UNITED STATES TEMPORARY IMPORT SURCHARGE


I. INTRODUCTION

1. In accordance with its terms of reference (L/3569) the Working Party has examined the United States temporary import surcharge notified in L/3567 and discussed in the Council on 24-25 August 1971 (C/M/71). For this purpose, as well as for the carrying out of certain other tasks assigned to it, the Working Party met from 6 to 9 September under the Chairmanship of Mr. K.A. Sahlgren (Finland). The meeting was attended by all of the members of the Working Party (as listed in L/3569) as well as a large number of observers among other contracting parties and from other intergovernmental organizations, which attested to the general interest in, and importance attached to, the matter under examination.

2. In addition to the documents mentioned in paragraph 1 above, the Working Party had before it the texts of the United States presidential proclamation and executive orders implementing the import surcharge and certain statistical information supplied by the United States, as well as two papers supplied by the International Monetary Fund as indicated in paragraph 4 below.

II. CONSULTATIONS WITH THE INTERNATIONAL MONETARY FUND

3. Pursuant to the provisions of Article XV of the General Agreement, the International Monetary Fund had been invited to consult with the Working Party on the balance-of-payments and monetary reserve aspects of the matters under consideration. The representative of the Fund made the following statement:
"The Fund invites the attention of the CONTRACTING PARTIES to the background papers dated December 21, 1970 and August 25, 1971 which it has transmitted for their information and use. It will be noted from the second of these papers that on August 15, 1971, the United States announced measures aimed at increasing employment, improving price performance, and strengthening the balance of payments position. One of the measures was the imposition of a temporary surcharge, generally at a rate of 10 per cent, on dutiable imports not subject to quantitative limitations imposed under statute by the United States.

"In view of the strains on the international reserve position and the underlying balance of payments situation, the United States authorities have suspended temporarily the full convertibility of the U.S. dollar into gold or other reserve assets, while simultaneously imposing an import surcharge. The U.S. authorities have said that some changes in exchange parities may be anticipated and that the temporary import surcharge is intended to provide relatively quick benefits to the trade balance under the circumstances which led to its use have been adequately dealt with.

"Persistent balance of payments pressures have brought the reserve assets of the United States to a low level and its reserve liabilities to a very high level. These pressures have been particularly strong in 1970 and 1971. Therefore, in the absence of other appropriate action and in the present circumstances, the import surcharge can be regarded as being within the bounds of what is necessary to stop a serious deterioration in the United States balance of payments position. However, a corrective adjustment in the pattern of exchange rates would be a preferred means for achieving a better balance in international payments. The Fund will remain in close consultation with the authorities of the United States and the other members with a view to the prompt achievement of a viable structure of exchange rates on the basis of parities established and maintained in accordance with the Articles of Agreement. The import surcharge can be justified as a means of improving the U.S. balance of payments only until it is possible to supplant it by effective action in the exchange rate field."

4. In response to a question, the Fund representative stated that the Fund had no suggestion to make as to any "alternative measures" that the United States might take at present. In clarification of the above statement, the Fund representative considered that the judgment as to whether "effective action in the exchange field" had been taken should be a Fund judgment. Major efforts
were under way for the solution of the problem under discussion as soon as possible. In exercising judgment on the balance-of-payments position of any country, it was normal practice for the Fund to take into account future prospects. The Fund would not confine itself to the existing situation or wait until actual equilibrium had been reached as a recommended measure affecting international payments might well be a necessary action for obtaining a healthy and sustainable balance-of-payments situation. / 

III. BASIC STATEMENT AND GENERAL COMMENTS

5. The Working Party took fully into account the views expressed by contracting parties at the last meeting of the Council. In supplement to those summarized in the minutes of that meeting, the United States representative and a number of other members of the Working Party made further statements containing general comments and observations. The essential points made in these statements are summarized below.

6. The representative of the United States in his opening remarks dealt with three main points:

   (1) the balance-of-payments background to the programme of 15 August;

   (2) the domestic measures in the overall programme; and

   (3) the import surcharge.

The full text of this statement is set out in Annex I.
The representative of Austria, referring to the IMF decision, agreed that effective action, as soon as possible, on exchange rates was necessary. His delegation hoped that problems arising from uncertainty in the international payments system would soon be resolved through common effort. He recalled that his country had already made an important contribution to this end by revaluing its currency in May 1971.

