

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## UNITED STATES IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS

### Draft Report of the Working Party

1. The Working Party was established by the Council on 29 January 1985, with the following terms of reference:

"To examine the twenty-seventh annual report (L/5772) submitted by the Government of the United States under the Decision of 5 March 1955<sup>1</sup>, and to report to the Council."

2. The Working Party met on 29 April 1985, under the chairmanship of H.E. Ambassador Julio A. Lacarte (Uruguay).

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-seventh annual report on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended<sup>2</sup>, and on the reasons for the maintenance of those restrictions. On the basis of the report, and with the assistance of the representative of the United States, the Working Party reviewed the action taken by the Government of the United States under the Decision of 5 March 1985.

4. In his opening statement the representative of the United States presented the annual report for examination. He informed the Working Party of recent modifications of the system applicable to sugar. Under

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<sup>1</sup> BISD 3S/32

<sup>2</sup> Import restrictions pursuant to Section 22 currently in effect include cotton of specified staple lengths, cotton waste and certain cotton products; peanuts; certain dairy products; sugar and syrups, and certain sugar-containing articles.

Proclamation 5313, dated 29 March 1985, the fees applicable to imports of raw sugar had been suspended and those applicable to imports of refined sugar had been fixed at the rate of 1 per cent per pound. Those modifications had taken effect on 1 April and would remain in force pending Presidential action on the report of the International Trade Commission (ITC). The United States representative said that his government had complied with both the letter and the spirit of the 1955 Decision. The problems existing in the agricultural area could not be solved unilaterally and for that reason the United States was actively pursuing global solutions to deal with world-wide problems in that sector in order to make progress in liberalization of agricultural trade. However, the United States was not simply waiting for results in the Committee on Trade in Agriculture and the 1985 Farm Bill was proposing fundamental changes in the operation of programmes. With a view to restoring a more market-orientated farm economy and reducing burdensome outlays on support programmes, those proposals would represent a sharp departure from the policies that had been shaping United States agriculture since the 1930s. They were designed to make farm programmes more market-oriented and to set long-term policies that would provide producers with better information for their production and investment decisions.

5. Members of the Working Party remarked on the absence of major structural adjustments in broad sections of United States agriculture. It was disappointing that the waiver was still being maintained after thirty years because Section 22 and the waiver were playing a decisive rôle in agricultural policies as a whole. The fact that the United States was not respecting the prior condition attached to the waiver, namely gradual removal of the restrictions and their alignment with GATT provisions, was a factor of market imbalance. Additional sources of difficulty were changes to product coverage and the fact that no date had been set for terminating the waiver. It was recalled that the waiver had played a central rôle in weakening the GATT rules and disciplines on agriculture. It had restricted access to a major market for agricultural products and, in conjunction with similar actions by other major countries, had been responsible for

transforming the world market for many agricultural products into a residual market, with all the attendant price uncertainties. Furthermore, it suggested that the legislation of a powerful contracting party had precedence over international agreements, including the GATT, thus underlining the inequalities of the rules of the game as they applied to international trade in agricultural commodities and in manufactures. It was further noted that the waiver was a privilege implying a lack of equity vis-à-vis other contracting parties, in particular developing countries. That privilege had formalized a path followed by many countries wishing to insulate their domestic markets from the disciplines of the international market-place. While the waiver was not the major cause of current instability in world agricultural trade, it nevertheless seemed to constitute a significant problem requiring urgent attention. In connection with allocation of quotas applied under the waiver, one member of the Working Party stated that his country would continue to reserve its rights under the General Agreement. One member of the Working Party requested the list of products the waiver (four-digit headings of the Customs Co-operation Council nomenclature).

6. Noting the positive elements of the Farm Bill which indicates the intentions of the United States administration, members of the Working Party underlined their hope that the waiver would soon be revoked and that a specific undertaking could be given in that sense. The waiver should be terminated and the United States should comply with the GATT rules as rapidly as possible. One member recalled the reference made during the previous year's review to the possibility of a "sunset" clause; the considerations put forward then were still relevant.

