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GENERAL AGREEMENT ON TARIFFS AND TRADE

Multilateral Trade Negotiations

GROUP 3(b) - DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES IN THE FIELD OF QUANTITATIVE RESTRICTIONS

Note by the Secretariat

1. Following an examination by Group 3(b) at its May meeting of a secretariat note synthesizing suggestions for the extension of differential treatment to developing countries in the field of quantitative restrictions, the secretariat was requested by the Group to prepare a note on the technical ways and means of implementing the proposals made (MTN/3, paragraph 20). In connexion with the request that the secretariat describe past experience with regard to preferential treatment in the liberalization of quantitative restrictions, a summary of such experience is provided in the Annex hereto.

2. When discussing the synthesis of suggestions made in this field[1] (MTN/3B/15), delegations from developing countries submitted a proposal (annexed to MTN/3B/18) providing for a standstill on quantitative restrictions and an action programme for the liberalization of such restrictions including embargoes and export restraints. In addition to the standstill, the essence of the proposal is that a programme should be drawn up for the liberalization of quantitative restrictions including embargoes and export restraints with respect to a list of products or product groups, including agricultural items, of export interest to developing countries. It has also been urged that where restrictions cannot be removed on a global basis, liberalization should be implemented in relation to imports from developing countries, as a transitional measure.

3. In summary, the technical ways and means of implementing the proposals made could consist of the following elements.

[1] It was noted that detailed proposals submitted earlier by Brazil and India had been circulated in documents COM.TD/W/188 and COM.TD/W/198 respectively.

(a) Identification of products subject to quantitative restriction of interest to developing countries. In this respect, it could be accepted in principle that all items listed in COM.TD/W/203/Rev.1[1] are of interest. The list would be open-ended and subject to addition in the light of any further notifications submitted by developing countries.

(b) Identification of products in the list where countries have given legal justification[2] for maintaining certain restrictions and have mentioned that in the relaxation or elimination of these restrictions the question of reciprocity may be relevant. In addition, there could be cases where the problems of protection against imports may be such that full liberalization may not be expected over the short term on an m.f.n. basis. For such items, an examination of the special treatment to be accorded developing countries would be required.

(c) Identification of products where an important part of the total problem of the elimination of quantitative restrictions is concerned more specifically with protection against imports from developing countries.

(d) In respect of products falling under (c), differential action in the form of advanced measures of liberalization for developing country products alone, could be expected to raise problems. However, where quota requirements are maintained with respect to imports from developing countries but not with respect to all sources, the first step would be to eliminate the discrimination involved. In other cases falling under sub-paragraph (c), emphasis could also be given, inter alia, to a review of measures to promote adjustment assistance, etc., that would facilitate the removal of the underlying impediments to liberalization.

(e) With respect to restrictions falling under (b) and (c), the question arises as to whether it is technically possible to pursue the removal of quantitative restrictions on a differential basis so as to supplement any global approach directed towards the longer term. A summary of measures adopted in the context of regional codes of trade liberalization including in the framework of customs unions or free-trade area arrangements is contained in the Annex. This indicates that differential procedures have been followed for accelerating the removal of restrictions on imports from certain sources while permitting trade liberalization on imports from other

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[1] It may be noted that at the May meeting of Group 3(b), some delegations said that apart from agricultural products (BTN Chapters 1-24) and products covered by the Arrangement Regarding International Trade in Textiles, there remained few quantitative restrictions on products of interest to developing countries.

[2] See COM.TD/W/203/Rev.1, page 3.

sources to be determined in the light of each country's global commitments. The basic point emerging is that it is possible to remove quantitative restrictions in relation to imports from particular sources broadly within the same system of customs control or measures which safeguard against the distortion of trade as is applied in respect of the removal of tariffs within customs unions or free-trade area arrangements.

(f) The experience with regard to schemes for trade liberalization also indicates that whether existing quantitative restrictions can be removed immediately or in accordance with a phased time-table or subject to any special procedures for ensuring selectivity would depend on the extent of liberalization which already exists and the problems that the further relaxation of restrictions is expected to cause, etc. In the light of the above points, including the suggestions already made regarding this matter, it is possible at the technical level to envisage the following formulae or modalities.

