

## ARTICLE XIII

### NON-DISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

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**I. TEXT OF ARTICLE XIII AND RELEVANT INTERPRETATIVE NOTES**

## Article XIII\*

*Non-discriminatory Administration of Quantitative Restrictions*

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, and to this end shall observe the following provisions:

- (a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;
- (b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
- (c) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
- (d) In cases in which a quota is allocated among supplying countries, the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.\*

3. (a) In cases in which import licences are issued in connection with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; *Provided* that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(b) In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were *en route* at the time at which public notice was given shall not be excluded from entry; *Provided* that they may be counted so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods; and *Provided* further that if any contracting party customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

(c) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of Article XI, the selection of a representative period for any product and the appraisal of any special factors\* affecting the trade in the product shall be made initially by the contracting party applying the restriction; *Provided* that such contracting party shall, upon the request of any other contracting party having a substantial interest in supplying that product or upon the request of the CONTRACTING PARTIES, consult promptly with the other contracting party or the CONTRACTING PARTIES regarding the need for an adjustment of the proportion determined or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party, and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

Interpretative Notes from Annex I

*Ad Article XIII*

*Paragraph 2(d)*

No mention was made of “commercial considerations” as a rule for the allocation of quotas because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it is practicable, a contracting party could apply these considerations in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

*Paragraph 4*

See note relating to “special factors” in connexion with the last sub-paragraph of paragraph 2 of Article XI.

*Ad Articles XI, XII, XIII, XIV and XVIII*

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms “import restrictions” or “export restrictions” include restrictions made effective through state-trading operations.

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## II. INTERPRETATION AND APPLICATION OF ARTICLE XIII

### A. SCOPE AND APPLICATION OF ARTICLE XIII

Concerning the general scope of Article XIII, see also the unadopted 1994 panel report on “EEC - Import Régime for Bananas”.<sup>1</sup>

#### 1. Paragraph 1

##### (1) “of all third countries”

The 1989 Panel Report on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” examined, *inter alia*, the claim that the administration and allocation of certain quantitative restrictions violated Article XIII.

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<sup>1</sup>DS38/R, dated 11 February 1994, paras. 141-142.

“The Panel recognized that, given its finding that the EEC measures were a violation of Article XI:1 and not justified by Article XI:2(c)(i) or (ii), no further examination of the administration of the measure would normally be required. Nonetheless, and even though the Panel was concerned with measures which had already been eliminated, in view of the questions of great practical interest raised by both parties it considered it appropriate to examine the administration of the EEC measures in respect of Article XIII.

“The first paragraph of the Article established the general obligation of non-discrimination in the administration of quantitative restrictions. The Panel noted that Commission Regulation 984/88 of 12 April 1988 suspended the issue of import licences in respect only of apples originating in Chile, eight days before the publication of import quotas. The Panel found that this measure constituted a prohibition in terms of Article XIII:1, and that it was applied contrary to that provision since the like products of all third countries had not been similarly prohibited. The Panel then proceeded to consider the EEC administration of the import quotas under Regulation 1040/88 in light of the subsequent provisions which delineated more specific requirements to achieve the aim of Article XIII:1.”<sup>2</sup>

**(2) “similarly prohibited or restricted”**

The 1980 Panel on “EEC Restrictions on Imports of Apples from Chile” examined EEC protective measures suspending imports of apples from Chile. The Panel Report includes the following finding:

“The Panel examined the EEC measures in relation to Article XIII:1. The Panel found that the EEC suspension applied to imports from Chile was not a restriction similar to the voluntary restraint agreements negotiated with the other Southern Hemisphere suppliers on the basis primarily that:

- “(a) there was a difference in transparency between the two types of action;
- “(b) there was a difference in the administration of the restrictions, the one being an import restriction, the other an export restraint; and
- “(c) the import suspension was unilateral and mandatory while the other was voluntary and negotiated”.<sup>3</sup>

**2. Paragraph 2**

**(1) “aim at a distribution of trade”**

It was pointed out during discussions at the Havana Conference that “global quotas not allocated among supplying countries might sometimes operate in a manner unduly favourable to those countries best able for any reason to take prompt advantage of the global quotas at the opening of the quota period; and it was agreed that Members, in administering import restrictions, should pay due regard to the need for avoiding such a result. It was also agreed that, in the case of perishable commodities, due regard should be had for the special problems affecting the trade in these commodities”.<sup>4</sup>

The 1980 Panel Report on “Norway - Restrictions on Imports of Certain Textile Products”, which examined an Article XIX action by Norway, notes as follows:

“The Panel was of the view that the type of action chosen by Norway, i.e. the quantitative restrictions limiting the importation of the nine textile categories in question, as the form of emergency action under Article XIX was subject to the provisions of Article XIII which provides for non-discriminatory administration of quantitative restrictions. In this connexion, the Panel noted the introductory part of paragraph 2 which stipulates that in applying an import restriction on a product, a contracting party ‘shall aim at a distribution of trade in such a product approaching as closely as possible the share which the

<sup>2</sup>L/6491, adopted on 22 June 1989, 36S/93, 130, paras. 12.20-12.21.

<sup>3</sup>L/5047, adopted on 10 November 1980, 27S/98, 114, para. 4.11.

<sup>4</sup>Havana Reports, p. 91, para. 28.

various contracting parties might be expected to obtain in the absence of such restrictions ...'. To this end, paragraph 2(a) of Article XIII further prescribes that wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed".<sup>5</sup>

The 1989 Panel Report on "EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile" notes

"that the first sentence of Article XIII:2 committed contracting parties applying import restrictions to any product to 'aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions', and sub-paragraph (d) provided more specific requirements for the allocation of quota shares. The Panel considered that it would not be useful for it to make a finding regarding the actual size of quota shares ...".<sup>6</sup>

See also the material below regarding choice of reference period for the purpose of allocating quota shares, at page 402.

## **(2) Paragraph 2(c)**

The question was raised at the Geneva session of the Preparatory Committee "whether a Member was permitted to require an import licence or permit to be utilized for the importation of a product from a particular country or source for balance-of-payments reasons". The Sub-Committee on the quantitative restrictions articles of the Charter considered that provisions for such an exception should not appear in Article 27 [corresponding to Article XIII of the General Agreement]; the Sub-Committee on the balance-of-payments articles of the Charter felt that Article 29:8(ii) [corresponding to Article XV:9(b) of the present text of the General Agreement] took due account of this problem.<sup>7</sup> See also generally Article XIV.

## **(3) Paragraph 2(d): "in cases in which a quota is allocated among supplying countries"**

See the Interpretative Note *Ad* Article XIII:2(d).

