GENERAL AGREEMENT ON TARIFFS AND TRADE

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UNITED STATES IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS

Draft Report of the Working Party

1. The Working Party was established by the Council on 29 June 1982 with the following terms of reference:

> "To examine the twenty-fourth annual report (L/5328) submitted by the Government of the United States under the Decision of 5 March 1955[1], and to report to the Council.

2. The Working Party met on 21 October 1982, 11 November 1982, and 25 January 1983 under the chairmanship of H.E. Ambassador K. Inan (Turkey).

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-fourth annual report on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended, on the reasons for the maintenance of these restrictions, and on the steps taken with a view to a solution of the problem of agricultural surpluses in the United States. On the basis of the report and of supplementary information provided by the Government of the United States upon request by several members of the Working Party, 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.

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[1] BISD, Third Supplement, page 32

4. In its opening statement, the representative of the United States illustrated the changes that had taken place in Section 22 controls since the twenty-fourth annual report was prepared. He indicated that, since the revision of the sugar fee import system annouced on 5 May 1982, the fees had been progressively reduced. The introduction of sugar import quotas under separate legal authority had enable domestic prices to recover despite a continued weakness of world sugar prices reflecting a situation of global over-supply aggravated by sales below the cost of production. The raw sugar import fee had been reduced to zero cents per pound and it was expected that it would remain at zero for the remainder of the calendar year 1982.

5. With respect to other commodities currently subject to Section 22 controls, namely cotton[1], peanuts and certain dairy products, he further indicated that no addition or changes had been made since the last submission of the report. He drew attention, however, to recent changes that had been made in the US dairy program with the aim of preventing excessive milk production. He mentioned that the new legislation authorized, inter alia, a compulsory producer contribution to the cost of operating the program and that the price support level world remain at the minimum required by law. These measures were consistent with and in effect an extention of the legislation contained in the Agricultural and Food Act of 1981. He also pointed out that these measures were totally consistent with the letter and spirit of the waiver as well as with the views expressed by various delegations during the CONTRACTING PARTIES review of the twenty-third annual report (C/M/146).

6. Turning to more general points, he recalled that the waiver was granted in 1955 against a background where almost all countries had restrictions virtually accross the board in agriculture and industry as an aftermath of World War II. At that time, it was thought that as the

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[1]Upland type cotton; long staple cotton and certain cotton waste and cotton products.

economic conditions improved, these import restrictions and export subsidies would disappear. In the industrial area they largely did. Unfortunately that was not the case in the agricultural area where problems had even grown more serious. For this reason the United States had not been able to give up the possibility to defend itself through measures covered by the waiver, though he again noted that the United States had in practice reduced use of the waiver. Since the waiver was granted in 1955, the number of items covered under the waiver had been significantly reduced. Section 22 controls were currently in effect for only four of the numerous commodities for which there were support programs.

7. He further recalled that in past meetings of working parties dealing with the waiver, his delegation had pointed out several times that the United States alone could not solve the problem of agricultural surpluses. Indeed no GATT contracting party could solve the problem alone. As various programs to protect agriculture existed in most contracting parties, there needed to be joint action. It was for this reason that the United States as well as other contracting parties had stressed the importance of agriculture for consideration by the 38th Session of the CONTRACTING PARTIES at Ministerial level, and had advanced a strong work program to adress the problem in the agricultural area.

8. The Working Party was grateful for the introductory comments given by the representative of the United States. Several members pointed out, however, that the waiver granted to the United States on Section 22 controls constituted a major departure from GATT obligations, notably the provisions of Articles II and XI, which was not available to other contracting parties. The waiver represented an anomaly to the principle of free trade so frequently expressed by the United States and it was a

significant impediment to international trade in agriculture, effectively limiting access for efficient agricultural producers to one of the world's largest markets for agricultural commodities. They considered that the waiver was originally agreed to in response to particular marketing difficulties faced by the United States in the mid-fifties and it was certainly not the intention of the CONTRACTING PARTIES at the time to grant a long-lasting waiver to allow the protection of US agriculture.

9. A member of the Working Party noted that the policy objectives resulting from the report under examination showed that the US administration was committed to a policy of balancing agricultural demand with supply. Apart from legitimate doubts as to the practicality of any artificial agricultural support policy to produce this balance, he was concerned that the acceptance of these objectives assumed that the United States would need to continue with the waiver indefinitely. Under today's international trading circumstances and in particular in the context of the 38th session of the CONTRACTING PARTIES at Ministerial level, he viewed the decision by the United States to continue to have recourse to the waiver as increasingly anachronistic and inconsistent with the criticism expressed by the United States regarding agricultural protection policies of other contracting parties.