His delegation fully understood the problems faced by the United States and agreed that it was in the common interest that these problems be solved. It felt, however, that the surcharge and other measures could have unduly negative effects, direct and indirect, on the liberal world trading system. He pointed out that more than 90 per cent of Austrian exports to the United States were covered by the full United States surcharge. The combination of various United States measures would severely affect the export possibilities of his country. There was also the possibility that deviations from GATT principles might damage, through a chain reaction, the international trading system. It was, therefore, important to stabilize the situation and avoid further repercussions on world trade.

He considered that the measures could have substantial indirect effects also through dislocation of trade flows into markets other than the United States. Smaller countries depending to a large extent on exports would be most severely affected. He appealed to the United States to proceed carefully and not to maintain restrictive measures for an undue period of time. He asked for a clear indication on the timing of removal of the surcharge.
The representative of Canada noted that the surcharge affected $20 billion of goods, amounting to about 9 per cent of total exports of contracting parties. His country was already experiencing the adverse effects of the measure through reduction in production and the Canadian Government proposed immediately to introduce legislation authorizing measures to counter the harmful effects on employment. While appreciating the balance-of-payments problem faced by the United States, his delegation questioned the appropriateness of maintaining trade measures to deal with this problem, given the changes in exchange rates which had already occurred. Canada attached importance to the statement of President Nixon linking the removal of the surcharge to the ending of "unfair" exchange rates. He hoped that the IMF would soon be in a position to make the judgment that effective action in the exchange rate field had been taken. In the view of his Government, the surcharge in fact inhibited full adjustment of currencies and should be removed at an early date.

The representative of Chile said that the United States was already committed by Part IV of the General Agreement to exempt goods of export interest to developing countries from non-tariff barriers. It was, therefore, incomprehensible why their products had not been exempted from the surcharge. He did not accept the contention of the United States that exemptions in the interest of developing countries would lead to claims for exemptions from other countries. The United States' balance-of-payments difficulties were due mainly to the outflow of capital, and not to the trade deficit which, in any event, appeared to be fortuitous and ephemeral. According to the figures, the United States had a favourable trade balance with developing countries. It was generally understood
that one of the objects of the measure was to exert pressure on United States trade partners to modify their exchange rates, and wondered whether this should be applicable to developing countries which had not created the problem and were in no position to help solving it. The recent massive outflow of short-term capital from the United States had not been to the developing countries. The surcharge was already causing serious damage to the trade interest of Chile. If it applied for any prolonged period, the damage might indeed be immeasurable. A deadline should be set for elimination of the surcharge, which was at any rate not justified with respect to imports from developing countries.

The representative of Ghana said that a basic reason for exempting developing countries from the surcharge arose from the fact that these countries were not responsible for the balance-of-payments difficulties of the United States. The application of the surcharge to imports from developing countries could not alleviate the United States problems. Exports of developing countries would moreover be adversely affected by any realignment of currencies as a result of the current crisis. Apart from the surcharge, the other measures envisaged in the United States programme would also have harmful effects on developing countries. In this connexion, he stated the view that the reduction in foreign aid would not contribute significantly to the solution of the United States balance-of-payments problem. Developing countries arguments for exemption from these measures must be considered as valid.

The representative of Greece stated that, even if one were to assume that the measure was in full conformity with the provisions of the General Agreement and that the present crisis had its roots on the trade, not on the monetary side, the application of the surcharge to the imports from those countries which had a negative trade balance with the United States could still not be justified.
The representative of the [REDACTED] stated that the problem of inflation during the past decade was a major element in the erosion of the United States balance of payments. Like all countries, the United States had the fundamental right to adopt measures to protect its balance of payments. He noted that the trade surplus of the United States in 1964 was the highest during a long number of years. His conclusion from the table before the Working Party was that the trade balance played only a minor part in the United States balance-of-payments situation, and that other factors - such as movements in capital and funds, particularly to international companies - had played a much more important role in the recent deterioration of the United States payments situation. It was necessary to bear in mind that trade and direct investments were items closely linked, and income from American investment abroad should also be borne in mind when assessing the trade balance.

