

GENERAL AGREEMENT ON

RESTRICTED

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TARIFFS AND TRADE

WORKING PARTY ON UNITED STATES ANDEAN TRADE PREFERENCE ACT

Draft Report

1. The Working Party was established by the CONTRACTING PARTIES on 18 February 1992 with the following terms of reference: to "(a) examine the Andean Trade Preference Act in the light of the relevant provisions of the General Agreement, and of the Waiver Decision in document L/6991; (b) examine thereafter from time to time the annual reports to be submitted by the United States under paragraph 6 of the Waiver; and report to the Council under (a) and (b) above".
2. The Working Party was open to all contracting parties indicating their wish to serve on it. It met on 22 January and 22 February 1993 under the Chairmanship of Ambassador W. Rossier (Switzerland). The terms of reference and membership of the Working Party appeared in L/7172.
3. The Working Party had before it the following documentation:
 - (i) United States request for a waiver (L/6980)
 - (ii) Text of the Andean Trade Preference Act (L/6980/Add.1)
 - (iii) Waiver decision of 19 March 1992 (L/6991)
 - (iv) Questions and replies (L/7126).

General observations

4. In an introductory statement the representative of the United States said that on 18 February 1992 his country requested a waiver from Article 1 for ten years for the purpose of implementing the Andean Trade Preference Act (ATPA). This request was made in accordance with footnote 2 of paragraph 2 of the Framework Agreement¹ and paragraph 5 of Article XXV of the General Agreement. The text of the Andean Trade Preference Act together with basic descriptive material and trade data were supplied at the time the waiver was requested. Subsequent to the granting of the waiver by the CONTRACTING PARTIES on 18 March 1992, the Council established a Working Party with the agreed terms of reference and modalities.
5. The representative of the United States referred to the terrible menace of the use of harmful drugs which was exacting a heavy toll in terms of personal loss, and the cost to the United States economy and the economies of other countries. He said that the Andean Trade Preference Act should be viewed in the context of the use of the United States trade policy to help fight production and trafficking of cocaine, which was presently more damaging to the United States, both economically and socially, than any other illicit drug. He pointed out that virtually all

¹BISD 26S/203

cocaine originated in the countries that would benefit from the ATPA. The four Andean countries wanted an opportunity for their citizens to engage in trade in legitimate products, as an alternative to narcotics trafficking, and the United States was using trade opportunities as incentives to encourage this.

6. The United States representative explained the background to the Andean Trade Preference Act and said that the tariff preference was an essential part of the Andean Trade Initiative. Under this initiative, which was announced in September 1989, the United States took steps to increase trade opportunities for the Andean nations, including use of the Generalized System of Preferences (GSP) programme. Later, at the February 1990 Cartagena Drug Summit, former President Bush agreed to improve access to the United States market and subsequently, in October 1990, submitted the Andean Trade Preference Initiative to Congress. This was a legislative package aimed at providing trade benefits similar to those contained in the Caribbean Basin Initiative. It was introduced to the House and Senate as The Andean Trade Preference Act. After being passed by Congress, the Bill was signed into law on 4 December 1991.

7. The representative of the United States said that the Andean Trade Preference Act provided a temporary extension of one-way, reduced-tariff access for the Andean nations. It acted as an extension of the United States GSP scheme, increasing the benefits of this programme to the four drug producing countries in the Andean region. It also contributed to other nations' efforts to encourage trade and economic development in the region. This Act was aimed at facilitating trade of the developing nations in the Andean region and would not raise barriers or impede the trade of other contracting parties. By presidential proclamation, Bolivia and Colombia became beneficiaries under the Act on 2 July 1992 and Ecuador and Peru were still under consideration.

8. The United States representative said that duty-free treatment would be given to all products with the following exceptions: textiles and apparel; footwear; petroleum and petroleum products; certain leather products; a minor category of watches and watch parts; canned tuna; and rum. For those leather products excluded from duty-free treatment, there would be a 20 per cent tariff reduction, subject to certain limitations, to be phased in over five years. These preferences were scheduled to last until 4 December 2001. The representative went on to explain how the impact of the benefits under the Andean Trade Preference Act on United States trade would be extremely modest. Some areas were excluded from duty-free coverage under the Andean Trade Preference Act. Imports to the United States from the four eligible Andean countries amounted to approximately \$5.5 billion in 1990 and about \$5.0 billion in 1991, i.e. roughly one per cent of United States merchandise imports. Product coverage by the Andean Trade Preference Act, excluding items already receiving duty-free treatment under either m.f.n. or GSP, was worth \$237 million in 1990 and \$205 million in 1991. Therefore, in 1990 and 1991 the value of products which would have received duty-free treatment under