10. Having recalled the background for the granting of the waiver, several members of the Working Party stressed that it was not in the minds of contracting parties in 1955 that the United States would not at some time in the future be prepared to relinquish the waiver, and indeed the notes attached to the GATT decision showed quite clearly that it was the intention of the United States to take positive steps to lower support prices sufficiently to reduce crop supplies to a level that would make the operation of the waiver unnecessary. They further stressed that the termination of the waiver should not be regarded as a matter for negotiation and it was never intended to be.

11. In this connection, a member of the Working Party pointed out that, from a legal point of view, a waiver was intrinsically different from an exemption negotiated and paid for under a contracting party's protocol of Accession to the GATT.

12. Several members of the Working Party also considered that the annual report under examination failed to adress the issue of which alternative measures in conformity with the General Agreement could replace Section 22 controls, and that despite the requests put foreward during the examination of previous annual reports. They also asked the United States authorities to provide the list of commodities to which Section 22 could be applied and to indicate what procedures are needed to remove on a permanent basis those restitutions temporarily suspended and to reintroduce a measure under Section 22 which had been suspended.

13. Some members of the Working Party also noted that the factual information contained in the report was inadequate in light of recent developments on both dairy products and sugar. They considered that this was mostly attributable to delays and shortcomings in the procedures of submission of annual reports.

14. With respect to dairy products a member of the Working Party stated that there had been fundamental changes in the world dairy market since 1955, which the United States and effectively isolated itself from. This continued deviation from normal GATT rules had compounded the trade distorting effects, and imposed even greater burdens of adjustment on others.

15. Another member of the Working Party noted that the report under consideration did not contain any indication whether the United States, taking measures in connection with the waiver, had or had not met GATT provisions not covered by the waiver, notably those of Article XIII. In particular, he recalled that at the last working party dealing with the waiver his delegation had already asked whether in the light of the significant development which had occurred since 1955 in the export capacity of the milk industry of some countries and of important changes

in trade policy relations between certain countries, the United States had a position on the question of the situation of eventual new suppliers in allocating quotas, and, more specifically, how the United States intended to treat his country within its cheese quota. Since he did not find satisfactory the reply given by the United States, he asked the United States representative to forward again his questions to his authorities.

16. With respect to the recent establishment of import quotas on sugar in the United States, a member of the Working Party stated that these measures were inconsistent with the GATT rules. In actual fact these quotas did not replace the duties and charges applied on imports, but were additional to them. Yet the waiver granted to the United States allowed that country to derogate from Articles II (bindings) and XI (quotas) of the General Agreement solely to the extent necessary to allow actions required to be taken under Section 22 of the United States Agricultural Adjustment Act. The latter provision (sub-section b)) did not allow cumulation of the two measures but stipulated an alternative ("the President ... shall by proclamation impose such fees not in excess of 50 per cent ad valorem or such quantitative limitations ..."). The best proof was that application of the quotas was not pursuant to Section 22 of the Agricultural Adjustment Act but to another provision deriving from another legal instrument (the tariff schedule), and this had moreover given rise to a complaint under United States domestic legislation by sugar refiners of that country. The decision of the United States Court of International Trade cited constant case-law dating back to 1960: "Under Section 22 of the Agricultural Adjustment Act as amended, the President may impose fees or quotas, but not both fees and quotas" (Court No. 82-5-00643, page 3). No doubt, the decision concluded that the President of the United States can lawfully introduce quotas pursuant not to Section 22 of the Agricultural Adjustment Act, but to the tariff schedule. But if the existence of a head-note in the tariff schedule (Schedule 1, Part 10, Sub-part A), allowing the cumulation of duties and quotas, could justify the measure under United States domestic legislation, it could not do so in respect of GATT. The fact that the tariff schedule and its head-note were included in the United States schedule of tariff concessions (Schedule XX) incorporated in the Geneva Protocol of 1967 (Kennedy Round) concerned and affected