He drew the conclusion from the IMF decision that the measure was not really appropriate to cover the present United States difficulties. Moreover, his delegation did not accept that the economic and trade policy practices of the United States trading partners were unfair, and was deeply concerned with the protectionist trend of the United States authorities. It objected to the idea which seemed to prevail in the United States that the United States had a right to a constant trade surplus, and particularly one based on the 1964 figure.

The representative of Japan recalled the statement made by his delegation to the Council. Since then, the Japanese Government had adopted a flexible exchange rate, an action which should be considered as reaffirmation of its intention to co-operate with other countries for revitalization of the international monetary system. As a result of new developments in the international monetary sphere, a fundamental change had arisen in the situation which had led the United States to adopt the import surcharge.
It was clear that the imposition of the surcharge on bound items was not in conformity with Article II of the General Agreement. Furthermore, no measures other than quantitative restrictions could be justified under Article XII. As regards the proposed Job Development Tax Credit, this was incompatible with the principle of national treatment on internal taxation as provided for in Article III; according to his delegation's analysis, this measure would increase the burden on imports of equipment for investment by a further 10 per cent.

The Japanese delegation deeply regretted that restrictive measures had been taken which would virtually nullify the fruitful results of past tariff negotiations. These measures would disrupt the orderly development of world trade as well as provoking protectionism and thus jeopardizing the foundations of the GATT, the most valuable instrument for world trade.

The representative of Japan went on to say that it remained to be clarified whether the United States had fully exhausted all domestic measures which could restore equilibrium in its balance of payments. In particular, he asked to what extent the outflow of long or short-term capital had adverse impact on the balance of payments and what specific remedial measures were envisaged to cope with this situation. He referred also to the possible effects that activities of multinational overseas enterprises could exert in the trade balance and invisible accounts of the United States.

He noted that the IMF had concluded that a corrective adjustment in the pattern of exchange rates would be a preferred means for achieving a better balance in international payments and that the surcharge could be justified only until it was possible to supplant it by effective action in the exchange rate field. In this connexion, he drew attention to the fact that many key countries had already moved towards the establishment of new monetary arrangements.
He strongly urged the United States to repeal the surcharge at the earliest possible date in the light of its incompatibility with the General Agreement and of its adverse effects on world trade. He suggested that the United States Government should indicate a specific date for the complete removal of the surcharge. He stressed that Japan would reserve its rights under the GATT and keep the matter under constant review until the situation returned to normality.

The representative of Spain took the view that the reduced competitiveness of American products on world markets was due to internal, not to external trade factors. The fact that the balance of trade was negative was temporary and accidental. The import surcharge measure taken by the United States was not fully justified, especially in the light of the fact that it represented a serious threat to trade liberalization. With regard to his own country, he pointed out that the import surcharge was creating great difficulties and was heavily prejudicing Spain's exports to the United States. This was all the more serious since his country had suffered since 1961 heavy and increasing deficits in its trade with the United States. He appealed to the United States to exempt imports from developing countries from the import surcharge on the grounds of Part IV of the General Agreement.

The representative of Sweden recalled that, in the Council, his delegation had drawn attention to a number of points relating to the United States surcharge. On this occasion, he wanted to stress one of those points, that is the long-term consequences for world trade of the measures taken by the United States in August.

The general effects of a measure of this kind, taken by the country with the strongest economy in the world, were very dangerous, since they could lead to a resurgence of protectionism, to new trade barriers and to shrinking world trade. This trend would be the opposite to what was necessary, namely, further moves towards world trade liberalization. The surcharge constituted a grave danger for continuing world trade liberalization. It could easily result in damage which would greatly exceed any of its possible positive effects.
The representative of Switzerland said that trade measures and particularly the surcharge could be considered - as appears to have been the opinion of the Fund - only as a substitute for other measures to which the United States did not or could not resort.

He regretted the unilateral character of the surcharge, a measure which disrupted the delicate balance of benefits and concessions resulting from a series of long and difficult multilateral negotiations under the rules of the GATT.

The situation was particularly dangerous because it could provoke a chain reaction of counter measures. It was therefore essential that the United States' difficulties be dealt with on the basis of the principles of international co-operation. This appeared all the more possible having regard to the decisions taken by certain governments - among which his own - in the monetary field and the readiness of others to consider appropriate steps.