7. Members of the Working Party noted that while that body had a mandate to examine the operation of the waiver, it was also in the more general framework of the Committee on Trade in Agriculture that one could hope to achieve substantial changes in the current situation and action for progressive reduction of the restrictions as originally envisaged. It was noted nevertheless that such parallel examination further underlined the

importance of the Working Party's deliberations. One member of the Working Party pointed out that when the waiver had been granted, there had been no reference to changing the GATT rules as a condition for its termination.

8. Members of the Working Party recalled that agriculture would be an important part of a new round of multilateral trade negotiations. It had been agreed at the fortieth session of the CONTRACTING PARTIES that the negotiations would aim, inter alia, at bringing waivers and exceptions within the purview of strengthened GATT rules and disciplines. It seemed essential that the United States administration revoke the waiver as part of that process. One member noted that such a decision would be consistent with the trade-liberalizing philosophy which the administration had espoused in its Farm Bill and with the views recently expressed by the United States in the Committee on Trade in Agriculture in respect of market access and subsidies. There was a need for leadership from the major countries as well as for joint action if progress was to be made either on the broader issues of agricultural trade liberalization or on the specific problem of the Section 22 waiver.

9. One member of the Working Party said that suggestions from the United States would be welcomed on any joint action in the form of negotiation of new disciplines or strengthened application of existing ones which would support a change in the programmes underlying the waiver. As part of that action, perhaps giving impetus to it, the United States could specifically undertake to revoke the waiver. The point at issue in the debate on agriculture was the need to promote structural adjustment. It was realistic to expect that the extent to which domestic support systems distorted international agricultural trade should be reduced over time. The United States should provide leadership in that process so that eventual negotiations would not get bogged down in the repeated statements of high principles, or perceived industry sensitivities as the rationale for stultification.

10. One member of the Working Party noted that in recent years the United States administration had indicated several times that it considered the

waiver "negotiable", depending on what trade disciplines other agricultural producers would accept. The waiver, however, was not something on which the United States could concede; it has been granted by the CONTRACTING PARTIES on condition that the United States reliance on it be progressively reduced. The United States was not in a position to bargain on fulfilling that obligation. Other delegations supported that view, underlining that the waiver could not be considered "negotiable". The United States had not granted any compensation for obtaining it. The waiver had been limited to certain conditions and should be terminated once those conditions were no longer fulfilled. World market disequilibrium could not justify it and other contracting parties faced such a situation by resorting only to GATT provisions. Termination of the United States waiver would be an important factor in GATT efforts to establish greater discipline in agricultural trade.

11. The representative of the United States pointed out that he had never stated that the waiver was negotiable as such. There were many problems in the area of agriculture, and the Committee on Trade in Agriculture was the appropriate forum for trying to solve them and find a solution permitting trade liberalization. It was not a matter of negotiating termination of the waiver, but of dealing with agricultural issues from which the problem had arisen. Alignment of United States legislation with GATT rules had not been a condition for granting the waiver.

12. With respect to dairy products, members of the Working Party noted that measures taken under the Dairy and Tobacco Adjustment Act of 1983 seemed to have had a positive impact on surplus milk production. Nevertheless, although production had been reduced, no balance had yet been achieved between supply and demand. Concern was expressed over recent sales by the United States and the provisions of the 1985 Farm Bill. The United States was urged not to dispose of stocks on the international market in such a way as to disrupt an already unstable situation.

13. One member of the Working Party noted that little progress had been made in thirty years towards terminating or, at least, suspending

Section 22 controls on dairy products and enquired what action had been taken in that direction or to modify those controls. It was also asked whether changes made to administration of the dairy programme, more particularly in the price-support system, which had allowed the domestic production surplus to be reduced, could be considered a change of circumstances substantial enough to allow some relaxation of Section 22 controls; if not, what circumstances would allow some modification to occur? One member of the Working Party asked whether the United States proposals for amendments to the dairy programme (in the context of the 1985 Farm Bill) would result in termination of Section 22. One member of the Working Party noted that the Bill seemed to allow a linkage to be envisaged between reduction of support and easing of restrictions, to the extent that comparable measures were taken by other countries.

