

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
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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 1955¹, and to report to the Council."

2. The Working Party met on 2 May 1984, 24 May 1984, and 28 June 1984, under the chairmanship of H.E. Ambassador 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 amended², 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.

¹BISD 3S/32

²Imports restrictions pursuant to Section 22 currently in effect include cotton of specified staple lengths, 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 tobacco 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 the provisions of the General Agreement 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 once again to provide an examination or a critical evaluation of the reasons why GATT-consistent measures did not constitute a feasible alternative to those maintained under the waiver. 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 limits on production. He noted that Articles VI and XVI could sometimes provide inadequate protection against export subsidies 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 successful 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 displacing commercial suppliers from recipient markets.

10. One member asked whether the United States did consider that the minor changes in licensing 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 imports from that country. His authorities urged the United States to modify the re-export programmes in order to eliminate their export incentive effect and to remove or 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. He emphasized that, while his authorities did not contest the use of the drawback system per se, they were concerned about the effects which this system produced when it was combined with border measures (i.e. fees) which had been taken earlier under Section 22. In his view, it was the operation of Section 22 measures which were the source of the problem. Given the volatility of the international sugar market, and hence of the level of fees imposed under Section 22, the problem could recur from time to time.

13. In connection with the discussion relating to sugar-containing products, one member stated that the United States had imposed over the years Section 22 controls on products for which no legal basis was provided for. It was the understanding of his authorities at the time when the waiver was granted that import restrictions pursuant to Section 22 could be imposed only on those products for which price support programmes were in force in the United States. In the case in question, a price support programme was in force for raw sugar but not for processed sugar items. He requested therefore that the Working Party examine the general issue of whether products at a stage of processing different from that of those on which price support programmes were being applied, could be legally subject to Section 22 restrictions.

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 the 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 the annual report, some members considered that the United States had used Section 22 fees and the "headnote" quotas to set a domestic support price for sugar which was unrealistically high and significantly above long-term average world sugar 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 alternative sweeteners, particularly isoglucose. Moreover, while the United States domestic sugar production had remained fairly stable 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 the United States did consider to be an adequate self-sufficiency ratio for sugar, and whether this ratio would take into account the fact that artificial sweeteners now accounted for about 30 per cent of the United States sweetener 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 cheese 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. Regarding recent changes in licensing administration for dairy products and their effect on exports from potential dairy suppliers, he noted that these changes had been introduced in an attempt to ensure that a maximum use could be made of existing dairy quotas. They were, therefore, highly significant for exporting countries.

20. Turning to reasons why the current US sugar import regime contemplated both Section 22 fees and the "headnote" quotas, he recalled that Section 22 fees had firstly been imposed because they were considered a less restrictive form of protection. By law, however, the amount of these fees could not exceed 50 per cent ad valorem. Unfortunately, the sharp decline in sugar prices in recent years would render ineffective the protection that these fees could provide. Therefore, quotas were imposed under a separate authority while Section 22 fees were reduced to zero. A sufficient increase in sugar prices would, of course, lead to reintroducing positive Section 22 fees and lifting off the "headnote" quotas. He noted, however, that countries' exports under quotas were benefitting from sugar prices within the United States which were substantially higher than those in the world markets, which would not be the case if fees were used instead the quotas.

21. With respect to sugar-containing items, he pointed out that the ITC report did indicate that the conditions required by Section 22 on these items were fully met. Moreover, he stressed that this action was fully consistent with Section 22 provisions and it was to preserve imports of those items from interfering with the sugar price support programme.

22. Referring to the question raised in connection with the self-sufficiency ratio for sugar in the United States, and the consumption of artificial sweeteners, he noted that the US legislation

was solely introduced to protect the sugar price support programme and had nothing to do with self-sufficiency. With regard to artificial sweeteners, he reiterated that this was a well-known and long-standing problem. Sugar consumption was declining in the United States irrespective of the levels of sugar prices, because of factors such as basic changes in dietary habits.

23. He also reiterated that no Section 22 actions had been taken or contemplated on tobacco. Therefore, notification requirements under the waiver did not apply in that respect. He stressed furthermore that, as document Spec(84)9 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.

24. 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 the past on similar occasions, that the United States could not solve agricultural trade problems alone. For this reason, even 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 should be sought in that Committee.

25. The Working Party noted the various statements made by the representative of the United States. Some members recalled that the waiver was granted in 1955 on the basis, inter alia, of the assurance of the United States Government that it would continue to seek a solution to the problem of domestic surpluses of agricultural commodities in order to permit a liberalization of trade. However, statistical data contained in document Spec(84)9/Add.1 clearly showed that the United States had failed to achieve that objective.

26. 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 become 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.