As regards the effects of the surcharge, he emphasized the serious damage to third countries, a fact that appears not to have been taken duly into account by the United States Government. In any case, it appeared that the surcharge, apart from its lack of conformity with GATT, was inadequate given the limited incidence of the trade balance on the overall balance-of-payments situation. The surcharge should therefore be eliminated.

The representative of the United Kingdom agreed with the Fund's conclusions.

While earlier action by the United States to correct its balance of payments would have been desirable, it had to act quickly, given the situation faced by it in August. He noted that both the United States and the IMF had linked the duration of the surcharge with action on exchange rates. The United States surcharge was imposed in similar circumstances to that introduced by the United Kingdom in 1964, but with the different objective of altering exchange parities. The import surcharge was only one factor in the general need to restore confidence.
The justification for the surcharge would disappear as soon as short-term action in the exchange rate field was agreed, and confidence restored. He considered, however, that there was a danger that the longer the surcharge lasted, the more difficult its removal would be, and that its very existence might actually inhibit necessary agreements or actions in the monetary field. His interpretation of the IMF decision was that the surcharge should be removed as early as possible.

IV. CONSIDERATION OF PARTICULAR ASPECTS AND PROBLEMS

The balance-of-payments difficulties of the United States

7. In examining the nature of the balance-of-payments difficulties, the Working Party took as a starting point the findings of the International Monetary Fund quoted in paragraph 3 above, and generally referred to the background material supplied by the Fund. Note was taken also of statistical material supplied by the United States delegation, supplemented with more up-to-date figures supplied by the United States representative in the course of the discussion.

8. The United States delegation stressed as an important factor responsible for the worsening of the country's balance of payments the deterioration of its trade balance, contrasted the estimated 1971 trade deficit with the substantial surpluses in previous years, in particular that of 1964, and cited the opinion that the deterioration of the trade balance had been sizable and persistent. Other members of the Working Party found it difficult to subscribe to these views, and particularly questioned the last contention. In their view, the trade account now had only a minor place in the United States payments, especially in comparison with the net outflow of capital and net inflow of earnings connected with direct private investments by United States enterprise abroad. In this connexion they also noted the basic difference in nature between United States investments abroad and foreign capital investments in the United States, which implied entirely different long-term consequences for the balance of payments.
9. In the view of these members the most important and immediate cause of the present balance-of-payments deficit in the United States had been the massive outflow of short-term capital, which reflected a deterioration of confidence in the stability of the United States economy. While the capital movement was speculative it would not have occurred and would not have reached the dimensions it had, were it not for the persistent inflationary trend and price instability in the United States. The worsening of the trade balance was but a manifestation of the root causes, and the remedy should be found in the adoption of appropriate domestic policies rather than the limitation of imports, which was both irrelevant to the problem and counter-productive in relation to the objective of fostering stability, apart from being damaging to the interest of other contracting parties and undermining the world trading system.

10. It was also pointed out that in evaluating the United States trade balance, account should be taken of the general tendency for United States corporations to transfer manufacturing operations abroad, which naturally tended to reduce exports in favour of investment earnings. Some members questioned the appropriateness of regarding a sizable United States trade balance as a natural, essential feature in the world trade structure. There was no reason to take the 1964 trade balance as a norm, or the 1970-1971 balance as indications of the onset of an enduring trend, both being the result of a combination of special factors and circumstances.
11. Some members of the Working Party also stated that they recognized the seriousness of the balance-of-payments situation of the United States, and the right for the United States Government to adopt measures to correct the disequilibrium. The inflation problem with which the United States had been confronted since the mid-60's had been a major element in the erosion of the United States international financial position. They could, therefore, not accept the contention of the United States authorities that the exchange rate and trade policies of the United States trading partners were unfair. A careful study of the evolution of the United States balance of payments and of its basic balance in the 1960's, showed that there was no correlation between the annual balance-of-payments deficits and the trade surplus. The overall disequilibrium had, in recent years, been of an order of magnitude totally out of proportion with the size of the fluctuations in the trade balance.

