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THE ADEQUACY OF
GATT PROVISIONS DEALING
WITH AGRICULTURE

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UNITED STATES SENATE
RUSSELL B. LONG, *Chairman*

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The Adequacy of GATT Provisions Dealing with Agriculture

Trade in agriculture, as other trade, is subject to the three elements of the GATT system: general rules, procedures for interpreting and enforcing them, and specific tariff commitments.

General Rules

The general provisions of the GATT apply to agricultural as well as to industrial trade. They should afford stability of trading expectations and give meaning to negotiated tariff and other concessions. To the extent that these purposes are frustrated through such devices as nontariff trade controls, internal support mechanisms, and export subsidies, the GATT becomes less effective.

Nontariff controls on agricultural products abound. Many of them are applied pursuant to the general exceptions provisions of the GATT. Among these provisions are those which permit restrictions necessary to protect human, animal or plant life or health and temporary quantitative restrictions to safeguard the balance of payments. Some restrictions are justified under the Protocol of Provisional Application which contains a "grandfather clause" permitting the application of measures required by domestic legislation which antedates the GATT, even though these measures are inconsistent with GATT provisions. A few restrictions have been authorized by waivers, subject to certain conditions. (In 1955, the United States obtained a waiver entitling it to apply restrictions required by Section 22 of the Agricultural Adjustment Act (of 1933), as amended, when such restrictions are inconsistent with the GATT.) Finally, there are a number of restrictions which are inconsistent with the GATT and are not covered by waivers.

The GATT also speaks to the problem of subsidies, including price or income support policies, which have the effect of increasing exports or reducing imports. It brings them under a regime of notification, exchange of information, and consultation. It particularly notes the possibly harmful effects of export subsidies and the undue disturbance to normal commercial interests which they may occasion. The GATT does not prohibit export subsidies on primary products. It states that governments should seek to avoid their use; but that if a government does apply an export subsidy on a primary product, it should not do so in a manner which would give that country more than an equitable share of world export trade in that product. The GATT provisions on export subsidies on primary products reflects the position taken by the United States on this matter when the GATT was reviewed in 1955.

This ambiguity in GATT language concerning export subsidies on primary products has come to cause special problems. Subsidies which have the effect of creating an artificial trade where none has heretofore existed or could exist without support interfere with the stability of trade relationships. The meaning of equitable share is vague; and the phrase "world export trade in that product" has been interpreted to mean the totality of trade (and contracting parties are thus left considerable freedom to concentrate their subsidies on exports to particular markets). If subsidized imports result in injury to domestic producers, the subsidies may be countervailed. The GATT does not, however, provide an effective remedy for exporters who are injured by the loss of third country markets to competitors whose exports are subsidized. There is a GATT provision permitting the Contracting Parties to authorize countervailing duties in such cases, but the countervailing country has little or no incentive to apply duties in behalf of an injured third country supplier.

A GATT working party in 1955 addressed itself to the problems raised by domestic subsidies. It agreed that a government which has negotiated a tariff concession is entitled to expect, failing evidence to the contrary, that the value of that concession will not be nullified or impaired by the later introduction or increase of a production subsidy.

Specific Exceptions for Agricultural Trade

The general provisions of GATT contain few exceptions specifically for agricultural trade. These exceptions, while significant, are carefully circumscribed. The basic thrust of the GATT is that protection for domestic production should not extend beyond the application of a tariff. There is an exception to this rule for agricultural and fisheries products. Insofar as a government restricts domestic production or marketing of a particular agricultural or fisheries product or of an animal product derived from imports of the product in question, it may also restrict imports of that product. Also, insofar as a government sells a domestic surplus of the product in question to its domestic consumers at reduced prices, it may restrict imports. Nonetheless, the GATT requires that the controls a government institutes under these circumstances should not reduce the proportion of imports to domestic production that might reasonably be expected in the absence of restrictions.

Tariff Commitments

All of the major trading countries have made important concessions on agricultural products. The value of some of these concessions however has been adversely affected by subsequent developments.

The creation of the European Community affected the tariff commitments the member states had contracted earlier. It also introduced on a wide scale a variable charge on imports in place of fixed

import duties that had hitherto been the subject of GATT negotiations. During the examination of this customs union in the course of the 1960-62 Dillon Round negotiations, there were lengthy discussions concerning agricultural commodities on which there had been bindings by individual member states but which were to be subject to an EC variable import levy. These commodities included wheat, corn, grain sorghum, rice, and poultry meat. The United States and the Community agreed to defer a final settlement (standstill) on these commodities; meanwhile the United States reserved its negotiating rights as of September 1, 1960.