### **(a) Allocation of quotas**

The Panel Report on "Norway - Restrictions on Imports of Certain Textile Products" notes that

"In the case before the Panel, Norway had in early 1978 concluded long-term bilateral arrangements with six textile-supplying countries. The Panel noted that Norway had concluded these agreements with the intention of acceding to the MFA and notifying these agreements to the TSB pursuant to the appropriate Article of the MFA. The Panel noted also, however, that in the event Norway had not acceded to the MFA and that for these arrangements no derogation or provision of Parts I-III of GATT had ever been invoked by Norway ... The Panel held that Norway's reservation of market shares for these six countries therefore represented a partial allocation of quotas under an existing régime of import restrictions of the products in question and that Norway must therefore be considered to have acted under Article XIII:2(d). The Panel noted that had the reservation of market shares for the six countries been entered into pursuant to Article XIII:2(d), Norway could have been presumed to have acted under the first sentence of that provision.

"... The Panel was of the view that to the extent that Norway had acted with effect to allocate import quotas for these products to six countries but had failed to allocate a share to Hong Kong, its Article XIX action was not consistent with Article XIII".<sup>8</sup>

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<sup>5</sup>L/4959, adopted on 18 June 1980, 27S/119, 125, para. 14.b.

<sup>6</sup>L/6491, adopted on 22 June 1989, 36S/93, 130-131, para. 12.22.

<sup>7</sup>EPCT/163, p. 23.

<sup>8</sup>L/4959, adopted on 18 June 1980, 27S/119, 125-126, paras. 15-16.

The 1980 Panel Report on “EEC Restrictions on Imports of Apples from Chile” notes that

“... notwithstanding the Panel’s conclusions regarding the lack of similarity of the restrictions with reference to Article XIII:1, and in light of XIII:5, the Panel proceeded to consider the EEC import suspension against Chile and the voluntary restraint agreements with other Southern Hemisphere exporters as ‘quotas’ for purposes of the Panel’s examination of the EEC measure under XIII:2”<sup>9</sup>

The 1984 Report of the “Panel on Newsprint” examined the action of the European Communities in opening a duty-free tariff quota for m.f.n. suppliers of 500,000 tonnes for newsprint for the year 1984 (whereas the EC’s commitment in its schedule provided for an annual duty-free quota of 1.5 million tonnes) as the EFTA countries had obtained full duty-free access for newsprint from 1 January 1984 onward.

“The Panel also noted the EC statement that ... the action taken by the EC was merely a change in the administration or management of the tariff quota which was permissible under Article XIII of the GATT, and that therefore renegotiations under Article XXVIII were not called for. ...

“The Panel considered the arguments advanced by the EC relating to Article XIII, but concluded that the conditions for its application had not been fulfilled. In examining the EEC Regulation 3684/83, the Panel found that it did not in fact constitute a change in the administration or management of the tariff quota from a global quota system to a system of country shares, as had been asserted by the EC ... It does not provide an allocation of country shares to individual m.f.n. suppliers, nor has a separate quota (global or otherwise) for the EFTA countries been established, as Article XIII requires.”<sup>10</sup>

(b) “*representative period*”

The Report of the Review Working Party on “Quantitative Restrictions” includes the following agreed interpretation of paragraph 2, agreed during the 1954-55 Review Session:

“The Working Party does not propose any change in the text of Article XIII. It considered, however, a suggestion which was put forward to the effect that an interpretative note should be added to clarify the term ‘previous representative period’ which appears in sub-paragraph 2(d) of Article XIII. The object of this note was to specify that, in cases in which import restrictions on a given product had been enforced for a certain time, the contracting party applying the restriction should grant to the foreign suppliers a share of its market which would correspond to what could reasonably have been expected in the absence of restrictions. The Working Party was not prepared to recommend the inclusion of that note but agreed to recognize that the general rule contained in the introduction to paragraph 2 governed the various sub-paragraphs of that paragraph including those of sub-paragraph (d) to which the note was intended to refer.”<sup>11</sup>

The 1980 Panel Report on “EEC Restrictions on Imports of Apples from Chile” considered it appropriate, with regard to both Articles XI:2(c) and XIII:2(d), and

“in keeping with normal GATT practice ... to use as a ‘representative period’ a three-year period previous to 1979, the year in which the EEC measures were in effect. Due to the existence of restrictions in 1976, the Panel held that that year could not be considered as representative, and that the year immediately preceding 1976 should be used instead. The Panel thus chose the years 1975, 1977 and 1978 as a ‘representative period’.”<sup>12</sup>

The 1989 Panel Report on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” includes the following finding:

<sup>9</sup>L/5047, adopted on 10 November 1980, 27S/98, 114, para. 4.12.

<sup>10</sup>L/5680, adopted on 20 November 1984, 31S/114, 131-132, paras. 49, 51.

<sup>11</sup>L/332/Rev.1 and Addenda, adopted on 2, 4 and 5 March 1955, 3S/170, 176, para. 24.

<sup>12</sup>L/5047, adopted on 10 November 1980, 27S/98, 113, 116, paras. 4.8, 4.16.

“... The Panel considered that it would not be useful for it to make a finding regarding the actual size of quota shares. It observed that the previous three years were normally considered to be the appropriate reference period, with due account taken of relevant special factors. The Panel did not construe ‘special factors’ applicable to only one, or some, exporters as sufficient reason to change the base period which applied to all - though these special factors should be taken into account in considering individual quota allocations. Therefore the Panel found that the reference period applied by the EEC for the purpose of allocating quota shares - i.e., the previous three years - was consistent with its obligations under Article XIII”.<sup>13</sup>

(c) “*special factors*”

The Sub-Committee at the Havana Conference which considered Articles 20 and 22 of the Charter (corresponding to Articles XI and XIII of the General Agreement) “agreed that the interpretative note on ‘special factors’ should be retained as a note but should be made more explicit both by the deletion of the cross reference to the note to Article 20 which appears in the Geneva text and by the specific mention of certain additional factors which should be taken into account in the allocation of quotas. The Sub-Committee also agreed that it was desirable to make clear that, in cases where separate import quotas were allotted to the various foreign suppliers, a country whose productive efficiency or ability to export had increased relatively to other foreign suppliers since the representative period on which import quotas were based should receive a relatively larger import quota”.<sup>14</sup> It was accordingly agreed to add the following Interpretative Note to paragraphs 2(d) and 4 of Article 22 of the Charter (which correspond to Article XIII:2(d) and 4):

“The term ‘special factors’ as used in Article 22 includes among other factors the following changes, as between the various foreign producers, which may have occurred since the representative period:

- “1. changes in relative productive efficiency;
- “2. the existence of new or additional ability to export; and
- “3. reduced ability to export”.

