

GENERAL AGREEMENT ON
TARIFFS AND TRADE

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RECOURSE TO ARTICLE XXIII:2 BY THE UNITED KINGDOM
ON BEHALF OF HONG KONG

The following communication, dated 12 July 1979, has been received from the Hong Kong Office of the United Kingdom mission.

1. On 31 May 1978, the United Kingdom on behalf of Hong Kong informed the CONTRACTING PARTIES (document L/4671) that Norway had introduced on 1 January 1978 certain measures regarding imports of a range of textile products from Hong Kong. The United Kingdom on behalf of Hong Kong considered that these measures constituted unjustifiable restrictions against imports from Hong Kong, that they were contrary to the GATT, and requested the CONTRACTING PARTIES to initiate the investigation procedures provided under Article XXIII:2 since Hong Kong's rights under the GATT were believed to have been nullified or impaired.
2. The Council examined the request from the United Kingdom on behalf of Hong Kong at a meeting on 6 June 1978 during which the representative of Norway said that his delegation was prepared to recommend to his authorities that they resort to global application in this particular case. The representative of the United Kingdom speaking for Hong Kong noted that if the Norwegian authorities would be able to accept the recommendation of the Norwegian representative, the legal basis of his delegation's complaint would be changed. However, until this had been done his delegation could not modify its position to seek recourse to the provisions of Article XXIII:2.
3. The Council requested Norway and the United Kingdom, on behalf of Hong Kong, to pursue their bilateral consultations under Article XXIII:1 on this matter for a further period. The Council agreed that if these consultations did not lead to a mutually satisfactory solution, an appropriate procedure for consideration of the complaint by the United Kingdom on behalf of Hong Kong under Article XXIII:2 would be the establishment of a panel. The Council authorized its Chairman to take the necessary steps for the establishment of a panel if the matter had not been settled satisfactorily on the proposed bilateral basis by 30 June 1978.

4. As recommended by the Council on 6 June 1978, Hong Kong and Norway held further consultations on 28-29 June 1978. However the two sides failed to reach agreement on a mutually acceptable solution.

5. On 20 July 1978 Norway formally notified the CONTRACTING PARTIES (document L/4692) that it had decided to invoke GATT Article XIX, that it was preparing for the introduction of global import quotas on various textile items, and was prepared to enter into consultations on request under Article XIX:2 with contracting parties having a substantial interest in the products concerned. Accordingly Hong Kong sought consultations with Norway under Article XIX:2: these were held from 6-8 September 1978. At the consultations the Norwegian delegation explained that the global quotas (subsequently introduced on 1 January 1979) might exclude certain countries including the six countries which had entered into bilateral agreements with Norway. The Hong Kong delegation argued that under Article XIII, any bilateral agreements which Norway might enter into would constitute the creation of "country shares" and would thereby oblige Norway to provide to all contracting parties having a substantial interest a similar proportionate share. The Norwegian delegation felt unable to accept this argument and confirmed that it did not intend to allocate a country share to Hong Kong.

6. On 27 November 1978 Norway notified the CONTRACTING PARTIES (document L/4692/Add.1) of the details of the global import quotas under its Article XIX action for 1979. These global import quotas apply to nine groups of products from all suppliers except the EEC, EFTA countries and the six countries which have bilateral agreements with Norway. The size of the global quotas is said to be calculated on the basis of average imports 1974-1976 from the countries included in the quotas. The United Kingdom on behalf of Hong Kong notes that the size of the global quotas is less than the average 1974-1976 imports from the countries included in the quotas.

7. The United Kingdom on behalf of Hong Kong believes that Norway's Article XIX action is inconsistent with the GATT because:

- (a) Norway's Article XIX action is not truly global in nature because it excludes certain countries;
- (b) the bilateral quotas concluded between Norway and other countries should be regarded as part of the Article XIX action and, as such, constitute "country" shares within the meaning of Article XIII, and
- (c) since Hong Kong is also a substantial supplier (in fact it is the major supplier in many of the items concerned), it should also be allocated an appropriate "country" share in accordance with Article XIII.

8. On 27 March 1979 Hong Kong requested consultations on Norway's Article XIX action under Article XXIII:1 having regard also to the rights and obligations under Article XIX:3(a). As these consultations could not be held

prior to the expiration of the ninety-day period provided for in Article XIX:3(a), Hong Kong sought Norway's agreement to an extension of the time-limit for a further period of ninety days in order to facilitate the consultations.

9. While agreeing to hold consultations, Norway indicated that Hong Kong had been provided with complete details concerning the global quota system during the consultations held from 6-8 September 1978 and that therefore the ninety-day period for Hong Kong had expired on 8 December 1978. Norway further stated that it was "no longer topical to hold Article XIX consultations with Hong Kong".

10. Whilst complete details had not been so provided in September 1978, at which time Norway had informed Hong Kong that it did not know if the six bilateral agreements with developing countries would be continued, Hong Kong informed Norway that in any case it could not agree with Norway's interpretation of Article XIX:3(a) and reserved its rights under the GATT on this question. The United Kingdom on behalf of Hong Kong holds the view that the ninety-day period provided for in Article XIX:3(a) should run from 1 January 1979 which is the date of implementation of Norway's Article XIX action.

11. Consultations were held from 29-31 May 1979, during which the Hong Kong delegation drew attention to the following in respect of the nine items subject to Norway's Article XIX import quotas for 1979:

- (a) the unilateral and discriminatory quantitative restrictions imposed by Norway against Hong Kong in 1978 had resulted in a loss in export value of HK\$86 million compared with 1977; in quantity terms exports dropped by between 40-88 per cent;
- (b) shipment figures for the first four months of 1979 compared with the same period in 1978 showed that in quantity terms exports in six of the nine items had dropped by between 6-60 per cent and that although exports in the remaining three items had increased they were still nowhere near the 1977 levels; and
- (c) when in due course figures for the full year of 1979 are available, the situation would not have improved for Hong Kong because the so-called global quotas for 1979 established for the nine items were almost without exception lower than Hong Kong's exports to Norway in 1977.

The Hong Kong delegation stated that in its view Hong Kong was fully entitled to compensation for the damage caused by the Norwegian actions in 1978 and 1979 to Hong Kong's export trade to Norway. The Norwegian delegation rejected Hong Kong's request for compensation.

12. The Hong Kong delegation further requested Norway to make its Article XIX action consistent with Article XIII by allocating to Hong Kong an appropriate share of the so-called global quotas for 1979 in respect of each of the items covered by Norway's Article XIX action. In making this request the Hong Kong delegation emphasized that Hong Kong was not asking Norway to review its six bilateral agreements with the six developing countries concerned, but was only seeking equitable treatment in the form of an appropriate country share. This request was also rejected by the Norwegian delegation.

13. In the circumstances, the United Kingdom on behalf of Hong Kong believes that Hong Kong's rights under the GATT have been nullified or impaired and that all bilateral procedures to find a mutually acceptable solution have been exhausted. The United Kingdom on behalf of Hong Kong therefore requests the CONTRACTING PARTIES to initiate the investigation procedures provided under Article XXIII:2.