

TARIFFS AND TRADE

UNITED STATES IMPORT RESTRICTIONS
ON AGRICULTURAL PRODUCTS

Draft Report of the Working Party

Revision

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".

When informing the Council of the Working Party's terms of reference the Chairman said that he understood these would permit the Working Party to make appropriate recommendations. The Council took note of this statement (C/M/201).

2. The Working Party met on 29 and 30 October 1986 and 5 March, 3 April and 30 April 1987, under the chairmanship of H.E. Ambassador Julio A. Lacarte (Uruguay), with Mr. Manuel Olarreaga (Uruguay) acting as alternate chairman.

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. In response to requests by members of the Working Party at the first meeting, the representative of the United States provided additional information which was issued as document L/5981/Add.1.

¹ BISD 3S/32

² Import 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.

4. In presenting his Government's report, the United States representative stated that the United States had complied with the letter the spirit of the waiver, and also gave an account of other measures taken since the period covered by the report (October 1984-September 1985) affecting Section 22 products, especially the provisions of the 1985 Food Security Act. Members of the Working Party raised a number of other factual points of information or clarification which were answered by the representative of the United States. He also answered a number of questions concerning quota allocations and programme costs.

5. The substantive concerns of members of the Working Party fell into three broad categories: the effects of the United States waiver, which were widely judged to be at variance with the purposes for which CONTRACTING PARTIES had taken the Decision of 5 March 1955; whether or not the United States had properly fulfilled the terms of that Decision (most members were of the opinion that they had not) and the desirability of ending the waiver within a specified period, such as the duration of the Uruguay Round.

6. In the Working Party's examination of the chapters of the United States Report dealing with the specific product groups covered by the waiver, a number of widely-held views were emphasized. Members of the Working Party considered that the use of the waiver had not resulted in a better balance of supply and demand for the products concerned or resolved the problem of surpluses which had been its main justification in 1955. Indeed it tended to protect surplus production, diminishing the scope for imports and acting, in effect, as an export incentive programme. This was judged to be particularly marked in the case of sugar, where the indirect effect of the introduction of import fees (refundable on export in refined form) under Section 22 had been a dramatic increase in United States exports of refined sugar to Canada, and dairy products, where the recently announced Dairy Export Incentive Programme could seriously undermine the world market. The problems cited in 1955 to justify the granting of the waiver had not been solved - they had in fact worsened, and new problems

had arisen. These problems resulted from distortions in the United States' own support programmes. The waiver had been intended to provide a temporary respite so the United States could get its house in order. This had not been done.

7. The United States representative said the present effect of Section 22 was that imports were prevented from entering the United States at levels which would materially interfere with certain programmes administered by the United States Department of Agriculture. The existence of exportable surpluses of any commodity at any time would be due to a number of circumstances, possibly including United States Department of Agriculture programmes instituted to implement legislation enacted by the Congress; but Section 22 itself would not be the cause of such surpluses.

8. Members noted that the United States Government had ordered in the 1985 Food Security Act that sugar 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 (corn-based) sweeteners which had already captured more than half the sweetener market. A member quoted from a United States Department of Agriculture publication to show that the combined effect of United States cereal and sugar support policies was a de facto subsidy to the production and use of these substitute sweeteners. The outlook was for further pressure to reduce sugar import quotas and possibly to modify their allocation. 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.

9. The representative of the United States pointed out that the sugar import quotas were not under Section 22. 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.

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. Corn-based high-fructose sweeteners had no government support programme but a natural price advantage; however, the limit of substitution had nearly been reached. Even in the absence of competition from these products there would still be a need to protect the United States sugar programme.

10. 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. One member said his authorities would not move 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. As the waiver had been designed to assist the United States to regulate the problem of surplus production, it was legitimate for this Working Party to consider the support programmes which applied to the products involved. Paragraph 6 of the Decision of 5 March 1955 mandated the Working Party to examine any action taken under the waiver, not just the United States Report, which was simply a tool for the Working Party to use in its work.

11. Members also 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. They questioned whether the United States could properly invoke the waiver on processed products in this way - it amounted to protection for the processed foods industry, which was not intended by the Decision of 5 March 1955.