It was also agreed that “changes artificially brought about since the representative period (assuming that period to have preceded the coming into force of the Charter) by means not permissible under the provisions of the Charter were not to be regarded as ‘special factors’ for the purposes of paragraph 2(c) and Article 22. The Sub-Committee agreed, however, that it was unnecessary to state this specifically in the text of the Articles or in the interpretative notes.”<sup>15</sup>

The 1980 Panel Report on “EEC - Restrictions on Imports of Apples from Chile” refers to these Charter provisions:

“... the Panel noted the fact that exports from Chile into the EEC had been expanding rapidly. ... The Panel believed that Chile’s increased export capacity should have been taken into account by the EEC in its allocation of shares among the Southern Hemisphere suppliers. The Panel felt such a consideration was in line with the interpretative note to the term ‘special factors’ as drafted in the Havana Charter, in particular with reference to the ‘existence of new or additional ability to export’ as between foreign producers. Moreover, the Panel considered that the fact that Chilean exporters had signed commercial contracts with EEC importers to the amount of 60,500 m.t. further demonstrated Chile’s increased export capacity and that these contracts should have been taken into account as a ‘special factor’ as well”.<sup>16</sup>

<sup>13</sup>L/6491, adopted on 22 June 1989, 36S/93, 130-131, para. 12.22.

<sup>14</sup>Havana Reports, p. 95, para. 52.

<sup>15</sup>Havana Reports, p. 94, para. 43.

<sup>16</sup>L/5047, adopted on 10 November 1980, 27S/98, 115, para. 4.17.

In the Panel Report on “United States - Imports of Sugar from Nicaragua”

“Nicaragua argued that the United States measures were inconsistent with the provisions of Article XIII of the General Agreement and in particular with paragraph 2 ... The Panel noted that under the sugar quota system established by the United States on 5 May 1982 the share of each supplying country corresponded to its share in the total sugar imports of the United States during a previous representative period, and that Nicaragua had, on this basis, been allocated 2.1 per cent of the total import quota, which amounted in the fiscal year 1982/83 to 58,000 short tons. Nicaragua’s quota for the fiscal year 1983-84 had been reduced to 6,000 short tons, or about one-tenth of its prior allocation, and this reduction had not been motivated by any factor which might have affected or might be affecting trade in sugar. The Panel therefore concluded that the sugar quota allocated to Nicaragua for the fiscal year 1983-84 was inconsistent with the United States obligations under Article XIII:2.”<sup>17</sup>

The 1989 Panel Report on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” includes the Panel findings that:

“Concerning ‘special factors’, the Panel took into account the Interpretative Note to paragraph 4 of Article XIII, which refers to the Note relating to ‘special factors’ in connection with the last sub-paragraph of Article XI:2. This reads:

‘The term “special factors” includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement.’

“The Panel further recalled that Article XIII:4 permits the party applying the restriction to initially select the representative period and appraise the special factors. It should subsequently consult, upon their request, with contracting parties seeking reappraisal of these factors. The Panel considered that this requirement for consultation was designed to ensure that due account was taken of special factors in terms of Article XIII:2(d) and in the light of the interpretation noted above. The Panel found that the overall trend towards an increase in Chile’s relative productive efficiency and export capacity had not been duly taken into account, nor had the temporary reduction in export capacity caused by the 1985 earthquake. On the other hand the Panel did not find any basis in the General Agreement for the EEC taking into account as special factors the ‘restraint’ alleged to have been exercised in previous years by other suppliers. Therefore the Panel found that the account taken of special factors by the EEC in allocating Chile’s quota share did not meet the requirements of Article XIII:2(d).”<sup>18</sup>

(d) *“No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share ... which has been allotted to it ...”*

The 1950 Working Party Report on “The Use of Quantitative Import and Export Restrictions for Protective, Promotional and other Commercial Purposes” provides as follows:

“... the Working Party noted that there was evidence of a number of types of misuse of import restrictions, in particular the following ...

“The imposition by a country of administrative obstacles to the full utilization of balance-of-payments import quotas, e.g. by delaying the issuance of licenses against such quotas by establishing license priorities for certain imports on the basis of the competitiveness or non-competitiveness of such imports with the products of domestic industry, in a manner inconsistent with the provisions of Article XII through XIV ... In this connection, the Working Party took note of Article XIII:2(d), which provides that ‘No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any

<sup>17</sup>L/5607, adopted on 13 March 1984, 31S/67, 73, para. 4.3.

<sup>18</sup>L/6491, adopted on 22 June 1989, 36S/93, para. 12.24.



such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate”.<sup>19</sup>

**(4) “subject to importation being made within any prescribed period to which the quota may relate”**

This condition was added to the Charter Article on non-discriminatory administration of quantitative restrictions when it was first discussed during the London session of the Preparatory Committee. The reason given for this addition was that “it would be very difficult to administer any system of quantitative regulation unless you could have some limitation over the time within which imports could be made”.<sup>20</sup>

**3. Paragraph 3(a): Administration of import licensing**

In 1950 at the Torquay Session the CONTRACTING PARTIES adopted a Working Party Report on a proposal for a Code of Standard Practices for the Administration of Import and Export Restrictions and Exchange Controls,<sup>21</sup> including the recommendations therein that the CONTRACTING PARTIES “approve the draft standards set out in the Annex to this Report [and] recommend these practices to the individual contracting parties as a code which they should endeavour to adopt to the maximum practicable extent”. The Report further provides:

“The Working Party considered that the proposed standards ... should be regarded as a code for the guidance of contracting parties and not as additional obligations imposed upon them under the General Agreement ... it was recognised that, where there are clear and overriding considerations, or in individual cases where there is good reason to suspect the bona fides of transactions in question, it may be necessary for contracting parties to depart from the precise terms of these recommendations.

“The Working Party confined its attention principally to the formulation of standard practices to be applied by governments imposing import and export restrictions for balance-of-payment reasons. Since, however, international trade in many products is subject to other regulations and orders, the Working Party was of the opinion that, where possible, the principles underlying the set of standard practices ... should also be observed for such regulations and orders”.

The Annex provides as follows.

“1. The grant of an import licence should imply that the necessary foreign exchange will be obtainable if applied for within a reasonable time. When both import licences and exchange permits are required, the operation of the two requirements should be co-ordinated. If more than one rate of exchange applies in payment for imports, the import licence or exchange permit should indicate the type of exchange which will apply in the settlement of the particular transaction.

“2. Any new or intensified restrictions on importation or exportation should not apply to goods shown to the satisfaction of the control authority to have been en route at the time the change was announced or to have been paid for in substantial part or covered by an irrevocable letter of credit.

“3. Goods proved to have been covered by adequate confirmed prior order at the time new or intensified restrictions are announced, and not marketable elsewhere without appreciable loss, should receive special consideration on an individual case basis, provided their delivery can be completed within a specified period. Such goods, as well as those covered under paragraph 2, should be accountable against any import or export quota or exchange allocation that may have been established for that particular class of goods.

“4. The administrative formalities in connection with the issuance of import and export licences or exchange permits should be designed to allow action upon applications within a reasonably short period. A licence or permit should be valid for a sufficient period to allow for the production or delivery of the goods, taking into account the character of the goods and the conditions of transport from the country of origin.

<sup>19</sup>GATT/CP.4/33, adopted on 3 April 1950, para. 21.

<sup>20</sup>Amendment by New Zealand, EPCT/C.II/PV/13, p. 13.

