GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

Spec(84)26
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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 7 February 1984, with the following terms of reference:

> "To examine the twenty-sixth annual report (L/5595) 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 2 May 1984 and ..., under the chairmanship of H.E. Ambassadeur F. Grünwaldt Ramasso (Uruguay).

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-sixth annual report on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended[2], on the reasons for the maintenance of these restrictions, and on 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 a note prepared by the secretariat on conditions of application and product coverage of the waiver since 1955 (Spec(84)9 and Add.1), 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 3S/32

[2] Imports restrictions pursuant to Section 22 currently in effect include cotton of specified staple lenghts, cotton waste and certain cotton products; peanuts; certain dairy products; sugar and syrups, and certain sugar-containing articles.

4. In his opening statement, the representative of the United States presented the annual report under examination by the Working Party. He indicated that no changes had taken place in Section 22 controls since the report was submitted to contracting parties. He noted, however, that a request had been made by the American Farm Bureau Federation that Section 22 actions be instituted on certain categories of tabacco imports. There had been no decision so far on whether the US Secretary of Agriculture should advise the President to institute a Section 22 investigation on this issue.

5. He also noted that import fees on raw sugar had remained at zero cent per pound for the first two quarters of 1984. With respect to certain sugar-containing items on which Section 22 controls had been introduced in June 1983, he indicated that the ITC did issue a report in December 1983 on which the Commission concurred with the action taken by the President, under the emergency procedures of Section 22, on two such items. A split decision was formulated on two other items. The ITC report was still under examination, and no action had been so far taken on it. He further pointed out that his authorities were keeping Section 22 controls under continuing review and they were paying serious attention to the obligations stipulated to his country under the waiver.

6. Commenting on the annual report under examination, several members of the Working Party stated that this document gave them no confidence that the United States was taking adequate measures to remedy the situation which originally gave rise to its request for the waiver. They expressed dissatisfaction with the fact that the United States had clearly deviated from the original intention of the temporary nature of the waiver and it had continued to avoid any commitment to remove the measures required by the waiver and to bring them into conformity with other GATT provisions where the effects might be more equitable and would probably caused less disequilibrium in the international markets of products in question.

7. In this respect, some members observed that in this report the United States had failed one again to provide an examination or a critical evaluation of the reasons why GATT-consistent measures alternative to those maintained under the waiver were not feasible. One member suggested that Article XI could prove of assistance to the United States, particularly in the field of dairy products where a program was in place contemplating limit on production. He noted that Articles VI and XVI could sometimes provide inadequate protection against export subsidy and dumping, but efficient agricultural producers were nevertheless able to survive present depressed international market conditions with domestic protection limited to tariffs and negligible non-tariff barriers applying to agricultural products.

8. With respect to dairy products, some members of the Working Party expressed deep concern with current trends in dairy supply in the United States. Data indicated that in spite of the 1955 undertaking to bring into balance dairy production with demand, surpluses of dairy products had increased. They noted that a new legislation had been recently enacted which provided, inter alia, for a reduction in support prices for manufacturing milk and for paying diversion programmes. They hoped that these measures could be successfull in reducing milk production in the United States significantly enough to allow stocks held by the Commodity Credit Corporation (CCC) to fall to more reasonable levels. But even if this did occur, the problems posed by restrictions on dairy imports in the United States would remain, as these imports would still account for a minimal shares of United States domestic consumption.

9. These members also remained anxious that the United States should not look to export markets to solve its dairy surpluses. Mention was made, inter alia, to recent sales of substantial quantities of butter and cheese to Egypt as being an unsettling development in view of the current downturn in world dairy trade. The view was generally shared that surplus disposal through food-aid and other non-commercial transactions should not result in replacing current commercial suppliers from recipient markets.

