

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

Spec(86)64

2. December 1986

UNITED STATES IMPORT RESTRICTIONS
ON AGRICULTURAL PRODUCTS

Draft Report of the Working Party

1. The Working Party was established by the Council on 15 July 1986, with the following terms of reference:

"To examine the twenty-eighth annual report (L/5981) submitted by the Government of the United States, under the Decision of 5 March 1955¹, and to report to the Council".

2. The Working Party met on 29 and 30 October 1986, under the chairmanship of H. E. Ambassador Julio A. Lacarte (Uruguay).

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-eighth annual report on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended², and on the reasons for the maintenance of those restrictions on the basis of the report (document L/5981), and with the assistance of the representative of the United States, the Working Party reviewed the action taken by the Government of the United States under the Decision of 5 March 1955.

4. In his opening statement the representative of the United States presented the annual report for examination. He added that the report covered the period October 1984-September 1985. The only Section 22 Proclamation that had been issued after those discussed in the report was

¹BISD 3S/32

²Import restrictions or fees pursuant to Section 22 currently in effect include cotton of specified staple lengths, cotton waste and certain cotton products; peanuts; certain dairy products; sugar and syrups, and certain sugar-containing articles.

Proclamation 5425 of 6 January 1986. This Proclamation permitted the import of certain cheeses from Uruguay under the authority of the Trade Agreements Act of 1979. It did not affect allocations from other supplying countries.

5. The representative of the United States gave an account of other measures taken since the period covered by the report affecting Section 22 products, especially the provisions of the 1985 Food Security Act. He reported on successive reductions in the support price for milk and the introduction of a "whole-herd buy-out" programme which was aimed at inducing farmers to quit dairying for a minimum five-year period. This was, he said, proving successful in reducing herd size and milk production, and he noted that Commodity Credit Corporation removals were down by 67 per cent from the previous year. The 1985 legislation also provided for a 25 per cent acreage reduction in cotton. This was made mandatory as a condition for receiving programme benefits, and over 90 per cent of farmers were participating. Target prices and loan rates were also being reduced. Controls on peanut production, begun in 1977, were being continued, only peanuts within a quota equal to national edible use receiving full support

6. The United States representative affirmed that his Government had complied with both the letter and the spirit of the Waiver (Decision of 5 March 1955). There were problems in the agricultural sector, but these were not caused by one country and could not be solved unilaterally. That was why the United States so actively supported the new Round of Multilateral Trade Negotiations and why, together with several of the contracting parties represented on this Working Party, it had worked so hard at Punta del Este for a meaningful mandate for the agricultural negotiations. The United States had said both in private and in public that it was willing to discuss all agricultural programmes and policies in the new Round.

7. Members of the Working Party expressed a general sense of frustration at the lack of progress in removing the Waiver, which was a temporary privilege, not a right, and should not be open-ended. The production control measures taken by the United States were described as lukewarm. After thirty years the Waiver should be coming to an end. One member urged

that a date be fixed for its removal, perhaps the end of 1987. Several members joined in the hope that the Uruguay Round would provide a context in which to eliminate the Waiver, though they emphasized that they did not regard it as a subject for negotiation; the United States had given nothing in exchange for the grant of the Waiver in 1955 and other contracting parties should not be expected to pay for its removal.

8. One member of the Working Party recalled that his delegation had called for a new element to be introduced into the Working Party's terms of reference, namely an explicit provision for the Working Party to make recommendations in its report to the Council. A compromise had been reached on the basis that the existing terms of reference permitted recommendations to be made. His delegation hoped that if the Working Party got to the stage of making agreed recommendations, the United States would not block them. The importance of the Working Party making eventual recommendations was endorsed by other members. One member also said the Working Party should examine as well whether the United States could not achieve the aims of Section 22 in other ways than using the Waiver, ways which would be consistent with GATT provisions. Were the particular border measures in use at present essential to meet these policy aims? Another member repeated the continuing obligation on the United States to keep its use of the Waiver under review and to remove restrictions where possible. This review should continue during the negotiations of the Uruguay Round.

9. The representative of the United States repeated that his Government was prepared to discuss all programmes and policies in the Uruguay Round. He could not prejudge its outcome, but all must work together in ending the Waiver. One member of the Working Party queried this statement, asking how other contracting parties could help correct United States internal problems which resulted from their own policies. It depended on the United States re-orienting their policies along the right lines. In this they could be assured of the support of their partners in the Working Party.