12. The net trade account played a marginal rôle in the overall balance-of-payments situation. Moreover, in the case of the United States, income from direct investments abroad and trade were closely linked because of substitution of exports by the establishment of manufacturing facilities abroad. Net income on that account had shown a considerable and constant growth in the 1960's. The surcharge was not an appropriate measure to correct the United States balance-of-payments disequilibrium.

13. These contracting parties were concerned not only with the imposition of the surcharge and with certain other measures which the United States intended to take, but equally with the protectionist overtones in statements of United States authorities. The idea which seemed to prevail in the United States that the United States had a right to a constant trade surplus, and particularly one based on the 1964 figure, the highest on record, was an untenable one.
14. In the course of the discussion representatives of a number of developing countries pointed out, and stressed, that as the producers of primary commodities and raw materials they were certainly not responsible for the plight, real or alleged, of the United States. They were, at any rate, powerless to influence events in the monetary domain. The general consensus among this group of countries was that if the remedial measures were indeed necessary to redress the United States balance of payments, they should evidently be of such a nature as not to damage their export interests. In their view, all exports from developing countries ought to be excluded from the coverage of the import surcharge.

Modalities of the imposition of the surcharge

15. In response to a request for a precise list of products which were exempted or to which a surcharge of less than 10 per cent applied, the representative of the United States referred to the Treasury Department Additional Duty Order No. 2, and the accompanying press release which mentioned many exempt items. Items which were exempt either because they were duty free or because the column 1 and column 2 rates were identical could be readily identified from an examination of the United States tariff schedules, as were items subject to a surcharge of less than 10 per cent.

16. Members of the Working Party welcomed the decision of the United States authorities, taken since the discussion on the matter at the last Council meeting, to exempt from the import surcharge goods in transit at the time of the introduction of the measure. Some members considered, however, that goods which had left the factory, although not the country, should be given similar treatment. The United States delegation was unsure of the exact scope of this new exemption, or the intention in this regard of the Commissioner of Customs who had the authority to issue regulations on matters of this nature and undertook to convey this representation to the appropriate authorities for attention. In response to a similar representation with respect to consignments which were the subject of a firm order or had been purchased under a long-term contract on or before 16 August, the representative of the United States did not feel exemption of such consignments to be a practicable proposition since this would entail enormous administrative problems of verification and interpretation.
17. In answer to an enquiry as to whether there were any exemptions from the surcharge arising from international arrangements similar to the United States-Canada arrangement regarding automotive parts, the United States representative referred to the residual preferential relations between the United States and the Philippines, in consequence of which most dutiable goods from the Philippines would bear an 8 per cent surcharge only.

In reply to a question the United States representative noted that those centrally planned economy countries which were not receiving most-favoured-nation treatment from the United States would in fact not be affected by the surcharge, as their exports were subject to statutory, or so-called column 2, rates of duty. This should not be regarded as differentiation in favour of these countries since these column 2 rates were in all cases higher than or at least equal to column 1 rates plus a surcharge.

18. Commenting on questions raised by the price and wage freeze introduced on 16 August, members of the Working Party took note of the explanation that price fluctuations on world markets could be passed on in the internal price on the United States market notwithstanding the freeze. It was astonishing for a number of contracting parties, however, that the same rule did not apply to the consequences on the price of imported products resulting from the adjustment of exchange rates. In order to respect the price freeze an importer would either have to accept a cut in his profit margins or be exposed to anti-dumping action. More probably, however, he would find it more profitable to give up importation. This modality of applying the price freeze might well have an effect of discouraging foreign countries from revaluing their currencies, which was precisely one of the declared objectives of the United States Government in the monetary field.
19. In reply to a question the United States representative confirmed that it was permissible for importers, processors and others to pass on to their customers the supplementary duty to the extent that it was actually paid on imports made on and after 16 August 1971, even when the imported goods had been subject to further processing in the United States.

20. In reply to questions the representative of the United States stated:

(a) the amount of the surcharge would be calculated on the same value basis as the regular customs duty, be this the normally used f.o.b. value, or some other special basis such as the ASP; and

(b) the surcharge levied on any item at present subject to a specific rate of duty would be calculated on an ad valorem basis, but the combined incidence of the surcharge and the customs duty should in no case exceed column 2 rates;

(c) the same applied to items subject to compound duties.