only the operation of tariff concessions that had been granted, and did not imply eo ipso any recognition that the measures so incorporated were justified under the GATT. In no case could such inclusion of the head-note justify any derogation from the general rules and the provisions of the General Agreement other than Article II to which it applied exclusively. That was why the requirements of Article XI could be set aside because of the head-note. Now, Article XI prohibited quotas, and the conditions in it allowing exceptions from that prohibition did not apply to the present situation of the United States to the extent that the import quotas were not part of any programme to restrict domestic production (Article XI:"(c)(i)). The institution of these quotas, which was inconsistent with the provisions of Article XI, was causing or threatening serious injury to the interests of other sugar exporters. The adverse effect was two-fold: on the one hand, it derived from restriction of the quantities of sugar that could be exported to the United States; on the other hand, it was contributing to depress world prices by arbitrarily reducing demand in the United States market, which was one of the largest in the world. Lastly, he recalled that the depressive effect of the United States sugar policy was further accentuated by that country's policy in regard to isoglucose which was replacing sugar on the domestic market to an increasing extent.

17. Some members of the Working Party shared the concern expressed in relation with the restrictive measures taken by the United States on sugar imports, and they questioned the US representative about the necessity of maintaining sugar within Section 22 commodities, if the US authorities had the capacity to take import restrictive measures on sugar under another specific authorities.

18. In his reply to the various points made and questions asked, the representative of the United States stressed that his country remained committed to market-oriented trade policies and the goals of liberal trade. These goals, however, could not be achieved or implemented by the United States alone. As long as other countries would found it necessary to restrict their imports, and world trade was distorted by

subsidised exports, the United States would be compelled to apply defensive measures. He added that United States invited its trading partners to join in the common endeavour to reduce restrictions on agricultural trade. Until sufficient progress would be mad in this endeavour, the United States must maintain a right to resort when absolutely necessary to the provision of Section 22 covered by the waiver.

19. He indicated that Section 22 controls were kept under continuing review and were made more liberal or suspended whenever possible. As previously reported, Section 22 restrictions had been removed for eleven commodities and commodity groups. Numerous proposals for additional Section 22 restrictions - recent examples were flue-cured tobacco and casein - had been denied. He recalled that his country had also used measures other than import restrictions to meet the goals of its support programs, even when import restrictions could have been justified under GATT Article XI. For examples, although import restrictions on wheat, rye, barley and oats had been removed, the United States had applied the various production controls (e.g. set-asides) to balance supply and demand. No other country had taken such drastic measures nor had any other country held such grain stocks.

20. He further stated that under US Law, Section 22 restrictions were authorized for all supported agricultural commodities, if necessary to prevent material interference of the support program. Support programs were currently in effect for the following commodities, of which only four were subject to Section 22 import controls: cotton, barley, corn, grain sorghum, oats, honey, milk, peanuts, rye, soybeans, sugar beets and cane, tobacco, wheat, wool, and mohair. Under the law, the required procedures for terminating or suspending restrictions or for imposing or reimposing restrictions were effectively the same. In all cases, there must be an independent, impartial factual investigation and report to the President by the US International Trade Commission as to whether the facts of the situation warrant the imposition, suspension or modification of restrictions. If the President determines that use of Section 22 emergency powers is necessary, the action taken is by law provisional pending the US International Trade Commission investigation and report and final action thereon.

21. Concerning the general question of the possibility of using GATT consistent alternatives instead of maintaining the waiver, he said that under current circonstances the United States did not think there were acceptable GATT consistent alternatives. He noted that other contracting parties did maintain an array of measures that they presumably claim to be GATT consistent but that distorted agricultural trade to a far greater degree than US actions under the waiver. He expressed doubt that other contracting parties would in fact prefer or be better off if the United States emulated such measures maintained by others.

22. Regarding dairy products, he recalled that the United States in fact made major concessions in the Tokyo Round; thus, the accusation of "no liberalization" was false. The United States could not unilaterally further liberalize dairy imports because, even under conditions of balanced internal supply and demand, US markets could be vulnerable to subsidized imports and additionally to non-subsidized imports from least-cost producers at depressed prices because of their loss of other markets to subsidized sales and import restrictions maintained by other countries.

23. Regarding disincentives for dairy production, he emphasized that the legislative authority for these measures was obtained only with enormous effort to overcome domestic opposition. Regarding domestic offtake, dairy products tended to be price inelastic, but consumption could increase moderately as the overall economic situation strengthened. CCC made special domestic donations of 140 million pounds of cheese and 20 million pounds of butter to needy persons during FY 1982. This was in addition to the regularly scheduled donations of dairy products four school lunch, military, and welfare programs. Additional special domestic donations were planned in the future to help reduce surplus stock.

