

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Group on Quantitative Restrictions
and Other Non-Tariff Measures

PAST GATT ACTIVITIES RELATING TO QUANTITATIVE RESTRICTIONS
AND OTHER NON-TARIFF MEASURES

Background Note by the Secretariat

1. This note describes briefly the past work of GATT in the areas of quantitative restrictions and other non-tariff measures and identifies certain of the major points influencing the development of this work. It is circulated for the information of delegations.

Quantitative Restrictions

2. The General Agreement contains a number of articles dealing with quantitative restrictions, for example Articles XI, XII, XIII, XIV, XVIII, XIX, XX and XXI. Certain other GATT instruments also deal directly or indirectly with quantitative restrictions, e.g. the Protocol of Provisional Application, protocols of accession, some waivers and the Arrangement Regarding International Trade in Textiles. This note does not attempt to review each of these provisions in detail, but describes some of the main developments in this general area of particular relevance to the Group's terms of reference.

3. In the early years of GATT, notable progress was made towards the elimination of quantitative restrictions imposed for balance-of-payments reasons that were the rule for most countries at the time of the coming into force of the General Agreement. However, countries concerned still felt obliged to retain "residual restrictions" on some products even where balance-of-payments safeguard measures were no longer warranted and no GATT justification existed. Initially, the CONTRACTING PARTIES adopted a policy of granting waivers, subject to certain conditions, to provide temporary authority for such restrictions (for example, the so-called "hard-core" waiver - BISD, 3S/38).

4. Somewhat later a waiver was also granted to a contracting party which had claimed that certain quantitative restrictions were applied under legislation which pre-dated its accession and were thus compatible with the terms on which it applied the General Agreement (BISD, 8S/31).

5. In 1960, a different approach was adopted. It was agreed that each country would notify those of its residual restrictions that it recognized to be inconsistent with the GATT, and the availability of consultation procedures under Articles XXII and XXIII was emphasized (BISD, 9S/19). In 1962 a Panel, convened to examine the adequacy of these notifications, put forward certain suggestions on the type of information that should be included in notifications (BISD, 11S/206 and 210).

6. In 1965, with a view to obtaining more complete information, a new procedure was devised under which it was suggested to newly-independent countries that, even if they were not yet in a position to determine whether they wished to invoke the provisions of Article XVIII as justification for some or all restrictions in force, they might submit descriptive material relative to their entire import control systems, without prejudice to the consistency of the measures maintained with their GATT obligations (BISD, 14S/161). A number of notifications under this procedure were made.

7. During the same period, attempts were being made to secure the liberalization of restrictions affecting particularly the exports of developing countries. In the light of the findings of the Haberler Report, the CONTRACTING PARTIES in 1958 established Committee III to consider in particular action to promote the trade of developing countries, as part of a Programme of Action Directed Towards an Expansion of International Trade (BISD, 7S/27). Committee III examined in detail problems relating to groups of products identified as of export interest to developing countries and made recommendations for their removal. In the search for more rapid and comprehensive progress, the Ministerial Declaration of 1961 (BISD, 10S/28) and the Ministerial Conclusions of 1963 (BISD, 12S/36) contained a number of general undertakings, subject to certain understandings, on quantitative restrictions affecting the trade of developing countries. Subsequently, the Group on Residual Restrictions, which met between 1965 and 1972 under the auspices of the Committee on Trade and Development, held periodic consultations with developed countries on a country-by-country basis. In the later stages of its work, the Group adopted a product-by-product approach and focussed on selected products of particular interest to developing countries.

8. Also as part of the 1958 Programme of Action Directed Towards an Expansion of International Trade, work on quantitative restrictions in the agricultural sector was undertaken in Committee II, which was given the task of considering problems arising out of the widespread use of non-tariff measures for the protection of agriculture or in support of the maintenance of incomes of agricultural producers.

9. The Short-Term Arrangement Regarding International Trade in Cotton Textiles came into force in 1961 (BISD, 10S/18), followed in 1962 by the first Long-Term Arrangement (BISD, 11S/25), which was superseded in 1974 by the Multifibre Arrangement (BISD, 21S/3). These Arrangements provided, on the one hand, for the phasing out of existing restrictions or their being brought into conformity with the Arrangement concerned, and, on the other hand, for the possible introduction of new restrictions in certain specified circumstances.