21. In discussing the rationale of according differential treatment to goods subject to statutory quantitative restrictions and goods subject to unilateral or voluntary restraints by exporting countries, the representative of the United States explained that while goods subject to United States statutory were readily identifiable by reference to the statutes and regulations in question, and the effectiveness of the restriction was not in doubt, the United States authorities could never be certain of the coverage or the effects of voluntary restraints arranged by foreign governments or industries. Some members stressed the view that the distinction was unwarranted since the export restraints had virtually the same alleviating effect on the United States balance of payments as the statutory restraints. It was up to the contracting parties affected to draw the necessary conclusions from this United States position.
22. With regard to cotton textiles, the representative of the United States confirmed that all sixty-four categories which were, or could be, subjected to import restrictions in terms of the LTA were exempted from the surcharge, regardless of the origin of the goods.

23. Commenting on the fact that handloom cotton textiles, not being covered by the LTA, were not exempt from the surcharge, a member of the Working Party strongly urged the United States Government to reconsider this discrimination contrary to the original intention of according more favourable treatment of this type of product.

24. In the course of the discussion, the representative of the United States reiterated the statement his delegation had made at the Council meeting that special exemption of imports from developing countries for goods which would remain subject to the surcharge when imported from developed countries was not feasible; a dilution of the scheme in this manner would have reduced the effect of the surcharge which was intended to bring about a rapid improvement of the trade balance, the discrimination it might serve merely to divert trade from one source of supply to another without reducing the amount imported.

25. In reply to a question as to the extent of the power of review granted to the Secretary of the Treasury by Headnote 4(a) sub-part C of Part 2 of the Appendix to the Tariff Schedules of the United States, the representative of the United States stated that this provision merely reflected the general practise of giving the Executive Branch of the Government the widest possible discretion, and had to be viewed in this context. The most recent case where the Secretary of the Treasury had made use of this authority had been the exemption from the surcharge of those goods which were exported to the United States before 16 August 1971 (cf. Treasury Department Additional Duty Order No. 3).
26. Noting the intention of the United States to eliminate the surcharge as soon as effective action in another specified field made this possible, members of the Working Party urged the United States authorities to keep the situation under constant review and, pending the abolition of the surcharge, to explore all ways and means of reducing the incidence, either by progressively reducing the rate, or by diminishing the product coverage. In the opinion of some members the latter process could advisably start at an early date with the few primary commodities not yet benefiting from an exemption. Considering the stable demand and supply of these products, and the low elasticity of their prices, their liberalization was not expected to have a significant effect on the United States import bill.

27. The use of the import surcharge by the United States in present circumstances raised the question in the minds of certain members of the Working Party about the United States readiness to implement the fifth step of the Kennedy Round concessions at the agreed date, namely 1 January 1972. These members were particularly disturbed by the hesitancy of the United States delegation to give an unequivocal assurance in this regard. They stressed the view that notwithstanding their general reluctance to take compensatory action against the United States in respect of the import surcharge, they would be compelled to reconsider their position should the United States fail to implement those tariff concessions. With reference to the practice which had been adopted by the United States of adjusting any surcharge rate below 10 per cent to the maximum permitted under the Tariff Act of 1930, members of the Working Party stressed the view that, in the unlikely event of the surcharge still remaining in existence at the beginning of 1972, this practice should certainly not be applied so as to cancel out the fifth step reductions, wholly or in part, by a corresponding increase in the import surcharge.
Effects of the surcharge on trade

24. In discussing the effects of the surcharge the representative of the United States supplied the following data, based on 1976 returns, showing the proportion of the exports of various countries and areas affected by the measure: 24.5 per cent of Canada's exports to the United States were affected; this was 15.9 per cent of Canada's total exports and 3.4 per cent of its gross national product. For the EEC, the respective figures were 86.0 per cent, 6.4 per cent and 1.2 per cent, for the EFTA 73.9 per cent, 6.5 per cent and 1.3 per cent, for Other Western Europe 72.8 per cent, an estimated 3.1 per cent and 0.8 per cent, for Poland 45.1 per cent an estimated 1.3 per cent and 0.1 per cent, for Japan 93.3 per cent, 22.4 per cent and 2.8 per cent, 12.4 per cent of the exports from Australia and Oceania to the United States were affected; this was an estimated 2.5 per cent of their total exports.