14. The representative of the United States noted that notwithstanding measures taken to reduce dairy surpluses, there was still excess production capacity. The Bill before Congress, which was designed to take account of changed economic circumstances, provided for support price reductions. In the long-term those measures should result in smaller purchases by the Commodity Credit Corporation and a decline in stocks and export availabilities, which could allow the controls to be eased. Section 22 was designed to protect agricultural programmes. Circumstances or programmes could change in such a way as to remove the need for protection in certain specific cases, but nevertheless a protection mechanism remained necessary. The International Trade Commission had to make an investigation to determine whether products were being or were practically certain to be imported in such quantities and under such conditions as to render ineffective or materially interfere with programmes or operations; the Commission's recommendations were then put before the President for action. Imports of dairy products into the United States were currently permitted to the extent that they did not hamper application of the programme, and import volume was substantial. Given the situation in the dairy market, it was not realistic to believe that the United States on its own could solve the problems. Because of existing conditions, any easing of controls was

impossible for the moment, and in that regard export subsidies played a decisive rôle. In the context of the Farm Bill, the effort to restore a better balance between supply and demand could allow some modification of controls, but that would depend on the overall situation in the dairy market, and export subsidies remained an obstacle to such relaxation. Accordingly the Committee on Trade in Agriculture was the appropriate forum in which solutions could be sought to those problems. The United States could not act in isolation.

15. One member of the Working Party noted that it was difficult for the International Trade Commission to evaluate changed circumstances that would allow the restrictions to be eased, because of the protection afforded to the United States market under the waiver. It was pointed out that the United States system could be made consistent with the General Agreement by resorting to the provisions of Article XI:2(c). If export subsidies were the major problem, the United States could apply countervailing duties. The United States representative remarked that recourse to the General Agreement in place of the waiver seemed difficult from the practical aspect, and that other countries applied a variety of measures to protect their domestic market.

16. In reply to a question regarding re-establishment of production controls in the dairy sector after September 1985, the United States representative said that while the system applied for fifteen months had yielded certain positive results, the current political objective was market orientation which implied less commitment on the part of the administration. Some members of the Working Party pointed out that in the context of the new dairy legislation, reduced support for milk producers without any quantitative limitation of output could affect export availabilities. Certain recommendations made in the context of the Bill were in that sense and were causing concern. It was noted furthermore that pending results in the Committee on Trade in Agriculture, one could imagine that sales of United States dairy surpluses at the market price could have an incentive effect on production. While recognizing the extent of the

dairy sector problem and its global character, members of the Working Party nevertheless underlined the importance of United States action in that area. It was recalled that the supply and demand situation was out of balance for many products and that numerous countries were meeting the situation by having recourse only to the GATT provisions.

17. In respect of sugar, members of the Working Party underlined problems caused for them by the Section 22 system applied by the United States, inter alia that the measures taken tended to lay the 'burden of adjustment on other producing countries. One member of the Working Party observed that because of high support prices and declining consumption, the situation in the United States market was having a sharp impact on exporting countries subject to quotas. It was noted that a group of traditional sugar-exporting Latin-American countries had expressed to the United States authorities their concern over the measures applied since 1982 and the consequent decline in the resources they could earmark for economic development. Those countries had also complained about the quotas applied in 1984 and the additional measures that were to remain in effect until the end of 1985 under which certain quotas had been cut by half.