<sup>21</sup>GATT/CP.5/30/Rev.1; adopted on 30 November 1950, GATT/CP.5/SR.16 p. 2-4; preliminary draft at GATT/CP.5/8, discussion also at GATT/CP.5/SR.8, SR.9.

The control authorities should not withdraw licences or permits unless they are satisfied that exceptional circumstances necessitate such action, and should give sympathetic consideration to requests for renewal or revalidation of licences or permits when exceptional circumstances prevent their utilisation within the original period.

“5. Under a system involving the fixing of quotas for particular classes of goods or of allocations of exchange in payment for them, any period that may be set, within which applications for such quotas or allocations must be made, should be sufficient to allow for the exchange of communications with likely foreign suppliers and the conclusion of purchase contracts.

“6. When foreign products subject to quantitative limitations are apportioned among importers largely in the light of their past participation in the trade, the control authorities, at their discretion and without undue prejudice to the interests of established importers, should give consideration to requests for licences or permits submitted by qualified and financially responsible newcomers.

“7. If an assurance regarding the issue of an import licence is required as a condition of consular legalization of shipping documents in the country of exportation, a reliable communication giving the number of the import licence should suffice.

“8. The authority given to customs officials should be adequate to allow them, at their discretion, to grant reasonable tolerance for variations in the quantity or value of individual shipments as delivered from that specified in the prior import or export authorization, in accordance with the character of the product involved and any extenuating circumstances.

“9. When, owing to exceptional and unforeseen balance-of-payment difficulties, a country is unable to provide foreign exchange for imports immediately payment becomes due to the supplier, transfers of foreign exchange in respect of goods already imported or licensed for importation should have priority over transfers in respect of new orders, or should at least have a definite and equitable share of the total amounts of foreign exchange currently available for imports.”<sup>22</sup>

The following supplement to Article 3 of the Torquay Code of Standard Practices was adopted in 1952.

“The CONTRACTING PARTIES recommend to governments imposing or intensifying import or export restrictions that they should authorize, to the fullest extent permitted by the exigencies of their economic and financial position, the importation or exportation of goods covered by firm and legitimate contracts which are proved to their satisfaction to have been concluded in the course of normal business before the announcement of new or intensified import or export restrictions. Governments should give prompt consideration to all individual cases; special consideration should be given to transactions involving perishable or seasonal commodities.”<sup>23</sup>

The CONTRACTING PARTIES at their Twenty-eighth Session in November 1972 decided that the data assembled on licensing systems should be kept up to date and that contracting parties should be invited to notify annually by 30 September any changes which should be made concerning the information on their licensing system. The Secretariat has issued annually an airgram inviting contracting parties to communicate any changes in their licensing systems necessary to bring up to date the individual country data, in accordance with a standard questionnaire.<sup>24</sup>

<sup>22</sup>GATT/CP.5/30/Rev.1, paras. 4-5.

<sup>23</sup>“Documentary Requirements for Imports, Consular Formalities, Valuation for Customs Purposes, Nationality of Imported Goods and Formalities Connected with Quantitative Restrictions.” Report of the Working Party adopted on 7 November 1952, G/28, 1S/100, 106 para. 22; see also discussion p. 105-106.

<sup>24</sup>The questionnaire was originally issued as L/1335; the version currently in effect is annexed to L/5640/Rev.8. Up to 1981, notifications appeared as addenda and corrigenda to a document with the dual symbol COM.IND/W/55-COM.AG/W/72. As from 1981, notifications appear in the L/ series (e.g. L/5106/Rev.2, L/5640 and Revisions, and Addenda and Corrigenda thereto). The Annual Report of the Committee on Import Licensing contains a status report on replies by its members to the questionnaire; see 38S/93, L/7109.

See also Secretariat background notes prepared during the Tokyo Round on “Import Documentation”<sup>25</sup>, “Customs and Administrative Entry Procedures”<sup>26</sup> and “Import Licensing Procedures”.<sup>27</sup>

See also the material below at page 414 on the 1979 Agreement on Import Licensing Procedures. In this connection see also the unadopted 1994 panel report on “EEC - Import Régime for Bananas”.<sup>28</sup>

#### 4. Paragraph 3(b) and 3(c): Administration of import quotas

**(1) “shall give public notice ... of the total quantity or value ... which will be permitted to be imported during a specified time period”: public notice requirements and back-dated quotas**

The 1989 Panel on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile” noted in its Report that

“Concerning the notification of quotas and quota shares, ... Article XIII:3(b) requires that ‘in the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period ...’. And Article XIII:3(c) requires that ‘in the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof’. The Panel also took into account the requirement of Article X:1 to publish trade regulations, including prohibitions or restrictions on imports, promptly in such a manner as to enable governments and traders to become acquainted with them. In the context of Article XIII’s overall concern with the non-discriminatory application of quantitative restrictions, it interpreted Article XIII:3(b) and (c) together as requiring that both the total quota and shares allocated in it be publicly notified for a specified future period. The Article XIII:3(c) requirement to promptly notify other contracting parties with an interest in supplying the product would otherwise be meaningless, as would the Article XIII:3(b) provision for supplies en route to be counted against quota entitlement.

“The Panel therefore considered that the allocation of back-dated quotas, that is, quotas declared to have already been filled at the time of their announcement, did not conform to the requirements of Article XIII:3(b) and Article XIII:3(c). It found that EEC Commission Regulation 1040/88 constituted a back-dated quota in respect of Chile, since although it published a quota share for Chile it simultaneously declared that share to be filled and, in fact, continued the suspension of imports from Chile enacted eight days before quotas were published. The EEC had therefore not observed the notification requirements of Article XIII:3(b) and (c). Moreover, the fact that such a back-dated quota was allocated to only one supplying country, Chile, resulted in the discriminatory administration of the restriction in violation of Article XIII:1”.<sup>29</sup>

Claims under the publication requirements of Articles XIII and X have been made in panel proceedings but (as subsidiary claims) not ruled upon by the panel in question; see below at page 411.

<sup>25</sup>MTN/3B/8, MTN/3B/13, MTN/3B/14.

<sup>26</sup>MTN/3B/2 and Add.

<sup>27</sup>NTM/W/73, NTM/W/73/Rev.1, NTM/W/73/Corr.1, NTM/W/73/Add.1.

<sup>28</sup>DS38/R, dated 11 February 1994, paras. 141-142.

<sup>29</sup>L/6491, adopted on 22 June 1989, 36S/93, 131-132, paras. 12.25-12.26.

