

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

Spec(84)52
9 October 1984

Committee on Trade and Development
Fifty-Fourth Session
13-14 and 16 November 1984

DRAFT REPORT OF THE SUB-COMMITTEE ON PROTECTIVE MEASURES

1. The Sub-Committee on Protective Measures held its seventh session on 21 September 1984, under the Chairmanship of H.E. Ambassador F. Mebazaa (Tunisia).
2. In his introductory remarks, the Chairman drew attention to the Sub-Committee's terms of reference, as determined by the CONTRACTING PARTIES in November 1979 (L/4899). These require it to examine any case of new protective action by developed countries affecting imports from developing countries in the light of the relevant provisions of GATT, particularly Part IV thereof, such examination being without prejudice to the rights of contracting parties under the GATT or the competence of other GATT bodies. The Chairman also recalled that the Committee on Trade and Development agreed at its forty-ninth session in March 1983 (COM.TD/114) that the work of the Sub-Committee, together with that accomplished in the country consultations called for by Ministers at the thirty-eighth session of the CONTRACTING PARTIES in November 1982 (L/5424), would form part of the regular annual review of the implementation of Part IV. The Chairman noted that it had been the practice in the past for the Sub-Committee to reconvene to adopt its report to the Committee on Trade and Development and to the Council. However, in view of the heavy schedule of meetings taking place in the GATT between now and the end of the year, and the difficulty

of scheduling a further meeting of the Sub-Committee, he suggested that the secretariat be invited to prepare a draft report of this session which would be circulated to interested delegations before being issued in its final form.

3. The Sub-Committee had before it six notifications from governments in response to GATT/AIR/2032; a notification from Canada in document COM.TD/SCPM/W/24, "reverse" notifications from Peru, Argentina, Colombia and Sri Lanka in documents COM.TD/SCPM/W/25, COM.TD/SCPM/W/26, COM.TD/SCPM/W/27 and COM.TD/SCPM/W/28 and Add.1 respectively, and a notification from Japan in document COM.TD/SCPM/W/29 indicating that it had no new restrictions to notify. In addition, the secretariat had put together in document COM.TD/SCPM/W/23 information which might be of interest to the Sub-Committee. The information contained in the secretariat note was presented, as indicated in its paragraph 6, in accordance with the understanding reached at the first session of the Sub-Committee that the inclusion of measures in secretariat documents would be without prejudice to views delegations might have regarding the desirability of taking up for examination any such measures or on whether they fall within the Sub-Committee's terms of reference.

4. The Chairman suggested that the Sub-Committee organize its work by first taking up the notifications made by governments, followed by discussion and examination of a number of measures referred to in the secretariat document, including developments with regard to certain measures examined at its earlier meetings. The representative of Egypt noted that in the reports of the Sub-Committee and also in the secretariat background documentation, there was a separate section referring to developments with respect to measures previously discussed in the

Sub-Committee. He felt that the effectiveness of the Sub-Committee would be enhanced if there was a separate agenda item relating specifically to developments in respect of past measures examined by the Sub-Committee. The Chairman stated that it was his intention to include such an item in the agenda, which would be taken up after a consideration of notifications by governments and any new measures brought to the attention of the Sub-Committee in the secretariat's note.

"Reverse" notifications from Peru, Argentina, Colombia and Sri Lanka

5. The representatives of Peru, Argentina, Colombia, Brazil, Philippines, Turkey and Uruguay made statements in connection with the "reverse" notifications of Peru (COM.TD/SCPM/W/25), Argentina (COM.TD/SCPM/W/26), Colombia (COM.TD/SCPM/W/27), Sri Lanka (COM.TD/SCPM/W/28 and Add.1), concerning the initiation of countervailing duty investigations by the United States in respect of a wide range of textiles and clothing items exported by thirteen developing countries. All these representatives expressed deep concern at the countervailing duty investigations undertaken by the United States, in particular because of their wide coverage. The investigations covered virtually the entire textile and clothing sectors of the affected countries and the use of countervailing duty provisions in this manner was unprecedented. In the view of these delegations, the coverage of the investigations provided clear evidence that these actions were protectionist in intent. Moreover, they violated paragraph 9 of the Multifibre Arrangement and paragraph 23 of the 1981 Protocol of Extension. All the developing country delegations who spoke on this matter also expressed the view that these actions were contrary to the commitments made by contracting parties in the Ministerial Declaration of November 1982, particularly paragraph 7(i) thereof, which calls on contracting parties to

resist protectionist pressures in the formulation and implementation of national trade policy.