The poultry issue was resolved by the withdrawal of U.S. concessions in January 1964. The 1962 standstill agreements concerning wheat, corn, and grain sorghum were extended into Kennedy Round discussions of an International Grains Arrangement (IGA). U.S. negotiating rights on grains covered by that Arrangement remained in suspension through the three-year term of the IGA ending June 30, 1971. The United States has asked the EC to negotiate on these rights and the U.S. rights on rice not covered by the IGA concurrently with the negotiations on the enlargement of the EC.

The results of the Kennedy Round (1964-67) proved disappointing insofar as agriculture was concerned. The United States sought agreement to limit the European Community's variable import levies. The goal was to reduce them if possible and, at any rate, to bind them against further increase. The Community countered with a broad offer to negotiate on all agricultural products on the basis of binding the margin of support. This would have been defined as the difference between the internal price (including all direct support measures) and a world price (reference price) which would be negotiated. The Community plan as put forward at that time would have required concessions by the EC's trading partners while at the same time it would have (1) continued its support levels which were high compared to those of the United States and (2) it would have replaced price competition with support manipulations and triennial negotiations. The United States did not accept the Community plan.

The IGA which emerged from the Kennedy Round did not secure the hoped-for assurance of improved access to import markets, and the higher price levels which it set turned out to be unworkable.

Enforcement Mechanism

The GATT procedure for dealing with an alleged violation of the general rules or an alleged impairment of a tariff commitment provides for a procedure of consultation and accommodation, with the possibility of ultimate recourse to retaliation pursuant to authorization by the Contracting Parties. Countries have been reluctant individually to push complaints to the point of collective discussion.

The United States has used the GATT enforcement mechanism with regard to many trade issues involving agricultural products.

Several of the U.S. complaints have involved quotas and restrictive licensing systems employed by a number of European countries, especially in the fruits and vegetables area. In some instances, restrictions were removed, quotas were enlarged, or the period of permissible imports was lengthened. In other instances, the U.S. complaint remains outstanding. Some of these latter instances include: the United Kingdom's quota restrictions on fresh U.S. grapefruit and certain processed citrus fruits, cigars and rum, the European Community's variable levy on sugar added to canned fruits, and the European Community's price supports and buyers' premiums for domestic tobacco. In some instances, the United States has been successful in having a quantitative restriction removed. However, in a few cases the removal of a quantitative restriction has been offset by increases in tariffs or the institution of variable levies has accompanied or followed closely upon the abolition of quotas.

A different kind of U.S. action arose from the failure of the United States and the European Community to agree to a final settlement on poultry meat. The Community's withdrawal of a tariff binding became a tangible problem when the common agricultural policy for poultry went into effect in July 1962. After further unsuccessful negotiations, the United States invoked the rights it had reserved in the standstill agreement concerning poultry meat. A GATT panel determined the value of the withdrawal of the tariff concession, and both the United States and the Community accepted its judgment. In January 1964, the United States, in accord with the panel's judgment, suspended trade agreement duty rates and restored the statutory rates on certain agricultural and nonagricultural items.

The GATT and U.S. Agricultural Trade

The structure of tariff bindings built up over several rounds of negotiations, compensations, and accession agreements gives U.S. traders of agricultural products a considerable degree of stability in what they may expect in their transactions. This structure is not perfect. Its building has not progressed so far as could be hoped. Moreover, it is undermined in a number of countries by trade practices that have evolved since the GATT was established. These practices (some of which are deviations from the basic GATT rules) often are an integral part of domestic agricultural support policies and programs.

In part, the problem arises from GATT silence concerning member countries' general tariff obligations, apart from specific commitments on particular products. Presumably, a government may change an unbound rate as it chooses; but to what extent and how frequently may it do so without upsetting the principles and stability of the GATT trading system? How comprehensive must a price support system be, and to what heights must it raise prices before it seriously disturbs the balance of trading advantages under the GATT?

If the GATT system is to be effectively implemented and improved, the major contracting parties may have to adjust their agricultural support programs so that the costs of these programs are not passed on to their trading partners.

