such exceptions, which must be kept to a minimum, representing not more than an agreed minimum percentage of the total exports of developing countries, negotiations should be held with interested developing countries concerning the timing as well as the modalities for the phasing out of quantitative restrictions including embargoes and export restraints.

- (c) pending the final removal of the quantitative restrictions including embargoes and export restraints, the following transitional steps should be taken by the developed countries concerned in cases referred to in (b) above:
 - (i) indication of a definitive time period for the phasing out of the remaining restrictions;
 - (ii) progressive enlargement of quotas in favour of developing countries, either automatically (by fixed amount or percentage increases) or in relation to the growth of the market so as to ensure a gradual increase in the market share of the developing countries;
 - (iii) adoption of measures to ensure the full utilization of quotas and the carry-over of unused portions of quotas to the succeeding quota period;
 - (iv) removal of all discriminatory aspects of remaining quantitative restrictions affecting developing countries such as discriminatory country classifications;
 - (v) adoption of measures to improve and liberalize the administration and operation of quantitative restrictions including licensing schemes.

10. In support of the proposals for the progressive enlargement of quotas, as a transitional measure pending their final elimination, reference has been made to the Scheme adopted by the member States of the EEC, in pursuance of Articles 30-37 of the Rome Treaty for liberalization of restrictions on intra-member trade as offering a possible model.¹

¹In this connexion it was noted by a delegation that Article 33 provided that at the end of one year after entry into force of the Treaty, each member State should convert any bilateral quotas accorded to any other member State into global quotas open to all other member States. The global quotas so established should be enlarged in such a way as to attain an increase of not less than 20 per cent in their total value as compared with the preceding year. Each global quota for each product should however be increased by not less than 10 per cent. In cases where the global quota was less than 3 per cent of the national output of the member State concerned, there was an obligation to increase the size of the quota to that level within one year after entry into force of the Treaty. Such a quota was to be increased by up to 4 per cent in the succeeding year and to 5 per cent in the third year. Thereafter the member State concerned was expected to increase the quota by not less than 15 per cent annually.

11. A specific suggestion made by a delegation in the context of the proposal at (c) (ii) of paragraph 9 above was that where trade from developing countries was in general regulated by bilateral quotas, these should be converted into global quotas. This suggestion would however appear to have application largely in the field of agricultural products. It was also suggested that a ceiling might be established for the number of products placed on the list of exceptions to which procedures under sub-paragraph (c) of paragraph 9 would apply.

12. It was also proposed that automatic licensing and other systems of licensing not intended for the application of quantitative restrictions should be abolished, at least in relation to the trade of developing countries, and agreement reached on principles and rules to govern other licensing systems with a view to minimizing their restrictive effects on imports including, inter alia, the following elements: (a) publication of information regarding import formalities sufficiently in advance; (b) issue of licences to importers in sufficiently large quantities; (c) allocation of a reasonable share of licences to new importers; and (d) import of goods subject to restrictions on the basis of export permits issued by exporting countries.

13. With regard to proposals concerning quantitative restrictions made elsewhere, and notably in UNCTAD, these have generally been included in certain of the suggestions put forward in the various GATT bodies and summarized in the above paragraphs.

ANNEX I

Nature and Scope of the Problem

1. Although over the years considerable progress has been made in the removal of quantitative restrictions, such measures continue to be maintained by developed countries on a number of products or groups of products, many of which are of actual or potential export interest to developing countries. As indicated in the tabulations contained in document COM.TD/W/203/Rev.1, most of the restrictions apply to agricultural products. In the industrial sector, if cotton, man-made fibre and woollen textiles, which are now covered by the Arrangement on Trade in Textiles are excluded, it appears that restrictions are maintained on a limited number of items by certain developed countries.

2. A large number of industrial products subject to restriction have been included in the GSP scheme of restricting countries, which provide for zero or reduced rates of duty for imports from beneficiary developing countries. In the Group on Residual Restrictions, the Joint Working Group and in the consultations carried by the Group of Three, a number of social and economic reasons have been advanced for the maintenance of such restrictions. For instance, it has been stated that in the case of jute and coir goods, and silk yarn and fabrics, import restrictions have been applied on the grounds of the threat of market disruption, the difficulties faced by local industries, and serious structural adjustment problems. With regard to products in the leather sector, where restrictions are maintained by one country, it has been explained that for certain internal reasons, it has been found necessary to provide protection to the domestic industry. The grounds given for maintenance of restrictions on imports of certain electrical products including batteries, radio and television receivers, transistors and insulators which again are maintained by one developed country, include the need to avoid market disruption and the difficulties faced by the domestic industries concerned. Some of the restrictions in the industrial sector in the form of bilateral quotas appear to apply, as in the case of export restraint arrangements, to imports from particular sources only, imports from other countries being permitted without such quantitative limits.

