

## TARIFFS AND TRADE

UNITED STATES IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTSDraft Report of the Working Party

1. The Working Party was established by the Council on 11 November 1987, with the following terms of reference:

"To examine the twenty-ninth and thirtieth annual reports (L/6256) submitted by the Government of the United States under the Decision of 5 March 1955<sup>1</sup>; and to report to the Council."

When proposing the terms of reference for the Working Party, the Chairman of the Council repeated the understanding, noted by the Council in 1986, that these traditional terms of reference would permit the Working Party to make appropriate recommendations. The Council took note of this statement (C/M/215).

2. The Working Party met on 11 February and 2 May 1988, under the chairmanship of H.E. Ambassador Julio A. Lacarte (Uruguay).

3. In accordance with its terms of reference, the Working Party carried out its examination of the twenty-ninth and thirtieth annual reports on import restrictions in effect under Section 22 of the United States Agricultural Adjustment Act as amended<sup>2</sup>, and on the reasons for the maintenance of those restrictions, on the basis of the reports (document L/6256). With the assistance of the representative of the United States, the Working Party reviewed the action taken by the United States under the Decision of 5 March 1955.

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<sup>1</sup>BISD 3S/32

<sup>2</sup>Import restrictions or fees 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.

had been done, exceptionally and without prejudice, in order to update the review cycle which had been slowed by Uruguay Round business. He specified that during the period under review two Presidential Proclamations regarding Section 22 had been issued, both of which had been discussed by the previous Working Party (Proclamations 5325 and 5618). Other import restrictions imposed under the authority of Section 22 continued in effect without change. Document L/6256 indicated steps being taken to balance supply with demand for the products where Section 22 restrictions existed. For all these commodities information was presented in the tabular form requested by the previous Working Party.

5. The representative of the United States affirmed that his government continued to meet the terms of the waiver in letter and spirit. Its use was linked to those cases where imports would materially interfere with the operation of a price support programme, and restrictions were relaxed or removed when possible. As for the problems of world agricultural trade, these were the result of government support programmes in many countries - their elimination must therefore be pursued multilaterally, as the United States sought to do with its negotiating proposal on agriculture.

6. The scope of the terms of reference of the Working Party was discussed. One member asked whether the United States was prepared to accept that the Working Party should make recommendations, as provided for in the Council Chairman's statement. Another said it was essential that it do so. The United States representative replied that his authorities did not consider it appropriate to make recommendations concerning the actions of one country alone. The member who had raised the question found this unacceptable. In his view it was proper to make recommendations concerning the policies of the United States because the United States was in a special, even unique, situation in GATT. Though they were zealous in enforcing Article XI on others, they could in fact withdraw their own agricultural sector from its rules. A member who had recently been party

to a dispute settlement case on agricultural imports with the United States commented that it was difficult for his farmers to accept that practices which had been ruled against in their own case were permitted to the United States. The Chairman of the Working Party noted that the terms of reference were broad enough to permit it to make recommendations, with reservations or dissenting opinions noted as necessary. The position of the United States could not change this mandate, though the United States were free to express their views.

7. Members of the Working Party raised general questions concerning the existence of the waiver and its effects on agricultural trade. It was described as a significant problem which had had serious adverse effects on the GATT system as a whole and on other contracting parties. The lack of any time-limit and the potential breadth of its coverage were criticized. Members claimed that the legitimate expectation of the CONTRACTING PARTIES at the time the waiver was granted was that the United States would take action within a reasonable period which would enable termination of the waiver. Several members agreed that in the circumstances unilateral action by the United States to reduce its export subsidies would be appropriate as a sign of good will. It was noted that the United States negotiating proposal carried with it a clear affirmation that the waiver was on the table. What was still needed was a commitment to terminate it within a specified period, of which there was no sign as yet. Several members also commented that the circumstances in which the waiver was granted had changed. It had been intended to enable the United States to seek a solution to the problem of surpluses through the adjustment of domestic supply and demand. Not only had this not been done, but the use of the waiver was in fact protecting and maintaining the production of exportable surpluses. Several members saw it as inconsistent with the intentions of CONTRACTING PARTIES in 1955 that the United States should become a subsidized exporter of products for which the waiver protected its own market. Additional data on export subsidies, conditions, prices and quantities was sought - especially CCC disposals and their destinations - and the United States was asked to comment on the relationship between exports and import protection.