12. The representative of the United States noted that in terms of the Decision any article could be placed under quota, irrespective of its state of processing. 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. Several members of the Working Party nonetheless observed that this was applied arbitrarily and inconsistently. They raised the further point that, if sugar quotas were not under Section 22, what was the validity of these quantitative restrictions in terms of the General Agreement? There was an important question to be answered as to whether they had any GATT cover. The representative of the United States repeated that he was not prepared to discuss import restrictions maintained under other authorities than Section 22 - e.g., the sugar quotas. There had been GATT consultations in 1982 with interested contracting parties concerning the relevant TSUS headnote, and he did not intend to go into the GATT legality question in this forum.

13. Members of the Working Party other than the United States maintained that, overall, the continued application of the waiver had done little to facilitate the long-term adjustment of the United States agricultural sectors concerned to international competition. It had allowed the maintenance of agricultural programmes which had led to recurring serious imbalances in supply and demand, with the creation of stocks in excess of United States requirements and pressure for subsidized exports, and had been among the more important factors which had prevented the development of more operationally effective GATT rules and disciplines concerning agriculture.

14. These members also concluded that the United States had not entirely fulfilled its obligations under the Decision of 5 March 1955. They saw this most clearly in the case of the import restrictions on certain products containing sugar which the United States had imposed under Section 22 and continued to enforce. Members criticized the continuation of these restrictions, as well as the reasons why, and the manner in which,

they were originally imposed. The United States had submitted that its imposition of zero quotas on dry mixtures containing sugar in Presidential Proclamation 5294 of 28 January 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 or the prior notification of CONTRACTING PARTIES which the Decision normally required. However, other 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 it was not fulfilling the terms of the waiver. Likewise it had only notified its actions after three months, and that under pressure from contracting parties. Members of the Working Party questioned why the Secretary of Agriculture had thought emergency action necessary on these products when there was, in effect, subsidized production of other sweeteners which could have damaging effects in terms of Section 22, and why the United States Government had imposed a zero import quota for these products while Section 22 stated that 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?

15. The representative of the United States affirmed that his Government had not contravened the terms of the waiver. The actions taken under the emergency procedures of Section 22 were notified as soon as possible. The quota could be set at zero because during the representative period (1975-81), which was the last period before sugar restrictions were tightened, there were zero imports of these mixes containing sugar. The 1975-81 representative period had been chosen because it was the only period during which the United States sugar market had been relatively open. During that period there was no incentive to import mixtures designed to circumvent controls. This incentive had come in with the

reduction of sugar quotas in 1982. After emergency quotas were imposed on imports of certain sugar-containing products in June 1983, imports of other articles not subject to quotas rose significantly. Without the emergency quotas imposed on these articles in January 1985 imports of sugar in products would have continued to rise, thus displacing the use of domestic sugar and undermining the domestic programme.

16. The representative of the United States stated that there was no legal time limit as to when the President must take action once the International Trade Commission had completed its investigation and report. A member of the Working Party drew his attention to paragraph 5 of the Decision of 5 March 1955, which stated that "the United States will remove or relax each restriction permitted under this waiver as soon as it finds that the circumstances requiring such restriction no longer exist or have changed so as no longer to require its imposition in its existing form". Therefore, since the ITC report showed that the circumstances did not require restrictions, the President had an obligation either to remove them or properly justify their continuance.

17. The United States representative replied that the President was not required to adopt the Commission's findings, which in any case were not unanimous. It was only part of the information he considered. The United States had clearly shown, by the adjustments made to the quotas in May 1985 (GATT document L/5787/Add.1), that it had met its obligations under the waiver by reviewing the circumstances and the restrictions and adjusting them as it could. A member of the Working Party urged that if the President was basing his maintenance of the restrictions on evidence other than the ITC report he should say so, to be consistent with the waiver.

18. The representative of the United States repeated that his Government felt it had complied with both the letter and the spirit of the waiver, in keeping to the engagements it had made, which were as follows:

- To review, upon the request of any contracting party, whether a change in circumstances would require the termination or modification of any existing import restrictions; if so, to institute a Section 22 investigation;
- To notify the CONTRACTING PARTIES whenever a Section 22 investigation has been instituted and to give any contracting party which considered its interests affected an opportunity for representations and consultation;
- To consider the representations of other governments, including representations concerning possible quota quantities other than those in place or under investigation;
- To notify the CONTRACTING PARTIES whenever a Section 22 Presidential decision has been made, including the particulars of whatever import restrictions may have been imposed and the reasons for them;
- To remove or relax import restrictions when it found that changed circumstances make doing so possible;
- To report to the CONTRACTING PARTIES changes in Section 22 import restrictions, Section 22 restrictions currently in effect, reasons why those restrictions were applied, and steps taken with a view to a solution of the problem of surpluses of agricultural commodities.