the Andean Trade Preference Act, had it been in effect for all four countries, was less than 0.1 per cent of United States imports. Of the products eligible for duty-free treatment under the Andean Trade Preference Act, just one sector, cut flowers from Colombia, accounted for over half of the value of current United States imports. Given this modest impact and previous experience under the Caribbean Basin Initiative, the United States believed that trade would not be diverted from other suppliers. The Andean Trade Preference Act was a recognition of the sacrifices made by the Andean countries in their fight, in co-operation with the United States, against narcotics production and trafficking. It would not prevent the reduction or elimination of tariffs or other restrictions to trade on an m.f.n. basis, for example, during the Uruguay Round of negotiations. Neither would it affect benefits to developing countries under the United States GSP programme. It was the United States' belief that the Andean Trade Preference Act, while having a small impact on the contracting parties, was of great importance in helping the Andean nations fight against illicit drugs.

9. The representatives of the beneficiary countries expressed their gratitude to the Government of the United States for the Andean trade preference initiative and its enactment in the ATPA. They also expressed their appreciation that the CONTRACTING PARTIES had granted the waiver that enabled the implementation of the ATPA within the framework of the General Agreement. They stressed that the objective of the United States initiative was to support the four countries in the Andean region in their efforts to fight the acute problem of illicit production, processing and trafficking of narcotics. In waging this fight, the price paid by these countries in terms of human lives, social and political costs had been very high. The Act was fully in line with the postulate that the countries in the region had endorsed for a number of years, namely to stimulate trade expansion rather than simply transfer aid to these countries. The examination of the ATPA and the review of its impact on the United States trade with the Andean countries would have to take into account the non-trade based reasons that had led these countries to embark on the initiative. The Working Party should consider not only the trade aspects but also those aspects relating to the benefits that would be generated in terms of the reduction of narcotics production. Such benefits of the Act were expected to accrue not only to the United States, which granted the preferential treatment, but also to a number of other traditional consumers or importers of narcotics. The European Communities' GSP programmes for the Andean countries had a similar objective. The draft Final Act of the Uruguay Round also took into account the problem of illicit production of narcotics and provided for special treatment for the affected countries.

10. Many members of the Working Party expressed their support for the stated goal of the ATPA. The Act established a legal and economic framework which recognized the diversification of the production and trade towards alternative products as a constructive element in the strategy of combating illicit trafficking of narcotics in affected countries.

11. With regard to the Waiver Decision of 18 March 1992 one member noted that a Working Group would normally be referred to study the

appropriateness of the waiver requested and prepare the relevant decision. As the waiver had already been granted for the ATPA, the present Working Party was set up to examine the Act itself and to enable contracting parties to follow up developments consequent to its implementation. Other members reiterated their delegations' view that working party examination of the appropriateness of a waiver and its terms should take place prior to the granting of a waiver. One other member stated that his authorities had supported the waiver to enable the extension of the benefits to four Andean countries on account of the very precise goal at the basis of the present initiative. Any derogation from the provisions of the General Agreement, and in particular from m.f.n. treatment under paragraph 1 of Article I, should be fully examined.

12. With regard to the systemic effects of the ATPA, one member stated that while her authorities appreciated the special and urgent circumstances of the ATPA in general, the major countries had a responsibility in seeking to uphold contractual approaches in the GATT. They were concerned about the trends towards regionalism outside the framework of Article XXIV and the implications of such practices for the application of the GATT rules and disciplines.

13. After the introductory statement by the United States, and the general observations from some other members of the Working Party, members proceeded to examine the provisions of the ATPA in detail, taking into account the questions and answers circulated in document L/7126. The main points raised by members of the Working Party are summarized below.

ATPA Provisions

14. With respect to a question regarding the possibility of extending the existing preferential arrangements to additional products or countries, the representative of the United States stated that the ATPA was passed as law by the United States Congress which confined the President's discretion in this respect. It would not be easy to pass a new law to extend the coverage of such non-reciprocal trade benefits to further countries and products. The representative of the United States also confirmed one member's understanding that, should circumstances require any extension of the Act to additional beneficiary countries or products, the United States would request a new waiver from the CONTRACTING PARTIES. He reiterated that the United States had no plans to do so.