10. Quantitative restrictions, both agricultural and industrial, were the subject of negotiations in the context of the Kennedy Round, but with relatively few results. Under the Programme For Expansion of International Trade reactivated by the CONTRACTING PARTIES after the Kennedy Round (BISD, 15S/69), work on quantitative restrictions was pursued in the Committee on Trade in Industrial Products (particularly the Working Group on Specific

Limitations on Trade) and in the Agriculture Committee. The inventories of non-tariff measures, which contain information on some quantitative restrictions, including on such matters as their scope, type and justification, were started at this time.

11. A new initiative in the area of quantitative restrictions was the establishment of the Joint Working Group on Import Restrictions (JWG) by the Council in January 1970 to conduct consultations, without commitments, with contracting parties along lines proposed by the Director-General (Section III of L/3260 and C/M/60). The creation of the JWG was motivated principally by a desire to find a more effective way of exploring the scope for the liberalization of quantitative restrictions as well as to improve the information available on them. There was also a feeling that there was something inequitable and anomalous about a situation whereby contracting parties invoking articles of the GATT, such as Articles XII and XVIII, as justification for certain restrictions had to submit to consultations and examination while contracting parties applying restrictions inconsistently with GATT were treated more tolerantly. While some contracting parties maintained no quantitative restrictions falling outside the GATT, it was clear that a substantial number of other contracting parties were employing quantitative restrictions for which no GATT justification was evident. The JWG was envisaged as consulting with countries on the whole range of restrictions that they maintained, whether consistently with the GATT or not, it being understood that no country would refuse to consider possibilities for dismantling a restriction on the ground that it was consistent with the GATT. In its work on quantitative restrictions, the JWG acted as an agent of the Committee on Trade in Industrial Products, the Agriculture Committee and the Committee on Trade and Development.

12. In the course of April 1970, the JWG carried out a fairly rapid restriction-by-restriction review, which was limited for practical reasons to measures maintained by eighteen developed countries. The review in the JWG focussed on the purpose of measures, their economic importance, other protection afforded, and plans and possibilities for relaxation and removal. The types of measures that were covered in the information gathered by the JWG and which were the subject of review are indicated in Annex I of this note. General points that arose in the Group's work included whether licensing requirements of a purely formal and automatic nature should be examined, the relevance of particular economic and social factors to agricultural restrictions, whether or not a distinction should be made in the Group's work between legal and illegal restrictions, and what sort of particular attention could be paid to restrictions affecting the trade of developing countries.

13. These and other points are recorded in the JWG's report to the Council of March 1971 (L/3391/Rev.1). One result of the work of the Group was the systematic collection of data on restrictions maintained by the countries consulted with; in the presentation of the Report to the Council, it was noted that it had been agreed that, in future revisions of the

documentation, countries should indicate the precise tariff lines affected by restrictions (C/M/68). The information gathered was annexed to the Group's report, which also contained information on restrictions with respect to which governments had indicated target time-scales for liberalization, those with respect to which maintaining countries had indicated possibilities of relaxation or removal, and those identified by developing countries as of particular export interest. Although the Council agreed that the JWG should continue its reviews of import restrictions, either annually or biennially, the JWG has not subsequently met. The consolidated table on import restrictions prepared by the JWG has been revised annually on the basis of notifications from countries applying restrictions, in accordance with the procedure established by the Council at that time (C/M/70). In 1980, the Council reaffirmed this procedure (BISD, 27S/20). However, not all contracting parties concerned have submitted notifications, and it is doubtful that the JWG documentation is presently complete and up-to-date.

14. Further work on quantitative restrictions (and other non-tariff measures) applied to products of particular interest to developing countries took place in the period 1971-1973 in the Group of Three, established by the Committee on Trade and Development. The Group of Three examined the possibilities for the liberalization of such measures and addressed certain recommendations to developed countries in this regard (BISD, 18S/70; 19S/31; and 20S/73).

15. Negotiations on quantitative restrictions were also held in the Tokyo Round. A major issue was the extent to which quantitative restrictions could be the subject of negotiation: on the one hand, some countries felt that concessions should neither be sought nor given for the liberalization of restrictions inconsistent with the GATT, while, on the other hand, countries maintaining measures consistent with the GATT sometimes took the view that there was no obligation on them to make such measures negotiable. As regards issues of a more procedural character, much of the discussion focussed on the extent to which the liberalization of quantitative restrictions could be achieved through the adoption of a formula of automatic application, through restriction-by-restriction negotiations on a bilateral or plurilateral basis, or through some combination of the two, and also on the question of special procedures for developing countries. In the event, it was found possible to agree on multilateral disciplines only in respect of import licensing procedures. The restrictions themselves were initially the subject of a "process of information, examination and dialogue" involving bilateral and plurilateral consultations among delegations, designed, inter alia, to elucidate whether restrictions were being maintained in accordance with the General Agreement. Summary notes on these consultations were circulated in documents MTN/NTM/W/40 and Addenda. Negotiations on quantitative restrictions subsequently took place under the request-offer procedures adopted for negotiations on item-related non-tariff measures. Certain quantitative restrictions were also the subject of negotiations under