19. Other members of the Working Party expressed strong dissatisfaction with the answers given by the United States to their questions. The United States had given no arguments in response to the points members of the Working party had raised, simply assertions. The United States had not lived up to the terms of the Decision of 5 March 1955 and should end the measures, such as those on mixtures containing sugar, which other members of the Working Party found to be contrary to the letter and spirit of that Decision.

20. The Working Party discussed at length the question of when CONTRACTING PARTIES might be able to end the waiver. Members expressed a general sense of frustration at the lack of progress thus far in removing it. After more than thirty years, they felt, this Working Party should be able to recommend, with the agreement of the United States, a time-frame within which the waiver would end. The United States had said on several occasions and in several fora that the waiver was on the table in the Uruguay Round. That was welcome if it signaled the intention of the United States to allow the termination of the waiver by the end of the Uruguay Round at the latest. An important element of the MTN would be the United States willingness to roll back its quantitative restrictions on agricultural products whether under cover of the Section 22 waiver or not. This of course also applied to a number of other major agricultural importers. This did not mean that such measures, which were inconsistent with the whole thrust of the GATT, were potential negotiating coin. 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. In fact in several members' view the United States restrictions fell within at least the spirit of the Punta del Este rollback commitment. 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.

21. The representative of the United States repeated that his Government was prepared to discuss all programmes and policies in the Uruguay Round. The problems of world agriculture were not caused by one country alone, and would not be solved by one country - in this case by the United States relinquishing the waiver at this time. They were prepared to enter into a comprehensive process in the MTN that would lead to a situation where the waiver was not needed, and they felt that the appropriate forum to be

discussing this was in the multilateral negotiations. Questions raised by members of the Working Party which referred to matters other than import restrictions under Section 22, e.g. the provisions of the Food Security Act concerning the export of dairy products, sugar quotas or the Punta del Este standstill/rollback commitments, were viewed by his authorities as not germane to the mandate of the Working Party.

22. To the question whether the necessary protection for United States agricultural price support programmes could be provided without the waiver, in a manner consistent with GATT articles, he said that Section 22 existed to protect farm programmes. Market circumstances might change or programmes might change in ways that would make such protection unnecessary in individual instances; but the need for a mechanism would remain. Insofar as the operation of that mechanism could lead to a possible conflict with United States GATT obligations, the need for the waiver would similarly remain. In reply to the point made by several members of the Working Party of an ending date for the waiver, he recalled that this issue was considered when the waiver was granted. In the view of the United States, a waiver limited in time would not provide the necessary assurance that an agreement entered into by the United States would not be applied in a manner inconsistent with the requirements of Section 22.

23. A member of the Working Party noted that the waiver had been granted without a time limit by the CONTRACTING PARTIES in the context of the undertaking by the United States that it was its intention to continue to seek a solution to the problem of surpluses of agricultural commodities. This point must be central to the Working Party's deliberations. He appreciated the problem involved with regard to conflict between United States legislation and the GATT, but there was some obligation upon contracting parties to bring their legislation into line with GATT. By saying that the waiver was on the table in the Uruguay Round the United States recognized implicitly that this was possible.

24. A member of the Working Party recalled that on various occasions United States representatives had said the reason for the waiver was so they could participate fully in GATT. Therefore, if there had been no waiver would they have had to withdraw from GATT? Furthermore, did the problem presented by the waiver not in fact go beyond agriculture, to a legislative problem in the United States, the fact that they had never ratified the General Agreement? Because the United States had not ratified it, Congress could pass domestic legislation which infringed the General Agreement, and hence obliged the United States to seek a waiver from certain of its provisions in order to be able to participate in GATT. He suggested this was a matter which might be taken up in the Negotiating Group on GATT Articles. The representative of the United States agreed that there would be a conflict between Section 22 and the General Agreement if there was no waiver.