15. One member expressed the hope that the United States authorities would consider the possibility of extending the list of beneficiary countries beyond the four Andean countries mentioned as eligible in the Act.

16. Several members considered that the Working Party would have a legitimate interest in being informed of the reasons for not effectively granting beneficiary status to two of the four Andean countries. They asked whether the specific mandatory conditions that these potentially eligible countries, Ecuador and Peru, had failed to satisfy were at all related to the stated goals of the waiver. They hoped that the situation

of these countries, could be remedied without further delays since the problem of illicit narcotic trafficking continued to affect them. The representative of an eligible country stated that his government was making every effort in its struggle against drug trafficking, including strengthening government and judiciary measures in this area. However, the problem remained a very difficult one to overcome and was further aggravated by his country's exclusion from the beneficiary status under the ATPA. In his delegation's view his country could also not be excluded under any of the other criteria in the Act and in particular, drew attention to the fact that his country fully respected the rights and property of foreign companies. The representative of the United States stated that the United States Administration had to assure Congress that the eligible countries met the criteria in the Act. Consultations had been held with the countries in question to try to help them to comply with the terms of the specific criteria that they were expected to fulfil in order to preserve the integrity of the ATPA.

17. Several members noted that the unilateral criteria in the Act did not seem to be directly related to the particular goals invoked in seeking the approval of the terms of the waiver. They expressed concern regarding the systemic implications of incorporating non-trade conditions as a prerequisite for granting trade benefits. The Act required the eligible countries to comply with a number of unilateral requirements, including those relating to intellectual property or workers rights, which went beyond the goal of encouraging expansion of legitimate products as an alternative to the production and trafficking of illicit narcotics.

18. The representative of the United States said that the conditions listed were not unique to the ATPA. They were virtually identical to those in the Caribbean Basin Initiative, and very similar to the conditions for eligibility under the United States Generalized System of Preferences (GSP). These criteria were integral elements for the economic development of the beneficiary countries and would in no way detract from the goal of encouraging the trade of legitimate products. Congress had wished to ensure that the countries given unreciprocal benefits adopted policies and practices which would enhance a co-operative relationship with the United States.

19. In connection with the specific criteria, several members expressed concern regarding the terms of section 203 (d)(3) of the ATPA that required an eligible country to assure the United States that "it will provide equitable and reasonable access to the markets". The representative of the United States stated that his country was interested in "equitable and reasonable", rather than reciprocal, access to the markets of beneficiary countries in return for the provision of trade preferences. Each of the four designated countries had given assurance that they would have no difficulty in meeting the criteria. One member considered that the commitment entered into by the four Andean countries concerning non-discrimination against United States products went beyond the obligations of contracting par under the General Agreement.

20. One member recalled that the representative of the United States had argued that the criteria listed in the ATPA were integral to the economic development of the designated countries. He therefore queried why Section 203 (d)(10) of the Act prohibited only the broadcast of copyrighted material belonging to United States copyright owners. The representative of the United States stated that his authorities hoped that copyrighted material would receive adequate and effective protection in a multilateral setting. Meanwhile the ATPA was a United States law that was intended to address the issue of protection for United States copyright owners. The application of this criterion went towards increasing the Andean countries' responsiveness to providing adequate and effective protection for copyrighted material belonging to owners from all countries.

21. With regard to the eligible articles, one member asked whether the preferential treatment under the ATPA would be extended to textiles and apparel articles if a multilateral agreement on textiles were reached as a result of the Uruguay Round. The representative of the United States stated that those articles subject to textile agreements as of 4 December 1991 were considered ineligible for benefits under the Andean Trade Preference Act. Trade liberalization carried out under any textile agreement prior to the termination of the ATPA would not imply the inclusion of the affected textiles and apparel articles in the list of eligible products. Another member suggested that the United States could seek a balance between its goal of encouraging the production and export of alternative products to illicit drugs and the traditional protection of its domestic textile industry.

22. One member asked whether the United States would consider taking emergency action against imports from non-beneficiary countries when the injury may be caused by imports subject to preferential treatment under the ATPA. The representative of the United States replied that the Act did not necessarily require an action to restrain imports from a beneficiary country from displacing restrained imports from a non-beneficiary country (cf. reply No. 2.2 in L/7126).

23. With regard to the impact of the ATPA on third countries, the representative of the United States stated that the ATPA provisions did not imply the increase of duties or other trade barriers to the trade of other countries. Moreover, those products covered by the Act which were not already benefiting from duty-free treatment under m.f.n. or his country's GSP scheme constituted only 0.1 per cent of United States trade. While he recognized that individual products might be affected, the overall effect on the trade of third countries should be negligible.