10. In considering developments since the period covered by the report, a member of representatives queried the maintenance of United States import restrictions on certain products containing sugar, as well as the reasons

why, and the manner in which, they were originally imposed. The United States submitted that its imposition of zero quotas on dry mixtures containing sugar in Presidential Proclamation 5340 of 17 May 1985 (L/5981, page 17, refers) was emergency action within the terms of the 1955 Decision, and could therefore be taken without a prior report by the International Trade Commission. However members of the Working Party expressed the view that as the ITC had in fact subsequently reported (over a year ago) that most of these products were unlikely to interfere with domestic programmes for sugar, the United States was not justified in maintaining the restrictions. In doing so was not fulfilling the terms of the Waiver. One member said it was imperative that some evidence be shown of the need to maintain such restrictions. None had been provided. A member asked why zero quotas had been imposed for these products when the 1955 Decision required import quotas to be set at no less than 50 per cent of traditional trade. Another member questioned why the Secretary of Agriculture had thought emergency action necessary on these products when there was effectively subsidized production of other sweeteners which could have damaging effects in terms of Section 22. Furthermore, the United States had breached the letter as well as the spirit of the Waiver by failing to consult beforehand with the other contracting parties concerned. It had in fact informed them in March of action taken in January. This member proposed that the Working Party's recommendations should include the point that it would be a good sign for the Uruguay Round if the United States removed these controls as part of its enactment of the Punta del Este commitment to standstill and rollback.

11. The representative of the United States replied that zero quotas were justified because the products in question did not exist before the introduction of a sugar support programme - they had been invented to take advantage of it. Hence there was no trade in the representative period, which was taken as the period before the sugar régime was brought in. The United States had had sugar import quotas since 1934; these were under the President's Headnote Authority in the Tariff Schedule of the United States, not Section 22. Under United States legislation it was necessary to have quotas to have the minimum tariff. The quotas had been adjusted when the United States sugar programme was introduced in 1982. However, the sugar-containing mixes were not covered by these quotas, so the United States had had recourse to Section 22 in their case.

12. Members of the Working Party commented further on the answers given by the United States. One expressed surprise that a product in which there had been no previous trade was yet enough of a threat to domestic programmes to warrant import controls. He reserved his right to examine this further. Likewise the same member formally reserved his authorities' position on the question of the validity in terms of Article XI of the General Agreement of the sugar quotas imposed under Headnote authority. Another member also expressed concern about the imposition of quotas under this authority.

13. There was discussion of how far the Working Party's mandate permitted it to go in examining policies - like the United States support programme for sugar and the import quotas on sugar - which were not under Section 22 and hence not under the Waiver. Several members of the Working Party maintained that measures taken under Section 22, such as the restrictions on mixes containing sugar, could not be discussed properly without considering the programmes which were their justification. The support régime led to distortions in supply and demand which affected the use made of the Waiver; it was therefore within the Working Party's scope. Another member criticized the fact that products containing a small amount of sugar were subject to Section 22 quotas while the raw material, sugar itself, was not. There was an obvious economic link between the two, and the Working Party could not consider one without the other. He questioned whether the United States could properly invoke the Waiver on processed products without doing so on the raw material from which they were made.

14. The representative of the United States noted that in terms of the Decision of 1955 any article could be placed under quota; thus mixes containing sugar could properly be covered by the Waiver, irrespective of their state of processing. This Working Party was not, he maintained, the forum for discussing the sugar policies of the United States, or indeed the wider problems of the international sugar market, which the United States was willing to discuss elsewhere as appropriate. One member said his authorities would not move from their position that it was this Working Party's right to discuss United States internal policy affecting the products covered by this Waiver. Otherwise the Working Party could not reach conclusions as to whether the United States had applied the Waiver correctly.

15. Examining the specific product chapters of the United States report, members of the Working Party took up particular aspects of points they had made earlier concerning the Waiver in general, and also commented on the quality and presentation of information in the report. One member criticized the amalgamation of statistics for domestic consumption and exports of peanuts (L/5981, p. 9). He described this as manufacturing the appearance of a balance of supply and demand, whereas in reality nothing effective had been done. Another member joined in requesting the United States representative to provide separate figures for domestic consumption and export. The representative of the United States agreed to supply these as soon as possible. Another member commented that the statistics for cotton were not even this good. He noted that, on the data given, the trend was for increasing production and decreasing imports. The adjustment programmes described concerned the international market, not the United States domestic situation. The Waiver had not led to a better internal balance of supply and demand for cotton - it had in fact assisted United States exports.

16. The representative of the United States commented that under his country's multi-year farm legislation cotton prices had been pitched too high, leading to increases in production. However, the recent price cuts should lead to a more realistic market orientation. One member of the Working Party recalled that when the United States was still a member of the International Dairy Council it had supplied to that body information about its dairy adjustment plans and forecast their effects on production patterns. He requested the United States representative to seek similar information concerning cotton for the use of this Working Party. Another member urged that the statistical tables presented in Spec(84)9/Add.1 should be updated and extended to cover cotton and peanuts. The United States should supply the necessary information. The representative of the United States said he would endeavour to provide the information requested.