similar procedures relating to agriculture and tropical products. While some progress was made¹, "it was evident at the conclusion of the negotiations that the offers made in response to requests would leave a large body of quantitative restrictions intact" (The Tokyo Round: Report by the Director-General of GATT, p.87 - pages 85-87 of the Report describe the main issues that arose in the Tokyo Round negotiations on quantitative restrictions).

16. In the post-Tokyo Round period, work on quantitative restrictions has taken place in particular in the context of the Committee on Trade and Development's work on trade liberalization in areas of special interest to developing countries. Following the updating of the data on restrictions applied by developed countries to products of export interest to developing countries (COM.TD/W/338/Rev.1), quantitative restrictions were the subject of bilateral and plurilateral consultations in the context of the Programme of Consultations on Trade Liberalization held by the Committee in March 1982. Delegations of many developing countries urged the adoption of a comprehensive approach towards the elimination of quantitative restrictions inconsistent with the GATT and the liberalization of other restrictions, with priority being given to restrictions affecting the exports of developing countries. These proposals were subsequently forwarded to the Preparatory Committee for its consideration (COM.TD/112, Annex 1(b)).

Other Non-Tariff Measures

17. GATT has dealt with non-tariff measures from the beginning. The GATT was drafted because certain governments wished to enter into tariff negotiations without waiting for the Havana Charter to come into effect. They therefore included in its Part II a large number of provisions governing the use of non-tariff measures, primarily with a view to preventing the nullification or impairment of tariff concessions. Many of these provisions were the subject of detailed examination and revision in the course of the 1955 Review Session of the CONTRACTING PARTIES (BISD, Third Supplement) when it was clear that the Havana Charter would not enter into force. In the years up to the launching of the Kennedy Round in 1963, the CONTRACTING PARTIES also examined specific issues relating to the use of non-tariff measures as and when they felt that joint action by them was required; examples are the studies undertaken by a Group of Experts on anti-dumping and countervailing duties in 1959 and 1960 (BISD, 8S/145 and 9S/194), the 1960 Decision Giving Effect to the Provisions of Article XVI:4 (BISD, 9S/32) and the 1958 Recommendation on Marks of Origin (BISD, 7S/30). Committees II and III also dealt with non-tariff measures falling within their respective terms of reference.

¹Some bilateral agreements on the abolition of quantitative restrictions were notified to GATT; in one case, a contracting party incorporated a quota commitment as a separate part of its GATT Schedule.

18. However, the attempt to negotiate on non-tariff measures other than quantitative restrictions really began in the Kennedy Round, the Ministers agreeing in May 1963 that the negotiations would deal not only with tariffs but also with non-tariff measures (BISD, 12S/47). The main result of this effort was the Anti-Dumping Code of 1967.

19. The basis for most of GATT's subsequent work on non-tariff measures was the decision of the CONTRACTING PARTIES in November 1967 to reactivate the Programme for Expansion of International Trade, in particular the establishment of the Committee on Trade in Industrial Products (CTIP) and the drawing up of an inventory of non-tariff measures (BISD, 15S/69). Five working groups were established under the CTIP, dealing respectively with government participation in trade, customs and administrative entry procedures, standards involving imports and domestic goods, specific limitations on trade, and charges on imports. The entries contained in the Inventory were considered in the respective working groups on a measure-by-measure basis, including specific aspects such as the trade effects of the measures and their GATT relevance. The work undertaken in the CTIP and its five working groups between 1968 and 1973 on the compilation and analysis of information on non-tariff measures, identification of trade problems and examination of possible solutions, including possible multilateral solutions drawn up on an ad referendum basis, formed the basis for much of the negotiations in the Tokyo Round on non-tariff measures. During this period, work on non-tariff measures was also being pursued in the Agriculture Committee and in the framework of the Committee on Trade and Development.

20. Six multilateral instruments on non-tariff measures were negotiated in the Tokyo Round:

- the Agreement on Technical Barriers to Trade;
- the Agreement on Interpretation and Application of Articles VI, XVI and XXIII;
- the Agreement on Import Licensing Procedures;
- the Agreement on Implementation of Article VI;
- the Agreement on Government Procurement; and
- the Agreement on Implementation of Article VII.

