

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/183

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CONTRACTING PARTIES  
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## WAIVER REQUESTED BY THE UNITED STATES

### Amendments Suggested by Australian Delegation

The Australian delegation proposes the following amendments to document W.9/170 for consideration by the Working Party:

1. Insert the words "of Articles II and XI" after the word "provisions" in line 2 of the first paragraph of the Statement of Considerations.
2. Insert the words "in the form either of fees or of quantitative limitations" after the word "restrictions" in line 2 of the last paragraph of page 1.
3. Substitute the following two paragraphs for the first paragraph on page 2:

"CONSIDERING the explanations of the Government of the United States that except in the case of a perishable commodity import restrictions can only be imposed under Section 22 following an investigation by the United States Tariff Commission, after due notice and opportunity for hearing have been given to interested parties; that while import restrictions may be imposed on a perishable commodity before an investigation by the Tariff Commission, the continuance of such restrictions is subject to the decision of the President as soon as the Commission has completed an immediate investigation; and that fees imposed under Section 22 cannot exceed 50 per cent ad valorem and any quantitative limitation of imports under that Section cannot be such as to reduce the quantity of imports of the product below 50 per cent of the quantity entered during a representative period as determined by the President;

"CONSIDERING, further, the statement of the Government of the United States that, except in the case of those products where it is impracticable to limit production or marketings or it is without legislative authority to do so, the products on which Section 22 controls are now for may in future be in effect are subject to limitation upon domestic marketings which in turn affect production."

4. Substitute the following for the second paragraph on page 2:

"TAKING NOTE, moreover, that it is the intention of the United States Government to solve the problem of surpluses of agricultural products, and so reduce the need for action under Section 22; and that as a further step toward the solution of that problem it has aimed at reducing 1955 crop supplies by lowering support-price levels or by imposing marketing quotas at the minimum levels permitted by legislation;"

5. Substitute the following for the DECISION and DECLARATION on page 2:

"THE CONTRACTING PARTIES

DECIDE, pursuant to paragraph 5(a) of Article XXV of the General Agreement and in consideration of the assurances recorded above, that, subject to the conditions and procedures set out hereunder, the provisions of Articles II and XI of the Agreement shall be waived to the extent necessary to prevent a conflict with such Articles in the case of action required to be taken by the Government of the United States under Section 22 as annexed to this waiver;"

\*\*/DECLARE that this decision shall not preclude the right of affected contracting parties to have recourse to the appropriate provisions of Article XXIII/;

DECLARE /further/ that, in deciding as aforesaid, they regret that the United States Government deems it necessary to continue to apply import restrictions which are impeding the attainment of the objectives of the General Agreement, have adversely affected the trade of a number of contracting parties and have impaired concessions granted by the United States Government."

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\* The annexure of Section 22 to the proposed waiver is suggested in order to make it clear that the waiver relates to the present text of Section 22.

\*\* It may be argued that this Declaration is unnecessary if the Conditions and Procedures of the Waiver are amended as proposed (see amendment 7) to make specific provision for compensatory action in the case of impairment of a concession.

6. Amend paragraph 1 of Section A to read:

"Pending the carrying out of the procedures set out hereunder and without prejudice to the review provided for in Section C, the provisions of Articles II and XI of the Agreement are provisionally waived to the extent necessary to allow the Government of the United States to continue to maintain restrictions in effect under Section 22 at the time this waiver is granted and which may not be authorized by the Agreement."

7. Having regard to the comments set out hereunder (see page 4), the substitution of the following is proposed for paragraphs 2 and 3 of Section A of W.9/170:

"(2) The United States Government, taking into account the harmful effects on general international trade relations of existing import restrictions under Section 22 will examine those restrictions (regardless of whether they are covered by this waiver) with a view to their modification to the fullest extent consistent with its legislative requirements and will have regard to any representations made to it by a contracting party which considers that its interests are seriously prejudiced by reason of such restrictions. It will, in particular, consider any representations made to it to the following effects:

(i) that a greater volume of imports than is at present permitted will not interfere materially with or render ineffective a programme undertaken by the United States Department of Agriculture or any agency under its direction;

(ii) that a greater volume of imports than is at present permitted would have taken place in the absence both of such programme and of such restrictions;

(iii) that the portion of a total import quota allotted to such contracting party is inequitable because of any circumstances that operated to reduce the imports from that contracting party of the product concerned during the past representative period on which that import quota has been based.

"(3) The Government of the United States will make a report to the CONTRACTING PARTIES as soon as possible and in any event not later than the opening of their Tenth Session in which it will -

(i) advise the result of the examination and representations referred to in paragraph (2);

(ii) report on action taken by it since the conclusion of the Ninth Session with a view to the eventual removal of the need to impose import restrictions under Section 22.

"(4) Where a contracting party which has entered into consultations claims that serious prejudice has occurred to its interests arising from the nullification or impairment of concessions granted by the Government of the United States under the General Agreement on any product which is the subject of import restrictions, it will ask the CONTRACTING PARTIES to make a determination in regard thereto.

"(5) The CONTRACTING PARTIES after consideration of the report referred to in paragraph (3) will take the following action:

(i) They will notify the Government of the United States that the waiver provisionally granted in accordance with paragraph (1) will, subject to the review provided for in Section C, continue to apply;

(ii) They will, pursuant to any requests which may have been made in accordance with paragraph (4) above, make a determination as to whether and to which contracting parties substantial prejudice has resulted from the import restrictions of the United States.

"(6) If, in accordance with paragraph 5(ii) above, the CONTRACTING PARTIES shall have determined that serious prejudice to the interests of any contracting party has resulted, that contracting party shall be free to suspend the application to the trade of the United States of such substantially equivalent obligations or concessions under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove."