(2) *“supplies of the good in question which were en route at the time at which public notice were given”*

The reference to “goods en route” was inserted into the Charter at the initiative of Chile, in discussions at the London session of the Preparatory Committee in 1946, in connection with the administration of supply-management quotas for agricultural and fisheries products. It was generally agreed at that time that if goods were en route, they must be admitted, but may be counted against a quota.<sup>30</sup> The following example was given in the discussion of the operation of the second sentence of paragraph 3(b):

“Supposing a boat is arriving and then it is found that it has all the quantity which is allowed on board, and then the next day another boat arrives, if the second boat-load was en route at the time, the goods cannot be excluded and the country in question would go over its quota. ... after notice has been given then an account has to be taken of the goods en route at the time ...”<sup>31</sup>

This “goods en route” provision was reflected in the London Draft Charter as a proviso to the provision which corresponds to Article XI:2(c) of the General Agreement.<sup>32</sup> The Drafting Committee which met at New York between the London and Geneva sessions of the Preparatory Committee moved this proviso to the article of the Charter corresponding to Article XIII. It also inserted the second proviso of paragraph 3(b) “to bring this subparagraph into harmony with the provision concerning publication of certain administrative rulings contained in paragraph 3 of Article 21”.<sup>33</sup> Article 21:3 of the New York Draft Charter (corresponding to Article X:2 of the General Agreement) provided a similar proviso to the requirement of advance publication of trade regulations, which was eliminated in the Geneva Draft Charter and was not included in the General Agreement.<sup>34</sup>

In the 1980 Panel Report on “EEC - Restrictions on Imports of Apples from Chile”

“The Panel noted that at the time of the suspension, Chilean exporters had signed commercial contracts for 60,500 m.t. of apples with EEC importers. The panel reviewed the Standard Practices for the Administration of Import and Export Restrictions and Exchange Controls (GATT/CP.5/30/Rev.1) that were approved by the CONTRACTING PARTIES in 1950. These guidelines specify, *inter alia*, that:

- (a) ‘any new or intensified restrictions on importation or exportation should not apply to goods shown to the satisfaction of the control authority to have been en route at the time the change was announced or to have been paid for in substantial part or covered by an irrevocable letter of credit’ and
- (b) ‘goods proven to have been covered by adequate confirmed prior order at the time new or intensified restrictions are announced, and not marketable elsewhere without appreciable loss should receive special consideration on an individual case basis, provided their delivery can be completed within a specified period.’

“The Panel noted however that these standard practices ‘should be regarded as a code for the guidance of contracting parties and not as additional obligations imposed upon them under the General Agreement’ and that individual contracting parties ‘should endeavour to adopt them to the maximum practicable extent’.

“With the above in mind, the Panel examined whether the EEC measure against Chile was ‘retroactive’ in the context of XIII:3(b) second sentence. The Panel found the EEC to be consistent therewith, as the EEC had not excluded from entry Chilean apples on board and destined for the EEC, at the time the EEC regulation regarding the import suspension was published”.<sup>35</sup>

<sup>30</sup>See EPCT/C.II/QR/PV/4, p. 7-12 and further discussion at EPCT/C.II/QR/PV/5, p. 67-73.

<sup>31</sup>EPCT/C.II/QR/PV/5, p. 71.

<sup>32</sup>London Draft Charter Art. 25(f); see also London Report p. 12, section III.C.1(d).

<sup>33</sup>New York Report, p. 20, 23.

<sup>34</sup>Geneva Draft Charter Article 37:3(a).

<sup>35</sup>L/5047, adopted on 10 November 1980, 27S/98, 116, paras. 4.19-4.20.

In the 1989 Panel Report on “EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile”

“The Panel went on to examine the EEC’s treatment of goods en route, in the light of Article XIII:3(b)’s stipulation that ‘any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry’. The Panel also took note of the (non-obligatory) Standard Practices for the Administration of Import and Export Restrictions approved by the CONTRACTING PARTIES in 1950. These state in part that ‘any new or intensified restrictions should not apply to goods shown to the satisfaction of the control authority to have been en route at the time the change was announced. ...’ The Panel noted that the EEC, in the preamble to Regulation 962/88, suspending the issue of import licences for Chilean apples, had stated that ‘... no account should be taken of goods being transported to the Community other than those for which import licences have been issued’ but the issue of import licences before sailing was not mandatory under EEC Regulations. The Panel found that by allowing entry only to those goods en route for which an import licence had been issued prior to the Regulation’s entry into force the EEC had added a requirement for which there was no basis in Article XIII. The wording of the Article clearly meant that apples en route - i.e., on board and destined for the EEC - at the time the suspension of Chilean import licences was published should have been admitted to the EEC. The Panel was also aware of the interim decision of the President of the European Court of Justice, dated 10 June 1988, which suspended the operation of the EEC regulations enacting the measures in question in respect of 89,514 cartons of Chilean apples which had been in transit but for which an import licence had not been issued at the time the issue of such licences was suspended for Chile”.<sup>36</sup>

**(3) *Second proviso to paragraph 3(b)***

The material which now appears in the second proviso in paragraph 3(b) was originally inserted into the Charter Article on non-discriminatory administration of quota restrictions, by the Drafting Committee which met in New York between the first and second sessions of the Preparatory Committee. This insertion was made in order to harmonize that provision with paragraph 3 of the New York Draft Charter Article on publication and administration of trade regulations, which provided that no administrative ruling imposing a new or more burdensome requirement, restriction or prohibition on imports would be applied to goods en route as of the date of publication, and had a proviso on the lines of this proviso. In the second session of the Preparatory Committee, the goods en route provision and its proviso was eliminated from the Charter Article on publication, but the proviso was retained in the Charter Article on non-discriminatory administration of quantitative restrictions. The resulting difference between the Charter provisions is reflected in the texts of Articles X:2 and XIII:3 of the General Agreement.<sup>37</sup>

**5. Paragraph 4: “representative period”**

See Article XI and material on this issue on page 402.

**6. Paragraph 5**

**(1) *Non-discriminatory administration of tariff quotas***

The “Panel on Newsprint”<sup>38</sup> addressed the consistency of an EEC tariff quota on newsprint with the requirements of Article XIII. See also page 402 above. In this connection see also the unadopted 1994 panel report on “EEC - Import Régime for Bananas”.<sup>39</sup>

<sup>36</sup>L/6491, adopted on 22 June 1989, 36S/93, 132-133, para. 12.27.

<sup>37</sup>New York (Drafting Committee) Report, p. 17, 23; Geneva Report, p. 23, 34.

<sup>38</sup>L/5680, adopted on 20 November 1984, 31S/114.

<sup>39</sup>DS38/R, dated 11 February 1994, paras. 141-142.

**(8) *Non-discriminatory administration of export restrictions***

In 1949, the Czechoslovak government brought a complaint that US export restrictions were administered in a discriminatory manner; see further on page 414 below.

See the discussion under Article XI of the 1950 Working Party Report on “The Use of Quantitative Import and Export Restrictions for Protective, Promotional and other Commercial Purposes”, with regard to the use of export restrictions as selective bargaining leverage. See also the discussion on “voluntary export restraints” in the chapter on Article XIX.