(i) Elimination of quantitative restrictions. A programme could be established in respect of quantitative restrictions envisaging the immediate elimination of those restrictions lending themselves to such action and the progressive elimination of quotas leading to full liberalization within a given period.

(ii) Establishment of separate quotas for imports of products from developing countries subject to systems of discretionary licensing, seasonal restrictions, etc. The size of any such quota might be significantly larger than actual imports during the preceding two or three years, and be fixed and announced before the beginning of the quota year. There should be provision for increases in the quota with a view to abolishing the quota system by a target date.

(iii) Establishment of separate quotas for developing countries, where global quotas exist. Provision might be made for increases in such annual quotas, so that restrictions on imports from developing countries are phased out by a given target date.

(iv) Bilateral quotas and export restraints applying to imports originating in certain countries. Provision might be made for increases in levels of bilateral quotas and export restraints which apply to imports from developing countries, with a view to removing their discriminatory aspects by a target date and providing for complete liberalization on the basis of a mutually agreed time-table.

(v) Non-fulfilment of quotas. Where quotas are not filled for two successive years, such quotas could be abolished.

4. The foregoing paragraphs list the technical procedures which could be involved in implementing differential treatment for developing countries in connexion with quantitative restrictions. Presumably, issues such as the relationship of differential treatment to the removal of quantitative restrictions on a global basis would be dealt with when individual items are examined to see what differential measures can be extended in the light of the considerations mentioned above.

5. The application of the approaches outlined in the field of agriculture would need to take into account the complete range of measures applicable, as well as any general understanding of the particular nature of the problem in this area.

ANNEX

SUMMARY OF PAST EXPERIENCE RELATING TO PREFERENTIAL TREATMENT IN THE CONTEXT OF LIBERALIZATION OF QUANTITATIVE RESTRICTIONS

1. Group 3(b) requested the secretariat to describe the experience gained in the past with preferential treatment in the liberalization of quantitative restrictions among countries.

2. Article XIII of the General Agreement lays down the principle of non-discrimination in the administration and removal of quantitative restrictions. In particular it states that "no prohibition or restriction shall be applied on the importation of any product ... unless the importation of the like product of all third countries ... is similarly prohibited or restricted". Certain exceptions to the rule of non-discrimination are contained in Article XIV. These, however, permit only countries in balance-of-payments difficulties to deviate from the basic rule of non-discrimination, in cases where corresponding restrictions on payments and transfers are justifiable on monetary grounds.[1] Article XX also provides for certain exceptions, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail.

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[1] Article XIV, inter alia, provides that contracting parties applying restrictions in accordance with the provisions of Article XII and section B of Article XVIII may in the application of such restrictions:

(i) deviate from the principle of non-discrimination "in a manner having equivalent effect to restrictions on payments and transfers for current international transactions, which that country may apply under Article VIII or Article XIV of the Articles of the Agreement of the International Monetary Fund".

(ii) temporarily deviate, with the consent of CONTRACTING PARTIES from the principle of non-discrimination,"in respect of a small part of its external trade, where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties".

3. Having regard to the basic rule of non-discrimination in the imposition and removal of quantitative restrictions, there have been departures from this principle. In the period immediately after the second World War, many countries in Europe were in serious balance-of-payments difficulties and resorted to various systems of currency and trade restrictions. A major step forward in the removal of these restrictions was taken when the European Payments Union was established and the OEEC Code for Trade Liberalization was adopted.[1]

OEEC Code of Liberalization

4. In 1949, the Council of the Organization for European Economic Co-operation (OEEC) called upon Member countries to take steps towards the removal of quantitative import restrictions on trade among themselves and, in the same year, the Council adopted a decision which called for the removal by Members of quantitative import restrictions on at least 50 per cent of their imports on private account from other Members. In 1950, the Council decided that following the entry into force of the European Payments Union which provided for the multilateral transfer of currencies of Member countries, this percentage should be raised to 60 per cent.