25. One member of the Working Party raised the question of symmetry between the United States import restrictions under the waiver and the GATT panel case it was currently pursuing concerning the member's own import restrictions on some of the same products. He put a number of questions on this subject to the United States representative, in particular whether the situation which the United States claimed justified the waiver was peculiar to that country - or did it stem from the specific characteristics of agriculture? In reply the United States representative said that his Government did not subscribe to the "specific characteristics of agriculture" argument. The waiver arose from the situation in the United States in 1955 and since. It protected programmes, not agriculture or its "specific characteristics".

26. The Working Party discussed, without reaching a consensus, whether it should make recommendations to the Council concerning the present use and future treatment of the United States waiver. There was a widespread feeling that after 32 years it was time to make concrete recommendations. This would be the first Working Party report on the waiver to come before the Council in the Uruguay Round, and members of the Working Party saw the United States restrictions as one of the keys to the outcome for

agricultural trade in the MTN. Several members emphasized the desirability of recommending a time-frame for the treatment of the waiver in the Uruguay Round. Members recalled the discussions in the Council in 1986 over the terms of reference for the Working Party, noting that then - as now - a number of contracting parties had seen little value in yet another Working Party on this subject unless it produced recommendations. It was in this spirit that several members of the Working Party had agreed to the terms of reference, on the understanding, expressed by the Council Chairman, that they did permit the Working Party to make appropriate recommendations. The United States delegation had assented to that understanding, these members maintained.

27. Most members agreed that the Working Party should have been able to conclude, on the basis of the examination of the Report on the waiver (L/5981 and Add.1), that the continued application by the United States authorities of the waiver granted by CONTRACTING PARTIES in 1955 from certain provisions of the General Agreement:

(a) had done little to facilitate long-term adjustment of affected United States agricultural industries to international competition in line with the undertaking given by the United States at the time the waiver was granted;

(b) had, over the life of the waiver, allowed the maintenance of agricultural programmes which had led to recurring serious imbalances in supply and demand and thus the creation of stocks well in excess of United States requirements and pressure for periodic subsidized exports;

(c) been among the more important factors which had prevented the development of operationally effective GATT rules and disciplines in the field of agriculture generally.

28. These members stated that if these conclusions had been adopted, then in view of the firm and repeated assurances by representatives of the United States Administration that its agricultural authorities were prepared to consider fundamental changes to policies related to the waiver, the Working Party would have recommended that the United States might undertake the review, foreshadowed in the statement to CONTRACTING PARTIES in 1955, of the circumstances that had led to the granting of the waiver with a view to terminating or modifying current restrictions. Such a review would be in line with the spirit of the Punta del Este Declaration on standstill and rollback.

29. The representative of the United States said that his authorities would not accept agreed conclusions or recommendations. He said that the waiver required only that the contracting parties review a United States report showing what Section 22 restrictions were in effect, how they had been changed, why restrictions continued to be applied, and what the United States was doing to resolve the problem of surpluses of agricultural commodities. To change that requirement to involve some kind of judgment of whether the Working Party members thought that the United States was doing what it should do to solve the surplus problem would completely alter the nature of the waiver. In effect, it would be a new waiver. The United States originally sought the waiver as assurance to the Congress that GATT obligations would not result in a conflict with United States law. A waiver altered in the manner proposed would not provide such assurance. The United States had made its position clear as to how it proposed to negotiate agricultural support measures and import restrictions in the Uruguay Round. Clearly the bodies set up for the Uruguay Round negotiations were the proper forum for this kind of discussion, and not the report of a Working Party established to review the actions of one government.

30. Other members of the Working Party were disturbed by the statement of the United States which they saw as inconsistent with the United States position when terms of reference were discussed. They could understand the United States opposing specific points in a set of recommendations, but a priori opposition to making any at all vitiated the purpose of the Working Party. Members took the United States position as showing that a broad political view had not yet been injected into this question - it needed to be looked at in the light of wider United States trade policy responsibilities and aims. The important point was that this Working Party, welcoming the United States Government's firm and repeated assurances that the waiver was "on the table" in the Uruguay Round, should urge that the United States undertake the review, foreshadowed in its statement to the CONTRACTING PARTIES in 1955, of the circumstances that led to the granting of the waiver, with a view to terminating or modifying current restrictions. [These members also saw it as important that] [The Working Party agreed that] the present Report should [not excluding other options] be transmitted to the Negotiating Group on Agriculture for its consideration and considered by the CONTRACTING PARTIES with a view to determining recommendations to the United States Government on appropriate action which might obviate continuing indefinite need for the waiver.