6. These delegations also expressed concern at the discriminatory nature of the measures. All the countries affected were developing countries, non-signatories of the Subsidies Code. It was difficult to see how the exports of the affected countries could cause injury to United States producers, since the amounts involved represented a very modest share of total United States production and consumption of textile and clothing items. In a number of cases, these countries had not even succeeded in fulfilling their quotas under the MFA. These actions were being taken against new entrants and small suppliers in the textiles and clothing industry, and against countries which were already facing acute difficulties in respect of their balance-of-payments positions, the low level of their reserves and their high external indebtedness. In noting that the countervailing duty investigations affected only non-signatories to the Subsidies Code, certain delegations observed that their authorities were interested in signing the Subsidies Code but that this was made difficult by the unilateral interpretation of certain Code provisions by the United States, which in the view of these delegations was not consistent with the generally accepted interpretation of the Code's provisions. The representative of Colombia noted that his country had also faced difficulty in respect of cut flowers in this regard. All the representatives who spoke urged the United States to suspend the countervailing duty investigations, noting that the investigations themselves constituted a significant barrier to trade irrespective of whether or not countervailing duties were subsequently levied.

7. The United States representative referred to the comments made by a number of developing-country representatives concerning the lack of compliance with commitments undertaken in the Ministerial Declaration of November 1982 and expressed the view that contracting parties' efforts to comply with the Ministerial commitment to resist taking protectionist measures had been increasingly successful in the past year. In a number of instances, governments had refused to submit to pressures for protection and in other cases where it had not been possible to avoid imposing restrictions, measures had been chosen which were intended to minimize the disruptive impact on trade. In the United States pressures for the imposition of protectionist measures had been particularly strong. In the context of the domestic economic recovery in the United States, imports had been growing at roughly twice the rate of the GNP, while exports had not shown the same expansion. The United States trade deficit had been increasing rapidly, and was expected to be nearly twice as large in 1984 as it was in 1983, and more than three times larger than it was in 1982. A significant factor in the growth of the United States trade deficit was the increase in imports from developing countries. The trade deficit with the non-oil exporting developing countries alone had quadrupled from 1982, to an estimated US\$33.2 billion in 1984. The representative of the United States observed that the large trade deficit, coupled with the strength of the United States dollar, had adversely affected many businesses in the United States. In these circumstances, it had not been possible in all cases to avoid taking restrictive actions. However, strong efforts had been made to resist protectionist pressures and for the most part this had been successful, particularly in recent months, including in regard to protectionist legislation. Where import relief had been granted, this had been done through existing statutory procedures which were highly transparent and required solid justification before action was taken. For

the United States to continue to be successful in abiding by its Ministerial commitments, such efforts needed to be matched by similar efforts on the part of all contracting parties, developed and developing alike.

8. The representative of the United States observed that in the past it had not been the practice of the Sub-Committee to examine measures affecting the textiles and clothing industry, and expressed the view that the Textiles Committee and the Textiles Surveillance Body were more appropriate fora for discussing these matters. The representative of Brazil stated that while the Sub-Committee had not considered measures falling under the MFA in the past, the measures before the Sub-Committee concerned countervailing duty actions and as such did not fall under the purview of the MFA.