25. It was also noted that according to data available to the IMF, the import surcharge applied to approximately 50 per cent of United States imports and that where it was applied, the rate did not always amount to 10 per cent so that on an average the rate of the import surcharge was about 9 per cent.
30. In reply to a question, the representative of the United States stated that it was very difficult to predict the effects in quantitative terms of the application of the surcharge, since this depended also on action taken by other contracting parties which could influence prices. His authority anticipated a possible import saving of approximately US$1.5 to 2 billion; this was, however, a highly speculative figure.

31. A number of delegations expressed concern at the likely effects of the surcharge on particular sectors of their economies. Others also stressed the indirect effects of the surcharge through, for example, increasing competition in the markets of third countries. Some delegations calling for early removal of the surcharge pointed out that the adverse effects on economies of third countries would continually increase and that these effects would greatly outweigh any benefits which the surcharge might bring to the United States balance of payments. Some delegations were concerned at the implications which the measures might have on long-term efforts toward trade liberalization and expressed the hope that the United States would be in a position to revert to its traditional rôle of promoting such liberalization.

32. A number of representatives, including those of developing countries, referred to and supplemented the statements already made in the Council regarding the trade effect of the surcharge on their economies. Some representatives enquired what the impact of the import surcharge would be on the trade of developing countries. The representative of the United States pointed out that it was difficult to make any predictions and stated that in 1970 total most-favoured-nation imports from developing countries had amounted to US$10.4 billion; of these imports only US$3.02 billion or approximately 29 per cent were subject to the surcharge. Giving a breakdown on a geographical basis, he stated that: 19.7 per cent of OAS countries' exports to the United States would be subject to the surcharge which was 7.0 per cent of their total exports and 0.8 per cent of their gross national product. For South Asia the respective
figures were 55.8 per cent, an estimated 7.3 per cent and 0.3 per cent; for South-East Asia 21.4 per cent, an estimated 4.0 per cent and 0.6 per cent and for Africa 11.2 per cent, 0.8 per cent and 0.2 per cent. 42.4 per cent of exports from the Near East to the United States were affected; this was an estimated 1.5 per cent of their total exports.

33. Asked to what extent the trade of the developing countries had contributed to the United States balance-of-payments deficit, the representative of the United States replied that since all elements involved were closely inter-related, it was, in his view, not possible to give any indication in this respect.

34. Some developing countries, while agreeing that exemptions in respect of duty-free products and items subject to quantitative restriction alleviated their problems to a certain extent, expressed concern at the fact that the measure applied to manufactured products which they had commenced to export to the United States and thus prevented diversification of their production. Some delegations also pointed out that any disruption in the present trading system as a result, for example, of retaliatory measures would cause grave damage to their economies.

35. A number of representatives of developing countries said that they could not accept the United States contention that exemption from the surcharge for exports of developing countries could be construed as discrimination, impermissible under the General Agreement. In their view, Article XXXVII clearly established that, in the absence of compelling reasons, countries must abstain from introducing or increasing non-tariff barriers vis-à-vis developing countries. They did not consider that the United States had advanced compelling reasons in this respect - there could be no serious economic effects for the United States in exempting developing countries from the surcharge. They, therefore, drew the conclusion that Article XXXVII was not being respected and stressed the fundamental importance to developing countries of this Article - the rôle commitment of developed countries.
towards developing countries. In the view of some of their delegations this Article should be considered as superseding other Articles in the GATT. Moreover, they considered that the surcharge was inconsistent with current trends in trade policy, as exemplified by the Generalized System of Preferences and with recent developments in other international organizations.

36. The representative of the United States said his delegation could not accept that any particular Article of the General Agreement had an overriding effect over the other Articles. Drawing attention to the fact that Article XXXVII provided for a standstill only as regards "products" of export interest to developing countries, he stated that the United States had endeavoured to exempt such products from the surcharge by the exclusion of duty-free items. He assured all delegations that their remarks would be brought to the attention of his authorities.
V. CONCLUDING OBSERVATIONS

37. The Working Party, taking into account the findings of the International Monetary Fund concerning the balance of payments of the United States, recognized the justifiable need for the United States Government to take urgent action to cope with the serious decline in its monetary reserves pending the adoption of measures which would effectively redress the underlying balance-of-payments situation. Most members of the Working Party, however, entertained doubt as to the appropriateness of the United States using a measure operating solely on imports, which is only one segment of the balance of payments.