18. Members of the Working Party expressed concern over the number and nature of products subject to the restrictions introduced in January 1985, and asked for a detailed list of those products. It was pointed out that when the CONTRACTING PARTIES had granted the waiver they had certainly not expected it to affect such a broad range of products, imports of which did not seem likely to hamper application of the sugar programme. Whereas it would seem that the restrictions should apply to imports of products whose sugar content could subsequently be separated, the present restrictions reflected a very broad and unilateral interpretation of the waiver since they included grocery articles and articles put up for retail sale; the criteria justifying them needed to be defined. One member of the Working Party, noting that under Section 22 restrictive measures could be applied because imports of a particular product had reached a substantial volume

and could limit the quantity of an agricultural product produced or processed in the United States, asked how imports of products such as those affected by the restrictions could limit sugar production in the United States. He raised the question whether a trade threat was a necessary condition or whether a legal reason - i.e. the import of any sugar-containing product, even of no major trade significance - was sufficient justification for the application of restrictions under Section 22. Indeed the restrictions affected products that did not seem to contain sugar in substantial quantities. The speaker asked what was the criterion justifying those import restrictions, and if any new product was considered to constitute a potential threat, whereas artificial sweeteners whose market share was steadily increasing were not deemed to be an obstacle to support programmes. If the criterion was a rapid increase in imports, should consideration not be given to the general economic situation and in particular monetary fluctuations which could account for such an increase? It was asked whether the United States would be ready to limit the restrictions to products with a high sugar content the import of which could clearly create difficulties for implementing programmes, or whether the intention was to introduce limitations for all sugar-containing products in respect of which an abnormal import increase was recorded. One member of the Working Party underlined that the weight of products was taken into account for quota restriction but not their sugar content, and asked what was the representative period taken into account for the quotas. It was also pointed out that new customs directives had been introduced in order to combat the particular problem of quota circumvention, and that they had proved very effective.

19. Members of the Working Party noted that the measures introduced on 20 January were not consistent with the terms of the waiver for no prior consultations had been held and the measures had been notified only on 11 March; furthermore the notification contained no justification for those restrictions. Emergency action seemed to be becoming the rule rather than an exception, and investigations and their result involved long delays. One member recalled that the International Trade Commission had

carried out an investigation the preceding year, and asked whether action had been taken on it. If not, and having regard to the time apparently needed for action to be taken it was to be feared that the temporary measures applied in January could be of long duration. Details were requested concerning the current investigation. Members of the Working Party noted that their authorities had requested, or would perhaps request, consultations on the restrictions imposed. Some members of the Working Party referred to action undertaken in GATT in that connection by one member of the Working Party.

20. The representative of the United States said that the reduction in support prices proposed in the 1985 Farm Bill would cause some adjustment of production. The real problem in the sugar sector was a global problem which the United States alone could not solve. Agricultural problems must be dealt with in a global context, as the Committee on Trade in Agriculture was trying to do. Grant of the waiver had not exempted the United States from observing certain rules, and the rights of its trade partners had been confirmed, for example, by the recent establishment of a panel. The restrictions introduced on 28 January had been triggered by a significant increase in imports probably designed to circumvent existing quotas. Those restrictions concerned tariff headings 156.45, 183.01, 183.05, namely sweetened cocoa, pancake flour and other flour mixes, and edible preparations containing less than 5 per cent butter fat. The problems raised stemmed from the fact that the last of those tariff headings was a "basket" heading whose content, which had been entirely brought under restriction, was difficult to determine. Consultations were proceeding to try to solve the problems without adversely affecting normal trade channels; it was hoped that a positive result could be reached fairly soon. Such restrictions were applied in order to protect the application of support programmes. Under Section 22, if imports threatened to hamper such application, restrictions had to be introduced. The waiver had been granted in relation not with specific products but with programmes, and the sugar content of any product would not be an appropriate criterion. The general situation and monetary fluctuations were not a problem relevant to Section 22.

21. In response to questions regarding the procedure used, the United States representative said that the Secretary of Agriculture had advised the President that certain sugar-containing products (TSUS 156.45, 183.01 and 183.05) were practically certain to be imported into the United States under such conditions and that in such quantities as to materially interfere with the price support operations for sugar cane and sugar beet. Quotas had accordingly been imposed as emergency action, and the International Trade Commission had been asked to carry out an investigation, informing the parties concerned and giving them an opportunity to express their views. The quotas would remain in effect until the President had received and acted upon the Commission's report and recommendations. In reply to a question regarding the legal basis for the measures applied on imports of sugar and sugar-containing products, the United States representative recalled that the quotas on sugar were in pursuance of not Section 22 but of a "headnote". Section 22 itself did not allow the simultaneous application of fees and quotas.

