

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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SUMMARY RECORD OF THE TENTH MEETING

Held at the Palais des Nations, Geneva
on Tuesday, 28 October 1952, at 10.30 a.m.

Chairman: Mr. Johan MELANDER (Norway)

- Subjects discussed:
1. Interim Report of Working Party on Ceylon Application.
 2. Point of Order concerning Working Party on the European Coal and Steel Community.
 3. Dairy Products - United States Restrictions.

1. Interim Report of Working Party on Ceylon Application (L/49)

Mr. REISMAN (Canada), Chairman of the Working Party, referred to the provision of Article XVIII:10 requiring the CONTRACTING PARTIES to advise applicant contracting parties, "at the earliest opportunity but ordinarily within fifteen days" after the receipt of the application, of the date by which they would be notified whether or not they were released from the relevant obligations. The Working Party recommended to the CONTRACTING PARTIES that they advise the Government of Ceylon that they would attempt to take a decision by the end of the present Session. The Working Party had given a first reading to the Ceylon application and had heard the benefit of extensive information supplied by the Ceylon Minister for Industries and Fisheries. If all the requisite information from Ceylon were received, it should be possible to complete consideration by the end of the Session. Two of the products involved, however, had been the subject of negotiated commitments and might require further negotiation.

It was agreed to inform the Ceylon delegation that the CONTRACTING PARTIES would attempt to take a decision on this application by the close of the Session, which would probably be on 8 November.

2. Point of Order concerning the Working Party on the European Coal and Steel Community

Mr. SVEC (Czechoslovakia) raised a point of order with regard to Working Party 4, which was discussing the Schuman Plan, and which, was, in his view, going beyond its terms of reference. He referred to the terms of reference, as agreed at the Third Meeting, whereby the Working Party was to consider the request of the six countries concerned, in the light of the

discussion at the meeting, and to report on its deliberations to the CONTRACTING PARTIES. In its effort to dispose of the conflicts between the two instruments, the Working Party was considering not only a waiver but a change in the fundamental rules of the General Agreement. The Working Party had given some consideration to the points of view of the United States, the United Kingdom, and Sweden, but it had not discussed the points raised by the Delegation of Czechoslovakia that Article XXV was not applicable, that the six members of the Plan had already violated their commitments under the Agreement and, furthermore, that the objectives of the Schuman Plan were not compatible with those of the General Agreement. These were points of principle. Mr. Svec asked that the Working Party be reminded of its terms of reference.

The CHAIRMAN stated that the Working Party had considered the question on the basis of the application submitted, and had come to a preliminary view that it would be worthwhile investigating whether the existing rules of procedure were adequate. Any working party was at liberty to suggest, as part of its report, that rules of procedure be altered, and it would be for the CONTRACTING PARTIES to view such a suggestion in the light of the rules of procedure as a whole. No such decision had yet been taken in the Working Party on the European Coal and Steel Community. As to the point of view expressed by the representative of Czechoslovakia at the Plenary Meeting, this had not been raised by any delegate in the Working Party but he pointed out that the meetings were open to all contracting parties, who were at liberty to make any remarks concerning the subject under consideration.

Mr. SVEC (Czechoslovakia) said he would take up in the Working Party the points raised by his Delegation. He stressed that as far as the rules of procedure were concerned, the structure of the GATT should not be rebuilt simply to accommodate the Schuman Plan.

3. Dairy Products - United States Restrictions (L/19, Add. 1 and Add. 1, Corr. 1)

Mr. van BLANKENSTEIN (Netherlands) stated that, having recognized that the United States import restrictions on dairy products were an infringement of Article XI of the General Agreement, and that the circumstances were serious enough to justify recourse by certain parties to Article XXIII:2, the CONTRACTING PARTIES had advised the contracting parties affected to afford the necessary time to the United States Government to allow for the repeal of Section 104 of the Defense Production Act. Now, a year later, it appeared that Section 104, although amended, had not been withdrawn. Certain types of cheese had been freed from quantitative restrictions since they were not considered competitive with United States types of cheese. The quota on some had been raised and although the intention behind this action was appreciated, the fact was that, to the maintenance of quantitative restrictions discrimination had been added.