5. In 1951, the Council adopted a Code of Liberalization which, inter alia, provided that the target for liberalization should be 75 per cent of imports on private account from other members; in addition, it provided that a minimum level of liberalization of 60 per cent should be secured on trade on private account in each of the three categories; food and feedstuffs, raw materials and manufactured products. The targets laid down in the Code for Liberalization were revised from time to time. In 1955, the target for liberalization was fixed at 90 per cent for private account trade with a minimum of 75 per cent for each of the three sectors.

6. Central to the liberalization scheme were provisions for the removal of quantitative restrictions in favour of the Members of the OEEC (Article 1, paragraph (a) of the Code of Liberalization)[2], as well as in favour of their dependent territories and of countries with which they had close links.

7. The Preamble to the Code indicated that more favourable treatment among Member countries of the OEEC was in effect "a stage towards the world-wide liberalization of trade and invisible transactions". As the external payments

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[1]For full details concerning any of the arrangements mentioned in the Annex and the discussions on particular points, delegations should refer to the relevant documentation.

[2]Paragraph (e) of Article 1 stated that the provisions of paragraph (a) did "not prevent any Member country, if it so desired, from taking measures of liberalization of trade in respect of a non-Member country".

position of member countries improved, liberalization measures were extended to outside countries. The removal of quota restrictions among member countries of the OEEC, even though it resulted in discrimination in the initial period, acted as a stepping-stone and facilitated the further removal of restrictions on a non-discriminatory basis.[1] However, there continue to be a few cases where restrictions are applied by some developed countries to imports from certain countries.

Removal of quantitative restrictions under regional arrangements including customs unions and free-trade areas

8. The Treaties establishing the European Communities, the European Free Trade Area, the EEC's Association Agreements with the African countries as well as the Treaties establishing regional economic groupings among developing countries, contain provisions for the elimination of quantitative restrictions on a regional basis without requiring the liberalization of restrictions on imports from countries outside the regions.

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[1] In this context, the following extract from the Report of the Working Party on Quantitative Restrictions submitted to the Ninth Review session of CONTRACTING PARTIES may be of some relevance:

"The Working Party had before it a proposal of the Benelux delegations to the effect that the rule of non-discrimination should not be applicable to contracting parties which endeavour, by means of freely-concluded agreements, to reach a closer integration of their economies and which, by the application of special regulations, promote to the greatest possible extent the maximum development of multilateral trade (L/271).

When this question came up for discussion, the United States representative was of the opinion that the adoption of strong GATT rules against discrimination need not result in retrogression of the work of the Organization for European Economic Co-operation in trade liberalization as the Benelux delegations seemed to fear, and they did not feel that any special provisions to the GATT on this point were necessary or desirable... In such a case, it seemed clear to the United States delegation that a contracting party confronted with such a problem would be free to bring the matter to the attention of the CONTRACTING PARTIES and that any well-founded case would be examined by them with sympathetic attention... The representatives of Canada, Cuba and the United Kingdom drew attention to the statement made by the representative of the United States and recommended that the problem should be dealt with in the manner proposed therein." (Cf. BISD - Third Supplement, page 178.)

European Economic Community

9. Arrangements for the liberalization of quantitative restrictions were outlined in Chapter 2 of the Treaty of Rome. Fundamental to this scheme was the situation where liberalization would be carried out among the member States of the EEC.

10. The first step in the process was the requirement that member States refrain from introducing any new quantitative restrictions or measures with similar effects on products, the trade in which had already been liberalized under the OEEC scheme (Article 31). From the date of entry into force of the Treaty, Members were required not to increase quantitative restrictions on products traded among themselves which continued to be subject to restriction (Article 32). The second step was the establishment of a procedure under which these quotas would be abolished by the end of a period of transition (Article 33). To this end, member States were required, one year after the Treaty entered into force, to convert any bilateral quotas granted to other member States into global quotas open without discrimination to all other member States. At the same time, the value of all global quotas applied by a member State was to be increased by not less than 20 per cent over the value of the preceding year. The global quota for each individual product was to be increased by not less than 10 per cent.[1] Each year thereafter, the quotas would be increased in accordance with these rules and in the same proportions in relation to the preceding year.