10. One member asked whether the United States did consider that the minor changes in license administration showed in the annual report were of significance to potential overseas dairy suppliers whose access had been seriously and increasingly curtailed over the period since the waiver was granted in 1955; and whether the United States did believe that these changes in any way addressed the obligation to relax quotas in the light of changed circumstances. He noted that it was correct, as stated in the report, that import controls on dairy were being continued to prevent material interference with the United States dairy price support programme. But he questioned whether the United States was prepared to adjust its dairy price support programme sufficiently to bring about a "change in circumstances" such that imports could be liberalized and still not cause material interference. He also asked what was the latest assessment by the United States of the likely impact and efficacy, in relation to the terms of the waiver, of the changes in the US support arrangements for dairy referred to in the annual report. Referring to the United States argument to justify its import controls by the existence of world dairy surpluses, he further asked what was the level of dairy surpluses in the United States in relation to total world dairy surpluses, and whether the United States had in mind any new course of action to curtail the further production of surpluses, as distinct from the disposal of existing surpluses, such that its might be able to liberalize its imports from countries which did not contribute to the structural surplus problems.

11. With respect to chapter of the annual report relating to sugar, one member of the Working Party stressed that his country's exports to the United States had been seriously affected by Section 22 controls recently introduced on imports of certain sugar-containing products. Referring to the ITC report on this matter, he pointed out that, in the light of ITC findings and of at least one of the conditions attached to the waiver by the CONTRACTING PARTIES, his authorities believed that circumstances requiring such import controls did not exist and that the United States therefore had an obligation to remove or relax these controls as from time when ITC had completed its investigation.

12. This member further indicated that the United States re-export programmes for refined sugar and sugar-containing products, combined with the duty drawback system in force in the United States providing for drawback of both duty and import fee, had resulted in increased import from that country. His authorities urged the United States to modify re-export programmes in order to eliminate their export incentive effect and to remove a relax Section 22 fee on sugar, syrups and molasses which, although currently set at zero cent per pound because of "headnote" quotas, had previously reached the peak of 4.07 cents per pound.

13. In this connection, one members questioned whether the United States had generally the right to impose Section 22 controls on processed products for which no support programmes were in operation. It was his understanding that such products were not covered by the waiver and therefore no import restrictions could be imposed on them.

14. Having noted that existing import regimes on sugar in the United States contemplated both fees under Section 22 and quotas under a separate legal authority (the Headnote in the TSUS) some members questioned the legality and an equity of this situation. In this connection, one member further reiterated his authorities views on the inconsistency of these quotas with the provisions of Article XI. These views were already reflected in detail in the report of the Working Party established to examine a previous annual report (L/5461, para. 16).

15. Contrary to the assertion contained in this respect in the annual report, some members considered that the United States had used the protection of Section 22 controls and the "headnote" quotas to set an unrealisticly high domestic support price which was significantly above long-term average world price levels, and comparable domestic prices in major sugar producing countries. Furthermore the quota system had reduced United States domestic demand for sugar on two fronts by setting restrictive quotas, and by stimulating production of alternate

sweetening, particularly isoglucose. Moreover, while the United States domestic sugar production had remained fairly static since the introduction of the support regime and import quotas, the self-sufficiency ratio had increased significantly as a result of declining imports. In these circumstances one member also asked what did the United States consider to be an adequate self-sufficiency ratio for sugar, and whether this ratio would take into account the fact that artificial sweeterners now accounted for about 30 per cent of the United States sweeterner market.

16. Having noted that a Section 22 actions had been invoked with respect to tobacco by a private producers' federation, some members expressed their concern that import restrictions under the waiver might be imposed on new items. In this connection, one member pointed out that one of the conditions attached to the waiver made an obligation for the United States to notify in advance contracting parties and the GATT of any contemplated Section 22 actions, in accordance with the provisions of Article XXII.

17. With respect to the allocation of chese quotas under the waiver, one member stated that his authorities continued to reserve on this issue the rights of his country under the General Agreement.