(Comments on the amendment proposed above)

This amendment would make the following changes of substance to the draft in W.9/170:

- (a) Paragraph (2) of the proposed re-draft provides for the review by the United States Government of all existing restrictions under Section 22 instead of a review at the request of a contracting party of a particular restriction. Without prejudice to its view that such an amendment of the present draft is desirable, the Australian delegation considers that the time period of thirty days in the present draft is inadequate.
- (b) Paragraph (2) of the proposed re-draft contains as subparagraphs (i), (ii) and (iii) some particular matters on which representations might be made. All of these points are regarded as important having regard to the area of discretion that Section 22 gives to the President of the United States and to the understanding of the Australian delegation that it is the intention of the United States Government to apply import restrictions as nearly in conformance with Article XI as Section 22 permits.

- (c) The other major change which would be involved in the insertion of new paragraphs (2), (3), (4), (5) and (6) in Section A is the deletion of the reference to Article XXIII and the substitution of a procedure of compensatory action on the lines of that provided in Article XIX. It is considered that this alternative procedure, although substantially the same as that in Article XXIII, has the strong presentational advantage of being expressed in explicit terms in the waiver instrument.)

8. The insertion of a new paragraph in the following terms (to become paragraph 2) is proposed in Section B:

(2) It is recognized that there must be a reasonable period provided for consultations between the time when the President of the United States causes an investigation to be made by the United States Tariff Commission and the time when a decision is made by the former as to whether import restrictions should be imposed.

9. The addition of a clause to paragraph 2 in Section B of the present draft to indicate that the "representations" may include representations in regard to the matters set out in paragraph (3) of the proposed re-draft of Section A, that is, representations to the following effects:

(i) that a greater volume of imports than is at present permitted will not interfere materially with or render ineffective a programme undertaken by the United States Department of Agriculture or any agency under its direction;

(ii) that a greater volume of imports than is at present permitted would have taken place in the absence both of such programmes and of such restrictions;

(iii) that the portion of a total import quota allotted to such contracting party is inequitable because of any circumstances that operated to reduce the imports from that contracting party of the product concerned during the past representative period on which that import quota has been based.

10. The Australian delegation is inclined to doubt whether such a provision as paragraph 3 in Section B of W.9/170 is necessary since it may be assumed that a contracting party making the representations referred to will provide any information that is likely to assist those representations.

11. The following paragraphs are proposed in substitution for paragraph 4 in Section B in W.9/170, the only substantive change being the incorporation of an explicit procedure for compensation in lieu of recourse to Article XXIII..

(For the purpose of numbering the following paragraphs it is assumed that paragraph 1 of the present draft will remain, that paragraph 2 will be the paragraph (proposed amendment 8 above) providing for a reasonable period for consultations and that paragraph 3 will be paragraph 2 in the present draft as expanded in accordance with amendment 9 above.)

New paragraphs (4) to (9) in Section B:

"(4) As soon as the President has made his decision the Government of the United States will notify the CONTRACTING PARTIES and those contracting parties which have made representations or entered into consultations.

"(5) If the decision is to impose additional restrictions, and regardless of whether such restrictions are consistent with the Agreement,

(i) the Government of the United States will notify the CONTRACTING PARTIES of the result of the representations referred to in paragraph (3) above.

(ii) each of the contracting parties which has been concerned in the representations and consultations will report immediately to the CONTRACTING PARTIES.

"(6) When the notification and reports referred to in paragraph (5) are received, the CONTRACTING PARTIES will forthwith advise the Government of the United States that, subject to the review provided for in Section C, the provisions of Article II or the provisions of Article XI of the Agreement, as the case may be, are waived to the extent necessary to allow the proposed restrictions to be put into effect..

"(7) Where a contracting party which has entered into consultations in pursuance of paragraph (1) above claims that serious prejudice has occurred to its interests arising from the nullification or impairment of concessions granted by the United States under the General Agreement on any product which is the subject to import restrictions; it will ask the CONTRACTING PARTIES to make a determination in regard thereto.

"(8) The CONTRACTING PARTIES will, pursuant to any requests which may have been made in accordance with paragraph (7) above, make a determination as to whether and to which contracting parties substantial prejudice has resulted from the import restrictions of the United States.

"(9) If, in accordance with paragraph (8) above, the CONTRACTING PARTIES shall have determined that serious prejudice to the interests of any contracting party has resulted, that contracting party shall be free to suspend the application to the trade of the United States of such substantially equivalent obligations or concessions under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

12. Amend paragraph 1 in Section C to read:

"The Government of the United States will remove each restriction permitted under this waiver as soon as it finds that circumstances requiring any restriction no longer exist and will modify each restriction whenever such modification can be made consistently with Section 22.

13. Substitute the following for paragraph 2 of the present draft:

"The CONTRACTING PARTIES will annually review the actions taken by the Government of the United States under this waiver. For each such review that Government will furnish a report concerning any import restrictions that are still being imposed under Section 22 including the reasons why such restrictions are still considered to be essential having regard to action taken by the Government of the United States to adjust its agricultural programmes so as to render the use of Section 22 unnecessary.

14. The Australian delegation reserves its position on the question whether a waiver should be granted to the Government of the United States until the form of any such waiver has been fully considered and until it is in a position to assess the general outcome of the work of the Review Session.

One particular aspect of the proposed waiver that has not been dealt with in any of the amendments proposed above concerns the period for which a waiver may be granted. The Australian delegation wishes to give further consideration to the question of fixing a time limitation to any waiver.