17. A member of the Working Party took up a further point of principle on which he sought a response from the United States representative as soon as possible. The 1955 Decision was taken, he said, in order to enable the United States to tackle its surplus stock problem. We saw no improvement in that situation today, as the information presented in the report on

peanuts and cotton showed. Had the whole purpose of the Waiver not changed? It was now a means of supporting surplus production destined for export. Did the United States interpret the Waiver as giving them the right to protect programmes which produced for export? The question of consistency between the aims of the Waiver and what it now in fact protected was also raised concerning dairy products. A member of the Working Party invited United States comment on the statistical tables in the report which showed production considerably in excess of that needed to assure "future needs" in the domestic market. He also queried why the United States believed dairy imports would displace domestic production (p. 12 of the report refers); was this fear of subsidized imports, or just of competition? If subsidized imports were the concern, would not the United States be adequately protected against them by the countervailing duty or antidumping provisions of the General Agreement? Members commented that for dairy products, as for others, the Waiver was now acting as an export incentive programme. They stated that the United States should try to reduce the problems resulting from its own internal policies rather than export its surpluses. The obligation to export dairy products imposed by the Food Security Act 1985 would worsen the world over-supply problem which was used to justify United States import controls. It was a vicious circle.

18. The representative of the United States said that, given the problems in world trade at present, the United States did not find it possible to replace the Waiver with other measures as suggested. He recalled his Government's recent price cuts for milk, and the other adjustment measures he had described. He conceded that the United States still had over-capacity in dairy production. It could not solve the problems of the world dairy market, but did allow some imports (e.g. cheese) and would relax controls as circumstances warranted. A member of the Working Party observed that the limited cheese quotas to the United States market were concessions which had been negotiated and paid for in previous MTNs.

19. A member of the Working Party urged the group to concentrate on the fundamentals of its mandate - to look in detail at whether or not the United States had kept to their engagements made at the time the Waiver was granted: He was not satisfied that the Working Party had been able to do

this. The United States should have come to the Working Party with some constructive ideas. He would not accept the defence that some important aspects were outside the mandate of this Working Party. The United States had developed its export capacity in dairy products instead of tackling the problem of over-production. This was not a resolution but a displacement of the problem. The United States surpluses were a result of the failure of their domestic policies. He did not see even a chance of progress in ending the Waiver in the Uruguay Round as long as these policies remained unchanged. Another member stated that the problems cited in 1955 to justify the granting of the Waiver had not been solved by it - they had in fact worsened. This undercut the United States arguments for maintaining the Waiver, which were essentially the same as in 1955.

20. Members of the Working Party asked for clarification or additional information on several aspects of the report's treatment of dairy products. They asked for the dairy tables in Spec(84)9/Add.1 to be updated by the United States, and for more information on 1986-87 production trends and CCC removals. The representative of the United States was asked to clarify the headings used in the statistical tables on dairy products in the report (pp. 15-16), which members of the Working Party found obscure. In particular one member requested more precise data on commercial dairy exports. He also asked what became of Commodity Credit Corporation (CCC) withdrawals - did any skimmed milk powder withdrawn by the CCC go to casein manufacture?

21. On the subject of sugar and products containing sugar, a member of the Working Party said that other members' remarks about the export-incentive effects of the Waiver were even more true for this sector. Since the introduction of the United States sugar programme and import fees under Section 22, there had been an increase in United States exports of refined sugar to Canada. This had come about because refiners were able to draw back the import fees on export of the refined article, and hence reduce their prices for sale into Canada. Duty drawback itself was unexceptionable, but in combination with the Section 22 fees it was having a perverse effect which did not meet the intent of the Waiver. The United States should consider the impact of this. The representative of the

United States noted these comments carefully, and replied that since the import fees on raw sugar had been removed on 1 April 1985, there should no longer be a problem. The Working Party member who had raised the issue observed that as drawback could be claimed for up to five years after import there was a continuing effect - there was also the possibility that fees could be reimposed.

22. Other members of the Working Party returned to the question of United States import controls under Section 22 on products containing sugar. They repeated that, as the Waiver had been designed to assist the United States regulate the problem of surplus production, it was legitimate for this Working Party to consider the support programmes which applied to the products involved. It was noted that the United States Government had ordered in the 1985 Food Security Act that import quotas were to be regulated so as to operate the sugar programme at no net cost to the United States. Thus imports were being made to bear the cost. However, there was no limit on substitute (e.g. corn-based) sweeteners which had already captured more than half the sweetener market. These products were, in fact, heavily subsidized through the low prices of their raw material maintained by United States Government cereals programmes. The outlook was for further pressure to reduce sugar import quotas. This could have harmful effects on developing countries. All the regulatory measures fell on the back of exporters to the United States, and because nothing was done to control substitute products, these measures were ineffective in adjusting the balance of supply and demand for sugar. Furthermore, a member of the Working Party noted, measures taken to restrict sugar imports could lead to trade distortions further downstream - for example if compensation were offered in other agricultural commodities for cuts in sugar quotas. Another member of the Working Party noted that it was becoming a feature of the United States Waiver that products protected by it were being exported under other programmes. He asked the United States to give an undertaking not to make further subsidized export sales of sugar while using the Waiver to control sugar imports. He also asked for assurances that the United States administration would continue to make its sugar programme more market-oriented and reduce excessive levels of protection.