The Netherlands Government considered it a grievous injustice that they were prevented, on the basis of pre-war performance, from obtaining the share that might be expected in an expanding United States market, particularly when they were striving for solvency by steadily increased exports. The immediate damage of the restriction was not, however, considered so serious as the psychological effect on countries which were attempting to combat a dollar shortage by means of increased exports to the United States. It was to be feared that the exporters, already often deterred by the high cost of developing a market in the United States, had also been still further discouraged by the imposition of restrictions in Section 104. The Netherlands delegation, in accordance with Article XXIII:2 of the General Agreement, and in view of these facts, requested that the CONTRACTING PARTIES authorise the Netherlands to suspend the application to the United States of their obligations so as to allow them to impose an upper limit of 57,000 metric tons on the import of wheat flour from the United States in 1953; this measure would be removed as soon as the United States lifted the quantitative restriction on dairy products from the Netherlands.

Mr. PRESS (New Zealand) recalled that the New Zealand delegation, at the last Session, had particularly stressed the unfortunate effects of Section 104 of the Defense Production Act. In view of the assurances that the United States Government would seek repeal of the offending section, his country had refrained from recourse to Article XXIII:2. However, since the last Session, the section had been re-enacted with some modifications which, although reducing the severity of some of the provisions had, on the other hand, introduced a considerable element of discrimination between supplying countries.

In giving more details of the direct economic impact of these measures on New Zealand, Mr. Press pointed out that the importation of butter was completely prohibited in the United States and Hawaii, the latter being a traditional market for New Zealand butter. He estimated that in 1951/52, enough butter could have been sold in an open United States market to earn over £4.5 million, and that the actual loss suffered by his country as a result of the restrictions was probably over £1.6 million. In the case of cheese, his country was able to trade within the quotas established under Section 104, but even with the increased quota for cheddar type cheeses, New Zealand would be permitted to export less than in 1950 and 1951, and much less than would be possible in the absence of a quota. The estimated loss of dollar earnings on this product was almost £0.5 million with a net loss of about £150,000.

The case of skimmed milk powder was an example of the indirect economic effects of such restrictions. New Zealand had lost a market in a third country which had been, as a result of the quotas, unable to export skimmed milk powder to the United States. The restrictions on casein had not been such as to cause economic loss to New Zealand. His Government had been alarmed, however, to note a movement in the United States to apply similar restrictive measures to other products.

Mr. Press pointed out that, if a net loss in total export earnings of £1.75 million was not very large, nevertheless, in the light of New Zealand's delicate balance-of-payments position, it was not insignificant and the loss of potential dollar earnings of some \$ 14 million was very serious. The United States action would certainly give a sense of frustration to those countries which were attempting to find a solution to their balance-of-payment problems by increased exports, as they had repeatedly been told was the correct solution, and would encourage the belief that restriction was, after all, the only effective action. Although everyone was aware that domestic agricultural policies might conflict with general trade policies, the only hope for rational development of international trade was that conflicts of this nature could be resolved with due regard to international obligations.

New Zealand continued to hope that this blot on the excellent record of the United States in international affairs since the war would be erased. Nonetheless, he must regretfully point out that New Zealand and others were still suffering substantially the same degree of damage as a result of this breach of the Agreement as a year ago. New Zealand felt that a reasonable period of time had been allowed, under the terms of the Resolution of 26 October 1951, to rectify the situation and that they were now free to institute measures of the kind referred to in Article XXIII:2. His delegation did not consider such action as a solution, but merely as a step towards the only satisfactory solution - the restoration of the benefits accruing to them under the Agreement.

Mr. SEIDENFADEN (Denmark) noted that although the United States had done what they could within the limits of the Defense Production Act to alleviate the situation, nonetheless, if some additional quantities of cheese were allowed to enter the United States market, this action had also the negative effect of increasing the discrimination between the different exporting countries. This would make it more difficult to gain a much needed market once normal conditions had been re-established.