3. For certain products listed in COM.TD/W/203/Rev.1, the Group of Three noted that restrictions were applied by some countries on the basis of discriminatory country classification. The countries concerned administer their import régimes on the basis, inter alia, of two lists, one containing practically all developed market economy countries and a certain number of developing countries, the other containing some developed countries and a relatively large number of developing countries. Quotas or licensing systems are applied, in a number of cases, only to imports from countries in the second list.

4. Apart from the social and economic reasons given for the maintenance of restrictions, a number of countries have referred to legal justification, including their Protocols of Provisional Accession and the various provisions in the General Agreement. Certain details in this connexion are indicated in the above-mentioned document. It should be noted, however, that these justifications relate mainly to agricultural products.

5. Document COM.TD/W/203/Rev.1 also lists products both in the industrial and agricultural sectors which are subject to State trading.¹ The reasons given for the existence of State monopolies include the need to protect public health, to raise revenue or, as in the case of medicaments, to ensure adequate supplies. The countries utilizing this type of measure have maintained that they follow purely commercial considerations in making purchases from different sources, and that the mere existence of State trading cannot be considered as a trade barrier.

¹An interpretative note to Article XI stipulates that the term "import restrictions" include restrictions made effective through State-trading operations.

ANNEX II

Possible Solutions Proposed at the Meeting of Working Group 4

1(a) An overall gradual liberalization and elimination of quantitative restrictions (including embargoes and measures having embargo effects), as well as export restraints by developed countries, shall be undertaken in step with progress reached in the preparation and in the course of the multilateral trade negotiations. Each individual developed contracting party shall contribute according to the relative importance of its quantitative restrictions of all types.

(b) In implementing sub-paragraph (a), effective priority shall be given to:

(i) quantitative restrictions (including embargoes and measures having embargo effects), as well as export restraints affecting exports of developing countries;

(ii) discriminatory quantitative restrictions (including embargoes and measures having embargo effects), as well as export restraints.

1(a) Illegal quantitative restrictions (including embargoes and measures having embargo effects), as well as illegal export restraints shall be removed before the beginning of the multilateral trade negotiations. Countries maintaining such restrictions after the beginning of the negotiations shall be required to:

(i) seek waivers of their GATT obligations, or

(ii) pay appropriate compensation. Countries obtaining waivers shall nevertheless be subject, as is customary, to the provisions of Article XXIII.

(b) An overall plan for the elimination of quantitative restrictions (including embargoes and measures having embargo effects) as well as export restraints inconsistent with the General Agreement but legal under waivers or protocols of accession shall be the subject of negotiations in the multilateral trade negotiations.

(c) In implementing sub-paragraphs (a) and (b), effective priority shall be given to:

(i) quantitative restrictions (including embargoes and measures having embargo effects) as well as export restraints affecting exports of developing countries;

(ii) discriminatory quantitative restrictions (including embargoes and measures having embargo effects) ~~/as well as export restraints/~~.

2. Progressive quota increases and continued liberalization of trade in embargoed products shall be put into operation with regard to quantitative restrictions (including embargoes and measures having embargo effects) as well as export restraints.

3. In no event shall new quantitative restrictions (including embargoes and measures having embargo effects) inconsistent with the General Agreement be introduced, nor shall the restrictive element of existing quantitative restrictions (including embargoes and measures having embargo effects) be increased, unless the increase is consistent with the General Agreement.

4. Trade liberalization resulting from the implementation of the preceding paragraphs shall not be impaired or nullified by the introduction of other trade inhibiting measures.

2. Progressive quota increases and continued liberalization of trade in embargoed products shall be put into operation with regard to quantitative restrictions (including embargoes and measures having embargo effects) ~~/as well as export restraints/~~.

3. In no event shall new quantitative restrictions (including embargoes and measures having embargo effects) ~~/or export restraints/~~ inconsistent with the General Agreement be introduced, nor shall the restrictive element of existing quantitative restrictions (including embargoes and measures having embargo effects) ~~/as well as export restraints/~~ be increased, unless the increase is consistent with the General Agreement.