CRITERIA GOVERNING THE USE OF DISCRIMINATION IN THE APPLICATION OF IMPORT RESTRICTIONS

Fellowship Programme Reference Notes

1. When contracting parties to GATT are permitted to impose quantitative restrictions for balance-of-payments reasons under Article XII, the general rule, as set out in paragraph 1 of Article XIII, requires that such restrictions be administered without discrimination among the supplying countries. But, when the Agreement was drafted the world was faced with the abnormal conditions arising from the war, and exceptions to that rule were considered unavoidable. During the so-called transitional period, currencies throughout the world were expected to be inconvertible. Currencies earned by a country from its exports to another country would often not be usable for payments for imports from a third country. In such a situation account had to be taken not only of the total earnings or monetary reserves of a country, but the actual currency composition of such earnings or reserves. When currencies were inconvertible, enforcement of the rule of non-discrimination, instead of causing trade to expand, might force it to contract. Consequently countries must be permitted to apply discrimination in the administration of their import restrictions.

2. Such discrimination of course has its dangers. It may be employed not to preserve financial stability or to secure the highest level of imports consistent with the status of a country's holdings of foreign currencies, but to obtain a preferential market for a country's trade or for other commercial reasons. Discrimination, though justified by financial necessity may thus divert trade from normal channels, establish vested interests and encourage bilateralism. For these reasons certain criteria are set forth in Article XIV for the application of discrimination, in order to ensure that such discrimination would be limited in scope and in duration and that it would not be employed to obstruct the revival of multilateralism.

3. The unrevised text of Article XIV contains several different sets of criteria to be opted by contracting parties applying restrictions. The revised text of Article XIV contains only one major set of criteria (paragraph 1) together with certain rules of minor importance (paragraphs 2 and 3).

4. For most countries the scope of discrimination permissible in the administration of quantitative restrictions will be as defined in paragraph 1 of Article XIV. This provision is closely related to the countries' exchange restrictions applied under the Articles of Agreement of the International Monetary Fund. Under that Agreement a country may apply exchange restrictions either under the so-called transitional period provisions of Article XIV, or by

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approval of the Fund under Article VIII. Exchange restrictions applied under either of these restrictions are subject to constant scrutiny by the Fund, and it is the intention of the drafters of GATT that advantage can be taken of this situation; the degree to which discrimination is permitted in the application of exchange restrictions under the Fund Agreement can be used as a gauge of the limit to which discrimination should be permitted in the application of quantitative restrictions under GATT. That briefly is the reason behind the present text of paragraph 1 of Article XIV.

5. Paragraphs 2 and 3 provide for certain rules permitting the use of discrimination which are not related to the financial situation of a country. These provisions are self-explanatory, but it might be noted that the rule of paragraph 3 generally applies to the trade relations between the metropolitan territory of a country and its dependent territories. As noted above, the rules of paragraphs 2 and 3, are of minor importance, compared with that embodied in paragraph 1.

6. For the time being, contracting parties are still governed by the unrevised text of Article XIV. The amendments to this article will not come into force until certain conditions in the international financial field are realized. These conditions are provided for in section 8(c) of the Protocol Amending the Preamble and Parts II and III of the General Agreement.