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GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES
Nineteenth Session

QUESTIONS RELATING TO BILATERAL AGREEMENTS, DISCRIMINATION AND VARIABLE TAXES

Note by the Executive Secretary

1. In requesting the inclusion of this item on the agenda, the delegation of Uruguay has indicated that it wishes to have a ruling from the CONTRACTING PARTIES on the question of whether the following practices are compatible with the provisions of the General Agreement:

A. bilateral trade agreements which specify, in terms of value or volume, products to be imported during certain periods;

B. the employment of separate lists of supplying countries, and the granting of different treatment in import restrictions to different contracting parties; and

C. the application of variable import duties.

2. These questions are posed in general terms, without reference to particular countries or to specific cases. The answer that can be given by the CONTRACTING PARTIES will, therefore, have also to be in general terms. Whether any particular practice of a contracting party is or is not consistent with the provisions of the Agreement is a question which can be answered only after an examination in detail of the practice, the circumstances and all relevant factors, within the framework of the general answer given by the CONTRACTING PARTIES to the Uruguayan request for a ruling.

A. Bilateral agreement providing for quotas

3. 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 a party to GATT, what is relevant for the General Agreement is the effects 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. With regard to the question raised by Uruguay, 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.

4. 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[1], 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.

(c) If the contracting party is entitled to apply import restrictions and, by virtue of Article XIV of the Agreement, is also entitled to use discrimination, then the relative incidence of the bilateral quota restriction and the restrictions applying to imports from other contracting parties can be the subject of examination under the provisions of that Article. If there is discrimination involved, it will be permitted under this Article provided it does not go beyond the limit laid down in paragraph 1, 2, 3 or 5 of the Article. Under paragraph 1 of that Article, for example, a contracting party is entitled to deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which the contracting party is applying under the appropriate provisions of the IMF Agreement.

5. With regard to the use of discrimination under the provisions of paragraph 1 of Article XIV, it should be noted that in 1959 the International Monetary Fund adopted a decision on the question of discrimination, which

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[1] It might be noted in this connexion that in no case has a waiver on import restrictions authorized any deviation from the provisions of Article XIII.

states that "... the Fund considers that there is no longer any balance-of payments justification for discrimination by member countries whose current receipts are largely in externally convertible currencies," and that "... members will be expected to proceed with all feasible speed in eliminating discrimination against member countries, including that arising from bilateralism". This decision was confirmed by the CONTRACTING PARTIES in regard to discrimination in trade restrictions (BISD, Eighth Supplement, p.73). The Fund has in various cases encouraged governments to reduce or discontinue discriminatory practices, and the Fund's views in these cases have been reflected in the consultations which the CONTRACTING PARTIES have held with the respective governments on their quantitative import restrictions.

B. Lists of countries and differential treatment

6. As regards the use of lists of countries in the administration of quantitative restrictions, the questions to be examined are essentially the same, and the points made in section A above are equally relevant in this connexion:

(a) whether the contracting party is in the first place entitled to apply the restrictions;

(b) if the contracting party is entitled to use restrictions but not discrimination, whether the distribution of trade resulting from the restrictions is consistent with the provisions of Article XIII and whether all the requirements of that Article are met; and

(c) if the contracting party is entitled to apply restrictions and discrimination, whether the discrimination goes beyond the limits laid down in Article XIV.

C. Variable import duties

7. The General Agreement contains no provision on the use of "variable import duties". It is obvious that if any such duty or levy is imposed on a "bound" item, the rate must not be raised in excess of what is permitted by Article II of the Agreement. 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 inconsistent 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.

8. 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 referred to in sections (a) and (b) above.