27. While expressing their hope for an improvement in agricultural trade rules resulting from works in the CTA, some members recalled 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 or relaxed to enable a termination of the waiver. They noted that a difficulty facing the United States Administration in relation to Section 22 of the Agricultural Adjustment Act might be that that Act did not automatically call for production controls to be put in place when it was found necessary to limit imports. However, and despite the above, any provision in Section 22 should not be used to justify the maintenance of the waiver as it should be the 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 have amended Section 22 long ago in order to bring it into line, inter alia, with Article XI.

28. 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. In this connection, 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 conditions of the waiver granted to the United States under Article XXV:5 might be desirable.

29. One member fully endorsed this proposal and indicated that, in his view, there was a general expectation that some concrete action should be taken with a view to imposing a time limit on the waiver.

30. Some members also 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 prepared to consider a reasonably-timed "sunset" clause. They observed that the United States willingness to move on the waiver would be, no doubt, an important factor in wider efforts to obtain greater discipline in agricultural trade.

31. Commenting on the proposal that the Working Party should examine what, if any, modifications on the conditions of the waiver might be desirable, the representative of the United States indicated that the proposal was not acceptable to his government and objected that such an examination would fall outside the terms of reference of this Working Party. He stated that the waiver was not granted on a temporary basis. The United States representative recalled that the CONTRACTING PARTIES, when they granted the waiver in 1955, had considered the same type of proposals that have now been suggested and rejected them when the waiver was granted. He drew attention to the report of the Working Party contained in the Third Supplement of the BISD (page 141), particularly to paragraphs 2 and 3 of that report noting that an amendment to Section 22 adopted in 1955 provided that no international agreement entered into by the United States should be applied in any manner inconsistent with the provisions of that Section. This report also indicated that the waiver was required in order to remove any possible inconsistencies beyond the obligations under the General Agreement and that under Section 22 so as to permit the fulfillment of the Congressional mandate. He also noted that the report of the Working Party stated that the US government was unable to accept a condition to the waiver for the United States to adopt measures to remove the underlying causes of the situation which necessitated the application of restrictions under Section 22 because: (i) many of the underlying causes were beyond the

control of the US government; and (ii) the measures contemplated would in some cases require legislative action by the US Congress, it was therefore, beyond the competence of the Administration to promise an adoption. He noted that the waiver itself contained the major points outlined by the United States. Also that the conditions and procedures referred to actions under the waiver not to the waiver itself as being temporary. There was no hint whatsoever that the waiver was not permanent. He stated that his government had lived up to both the spirit and the letter of the waiver and certainly the documentation prepared by the secretariat (Spec(84)9) indicated that number of items that had been removed from Section 22 restrictions.

32. He further recalled the statement made by his delegation in the course of the examination of the 25th annual report and which had been reflected in the report of that Working Party (L/5569, paragraphs 34 and 35). Quoting from that report, he reiterated once again that the United States would actively participate in the work of the Committee on Trade in Agriculture and sincerely hoped that the work of that Committee would result in positive and parallel progress in the agricultural trade situation leading towards the much-needed greater liberalization of agricultural trade and would enable the United States to take positive action towards the progressive reduction and elimination of remaining restrictive measures under the waiver. He stated that this was the best way to tackle this problem and to achieve a practical solution. But he stressed that working on two tracks to solve the same problem could be, in the present circumstances, extremely counterproductive. He stressed that agricultural trade restrictions and subsidies were a global problem and could not be solved by the actions of any one country. The United States could not give up its defense against subsidized exports or the trade efforts of import restrictions applied by other countries. That was why the US supported the work of the Committee on Trade and Agriculture and believed that was the appropriate place to deal with this problem.

33. Although sharing the basic aims and trust of the proposal referred to in paragraph 28 above, several members nevertheless expressed their concern about the timing of such a proposal. They were also of the view

that, in the current state of affairs, a practical solution to the too long-lasting issue of the waiver could and should better be found in the Committee on Trade in Agriculture. In this connection, one member further stated that the broader mandate of the CTA would better serve the purpose of finding mutually acceptable solutions for all measures, whether lawfully or unlawfully maintained, which affected trade in agriculture.

34. The member who put forward the proposal in question stated that her delegation wished to maintain it on the table. In her view, it was only reasonable to seek a modification of the conditions attached to the waiver almost 30 years ago, notably with respect to a date of its termination. Moreover, she reserved the rights of her country with respect to the interpretation of the terms of reference of the Working Party.

35. Some members recalled that the Working Party and the CTA had each specific tasks and terms of reference. Therefore, work should be pursued in both bodies, independently, with a view to achieving all possible progress. They could not accept, however, that measures illegally maintained with respect to GATT provisions could possibly be treated in the same manner as other measures affecting trade, but which nevertheless had legal status under the General Agreement.

36. Some members were of the view that there was little point in further discussing procedural aspects of future work. They considered that the report of the Working Party did contain sufficient elements to enable the Council to have a fruitful discussion on this matter. It would be for the CONTRACTING PARTIES, in the light of such discussion, to further consider an appropriate way for addressing the points and the concern expressed by various members in the course of the proceedings of the Working Party.