18. Having taken note of the various points and questions made, the representative of the United States pointed out that some of them, such as those concerning the drawback system and the "headnote" quotas, clearly fell outside the terms of reference for this Working Party.

19. With respect to sugar-containing items, he indicated that Section 22 controls had been legally imposed on these items because, in practice, they were also part of the program of support under the terms of Chapter 9 of the Tariff Schedule of the United States (TSUS).

[Replies to questions on dairy and sugar]

20. He reiterated that no Section 22 actions had been taken so far on tobacco. He stressed that, as document Spec(84)9 amply illustrated, his authorities had continuously kept under review the measures maintained under the waiver and they had considerably reduced the scope of such measures over the years.

21. He further noted that the recent work undertaken by the Committee on Trade in Agriculture had clearly demonstrated the complexity of the problems affecting trade in this sector. He pointed out, as he consistently did in past similar occasions, that the United States could not solve this problem alone. For this reason, and although there was no formal link between this Working Party and the CTA, he stressed that a practical solution towards a greater liberalization of trade in agriculture could, in the present circumstances, be better achieved in that Committee.

22. The Working Party noted the various statements made by the representative of the United States. One member of the Working Party shared the position that, in the current state of affairs, a practical solution to the too lasting problems of the waiver could better be found in the CTA. In this respect, he questioned whether, in the framework of the CTA, the United States would envisage to apply the provisions of Article XI to import restrictions currently under the waiver.

23. Other members were of the view that the Working Party and the CTA had each a specific task and terms of reference. Therefore, work should be pursued in both bodies, indipendently, with a view of achieving all possible progress on this matter.

24. With regard to the specific characteristics of agriculture and the complex trading problems in this sector, one member expressed full understanding for the difficulties faced by the United States in this respect. However, if the waiver granted to the United States, which was a derogation from GATT rules and dated back as far as 1955, would last further and became permanent, the motives of each country towards

solving the difficult problems of agriculture might be weakened. And, especially from the view point of promoting trade liberalization based on a balance of rights and obligations, he considered that it was very important for the United States to show, as soon as possible, its good faith on this issue of the waiver.

25. While expressing their hope for an improvement in agricultural trade rules resulting from works in the CTA, some members indicated nevertheless that the Working Party process was a separate enterprise and that in any case the United States should be expected to forego the waiver, irrespective of any progress in the CTA. They noted that when the waiver was negotiated in 1955, it was not a pre-condition for its removal that GATT rules should be altered. Instead the understanding was that the United States import controls would be progressively removed a relaxed to enable a termination of the waiver. They noted that difficulties facing the United States administration in relation to Section 22 of the Agricultural Adjustment Act might be that that Act did not automatically called for production controls to be put in place when it was found necessary to limit imports. However, and despite above, any provision in Section 22 should not be used to justify the maintenance of the waiver as it should be intention of all contracting parties to bring their legislation into conformity with the General Agreement within a reasonable period of time. Therefore, the United States should long ago have amended Section 22 in order to bring it into line with, inter alia, Article XI.

26. In the view of these members, the experience gained in past working parties on the waiver indicated the need to examine the background and conditions of the waiver when it was originally granted, in the context of present day conditions.

27. Having recalled that besides the annual report as such the object of the Working Party's examination was the operation of the waiver in the light of the Decision of the CONTRACTING PARTIES of 5 March 1955, one member put forward a proposal that this Working Party should recommend to the CONTRACTING PARTIES what, if any, modifications to the conditons of the waiver granted to the United States under Article XXV:5 might be desirable.

28. Some member pointed out that in the framework of an overall review of the waiver and its present terms and conditions, possible recommendations to CONTRACTING PARTIES might include a "standstill" on present product coverage of and a "sunset" clause on the waiver. They further indicated that, given the difficulties the United States faced, they were prepare to consider a reasonably timed "sunset" clause. They observed that the United States willingness to move on the waiver would be, no doubts, an important factor in wider efforts to obtain greater discipline in agricultural trade.

[To be completed]