23. Members of the Working Party expressed concern over recent indications of pressure within the United States to notify the allocation of sugar import quotas. They called for the principle of non-discrimination to be upheld.

24. The representative of the United States commented that most of these points had been covered in previous Working Parties. The sugar import quotas were not under Section 22. There was no formal price support programme for corn-based sweeteners - they had a natural price advantage, but the limit of substitution had nearly been reached. He reminded the Working Party that the President of the United States had expressed dissatisfaction with the sugar chapter of the 1985 Food Security Act and had said he would seek changes in it in the interests of a better market orientation. Likewise while sugar quotas were outside Section 22, he assured the Working Party that the Administration had fought for non-discriminatory application of them and would continue to do so. Several recent proposals in Congress for redistribution of quotas had been rejected.

25. A member of the Working Party commented that the statistics for sugar provided by the United States in the report camouflaged the state of supply/demand adjustment. He criticized them for including too much detail about local variations in production and not enough clearly identified data on the basic relationships of overall production, consumption, imports and exports. As for other products, the United States was asked to update the tables in Spec(84)9/Add.1 with respect to sugar.

26. Another member of the Working Party commented further on what he described as the United States Waiver's de facto protection for the processed food industry. It had never been imagined that the Waiver would apply to quantitative restrictions on articles processed from agricultural products which were themselves not under Section 22 quotas, such as sugar. He also asked for some guidance from the United States as to the criteria they used in judging whether to apply Waiver protection. What percentage of a Section 22 product did a processed food have to contain to merit import protection?

Or was there carte blanche for any such product to be protected - e.g. crème caramel because it contained milk? In this case it was not domestic agricultural production which was being protected, it was the food processing industry. Another member pointed out that on such reasoning cotton shirts could be brought under the Waiver. It was suggested that a possible means of defining the application of the Waiver in such cases would be for the United States to apply the "like product" test set down in Article VI of the General Agreement. A member also asked whether the United States had any statistical breakdowns of the use of Section 22 quota controlled primary products in further processing.

27.. The representative of the United States took note of these points. He stated that Section 22 existed to protect United States commodity support programmes from material interference, and it was this, not the level of processing of a product, which was the criterion for Waiver action. Members of the Working Party nonetheless observed that this was applied arbitrarily and inconsistently.

28. One member of the Working Party presented a list of questions concerning sugar and sugar-containing products, and the Waiver in general, as a summary of points he had made during the Working Party's deliberations. The questions were:

(a) Could the United States affirm that it had not acted contrary to the terms of the Waiver when introducing an import quota for products containing sugar, insofar as it did not respect the required procedure, which was to notify CONTRACTING PARTIES beforehand of the measures envisaged?

(b) Why had the United States Government imposed a zero import quota for certain products containing sugar while Section 22 stated such quotas were not to be less than 50 per cent of traditional trade? If the answer was that there was no traditional trade, how did this present a threat to the sugar programme in terms of Section 22, especially since most professional opinion (e.g. the ITC report) had shown this not to be the case?

(c) In the Decision of 5 March 1955 CONTRACTING PARTIES noted that emergency measures could be taken, but that maintenance of these was subject to the decision of the President as soon as the ITC had reported. How was it that, more than a year after the ITC had reported that there was on the whole no interference with the sugar programme, the United States had not moved to end these measures?

(d) The United States representative had stated that sugar quotas were not under Section 22. Did the United States believe it was in accordance with the Waiver to bring in measures under Section 22 for products containing sugar when the quantitative import restrictions on sugar itself were not under this Section?

(e) If sugar quotas were not under Section 22, what was the validity of these quantitative restrictions under the General Agreement? The Headnote Authority was not a GATT dispensation. It had been included in Schedule 20 in 1967 following the Kennedy Round, but this was only a record of tariff concessions, not approval or a recognition that these were well founded in GATT. In any case the Headnote only applied to Article II of the General Agreement - it could not set aside Article XI. The United States measures would not qualify for any of the exceptions permitted to this latter article.

(f) Was it not United States policy on cereals, and hence artificial sweeteners, which made the United States sugar programme ineffective, especially in balancing supply and demand?

(g) Did the United States agree that resolving the problem of surpluses for Section 22 products was the major reason for the Waiver's establishment?