**B. RELATIONSHIP BETWEEN ARTICLE XIII AND OTHER GATT PROVISIONS**

**1. Article I**

In the 1980 dispute on “EEC - Restrictions on Imports of Apples from Chile,” Chile maintained that as the quantitative restrictions in question affected exclusively apples of Chilean origin they were inconsistent with the most-favoured-nation treatment prescribed in Article I. The Panel Report notes: “The Panel examined the consistency of the EEC measures with the most-favoured-nation principles of the General Agreement. The Panel considered it more appropriate to examine the matter in the context of Article XIII which deals with the non-discriminatory administration of quantitative restrictions rather than Article I:1”.<sup>40</sup>

In the 1989 dispute concerning the complaint by Chile on “EEC - Restrictions on Imports of Dessert Apples”, the Panel examined a claim made by Chile under Article I with regard to the EEC’s import quota on apples. The Panel findings note: “The Panel considered it more appropriate to examine the consistency of the EEC measures with the most-favoured-nation principles of the General Agreement in the context of Article XIII. ... This provision deals with the non-discriminatory administration of quantitative restrictions and is thus the *lex specialis* in this particular case”.<sup>41</sup>

In 1961 Uruguay requested a ruling from the CONTRACTING PARTIES concerning whether the application of variable import duties was compatible with the GATT. A Note by the Executive Secretary stated: “The General Agreement contains no provision on the use of ‘variable import duties’. ... Apart from the question of consistency with Article II it should be noted that the question might arise as to whether a variable import duty is consistent with the provisions of Article I on the most-favoured-nation treatment. This question can, however, hardly be discussed *a priori* without a knowledge of the exact nature of the measure in question or the manner in which it is operated. It should be noted that if a variable levy system should be accompanied by the imposition of restrictions by specified volume, or a prohibition, of imports such measures would of course be subject to the examinations and considerations [concerning Articles XI, XII, XIII, XIV and XVIII:B]”.<sup>42</sup> In the discussion of this question at the Nineteenth Session of the CONTRACTING PARTIES the following views were expressed:

- (i) “If the variable levy ... had the effect of exactly equalizing the price of the imported goods with the cost of bringing goods onto the market from domestic sources ... the CONTRACTING PARTIES should treat it as if it were a quantitative restriction or quantitative prohibition on imports.”
- (ii) “A levy that varied from source to source would be violation of the provisions of the Agreement dealing with non-discrimination”.<sup>43</sup>

The 1962 Panel Report on the “Uruguayan Recourse to Article XXIII” notes as follows:

“The Panel was faced with a particular difficulty in considering the status of variable import levies or charges. It noted the discussion which took place at the nineteenth session of the CONTRACTING PARTIES on this subject during which it was pointed out that such measures raised serious questions which had not been

<sup>40</sup>L/5047, adopted on 10 November 1980, 27S/98, 112, para. 4.1.

<sup>41</sup>L/6491, adopted on 22 June 1989, 36S/93, 133, para. 12.28.

<sup>42</sup>L/1636, dated 21 November 1961.

<sup>43</sup>SR.19/8, pp. 111-120.

resolved. In these circumstances the Panel has not considered it appropriate to examine the consistency or otherwise of these measures under the General Agreement”.<sup>44</sup>

## 2. Article XI

The 1984 Panel Report on “Japanese Measures on Imports of Leather” dealt with the claim by the United States that the Japanese restrictions were in contravention of Article XI and that, in addition, the restrictions also contravened Articles [X:1 and 3 and] XIII:3.

“The Panel noted that the United States had, as a subsidiary matter, argued that Japan had also nullified or impaired benefits under Articles II, X:1, X:3 and XIII:3. In view of the findings set out in the paragraphs above [concerning inconsistency with Article XI], the Panel found that it was not necessary for it to make a finding on these matters.”<sup>45</sup>

The 1988 Panel Report on “Japan - Restrictions on Imports of Certain Agricultural Products” examined the claim that import restrictions on several agricultural products were inconsistent with Article XI:1 because each restriction was inconsistent with one or more of seven criteria listed in Article XI:2(c)(i).

“The Panel noted that the United States had, as a subsidiary matter, argued that Japan had also nullified or impaired benefits under Articles [X:1, X:3] and XIII:3. Since these provisions dealt with the administration of quotas that may be applied consistently with the General Agreement, the Panel decided that it was not necessary for it to make a finding on these matters with regard to quantitative restrictions maintained contrary to that Agreement.”<sup>46</sup>

See also references under Article X to similar cases in which claims regarding notice of quota allocations were not reached due to a panel finding that a quantitative restriction was inconsistent with Article XI.

## 3. Article XXI

See below at page 414.

## 4. Article XXIV

See material in the chapter on Article XXIV.

## 5. Part IV

See material in the chapter on Part IV.

## 6. Protocols of Accession

The Protocol for the Accession of Switzerland provides in its paragraph 4 for a reservation with respect to the application of the provisions of Article XI to the extent necessary to permit Switzerland to apply import restrictions pursuant to certain domestic legislation. However, this paragraph also provides:

“... In applying, under these laws, measures which are not covered by paragraph 1(b) above, Switzerland ... consistently with Article XIII of the General Agreement, shall apply all restrictions imposed under these laws in accordance with the principle of non-discrimination”.<sup>47</sup>

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<sup>44</sup>L/1923, adopted on 16 November 1962, 11S/95, 100, para. 17.

<sup>45</sup>L/5623, adopted on 15/16 May 1984, 31S/94, 114, para. 57.

<sup>46</sup>L/6253, adopted on 2 February 1988, 35S/163, 242, para. 5.4.2.

<sup>47</sup>14S/6, 8.

### C. RELATIONSHIP BETWEEN ARTICLE XIII AND OTHER AGREEMENTS

In a Decision on “Margins of Preference” of 9 August 1949 the CONTRACTING PARTIES ruled that “The determination of rights and obligations between governments arising under a bilateral agreement is not a matter within the competence of the CONTRACTING PARTIES.” This ruling was subject to a footnote:

“This Decision by its terms clearly refers only to the determination of the rights and obligations as between the parties to the bilateral agreement and arising from that agreement. It is, however, within the competence of the CONTRACTING PARTIES to determine whether action under such a bilateral agreement would or would not conflict with the provisions of the General Agreement”.<sup>48</sup>

The Report of the Review Working Party on “Quantitative Restrictions” records that an amendment was proposed to Article XIV with a view to ensuring that discrimination practised by contracting parties under bilateral agreements was limited to the extent justifiable on currency grounds. “The Working Party considered that this amendment was unnecessary since it was already covered by the provisions of Article XIV which clearly defined the extent to which deviation from the provisions of Article XIII was permitted. ... Moreover it is for the CONTRACTING PARTIES to decide whether the provisions of the Agreement are being complied with and in so far as discrimination is not authorized under the Agreement, it is possible to have recourse to the provisions of Article XII.”<sup>49</sup>

The question of the compatibility with the General Agreement of bilateral trade agreements providing for quotas or differential treatment was again discussed in 1961 at the Nineteenth Session of the CONTRACTING PARTIES.<sup>50</sup> According to a Note by the Executive Secretary, which was generally supported in the discussion,

“The General Agreement contains no provisions dealing specifically with the use of bilateral agreements. If a contracting party concludes a bilateral agreement with another contracting party or a government not party to the GATT, what is relevant for the General Agreement is the effect on the trade of other contracting parties of any measures affecting trade which that government takes to make effective the provisions of the bilateral agreement. ... it is, therefore, necessary to know the nature of the quota obligation provided for in the bilateral agreement and details of any measures affecting imports which are taken for the fulfilment of that bilateral obligation.