11. In those cases where the global quota of a member State was less than or equal to 3 per cent of the national output of the particular product, a global quota for trade among the member States equal to at least 3 per cent of national output would be established one year after the Treaty came into effect. After the second year, the quota would be enlarged to 4 per cent and after the third year to 5 per cent. In subsequent years, the quota would be increased by 15 per cent annually and at the end of the tenth year was required to be equal to not less than 20 per cent of the national output of the particular product. In cases where total imports of the product concerned were below the level of the quota granted during two successive years, this global quota would be excluded from consideration in the calculation of the total value of the global quotas; in addition, the quota would be abolished.

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[1] For countries whose programmes of liberalization had surpassed the requirements of the OEEC Code, there were special provisions for taking this into account when they made their first 20 per cent increase in the global quota (Article 33, paragraph 6).

12. It may be relevant to note that a number of members of the Group set up to examine the Treaty establishing the European Economic Communities had considered that it was not possible to make a judgement as to whether the provisions in the Treaty concerning the use of quantitative restrictions would or would not be compatible with the relevant provisions of the General Agreement. However, the Group had, as a practical measure, agreed that any particular problems that might arise in the actual application of import restrictions by the individual Members of the Community would be examined in the consultations under the provisions of the General Agreement (BISD - Sixth Supplement, page 81).

European Free Trade Area

13. Procedures relating to the liberalization of quantitative restrictions were included in the Convention Establishing the European Free Trade Association. Article 10 of that Convention provided for a standstill and for the progressive relaxation of quantitative restrictions in order that they not frustrate "a reasonable rate of expansion of trade" or create "burdensome problems for the member State concerned". It also required that they be applied on a non-discriminatory basis among the member States. Global quotas were to be established on the basis of "basic quotas"[1] enlarged by not less than 20 per cent. Thereafter, the basic quotas thus established would be increased annually at a compound rate of 20 per cent. Where global quotas were to be open to non-Member States, they included the enlarged basic quota plus an amount not less than the value of imports from non-member States in 1959. It may be noted that in cases where the basic quota was "nil or negligible", the global quota to be established was required to be "of appropriate size".

Other regional arrangements

14. Other regional arrangements also contain provisions for liberalization of quantitative restrictions among member States. For example, the Yaoundé Convention contains, in Article 6, the provision that "the Community shall not apply to imports of products originating in the Associated States any quantitative restrictions or measures having equivalent effect other than those that member States apply among themselves".[2] Under Article 7, Associated States are required,

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[1] A "basic quota" for a particular commodity was the value of its imports subject to quantitative restrictions from Member States in 1959.

[2] Agricultural products covered by the common organization of the market of the Communities are however excluded from the purview of Article 6.

subject to certain exceptions, "not to apply any quantitative restrictions or measures having equivalent effect to the importation of products originating in Member States".[1] Provisions for the removal of quantitative restrictions are to be found in Treaties establishing regional groupings among developing countries. For example, Article 3 of the Montevideo Treaty establishing LAFTA provides that member States shall "gradually eliminate, in respect of substantially all their reciprocal trade, such duties, charges and restrictions as may be applied to imports of goods originating in the territory" of other member States.

Concluding remarks

15. Generally speaking and more particularly in the case of regional arrangements among developed countries, while quantitative restrictions have been removed at an accelerated rate on intra-regional trade in accordance with the provisions of the relevant Treaties, efforts have been made by these countries to apply such liberalization measures either simultaneously or as soon as feasible to imports from outside countries.

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[1] Paragraph 2 of Article 7 states that the Associated States may "retain or introduce quantitative restrictions or measures having equivalent effect on the importation of products originating in member States, in order to meet their development needs or in the event of difficulties in their balance of payments".