22. One member of the Working Party enquired what effects the modifications proposed in the Farm Bill would have on the need for special protective mechanisms in respect of sugar, in particular import fees, and at what stage those modifications would allow the United States to terminate special protective measures in respect of sugar. The United States representative noted that the 1985 Farm Bill provided for a sugar programme. To the extent that restrictions could be necessary to prevent imports from hampering that programme, they were required under Section 22. In his opening statement he had mentioned modifications in respect of the fees on sugar. With respect to import quotas for certain sugar-containing products, efforts had been undertaken since March to reduce their trade effects which were not designed to circumvent the sugar restrictions.

23. One member of the Working Party recalled that the United States re-export programmes for refined sugar and sugar-containing products, combined with the duty drawback system providing for drawback of both duty and import fee, had resulted in increased imports from that country. Since

the matter had been examined in detail the previous year, the problems caused for his country had continued. While not contesting the use of the drawback system per se his authorities were concerned about the effects which the system produced when combined with measures taken under Section 22. His country's authorities were therefore urging the United States to modify its programmes in order to eliminate the export incentive effects and the problems that arose from time to time. One member of the Working Party noted that in cases of that kind appropriate measures should be taken to protect the rights of other parties. The United States representative pointed out that the drawback system was not connected with Section 22 and was therefore not within the province of the Working Party. He noted nevertheless that the current suspension of the fee should ease the problem.

24. With respect to cotton, one member of the Working Party said that the acreage reduction was insufficient. Having regard to the importance of the United States on the market, the increase in that country's production, problems of surpluses and the support prices applied were hampering any effort to stabilize international prices. The Working Party should endeavour to determine the effect of price stabilization measures taken by the United States by comparing the volume of supported production intended for consumption and for export. One member of the Working Party asked for details of the trade promotion programmes. The United States representative recalled that production was being adjusted in his country and noted that other factors were playing an important rôle in the world production increase.

25. Members of the Working Party recalled that at the 1984 meeting the United States had been asked to present a report providing a detailed examination and critical evaluation of the reasons why measures consistent with the provisions of the General Agreement did not constitute a feasible alternative to those maintained under the waiver. It had been noted that a report along those lines would provide the Working Party with a more appropriate basis for full examination of United States commitments, as

envisaged under the waiver. One member of the Working Party proposed a study of possible legal solutions for terminating the waiver. The United States was asked to furnish such additional information. One member of the Working Party underlined that recourse could be had to Article XI; in regard to dairy products, the United States was maintaining production limitation programmes, as envisaged in that context. Even if such programmes did not exist for other products, every contracting party was, nevertheless, under the obligation to bring its legislation into conformity with the GATT provisions.

26. Members of the Working Party supported the request for a supplementary report, noting that it was urgent and necessary to solve a thirty-year old problem and underlining the concern felt over what seemed to be unilateral interpretation of the waiver by the United States. One member of the Working Party asked whether the United States would envisage total elimination or product by product. A member of the Working Party, recalling that the United States intended to maintain the legal mechanism of the waiver even without economic need, expressed the hope that progress could be made in the framework of the Committee on Trade in Agriculture.

27. The representative of the United States underlined that the Farm Bill showed that the United States was not waiting for other countries to take action before introducing adjustment measures. Nevertheless, it could not on its own solve problems in the agricultural area and was not solely responsible for either surpluses or trade barriers. As indicated to the previous year's Working Party, that situation determined his country's position in regard to the Committee on Trade in Agriculture. Without action in that body, it was not feasible to terminate the waiver because the United States needed some measure of protection. He would inform his authorities of the comments made and of the request for additional information. He was not sure of a positive response to that request having regard to the kind of problem involved. Article XI and countervailing duties were not adequate to protect his country's programmes.