24. With regard to sugar import quotas, he said that these quotas were not taken under Section 22 and therefore, like other countries measures, were not properly within the Working Party's mandate. Accordingly, he further said that he did not propose to go into a detail explanation of the quotas, other than to note that the United States considered that the quotas conformed with US obligations and were necessary, in light of the severe depression in world sugar prices resulting from massive subsidized supplies, to protect the interests in the US market of materially affected members of the GATT and domestic producers. When the international market would recover from its distress situation and prices would improve sufficiently the quotas could be removed and the system of duties and, as necessary, fees under Section 22 could again be relied upon to prevent material interference with the support program. The United States thought that the possibility of using fees under Section 22 for sugar enabled a more firmly tuned and less restrictive policy than if the United States had to rely only the more regid quota authority.

25. Referring to the question on cheese quotas, he stated that the fact that a cheese quota was not allocated to a country that had not traditionally exported to the United States and was not a major world exporter was neither surprising nor inconsistent with the GATT. He also recalled that in the course of the MTN, bilateral discussions had taken place between his authorities and cheese exporting countries, but that the country concerned raised the issue with the United States though it was well known such discussions were being held with other countries.

26. The Working Party noted the various statements made by the representative of the United States. Some members pointed out, however, that neither these statements nor the annual report under examination had addressed in a satisfactory and exhaustive way the issue of what alternative measures, in conformity with the General Agreement, were tried or could be tried by the US authorities in order to replace Section 22 controls, notably in the dairy sector. They reiterated, therefore, their disappointment as to the adequacy of the report in its present form and requested the US representative to report their concern to his authorities.

27. A further member of the Working Party expressed dissatisfaction with the reply given by the US representative on the question of cheese quotas, and stated that his country would reserve its rights under the General Agreement with respect to this matter.

28. Several members of the Working Party also pointed out that the US authorities should be invited to respect the obligations attached in the waiver including that of presenting annual reports within the required time as indicated by the relevant procedures of the Decision of 5 March 1955. This would allow future working parties to be convened in time and to dispose of up-to-date factual information necessary to carry out a proper examination of the matter.

29. They further stated that any linkage between the maintenance of the waiver and the current status of agricultural trade relations should be regarded as unacceptable. No contracting party could be asked to pay for the termination of the waiver as it was granted by the CONTRACTING PARTIES against a specific background and on the basis of well defined conditions. They stressed that the United States should address unilaterally the question of the termination of the waiver as the conditions under which it was granted had changed fundamentally.

30. In this connection, a member of the Working Party stated that the United States should be asked to make a clear statement concerning their attitude to the future of the waiver.

31. Having noted that in accordance with its terms of reference adopted on 29 November 1982 by the Ministerial Declaration, the newly established Committee on Trade in Agriculture would, inter alia, examine the Decision of 5 March 1955 and make recommendations, "with a view to achieving greater liberalization in the trade of agricultural products", several members of the Working Party expressed their hope that, within this framework, positive developments could take place and a basis for an early termination of the waiver could be developed.

32. Some members pointed out, however, that, if this expectation would not be realized, the CONTRACTING PARTIES should be invited to make a new review of the waiver and to consider its termination at their session in 1985.

33. They further noted that the examination by the Committee on Trade in Agriculture should not preclude the establishment, under the procedures of the waiver, of a new Working Party to carry out the examination of the next annual report.

34. The representative of the United States took note of the statements made and said that he would report fully to his authorities comments and questions which had been made in the Working Party. He recalled that on various occasions his authorities had expressed their concern with the current status of agricultural trade relations and invited all other contracting parties to join in a common endeavour to overcome this difficult situation. It would be disingenious, however, to pretend that unilateral dismantling of those measures maintained by the United States under Section 22 would solve the international problem. The United States continued to try to liberalize its Section 22 actions where possible, but could not, in the current international situation, unilaterally renounce its defensive measures.

35. He further stated that for these reasons his authorities had operated to obtain a strong work programme for the Committee on Trade in Agriculture and that they sincerely hoped that positive and parallel progress in the work of the Committee towards achieving a needed greater liberalization of agricultural trade, would also enable the United States to take positive action towards a progressive reduction and elimination of remaining restrictive measures under the waiver.