“If the fulfilment of the obligations under the bilateral agreement involves the use of restrictions on imports from any other contracting parties, these restrictions will be matters for examination under the relevant provisions of the Agreement:

“(a) Obviously, if the contracting party is not entitled under any provisions of the General Agreement to apply import restrictions, the application of these restrictions will be contravening the provisions of Article XI.

“(b) If the contracting party is entitled to apply import restrictions (e.g. under Article XII or XVIII:B) but has no justification under the GATT to use discrimination, then the restrictions will not be compatible with the provisions of Article XIII unless the quota restriction and the restrictions on imports from other contracting parties are ‘similar’ (see Article XIII:1) and if the rules and criteria in Article XIII are met”.<sup>51</sup>

The Note also stated that these principles were equally applicable to the use of lists of countries in administering quantitative restrictions (according particular treatment to several countries at once). In discussion on the Note, the Executive Secretary stated that “as he saw it, the existence of a bilateral agreement could in no circumstances be justified as a basis for non-observance of the non-discrimination provisions of the General Agreement. ... the

<sup>48</sup>II/11, para. 1.

<sup>49</sup>L/332/Rev.1 + Adds., adopted on 2, 4, and 5 March 1955, 3S/170, 177, para. 29; see also SR.19/8, p. 112.

<sup>50</sup>SR.19/8, pp. 111-120.

<sup>51</sup>L/1636, p. 2-3, paras. 3-4.



[Note] made no distinction between import and export restrictions which were governed in the same way by the provisions of the General Agreement".<sup>52</sup>

#### D. EXCEPTIONS AND DEROGATIONS

##### 1. Provisions of Protocols of Accession relating to discriminatory quantitative restrictions

The Protocol for the Accession of Poland provides, *inter alia*, that contracting parties may maintain with respect to imports from Poland, during a transitional period, prohibitions or quantitative restrictions which are inconsistent with Article XIII, provided that the discriminatory element in these restrictions is not increased, and progressively relaxed over the transitional period.<sup>53</sup> The Report of the Working Party on the Ninth Review under the Protocol of Accession stated that no agreement had been reached on a date for the termination of the transitional period.<sup>54</sup>

The Protocol for the Accession of Romania provides, *inter alia*, that contracting parties still maintaining prohibitions or quantitative restrictions not consistent with Article XIII shall not increase the discriminatory element in these restrictions, undertake to remove them progressively and shall have as their objective to eliminate them before the end of 1974. "Should this agreed objective not be achieved and, for exceptional reasons, should a limited number of restrictions still be in force as of 1 January 1975, the Working Party provided for in paragraph 5 would examine them with a view to their elimination."<sup>55</sup> The Report of the Working Party on the Sixth Review under the Protocol of Accession noted that certain discriminatory import restrictions continued to be maintained.<sup>56</sup>

The Protocol for the Accession of Hungary provides, *inter alia*, that contracting parties still maintaining prohibitions or quantitative restrictions not consistent with Article XIII on imports from Hungary shall not increase the discriminatory element in them and undertake to remove them progressively. "If, for exceptional reasons, any such prohibitions or restrictions are still in force as of 1 January 1975, the Working Party provided for in paragraph 6 will examine them with a view to their elimination."<sup>57</sup> The Report of the Working Party on the Fourth Review under the Protocol of Accession noted that import restrictions not consistent with Article XIII continue to be maintained.<sup>58</sup> This was reiterated in the Reports of the Working Parties on the Sixth and Seventh Review.<sup>59</sup>

Concerning these Protocols of Accession, see also the material under Article XXIV concerning the relationship between that Article and Article XIII.

##### 2. Waivers under Article XXV:5

There is only one instance of a waiver to the provisions of Article XIII: the Decision of 10 November 1952 on the "Waiver granted in connection with the European Coal and Steel Community". This decision provided that the Governments of the member States of the ECSC Treaty, "notwithstanding the provisions of paragraphs 1 and 2 of Article XIII of the General Agreement, will be free to refrain from imposing any prohibitions or restrictions on the importation or exportation of coal and steel products from or to the territories of any other member State, although instituting or maintaining such prohibitions or restrictions upon the territories of other contracting parties; *provided* that the prohibitions or restrictions are in all other respects consistent with the General Agreement".<sup>60</sup>

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<sup>52</sup>SR.19/8, p. 116.

<sup>53</sup>15S/46, 47-48, para. 3.

<sup>54</sup>24S/148.

<sup>55</sup>18S/5, para. 3.

<sup>56</sup>35S/337, 339, para. 10.

<sup>57</sup>20S/3, 4, para. 4.

<sup>58</sup>L/5303, adopted on 31 March 1982, 29S/129, 130.

<sup>59</sup>33S/136, 145; 36S/416, 423, para. 43.

<sup>60</sup>1S/17/20, para. 3; see also Working Party report on the waiver, G/35, adopted on 10 November 1952, 1S/85.

A Note by the Executive Secretary on “Questions Relating to Bilateral Agreements, Discrimination and Variable Taxes” mentions “that in no case has a waiver on import restrictions authorized any deviation from the provisions of Article XIII”.<sup>61</sup> In the case of waivers of Article XI it has generally been the case that it has been provided either in the Waiver Decision or in the accompanying working party report that the waiver does not extend to discriminatory measures inconsistent with Article XIII.<sup>62</sup> For instance, the 1955 Working Party Report on “Import Restrictions Imposed by the United States under Section 22 of the United States Agricultural Adjustment Act” provides, with regard to the waiver granted to the United States for such restrictions: “In particular, as its obligations under Article XIII are not affected, the United States should acquire no right by virtue of this waiver to deviate from the rule of non-discrimination provided for in that Article”.<sup>63</sup> Similarly, the 1985 waiver decision on “Caribbean Basin Economic Recovery Act” provides that “The Government of the United States shall ensure that this waiver will not be used to contravene the principle of non-discriminatory allocation of sugar quotas”.<sup>64</sup>

### 3. Other exceptions

In 1949, the Czechoslovak government brought a complaint that US export restrictions were administered in a discriminatory manner; the US representative cited Article XXI:(b)(iii) in justification. In a decision of 8 June 1949 “The CONTRACTING PARTIES decided to reject the contention of the Czechoslovak delegation that the Government of the United States had failed to carry out its obligations under the Agreement through its administration of the issue of export licences”.<sup>65</sup>

The Panel Report on “United States - Imports of Sugar from Nicaragua” includes the following finding: “The Panel noted that the United States had not invoked any of the exceptions provided for in the General Agreement permitting discriminatory quantitative restrictions contrary to Article XIII. The Panel therefore did not examine whether the reduction in Nicaragua’s quota could be justified under any such provision”.<sup>66</sup>

See also Article XIV (Exceptions to the Rule of Non-discrimination) and accompanying text.