The maintenance of Section 104 was harmful to Denmark by reason of the direct economic effects on dollar earnings and the indirect effect on the dollar export drive by discouraging exporters from making serious attempts to create markets in the United States. More intangible, but equally important, was the effect on the understanding and goodwill towards the United States which had developed in Denmark as the effect of the spirit of the Marshall Plan and the way in which it had been carried out. Public opinion could not understand a policy of continuing assistance rather than permitting payment in goods for the dollars required, nor why their most important exports should be hampered when, in relation to the immense American market, the quantities were negligible, although, at the same time, the proceeds from these exports would solve, to a large extent, his country's dollar problem.

The Danish delegation supported the other governments who thought that a solution should be found within the Agreement to make it possible for them to introduce compensatory action. It should be stressed, however, that compensatory action, even if perfectly legal, was an unsatisfactory answer and should, in no case, be considered as a final solution. The introduction of Section 104 by the United States followed by counter-action by other governments, was a step towards legalised economic warfare and as such completely contrary to the spirit and objectives of the Agreement. He requested the CONTRACTING PARTIES in their decision on this matter to make it clear that this solution was not wholly satisfactory to any contracting parties and that the United States Government be strongly urged to pursue the repeal of Section 104. He asked that this item be kept on the agenda and that the United States be requested to report to the next Session.

Mr. ISBISTER (Canada) stated that a year ago, by a Resolution, the CONTRACTING PARTIES recognized that certain tariff concessions granted by the United States had been nullified or impaired within the meaning of Article XXIII as a result of these import restrictions on dairy products and that the restrictions themselves constituted an infringement of Article XI. Canada was recognized as being one of the countries injured. The Resolution also recommended that recourse to compensatory action be delayed so as to afford the United States reasonable time to rectify the situation.

A year had now elapsed and the legislation was still in force. The Canadian delegation felt that the CONTRACTING PARTIES should now withdraw the advice to delay taking compensatory action. Mr. Isbister noted the Netherlands proposal to reduce its purchases of wheat flour from the United States and his delegation considered this measure reasonable and justifiable. The Canadian Government appreciated the attempts by the United States over the past year to repeal the section, but noted that, as had already been stated by other delegations, if some alleviation had been granted it had been at the cost of adding discrimination to the already objectionable provisions. Canada itself was concerned about the damage done to Canadian trade in dried milk products and cheese in particular. His Government wished, however, to stress more particularly the far-reaching implications of this continued infringement of the General Agreement by the United States. His delegation urged the United States Government to continue to seek repeal of this legislation. His Government had not yet decided to adopt compensatory measures, but they reserved their rights under the Agreement for possible compensatory action in the future.

Mr. DI NOLA (Italy) stated that his country had benefited somewhat from the new provisions of Section 104, but these measures were not wholly satisfactory, since some cheese products were still affected. Damage to Italy continued and was caused not only by the restrictions, but also by the anxiety of exporters, as a result of the experience of these restrictions, that others might also be imposed. It was alarming that when sacrifices were made to place products on the very difficult United States market, there should be the risk that their import might be restricted from one day to the next.

The representative of Italy hoped that the United States would pursue a more systematic policy and one more likely to favour the entry of Italian products, which were almost exclusively specialities and could not, therefore, hinder United States domestic production. Only extensive outlets in the American market would make it possible for Italy to diminish its shortage of dollars and become independent of American aid. This was the end desired by both the United States and Italian Governments.

Mr. THOMMESSEN (Norway) stated that although cheese exports did not form a large part of Norwegian dollar earnings, nevertheless, efforts following the war to increase sales to the United States had met with considerable success until the imposition of the quantitative restrictions. These restrictions had stopped all future efforts in this field and had far wider effects in discouraging Norwegian exporters from continuing efforts to earn dollars. Norway, like Canada, would reserve its right to undertake compensatory measures. Mr. Thommessen also supported the request of the Netherlands delegation.

