FORMALITIES AND PROCEDURES IN THE USE OF QUANTITATIVE RESTRICTIONS

Fellowship Programme Reference Notes

It is regretted that time has not permitted a talk to be given on the two documents "Standard Practices for Import and Export Restrictions and Exchange Controls" and "The Use of Quantitative Restrictions for Protective and Other Commercial Purposes", of which copies have been circulated and which are referred to in the "Curriculum of Studies".

The following notes, it is hoped, may be of use to the fellows in studying those documents.
In 1950 it became increasingly clear that restrictions for balance-of-payments reasons were likely to continue to be applied for some time and that, necessary as they might be, they presented great problems to the trading community, problems which were sometimes intensified by the unnecessarily onerous manner in which the restrictions were applied. After examining the problems the CONTRACTING PARTIES adopted a Code of "Standard Practices for Import and Export Restrictions and Exchange Controls" which were aimed at reducing to a minimum uncertainties and hardships to merchants resulting from the operation of controls and restrictions. The Code contains nine rules, each of which reflects certain concrete problems faced by the trading community at that time.

The purposes and the value of each of the rules may be briefly discussed:

- A lack of co-ordination between the exchange and trade control authorities in a country may create unnecessary difficulties for importers and exporters because of the duplication of procedures and, more importantly, inconsistencies in treatment and uncertainty. Section 1 of the Code recommends that the grant of an import licence should imply the obtainability of the necessary foreign exchange and that the operation of the two controls, if both exist, should be co-ordinated. Since the adoption of the Code substantial improvements have been witnessed in this field. Most countries have co-ordinated their import and exchange controls. In many cases (e.g., the Federal Republic of Germany, India, Italy, the United Kingdom), foreign exchange is granted automatically for imports covered by import licences as well as those which are free from restriction.

- When restrictions are intensified or new restrictions imposed importers and exporters may be faced with hardships if they could not be certain that goods which have already been shipped or paid for before the governmental action is taken will be admitted on arrival. Non-admission of goods under confirmed order could also be damaging to the interests of the trading community. Consequently, the Code provides in Sections 2 and 3 that goods which have been en route or paid for at the time of the introduction of new or intensified restrictions should not be affected and that special consideration should be given to goods which have been covered by confirmed order and which are not marketable elsewhere without appreciable loss. In the light of this recommendation countries which intensified their restrictions in recent years have, either initially or upon representations made by other countries in GATT consultations, made provisions for the admission of shipments of the described nature. Special provisions were made to these ends in the intensification of restrictions by Australia in 1956, by France in 1957 and by New Zealand in 1958.
Section 4 of the Code recommends expeditiousness in the issue of trade and exchange licences. It is also recommended that a licence should have sufficient validity and should not be withdrawn except in special circumstances and that their validity should be extendable in justifiable cases. Since the adoption of the Code the general tendency has been to issue licences valid for as long a period as possible. The withdrawal of existing licences has been resorted to only in cases where a very critical balance-of-payments situation justified such drastic action.

Section 5 of the Code recommends that the period within which applications for licences for imports under quotas must be made should be sufficient to allow for the exchange of communications with foreign suppliers. In supplement of this rule, the view has been expressed by exporting countries in GATT consultations that countries applying restrictions should ensure the maximum stability in import quotas; downward revision of quotas should be avoided as much as possible so that importers could be reasonably sure of the quotas they will be entitled to in future licensing periods. In this way, traders are enabled to conclude transactions with greater certainty and on a longer-term basis.

It has sometimes been complained that the method of apportioning import quotas among established importers in the light of their past performance has the effect of enhancing the monopolistic strength of established importers to the detriment of the economy as a whole. The Code therefore recommends (Section 6) that where quotas are allotted in this manner the control authorities should give due consideration to granting quotas to qualified and financially responsible newcomers. The technique of allocating licences among established importers has been in use in a number of countries, including most countries in the sterling area. In many of them (e.g., India, Pakistan, the United Kingdom) provisions have been made for the issue of licences to "newcomers".

The Code also recommends that a reliable communication indicating the number of an import licence should be regarded as sufficient evidence to enable the issue of consular invoices if such evidence is required. In recent years the CONTRACTING PARTIES have exerted themselves in the simplification of consular formalities and only in isolated cases has there remained the requirement that copies of import licences be shown to consular authorities before shipping documents could be legalized.

It has been found that too rigid an interpretation given by customs officials of the quantity or value listed in import licences may cause unnecessary difficulties to importers. The Code recommends that customs officials should have the discretion to permit reasonable variations in appropriate circumstances.
The last Section of the Code aims at assuring payments for goods already imported or licenced for importation, which as a matter of equity should take precedence over new orders.

Insofar as import restrictions are applied for balance-of-payments reasons, it is undesirable that they should exert incidental protective effects upon the domestic industry so as to encourage its expansion which is not in the long-run interest of the country concerned. The CONTRACTING PARTIES have consistently urged governments applying restrictions for balance-of-payments reasons to avoid incidental protective effects. In 1950 they drew up a report on "The Use of Quantitative Restrictions for Protective and Other Commercial Purposes" in which they recommended certain specific measures which, in their view, would be useful for this purpose. These recommendations, which are contained in paragraph 19 of that Report, include the avoidance of encouragement of investment in uneconomic enterprises, administering restrictions in a flexible manner, allowing the importation of token quantities of otherwise restricted products, etc.

Particular attention has been drawn in discussions in GATT to the question of "token imports", a measure which was specially recommended in the report referred to in the preceding paragraph, in supplement of the provision of Article XIII:3(c)(ii) and Article XVIII:10 of GATT. Contracting parties to GATT applying import restrictions, in the light of this requirement, have generally avoided total prohibition of particular imports. An extensive token import scheme is in force, inter alia, in the United Kingdom. In countries where no such formal scheme exists licences may be issued for this purpose, for the import of items which were otherwise not permitted. This has proved of great value to exporters and importers in keeping the traditional channels of trade alive and in providing stimulating competition for industries benefitting from the protective effect of restrictions.