Extracts from the Report of the CONTRACTING PARTIES on

THE USE OF QUANTITATIVE RESTRICTIONS FOR
PROTECTIVE AND OTHER COMMERCIAL PURPOSES

This report was adopted by the CONTRACTING PARTIES at their Fourth Session in April 1950, and was circulated in printed form in July 1950. In view of the fact that it is relevant to matters currently under discussion and that printed copies are no longer available, it has been considered useful to reproduce the relevant part to facilitate reference.

The first part of the report which deals with Export Restrictions is not reproduced as it is of limited interest at present.

I. QUANTITATIVE EXPORT RESTRICTIONS

(not reproduced)

II. QUANTITATIVE IMPORT RESTRICTIONS

17. In discussing the application of the Agreement to import restrictions applied for protective, promotional or other commercial purposes, the CONTRACTING PARTIES devoted their main attention to two points:

(a) The fact that balance-of-payments restrictions almost inevitably have the incidental effect of protecting those domestic industries which produce the types of goods subject to restriction and of stimulating the development of those industries. Any consequent development of uneconomic production could interfere with the process of removing balance-of-payments restrictions as and when the justification for such restrictions under the Agreement disappears.

(b) The evidence (derived inter alia in the course of bilateral trade negotiations) of (i) the administration of import restrictions in some countries in a manner calculated to afford undue protection, beyond the normal protection accorded by tariffs or subsidies, to domestic production, and (ii) pressure exerted by certain interests in some countries on their governments to administer import restrictions in such a manner.

18. As regards (a) the CONTRACTING PARTIES examined the methods by which countries applying balance-of-payments restrictions can seek to minimize the undesirable incidental protective effects resulting from such restrictions. A number of methods are employed by different countries and others
were suggested in the course of the discussions. The CONTRACTING PARTIES did not attempt to determine how far the provisions of the Agreement might imply any degree of obligation upon contracting parties to adopt particular techniques, but took note of the provisions of Article XII:2(b) that contracting parties applying restrictions under paragraph 2(a) shall progressively relax them as conditions improve, maintaining them only to the extent that the conditions specified in that paragraph still justify their application, and shall eliminate them when conditions would no longer justify their institution or maintenance under that paragraph. The CONTRACTING PARTIES commend these methods to the individual contracting parties as useful methods which countries might where possible employ in their own interests and in the spirit of the Agreement in order to stimulate efficiency on the part of their domestic industries and to prepare them for the time when import restrictions can be relaxed or removed.

19. Accordingly, the CONTRACTING PARTIES noted the following methods whereby the undesirable incidental protective effects of balance-of-payments restrictions can be minimized:

(a) Avoiding encouragement of investment in enterprises which could not survive without this type of protection beyond the period in which quantitative restrictions may be legitimately maintained;

(b) Finding frequent opportunities to impress upon producers who are protected by balance-of-payments restrictions the fact that these restrictions are not permanent and will not be maintained beyond the period of balance-of-payments difficulties;

(c) Administering balance-of-payments restrictions on a flexible basis and adjusting them to changing circumstances, thereby impressing upon the protected industries the impermanent character of the protection afforded by the restrictions;

(d) Allowing the importation of "token" amounts of products, which otherwise would be excluded on balance-of-payments grounds, in order to expose domestic producers of like commodities to at least some foreign competition and to keep such producers constantly aware of the need ultimately to be prepared to meet foreign competition;

(e) Avoiding, as far as balance-of-payments and technical considerations permit, the allocation of quotas among supplying countries in favour of general licences unrestricted in amount or unallocated quotas applying non-discriminatorily to as many countries as possible; and

(f) Avoiding as far as possible narrow classifications and restrictive definitions of products eligible to enter under any given quota.
20. The general considerations relating to export restrictions set out in paragraph 3 apply similarly to the discussion of import restrictions in the following three paragraphs.¹

21. As regards paragraph 17(b), the CONTRACTING PARTIES noted that there was evidence of a number of types of misuse of import restrictions, in particular:

(i) The maintenance by a country of balance-of-payments restrictions, which give priority to imports of particular products upon the basis of the competitiveness or non-competitiveness of such imports with a domestic industry, or which favour particular sources of supply upon a similar basis, in a manner inconsistent with the provisions of Articles XII to XIV and Annex J. Such type of misuse, for example, might take the form of total prohibitions on the import of products competing with domestic products, or of quotas which are unreasonably small having regard to the exchange availability of the country concerned, and to other relevant factors.

(ii) The imposition by a country of administrative obstacles to the full utilization of balance-of-payments import quotas, e.g., by delaying the issuance of licences against such quotas or by establishing licence priorities for certain imports on the basis of the competitiveness or non-competitiveness of such

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¹ Paragraph 3 reads as follows:

3. In the discussions, there emerged three important general points:

(a) In the case of each of these four practices, it is assumed for the purpose of this discussion that the practice is maintained for the purposes described and is not justified on other grounds for which the Agreement specifically permits export restrictions to be used.

(b) During the period of provisional application of the Agreement, contracting parties may be entitled under paragraph 1 of the Protocol of Provisional Application or of the Annecy Protocol of Accession (which requires contracting parties to apply Part II of the Agreement "to the fullest extent not inconsistent with existing legislation") to maintain certain export restrictions required by existing legislation which are not consistent with Part II of the Agreement.

(c) Nothing in the Agreement confers rights on a non-contracting party, but it is recognized that relations between a contracting party and a non-contracting party may, in certain circumstances, affect the contractual obligations between contracting parties.
imports with the products of domestic industry, in a manner inconsistent with the provisions of Articles XII to XIV and Annex J. In this connexion, the CONTRACTING PARTIES took note of Article XIII:2(d), which provides that "no conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate".

(iii) Quantitative restrictions on imports imposed not on balance-of-payments grounds but as a means of retaliation against a country which has refused to conclude a bilateral trade agreement with the country concerned.

22. It appeared to the CONTRACTING PARTIES that in so far as these types of practice were in fact carried on for the purposes indicated above and were not justified under the provisions of Articles XII to XIV relating to the use of import restrictions to protect the balance of payments or under other provisions of the Agreement specifically permitting the use of import restrictions, they were inconsistent with the provisions of the Agreement, and such misuse of import restrictions might appropriately provide a basis for recourse to the procedures laid down in the Agreement for the settlement of disputes. Moreover, it was not particularly relevant to the Agreement whether such practices were determined unilaterally or in the course of bilateral negotiations.

23. The CONTRACTING PARTIES agreed that there did not appear to be any provision in the Agreement which would permit the imposition by a contracting party of quantitative restrictions on imports of a particular product for the purpose of avoiding an increase in the cost to the importing country of maintaining a price support programme for the like product of domestic origin and not for other purposes provided for in the Agreement.

III. CONCLUSIONS AND RECOMMENDATIONS

24. The discussion led the CONTRACTING PARTIES to conclude that their general review of the problem had served a useful purpose and that further progress could be expected in future from consideration of such actual cases as may be brought before the CONTRACTING PARTIES in accordance with procedures laid down in the Agreement.

25. The CONTRACTING PARTIES recommended that contracting parties review their present systems of quantitative import and export restrictions in the light of the conclusions of this report. And they recognized that these conclusions would be of the greatest utility if those responsible for the imposition or the administration of quantitative restrictions and those engaged in the negotiation of trade agreements were made thoroughly familiar with them and with the necessity for administering such restrictions and negotiating such agreements in a manner consistent with the provisions of the Agreement. They recommended that contracting parties take all necessary measures to these ends.