

No. 14/88
June 21, 1988

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441.2(103)

Contact: Ella Krucoff
(202) 862-9540

E.C. CHALLENGES WAIVER ALLOWING U.S. AGRICULTURAL IMPORT RESTRICTIONS

The European Community has asked the United States for consultations on a waiver under the General Agreement on Tariffs and Trade (GATT) that allows the U.S. to limit imports of certain agricultural products. The waiver, granted in 1955, is presently applied to dairy products, sugar, cotton and peanuts.

In a June 10 letter from Willy De Clercq, E.C. Commissioner for External Relations and Trade Policy, to U.S. Trade Representative Clayton Yeutter, the Community charges that the waiver has been used in ways that are not consistent with its original purpose and "which are damaging to the Community's trade interests."

It adds: "We consider further that the waiver has over this period led increasingly to major economic distortions in terms of the effects on trade flows for the commodities concerned." The waiver was intended to help the U.S. solve its agricultural surplus problems. Instead, the U.S. has increased production, developed export programs and increased its price support activities.

If bilateral consultations under GATT procedures (Article XXIII; see attachment) fail, the Community will ask that a GATT panel investigate the issue.

In a statement released in Brussels, Mr. De Clercq said:

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Despite the considerable reform efforts that the Community has undertaken in agricultural matters, it is confronted by a largely negative American attitude--refusing to negotiate emergency and short-term measures in the Uruguay Round framework, increasing export subsidies, reducing set-aside acreage, and attacking the Community oilseeds policy.

It seems that the United States is trying to pull out important elements of the Uruguay Round negotiations to get results through confrontation.

All this is contrary to what has been adopted in international fora--Punta del Este [where the Uruguay Round was launched] and the ministerial meetings of the Organization for Economic Cooperation and Development.

Article XXIII

Nullification or Impairment

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of

- (a) the failure of another contracting party to carry out its obligations under this Agreement, or
- (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
- (c) the existence of any other situation,

the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1 (c) of this Article, the matter may be referred to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary¹ to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

UNITED STATES AGRICULTURE AND THE GATT WAIVER

The following excerpts from books on the GATT explain, first, the history of the U.S. waiver from GATT obligations for certain farm products and, second, the Agricultural Adjustment Act, the legislation on which the waiver is based.

THE WAIVER

World Trade and the Law of GATT

By John H. Jackson

Published by the Bobbs-Merrill Company, Inc. (1969)

Pages 733-737

United States problems with the economics of agriculture date back at least to the post-World War I decline in agricultural prices. Various measures were tried to cope with these problems and, by the end of World War II, the United States had laws on its books that could largely insulate its domestic market from agricultural imports.

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The post-World War II period, like that period after World War I, saw an increasing problem of agricultural surpluses in the United States. Although the United States negotiators in 1947-1948 did their best to prevent provisions of the GATT from being inconsistent with United States law, ironically, the United States Congress soon began to modify its law, and some of these modifications were inconsistent with GATT.

In 1948, just after GATT came into force (provisionally), Congress amended the Agricultural Adjustment Act, section 22, but added a provision to preserve the consistency between that act and GATT.

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In 1951, Congress again amended section 22 of the Agricultural Adjustment Act, this time to read: "(f) No trade agreement or other international agreement heretofore or hereafter entered into by the United States shall be applied in a manner inconsistent with the requirements of this section."

This established precedence for the United States legislation over international agreements including GATT. Congress recognized at the time it adopted this and the other amendments of 1951 that its new amendments might cause the United States to breach the GATT. The statutory provision of section 22 of the Agricultural Adjustment Act as so amended, however, required that whenever the President finds the existence of facts that indicate the imports of agricultural commodities would render ineffective, or "materially interfere with, any program or operation undertaken under this title..." then the President shall, by a proclamation, "impose such fees not in excess of 50% of ad valorem or such quantitative limitations on any article or articles...as he finds ...to be necessary..."

At the Review Session in 1954-1955, the United States applied to GATT for a waiver. It was clear, of course, that the United States would have to carry out the congressional enactment,

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whether or not GATT granted the waiver. Should the United States be forced to carry out the congressional enactment without a waiver, damage to the legal principles of GATT could, it was thought, ensue and indeed one result might be the withdrawal of the United States from GATT. The other members of GATT had little choice but to accept the waiver.

The waiver...waived United States obligations under Articles II [on import fees] and IX [on quotas] to the extent "necessary to prevent a conflict" with section 22 of the Agricultural Adjustment Act, and this section was annexed to the decision. The waiver did not include any time limits or any provision for reconsideration of the waiver after a lapse of time, because United States representatives felt that if "these amendments were incorporated in a waiver it would not suffice to meet the need for which it was requested"....

The waiver required the United States to report on any action taken by it, and expressly reserved other contracting parties' rights for consultation and for appropriate action under the provisions of Article XXIII. The United States has, pursuant to the provisions of the waiver, presented an annual report to GATT regarding the actions under section 22 of the Agricultural Adjustment Act. Each year the GATT holds an annual review of the United States waiver and actions thereunder, and the unfairness of the United States waiver is pointed out....

As the European market has become increasingly attractive for United States agricultural exports and as the European Common Market has become increasingly protectionist in precisely this sector, the United States has been faced with another bit of irony. It now finds that the agricultural protectionism of other countries, and particularly the EEC, is a source of aggravation to the United States--after having, for several decades, imposed on other countries the unpleasant task of accommodating themselves to United States agricultural protectionism. As long as the United States retains this broad, open-ended waiver for agricultural protection, few if any other GATT parties will be responsive to United States arguments for dismantling or liberalizing agricultural protection schemes of others, whether or not consistent with GATT.

THE AGRICULTURAL ADJUSTMENT ACT

Agriculture and the GATT: Rewriting the Rules

By Dale E. Hathaway

Published by the Institute for International Economics (1987)

Page 104

...the United States had passed its basic agricultural legislation in the Agricultural Adjustment Act of 1933. The objective of the legislation was to stabilize the prices of the farm commodities that had been suffering from the worldwide economic collapse of the 1930s. The basic legislation, an intervention mechanism for agriculture, included production control programs, internal commodity price supports at above world levels, and the authority for the Commodity Credit Corporation (CCC) to use export subsidies to maintain or increase the exports of US farm products. It also contained the authority for the President to impose tariffs and quotas if imports of commodities from foreign sources threatened the workability of the domestic price support programs in the United States.