8. The representative of the United States replied that his government had sought the waiver in order to put the United States on the firmest possible GATT standing given the requirements of Section 22. Section 22 was not in itself the cause of United States exportable surpluses, though some USDA programmes might be among the causes. Concerning the suggestion that a time-limit be set on the waiver, he noted that the 1955 Working Party had considered but dismissed this idea, either for the waiver itself or for the adjustment of supply and demand. The waiver had been sought in order to avoid a conflict between Section 22 and the GATT obligations of the United States, a conflict which would still exist. Therefore no commitment could be given either in 1955 or now to a specific termination date. Document Spec(84)9 showed the progress that had been made over time to reduce the waiver's coverage. Efforts had also been made to reduce surplus production; there was now a 25 per cent acreage reduction requirement for farmers participating in the cotton price support programmes, and dairy support prices had been reduced by about 18 per cent in the past 18 months. There was also a dairy termination programme which had been described in the United States reports.

9. A member of the Working Party commented that the United States had been giving their own interpretation regarding the granting of the waiver, which not all contracting parties would share. There had been expectations attached to its granting, which members had the right to recall. He could not accept that there was no direct link between Section 22 and subsidized exports. Section 22 protected the United States programmes which led to surplus production which in turn was disposed of through export. He saw it as necessary for the United States Congress to modify Section 22 in order to permit full United States participation in the Uruguay Round agricultural negotiations. He asked the United States representative for information on congressional attitudes to such a modification and whether the administration had already been given a mandate to open negotiations which could lead to a modification of Section 22.

10. The United States representative answered that all United States programmes were on the table in the Round. He confirmed that an Act of Congress would be needed to change Section 22. His government was not

proposing to trade Section 22 for any particular action by another contracting party, but rather wanted a gradual multilateral elimination of all trade-distorting actions. Even without passage of the Trade Bill (since vetoed by the President), the United States administration had a mandate to negotiate, and there was broad bipartisan congressional support for their agricultural negotiating proposal.

11. Taking up the United States statement that the waiver was on the negotiating table, a member of the Working Party inferred that this meant the United States would eventually be able to do without it. He asked them therefore to give details of the possible systems which could replace it, and the steps by which the waiver could be removed. In the light of their own negotiating proposal, he questioned whether the United States could bring their actions into conformity with Article XI by a certain date.

12. The United States representative replied that the question essentially concerned the work of the Negotiating Group on Agriculture, which was distinct from the business of this Working Party. However, he observed that Section 22 existed to protect United States farm programmes. The programmes might change but the need for such a mechanism remained, and hence the need for the waiver, leaving aside hypothetical questions about the outcome of the Uruguay Round. The other member commented that a purpose of Article XI was to protect domestic programmes, which many contracting parties maintained without necessarily violating it. Thus "possible conflict with Article XI" was not much of a reason for maintaining the waiver. He asked for more information on the standing of United States domestic programmes in terms of Article XI. The United States representative agreed to reflect on this.

13. Members also commented on various specific aspects of the reports, and on United States policies for the products under the waiver. Overall there was seen to be insufficient information on measures being taken to balance supply and demand - measures of whose effectiveness members were in any case critical. On sugar, a member expressed disappointment that there was no separate statistical tabulation in the reports. He also commented on

the dramatic change in the United States sugar import regime: imports had now slipped far below the 2.7 million tons cited to some 750,000 tons in 1988 according to US official statements. This would be the lowest level for 100 years. The effect of United States sugar programmes had in fact been that from being the major importer in the late 1970s, the United States now verged on becoming a net exporter. The corn sweetener industry was the major beneficiary of the United States sugar programme. The use of the waiver in respect of sugar was not, this member claimed, consistent with the spirit of the Decision of 5 March 1955. Several other members agreed, and also found the information concerning sugar in the United States reports to be insufficient, especially compared with previous years. They stated that more information was needed on the details of policy measures acting on production, imports and exports, in particular the duty drawback system on sugar, which in certain circumstances could be seen as an export subsidy under the Subsidies Code.