Mr. VARGAS GOMEZ (Cuba) stated that his Government had observed with alarm the imposition of the restrictions on dairy products in the United States. Although some improvement had been made, the only satisfactory solution was to remove the measures completely. The question was one of principle, and unless the measures were removed, the effects on the Agreement would be damaging. Mr. Vargas Gomez was not, therefore, in favour of retaliatory action, but preferred that the United States should be strongly urged to continue to seek the repeal of the offending section.

Mr. TONKIN (Australia) said that he had hoped inclusion of this item on the agenda signified positive action by the United States to adjust the position. Although some measures of alleviation had been taken, the restrictions remained, and in the case of butter there was still a total prohibition of imports into the United States. Some adjustment had taken place for cheese, but the quota for Australia was still negligible and the position had not improved for particular types of processed milk products in which Australia was interested. In sum, action had not been taken by the United States Government to eliminate the measures conflicting with the General Agreement.

At Geneva, the United States Government had given a concession directly to Australia on butter amounting to a reduction from 14 cents per lb. to 7 cents per lb. The concessions on cheese and dried milk, although of interest to Australia, had been bound to other countries. Butter was thus the item of most interest to Australia. Concessions were also made on other agricultural products.

Australia was one of the few countries whose Parliament had authorised the Government to proceed with ratification of the Havana Charter. This action was considerably influenced by the outcome of the Geneva negotiations to which his Government had attached great value. Of all the negotiations in 1947, those with the United States had been considered far the most important because

of the possibilities they offered of substantial trade with that country. But, since 1947, in spite of the Geneva concession, Australia had not been able to export one pound of butter to the United States.

Australia had engaged in three consultations on balance-of-payment difficulties and although Mr. Tonkin did not envisage that dollar import restrictions to meet these difficulties could have been eliminated, he did think they might have been less severe if there had not been restrictions and prohibitions such as those applied to dairy products to hamper the efforts of exporters in the dollar market. The implications of this matter were wider than the particular damage to individual countries and all contracting parties must have an interest in the elimination of measures not permitted by any provision of the General Agreement.

After studying sub-section A of Section 104, Mr. Tonkin considered that the United States dairying industry would not have been damaged materially if butter had been allowed to be imported. The Geneva concession, which was in the form of a tariff quota, supported this view. He emphasized the importance his country attached to the preservation of a balance by maintenance of the concessions to which importance was attached and not the establishment of a balance in defection from the provisions of and concessions negotiated under the Agreement. The failure of the United States Government to rectify the nullification of a concession, raised the question whether understandings reached in 1947 and subsequently could continue to operate unchanged.

Mr. Tonkin urged the United States Government to lift these restrictions so that countries in balance-of-payment difficulties could earn dollars; otherwise, the alternative and less satisfactory course would be compensatory measures to be taken by his Government. The Australian delegation suggested the possibility of a special meeting of the CONTRACTING PARTIES to give the necessary authorization to suspend such obligations and concessions under this Agreement as they determined appropriate.

Mr. LECKIE (United Kingdom) said the direct effect of these restrictions on the United Kingdom was not material. The principle and implications were however fundamental. The reasons behind Section 104 of the Defense Production Act were indefensible and inconsistent with the objectives of the General Agreement. He regretted that the United States had not been successful in removing these restrictions. The action taken to mitigate the severity of the Act, had not removed the basic objections to the legislation, and it should now be open for countries to apply for authority to suspend equivalent obligations under Article XXIII. Mr. Leckie agreed, however, with speakers who had pointed out that compensatory action was not satisfactory and that repeal of the Act was the only acceptable solution.

The wider effects of these measures must be taken into account. The United States market had never been an easy one to enter and since the last war, considerable effort had been expended by governments and exporters in developing openings for their goods. Action such as this on the part of the

United States increased the difficulties of governments since traders would counter any urging to develop their exports by the observation that any marked success in entering the dollar market ran the risk of entailing protective action by the United States under pressure from United States domestic interests. This possibility aggravated the difficulties for governments seeking to pay their way by trade instead of accepting United States aid and must inevitably retard the realization of the general equilibrium which was vital for the objectives of the Agreement.