38. The Working Party noted that the import surcharge might encourage and strengthen the protectionist pressures which were already manifest in many sectors of the United States economy and which might equally be kindled in other countries, especially were it to show any signs of becoming a permanent feature of the United States tariff structure. Whatever the longer-term effects of the measure, the inescapable impression for the world trading community was that the liberal trade policies that had been so painstakingly pursued by the United States and its trading partners over the past quarter-century had been reversed and that the achievements of the Kennedy Round had been placed in serious jeopardy.

39. The Working Party welcomed the statement by the United States that the import surcharge would be temporary and urged that it be removed within a short time.

40. There was a widely and strongly held view in the Working Party that it would be unwarranted for the United States to use the import surcharge as a bargaining counter for the negotiation of tariff or other trade concessions.

41. Another point generally endorsed in the Working Party was that the surcharge, being applied by such an important trading nation as the United States, must have direct and severe effects on the trading partners of the United States and add greatly to the trade and economic difficulties faced by many of those countries. As a result, the surcharge, if continued for any length of time, could not but have far-reaching effects on the world economy and international trade, particularly having regard to the inhibitive effect it could have on the continuation of the liberalizing trade policies that have been advocated and pursued since the inception of GATT.
42. The Working Party took cognizance of the view that the United States import surcharge, in so far as it increased the incidence of customs charges in excess of the maximum rate bound under Article II, was not in conformity with the obligations of the United States under the General Agreement. The United States contended that the present trade and monetary situation of the United States was such that the United States Government would have been fully justified in introducing quantitative restrictions under the provisions of Article XII, and that it was only owing to the need for prompt action, the desire to avoid the administrative complications and the wish to adopt the least undesirable form of restraint that the United States Government had chosen to adopt the import surcharge. Furthermore, the import surcharge was not intended to reduce the level of imports, but merely to moderate their rate of growth. In the view of the United States Government numerous precedents indicated a growing preference among contracting parties for this method of limiting imports than those contemplated by the drafters of GATT who understandably were unacquainted with administrative and trade problems of the kind faced by governments today. The Working Party noted in this connexion that while the use of an import surcharge in lieu of quantitative restrictions for balance-of-payments reasons in the past had generally required action under Article XXV:5, there were cases in which the CONTRACTING PARTIES had concentrated their attention on the trade and economic effects of the action in question, without immediately seeking to resolve the legal question of compatibility with the specific GATT provisions. It should only be stressed that in each of these cases - in which the use of the import surcharge was not sanctioned through a waiver - the contracting party concerned was invariably urged by the United States as well as by other contracting parties to reduce its incidence as much as possible and to remove it at the earliest possible moment. The Working Party noted in the present case the assurance given by the United States that the import surcharge under consideration was of a temporary nature.

43. The Working Party noted that any contracting party which considered its rights under the Agreement were adversely affected by the measure would be free to take action under the appropriate provisions of the Agreement.
44. In the spirit of Part IV of GATT, and in view of the possibilities opened up by the newly adopted GSP, the Working Party explored with the United States the feasibility of exempting more products exported by developing countries from the surcharge. The Working Party fully understood the keen desire and the urgent need of developing countries to expand their exports as well as the importance of the United States market to them, and generally agreed that in spite of the exemption of many raw materials and primary products normally exported by them, the import surcharge significantly affected the export interest of developing countries. The Working Party wished to stress this as an a fortiori reason why the measure should be eliminated within a short time. In the meantime, the United States should keep the situation under constant review so as not to overlook any possible opportunity of adding to the exemptions list products of particular export interest to developing countries.

45. The United States representative stated that as the measure had been in force for barely three weeks, it was too early to discuss the question of its elimination. On the other hand, his delegation fully understood the legitimate concern of the contracting parties, and had taken due note of the views and presentations of the other delegations. The United States Government naturally regretted the adverse effects which a measure of this nature inevitably had on the economies of other contracting parties. While unable to discuss a date, or the exact conditions for its removal, the United States delegation wished to assure the contracting parties of its sincerity in describing it as a temporary measure.