14. It was noted that the present import position had been reached without (in the case of raw sugar) the need to use the provisions of Section 22. As the United States could impose either quotas or fees under these provisions but not both simultaneously, a member asked why the United States had not applied Section 22 quotas on raw sugar. He asked the United States to confirm that the present quotas were not under Section 22, and furthermore that they were not justified in GATT terms by any waiver granted by the CONTRACTING PARTIES under Article XXV, or by the use of programmes consistent with Article XI. The United States representative was also asked to outline the domestic consequences if the President were to use Section 22 to impose quotas on raw sugar, rather than the legislative authority drawn on at present. He was asked to confirm that this authority was based on a headnote in the Tariff Schedule of the United States, and to explain how this was consistent with GATT in the absence of waiver cover. These questions were endorsed by other members of the Working Party, who underlined their importance. One of them also commented that drafts of the United States Trade Bill had included a provision to extend the period for sugar duty drawback back as far as 1977. However, he had heard that this clause had been removed prior to the Bill's approval by Congress; the United States representative's confirmation of this was requested.

15. In reply the United States representative affirmed that the sugar import quotas were not under Section 22; hence they, and their GATT conformity, were not within the mandate of this Working Party. (He noted, nonetheless, that the United States administration had announced its intention to introduce legislation to change the price support programme for sugar.) The provisions of Section 22 had been included in the CONTRACTING PARTIES' decision granting the waiver in 1955. These provisions had not been changed since. They did prohibit the use of Section 22 quotas and fees together. Concerning the other questions raised in paragraph 14, the United States representative undertook to consult further with his authorities. He understood, subject to confirmation, that the Trade Bill clause referred to had indeed been deleted.

16. One member of the Working Party contrasted the United States restrictions on cotton under the waiver with the United States government's attitude to the Multi-Fibre Agreement, which he said hurt his country's interests. Another noted that cotton carry-over stocks continued to increase and asked the United States to comment on the effectiveness of set-aside programmes for cotton in reducing surpluses when accompanied by high target prices and deficiency payments.

17. A member noted continuing production increases for dairy products as well, and commented that here, as for sugar, the intention that the waiver would allow the United States to balance supply and demand was not being fulfilled. Another member observed that the dairy termination programme referred to had in fact ended, and asked what other steps were being taken or envisaged. Turning to the administration of import quotas established under the waiver, a member asked how "non-traditional" suppliers of dairy products could gain access to the United States market. How was a "traditional supplier" defined? His own country had tried without success for ten years to get a share of the uncommitted cheese quota.

18. In response to these points, the representative of the United States reaffirmed that Section 22 existed to protect United States agricultural programmes, not particular production levels. It was not an export programme. Concerning the data supplied in the reports, he recalled that the previous Working Party had asked for this to be set out in the format used on page 4. Furthermore, that Working Party had criticized the United States for an excessive amount of detail on sugar. The restrictions in place for this product remained as last reported - i.e., a 1¢/lb fee on imports of refined sugar and quotas on three categories of sugar-containing products. In answer to the question concerning the administration of quotas (traditional/non-traditional suppliers) the United States representative said he would have to seek clarification. But he noted that the United States was not waived from its obligations under the General Agreement to consult with other contracting parties; the United States was willing to meet with the member concerned to discuss this issue as those obligations required.

19. A member submitted a list of written questions to the United States, who provided written replies together with statistical annexes. These questions and answers are being issued as an addendum to the present document.