24. Several members expressed doubts that the application of the Act would not adversely affect the trade of third countries. The United States' claim that the trade from the four Andean countries constituted only a small share of United States total imports was based on aggregate trade data. It was also important to assess the effect of the preferences under the Act on the trade of specific exports of other contracting parties. While overall diversion might be hard to detect, there could be a negative change in the exports of specific products from non-beneficiary

countries during the ten-year duration of the waiver. One member added that the tariff currently in place on a product of export interest to his country would be reduced to duty-free under the ATPA, while his country's exports of the same product would face a seasonal tariff of 25 per cent.

25. Many members expressed interest in monitoring developments in trade flows with the beneficiary countries and other countries on the basis of the annual reports to be submitted by the United States. They also welcomed the opportunity to regularly review the application of the preferential treatment provided under the Act. The Working Party should ensure that appropriate corrective measures were taken in the event that any negative trade effect of the ATPA were identified. One member added that future annual reviews of the operation of the waiver should also examine to what extent the trade preferences in the ATPA had an effect on attaining the objective of tackling drug-related problems in the Andean countries. The United States representative re-affirmed his country's commitment, as indicated in paragraph 4 of the waiver decision, to enter into consultation with any interested contracting party regarding any difficulty that may arise as a result of the implementation of the Act. The annual reports to be provided by his authorities would contain regularly updated aggregate and four-digit-level data on trade flows. He also confirmed in this context that the President had the authority to withdraw, suspend, or limit the application of duty-free treatment as a result of changed circumstances.

26. In response to a concern expressed by a member, the representative of the United States stated that tariff preferences under ATPA would not affect the benefits to developing countries under his country's GSP programme. One member noted that, unlike the ATPA preferences, which discriminated among developing countries, the GSP scheme was unilateral and did not require the authorization of the CONTRACTING PARTIES. In response to a question from one member as to the future of the Generalized System of Preference scheme as it related to the ATPA, the representative of the United States stated that the GSP programme was scheduled to end in July 1993 and that the existence of the ATPA should not affect the United States administration's consideration of the renewal of the GSP programme.

27. Several members expressed concern regarding the possibility of drug-related crop migration to regions of non-beneficiary countries. They suggested that the reports of the International Trade Commission (ITC) should analyse both the trade impact of the Act on third countries and the scope of drug-related crop migration. The United States representative said that the International Trade Commission Reports on the ATPA were public documents and could be made available to contracting parties. He added that the ITC report would take into account any evidence or relevant information submitted by other countries on the subject of drug-related crop migration.

Conclusions

28. There was widespread support and understanding in the Working Party for the stated objectives and purposes of the ATPA, particularly in regard

to its central aim of supporting the beneficiary Andean countries in their efforts to fight against the production, processing and trafficking of narcotics by encouraging the expansion of trade in alternative legitimate products.

29. With regard to the waiver decision of 18 March 1992, while considering the waiver as the appropriate procedure to be used to grant the ATPA the necessary derogation under the General Agreement, several members reiterated their general position that working party examinations should take place prior to the granting of waivers from paragraph 1 of Article I. It was noted that any extension of the ATPA to additional beneficiary countries and to additional products would require a new waiver request.

30. The Working Party noted the concerns expressed by several members that the ATPA attached a number of non-trade criteria in determining the designation of the four eligible countries as beneficiaries, and that these and other trade-related specific criteria were not directly related to the precise goals stated in the waiver decision. It was also noted that only two of the four eligible countries had as yet been designated as beneficiaries.

31. With respect to the trade impact of the ATPA, the Working Party noted the affirmation by the United States that the overall trade covered by the ATPA benefits was negligible and the assurances given that the Act would not have adverse effects on the trade of non-beneficiary contracting parties. Some members expressed concern that trade in individual products might nevertheless be adversely affected, as had been recognized by the United States representative.

32. The Working Party noted with appreciation the commitment by the United States, in accordance with paragraph 4 of the Decision of 19 March 1992, to enter into consultations, upon request, with any interested contracting party with respect to any difficulty or matter that might arise as a result of the implementation of the trade-related provisions of the Act.

33. The Working Party also noted that the United States would submit to the CONTRACTING PARTIES an annual report on the implementation of the trade-related provisions of the Act and recalled that, as required by its terms of reference, it would examine such reports from time to time.