The first four of these agreements came into operation on 1 January 1980 and the last two on 1 January 1981. Other Tokyo Round multilateral instruments, such as that on civil aircraft, also contain provisions relating to non-tariff measures.

21. Other non-tariff measures, for which multilateral solutions were not being negotiated, were the subject of negotiations in the Tokyo Round on a bilateral or plurilateral basis under the request-offer procedure for item-related non-tariff measures that was adopted. Negotiations on certain non-tariff measures also took place in the context of the work of the Tokyo Round Groups "Agriculture" and "Tropical Products".

22. In line with the decision of the CONTRACTING PARTIES of November 1979 on the continuation of the process of trade liberalization in the context of GATT's post-Tokyo Round work programme (BISD, 26S/219), the Council adopted in March 1980 procedures for the updating of the Inventories of Non-Tariff Measures (BISD, 27S/18). These procedures provide, inter alia, for it to be left to each contracting party to decide whether it wishes to maintain or include notifications relating to measures covered by the codes on non-tariff measures. The revised Inventory of Non-Tariff Measures (Industrial Products) was issued in October 1981 in documents NTM/INV/I-V. Annex II to this note reproduces the table of contents of this Inventory, which indicates the structure of the Inventory and the types of measures covered. Updated inventories of agricultural non-tariff measures are also being issued (AG/DOC/- series of documents).

ANNEX I

TYPES OF RESTRICTIONS INCLUDED IN THE
JOINT WORKING GROUP DOCUMENTATION
(L/3391/Rev.1, pages 7 & 8)

The JWG documentation included all types of measures considered by some members of the Group to constitute import restrictions, except restrictions maintained on health and sanitary grounds and restrictions on products of a purely military character.

The restrictions were classified as follows:

- BQ: Bilateral quota - where an individual quota of a fixed amount has been agreed with the supplier country.
- GQ: Global quota - where a restriction applies to goods of most, if not all countries, and where the amount of the quota is published.
- P: Denotes that imports are generally prohibited or embargoed, with the possible exception of purchases for government (e.g. defence) use.
- ST: State trading - an additional symbol indicated the degree of restriction involved, where attention was given to this question.
- AL: Automatic licensing
- LL: Liberal licensing - where maintaining countries consider their licensing régime to be a purely formal requirement involving no restriction.
- DL: Discretionary licensing - includes cases where global quotas may have been established, but not published (see definition of GQ).
- L: Licensing (method unspecified).
- SUSP: (followed by country abbreviation) - where an import restriction has been suspended pending application of an export restraint by the country named in parenthesis.
- XR: (followed by country abbreviation) - the country in parenthesis operates an export restraint vis-à-vis the country shown as maintaining the restriction.
- MP: Minimum price system

Certain other restrictions (e.g. mixing regulations and screen quotas) were mentioned in individual boxes.

ANNEX II

TABLE OF CONTENTS OF THE INVENTORY OF NON TARIFF MEASURES

<u>Parts and sections</u>	<u>Description</u>
Part I	<u>GOVERNMENT PARTICIPATION IN TRADE AND RESTRICTIVE PRACTICES TOLERATED BY GOVERNMENTS</u>
A	Government aids
B	Countervailing duties
C	Government procurement
D	Restrictive practices tolerated by governments
E	State-trading, government monopoly practices, etc.
Part II	<u>CUSTOMS AND ADMINISTRATIVE ENTRY PROCEDURES</u>
A	Anti-dumping duties
B	Valuation
C	Customs classification
D	Consular formalities and documentation
E	Samples
F	Rules of origin
G	Customs formalities
Part III	<u>TECHNICAL BARRIERS TO TRADE</u>
A	General
B	Technical regulations and standards
C	Testing and certification arrangements
Part IV	<u>SPECIFIC LIMITATIONS</u>
A	Quantitative restrictions and import licensing
B	Embargoes and other restrictions of similar effect
C	Screen-time quotas and other mixing regulations
D	Exchange control
E	Discrimination resulting from bilateral agreements
F	Discriminatory sourcing
G	Export restraints
H	Measures to regulate domestic prices
I	Tariff quotas
J	Export taxes
K	Requirements concerning marking, labelling and packaging
L	Others
Part V	<u>CHARGES ON IMPORTS</u>
A	Prior import deposits
B	Surcharges, port taxes, statistical taxes, etc.
C	Discriminatory film taxes, use taxes, etc.
D	Discriminatory credit restrictions
E	Border tax adjustments
F	Emergency action