## E. AGREEMENT ON IMPORT LICENSING PROCEDURES

The Agreement on Import Licensing Procedures was negotiated during the Tokyo Round of multilateral trade negotiations.<sup>67</sup> The Agreement sets out detailed rules so as to ensure, *inter alia*, “that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of the GATT including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries”.<sup>68</sup> A list of acceptances of the Agreement appears in the Appendix to this book. Article 4 of the Agreement establishes the Committee on Import Licensing composed of representatives of the parties to the Agreement. The Committee reports annually to the CONTRACTING PARTIES. The basic document for the biennial review conducted by its parties includes information on participation in the Agreement and lists of notifications by parties on their import licensing régimes, public notices of import licensing, and import licensing laws and regulations. The basic document also provides references to information on the automatic and non-automatic licensing systems of parties from the replies to the Questionnaire on Import Licensing Practices.<sup>69</sup> At its eleventh meeting, the Committee adopted a work programme to help it reach a common understanding on the meaning of certain provisions of the Agreement formulated in vague terms. The Committee has adopted recommendations which were developed on the

<sup>61</sup>L/1636, p. 2.

<sup>62</sup>In addition to examples cited on this page see Decision on “Problems Raised for Contracting Parties in Eliminating Import Restrictions Maintained During a Period of Balance-of-Payments Difficulties” (the “hard-core” waiver decision), 3S/38, 41, para. 2; Working Party Report on the waiver granted under this Decision to Belgium, L/467, adopted on 3 December 1955, 4S/102, 106-107, paras. 18-19; waiver decision on “German Import Restrictions”, 8S/32 and Working Party Report at 8S/160.

<sup>63</sup>L/339, adopted on 5 March 1955, 3S/144.

<sup>64</sup>L/5779, Decision of 15 February 1985, 31S/22.

<sup>65</sup>GATT/CP.3/SR.22, II/28.

<sup>66</sup>L/5607, adopted on 13 March 1984, 31S/67, 74, para. 4.4.

<sup>67</sup>26S/154. Concerning the negotiation of the Agreement, see documents listed in TA/INF/1/Rev.8, p. 38-44.

<sup>68</sup>26S/155, Article 1:2..

<sup>69</sup>See LIC/22/Rev.1 (1993 basic document).

application of Articles 1.4, 1.6, 3(c), 3(d), 3(e) and 3(g) of the Agreement.<sup>70</sup> A new Agreement on Import Licensing was agreed in the Uruguay Round and is included in Annex 1A of the WTO Agreement.

### III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

The corresponding provision in the Havana Charter is contained in Article 22; in the US-UK *Proposals* in Chapter III C-3; in the US Draft Charter in Article 21; in the London and New York Drafts in Article 26; and in the Geneva Draft in Article 22.

*Differences between the Havana Charter and the General Agreement:* In the first sentence of paragraph 2(d) there is a drafting difference between Article 22 of the Charter and Article XIII of the General Agreement. Also, the Interpretative Note to this paragraph was deleted in Havana and is not included in the Charter.<sup>71</sup> Paragraph 3(d) of the Charter article is not in the GATT text; it was inserted at Havana in order to enable a Member, trading with a non-Member or non-Members, to be released from its obligations to give public notice under paragraph 3(b) and 3(c).<sup>72</sup> Also, the following Interpretative Note to paragraph 3, which is not in the GATT text, was added at Havana to meet the special case of India:

“The first sentence of paragraph 3(b) is to be understood as requiring the Member in all cases to give, not later than the beginning of the relevant period, public notice of any quota fixed for a specified future period, but as permitting a Member, which for urgent balance-of-payments reasons is under the necessity of changing the quota within the course of a specified period, to select the time of its giving public notice of the change. This in no way affects the obligations of a Member under the provisions of paragraph 3(a), where applicable.”<sup>73</sup>

In response to proposals in the Sub-Committee on Articles 20 and 22 at Havana, made with regard to the interpretative note on “special factors” (Note Ad Article XIII:4 of the General Agreement, or Ad Article 22:4 of the Charter), the Sub-Committee agreed to the interpretation and the additional interpretative note which appear on page 403 above with reference to “special factors”.

In 1948, the Working Party on “Modifications to the General Agreement” at the Second Session of the CONTRACTING PARTIES considered which of the changes made to the Charter at Havana should be brought into the General Agreement. The Working Party decided to amend the text of paragraph 5.<sup>74</sup> The amendment deleted a reference to internal quantitative restrictions and licensing regulations, consequential to the replacement of the 30 October 1947 text of Article III by the text of Article 18 of the Havana Charter, including the text of the present Article III:7. These changes were effected through the Protocol Modifying Part II and Article XXVI.

During the Review Session, various proposals for changes to Article XIII were considered and rejected. See the paragraph from the Report of the Review Session Working Party on “Quantitative Restrictions” at page 402 above, and the documents cited below.

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<sup>70</sup>See LIC/M/11, paragraphs 29-34 (decision on work programme); LIC/12 ( compilation of recommendations adopted); LIC/M/18 (statements made on adoption); and LIC/M/20, para. 13 (later statements referring to the recommendations). See also discussions in the Committee on the definition of “import licensing” under Article 1.1, in LIC/M/20-25.

<sup>71</sup>Havana Reports, p. 95, para. 51.

<sup>72</sup>Havana Reports, p. 96, para. 54.

<sup>73</sup>Havana Reports, p. 96, para. 53.

<sup>74</sup>GATT/CP.2/22/Rev.1, adopted on 1 and 2 September 1948, II/39, 45, para. 32.

## IV. RELEVANT DOCUMENTS

*London*

Discussion: EPCT/C.II/QR/PV/2, 4 (p. 25), 5  
(p. 95), 6 (Part II),  
EPCT/C.II/PV/4, 5

Reports: EPCT/30

*New York*

Discussion: EPCT/C.6/17, 20, 21, 23, 27, 51

Reports: EPCT/C.6/97/Rev.1

Other: EPCT/W.64, 224, 313

*Geneva*

Discussion: EPCT/EC/PV.2/22  
EPCT/A/SR.21, 40(1)  
EPCT/TAC/SR.13  
EPCT/TAC/PV/27, 28

Reports: EPCT/135, 141, 164, 189, 196,  
212, 214/Rev.1/Add.1  
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Other: EPCT/W/64, 74, 208, 219, 223,  
259, 272, 301, 318

*Havana*

Discussion: E/CONF.2/C.3/SR.21, 37, 41, 42

Reports: E/CONF.2/C.3/54

Other: E/CONF.2/C.3/E/W.19

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Discussion: SR.9/14, 15, 40

Reports: W.9/174+Add.1, 208,  
L/332/Rev.1+Add.

Other: W.9/91, 106, 130, Spec/53/55