Mr. ADARKAR (India) stated that India had an interest in the sections of the Defense Production Act relating to oils, coconut products, etc. Although India did not intend to lodge a formal complaint, it was interested in the principle of the maintenance of the sanctity of the Agreement. No opportunity should be given for the charge that one law applied to big countries and another to smaller ones. The whole world was in balance-of-payment difficulties, vis-à-vis the dollar area. It was regrettable that the United States had still been unsuccessful in repealing this Section.

Mr. AZIZ AHMAD (Pakistan) expressed his gratification that the United States Government had been able to mitigate somewhat the effects of these restrictions although they had not yet succeeded in removing the measure. The CONTRACTING PARTIES at the preceding Session had allowed time for bilateral negotiations and it was important, and within the spirit of Article XXIII, that ample time should be allowed for a solution to be reached in this manner.

Mr. SVEC (Czechoslovakia) stated that his delegation's concern was with the principle involved. His delegation had continually stressed, since Ancey, that any violation of the Agreement to which the CONTRACTING PARTIES acquiesced, threatened the whole basis of international obligations. The present situation was part of a series of measures which indicated that the United States acted without regard to their international obligations; measures by which they were also disrupting international economic progress. The Czechoslovak delegation would support action by the injured parties.

Mr. BOTHA (Union of South Africa) pointed out that Section 104 was a cause of continuing direct and indirect damage to contracting parties and to the principles of unrestricted trade which underlay the General Agreement. He regretted that the United States had not yet repealed the offending section and expressed sympathy for the injured parties.

Mr. VERNON (United States) remarked that one reason the dairy products restrictions had attracted attention was precisely because they represented a marked deviation from the general policies of the United States since the war. At the Sixth Session his delegation had acknowledged that Section 104 of the Defense Production Act required action conflicting with GATT provisions. Despite the efforts of his Government, the legislation remained in force. Nevertheless, as a result of these efforts, the impact of the restrictions had been reduced in some quarters. The liberalisation of the restrictions was not

intended to and did not, in the United States view, introduce discrimination in the existing restrictions since the liberalisation occurred in well recognized cheese types, without regard to their source.

The objective of the United States Government remained the complete elimination of these restrictions. They recognized the right of other contracting parties to withdraw concessions reasonably necessary to restore the balance of the Agreement and would not object to such action. The United States would not consider, on the other hand, that such withdrawals closed this case. Such action was not a remedy, given the objective of the Agreement to hold down restrictions conflicting with the extension of trade. His Government aimed, therefore, at the removal of these United States restrictions and the removal of any measures of compensation which other contracting parties might have taken in the meantime.

The CHAIRMAN, in summarizing the discussion on this item, stated the general consensus was that it was regrettable that the United States had not yet repealed the measures in question and that it was thereby still infringing the General Agreement. Certain delegations had reserved their rights to take compensatory measures if the restrictions were not lifted. But it was generally agreed that retaliation was, in itself, no answer and that a solution to the problem should be sought in a constructive manner, namely by the removal of these restrictions by the United States. He suggested that the item be retained on the agenda and that the United States Government be urged to continue its efforts for repeal of Section 104 and to report to the CONTRACTING PARTIES on developments. If one or more contracting parties felt it necessary to take compensatory action, he, as Chairman, exercising the initiative conferred upon him by Rule 1, would call a special session to consider these measures under Article XXIII:2.

The Chairman referred to the action the Netherlands proposed to take and suggested that a Working Party be appointed to consider the proposed measure. He proposed, as terms of reference, the following:

"To consider the measure which the Government of the Netherlands has notified that it intends to take in accordance with Article XXIII:2 and to report to the CONTRACTING PARTIES as to the appropriateness of such measures, having regard to the equivalence of the measure proposed to the impairment suffered by the Netherlands as a result of United States restrictions on imports of dairy products."

and as members:

Chairman: Dr. Treu

Austria
Burma
Brazil

Germany
Haiti
Sweden
Southern Rhodesia

The summing up of the Chairman was agreed to as also the Working Party as proposed.

The meeting rose at 3.45 p.m.