9. In regard to the countervailing duty petitions, the representative of the United States observed that these were the result of initiatives taken by industry and labour groups in response to what they considered to be subsidization on the part of the thirteen countries concerned. These petitions would be thoroughly investigated by the United States Commerce Department in a highly transparent manner. Not only was the utilization of the countervailing duty provisions of the United States law fully consistent with the provisions of, and obligations under the Multifibre Arrangement, but vigorous enforcement of unfair trade laws was also compatible with the broad principles of free trade, which assume that governments do not subsidize their exports or distort trade in other ways. Since action taken under countervailing duty and anti-dumping legislative provisions was a legitimate response to the trade practices of other countries, it was not clear to the representative of the United States that this was an appropriate matter for consideration by the Sub-Committee.

However, the concern of the affected countries had been noted and would be transmitted to the appropriate authorities in Washington. Moreover, the United States always remained willing to discuss these issues bilaterally or in the appropriate Committees.

Discussion of points arising out of the secretariat note COM.TD/SCPM/W/23

10. In regard to the measure taken by Switzerland affecting imports of certain frozen vegetables, referred to in paragraph 7 of COM.TD/SCPM/W/23, the representative of Switzerland stated that his authorities had imposed additional import duties on these items when imports exceeded 3,400 tons per year because of a rapid increase in imports, which had doubled in the past six to seven years. The representative of Switzerland also referred to national policies which placed priority on ensuring that a certain proportion of the demand for some agricultural products was met from domestic sources of supply. It was also in view of the conditions in this sector that the Swiss authorities had withdrawn the GATT binding on this item in 1980. The representative of Switzerland stated that on the basis of available statistics, it appeared that developing countries were not affected by the duty increase, and any impact from these measures was most likely to affect suppliers from neighbouring countries. The Swiss representative said that his authorities were ready to discuss this matter with any interested contracting party.

Other developments of possible interest to the Sub-Committee

11. The Sub-Committee had before it in paragraphs 8 and 9 and Annex II of COM.TD/SCPM/W/23 certain information on anti-dumping and countervailing duty actions and on subsidies. The Chairman recalled that in accordance

with the understanding reached in the Committee on Trade and Development in March 1983, the information provided by the secretariat in Annex II concerning anti-dumping and countervailing duty actions referred only to those countries which were not undertaking Part IV country consultations during the current period. The representative of Brazil stated that he wished to add a few items to the list in Annex II of anti-dumping actions affecting his country. Australia had imposed an anti-dumping duty on trietanolaminae in 1983. In addition, Australia had opened an anti-dumping investigation on sorbitol in July 1983 and had terminated the action with a finding of no injury in December 1983. Also, Canada had opened an investigation and imposed an anti-dumping duty on synthetic twine in 1982. A new investigation on the same product had been initiated in March 1984, the results of which were not yet known.

Developments in respect of measures examined at the Sub-Committee's earlier meetings

12. With regard to paragraphs 10 and 11 of COM.TD/SCPM/W/23, which contains information on an Article XIX action by the European Communities on dried grapes, the representative of the European Communities stated that his authorities had held consultations with certain contracting parties, but none of these had been developing countries. He was not aware of any problems faced by developing countries in regard to these measures, but his authorities remained ready to discuss the matter with any interested contracting parties. In relation to paragraph 14 of COM.TD/SCPM/W/23, containing information on the Article XIX action taken by the European Communities on quartz watches, the European Communities representative stated that consultations were proceeding in this matter.

13. The representative of Australia, referring to the information contained in paragraph 17 of COM.TD/SCPM/W/23 concerning measures affecting the textiles, clothing and footwear sectors in Australia, stated that in the view of her authorities these arrangements were of a liberal nature and contained an automatic mechanism for increasing imports. Quotas for 1985 have increased on a weighted average basis by 14 per cent compared to the previous year. The total tender quota for 1985 was significantly higher than in 1984, representing an overall increase in the tender quota pool of approximately 60 per cent. Moreover, the textiles, clothing and footwear plan of Australia contained a guaranteed liberalization factor and all market growth would be made available to importers. These arrangements allowed for a relatively high level of import penetration, especially with respect to exports from developing countries.

Report of the Sub-Committee

14. The Sub-Committee agreed that the secretariat would prepare a draft report of the proceedings of this session, which would be circulated to interested delegations for comment before being issued in its final form.