GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Held at the Marine Spa, Torquay,
on 13 December, 1950, at 3 p.m.

Chairman: Dr. H. Van BLANKENSTEIN (Netherlands)

Subjects Discussed:

1. Report of Working Party "E" on Brazilian Internal Taxes. (GATT/CP.5/37)
2. Report of Working Party "H" on the Review of Import Restrictions. (GATT/CP.5/42)
3. Report of Working Party "J" on Special Exchange Agreements. (GATT/CP.5/44)
4. Assured Life of Tariff Concessions with Respect to Article XIX. (GATT/CP.5/22)

1. Report of Working Party "E" on Brazilian Internal Taxes (GATT/CP.5/37)

Mr. **ARGYROPOULOS** (Greece), Chairman of the Working Party, outlined the history of the question and explained the contents of the report. The question had originated in connection with changes in the internal consumption taxes on domestic and imported products. These measures, though incompatible with Article III, had been considered permissible since the Agreement was being applied under the Protocol of Provisional Application which requires compliance with the provisions of the Agreement only to the fullest extent not inconsistent with existing legislation. The rates of the taxes, however, were increased in 1948 and the effect of the increase, with respect to the provisions of Article III and of the Protocol of Provisional Application, had been a subject on which there was a difference of opinion. Some contracting parties had maintained, at their Third Session, that the terms of the Protocol permitted the maintenance of only the absolute, rather than the percentage differences between taxes on domestic and imported products, which had existed at the date of that Protocol. The Brazilian Government had brought the matter to the attention of the Brazilian Congress with a view to bringing about a modification of the relevant laws, including the Law of 1948. A further message had subsequently been transmitted by the Brazilian Government to Congress requesting the latter to proceed with the modification of such laws. At the present session, the Brazilian Delegation had asked the Contracting Parties to examine the text of a draft law modifying the present legislation on consumption taxes which it had submitted to its legislature and to give advice on the conformity of the draft law with the relevant provisions of the General Agreement and of the Protocol of Provisional Application. Working Party "E" had been appointed for this purpose and it had examined a translated text of the draft law, together with translated texts of extracts from laws and decrees at present in force which had been provided to enable a more intelligent study of the former. Mr. ARGYROPOULOS then summarised the contents of the report and drew attention to the more important points therein.

The CHAIRMAN thanked the representative of Greece for his statement, and proposed the adoption of the Report.

M. LECUYER (France) congratulated the Working Party and its Chairman on having successfully completed the study of this particularly complicated question involving the interpretation of both national and international laws. This clearly showed that a remarkable progress had been realized. On the other hand, it was regrettable to note that the adoption of the proposed draft law would not remove all the discriminatory effects of the Brazilian taxes. The incorporation of internal taxes into customs duties would impair the effect of the concessions previously granted, and it was particularly regrettable that the tax on spirits remained such as seriously to prejudice the interests of France in regard to her exports to Brazil.

Mr. KINGSTON (Brazil) stated that his delegation took note of the fact that the Contracting Parties considered the text of the draft law to be satisfactory and that the measure taken by his Government received the approval of the Contracting Parties. The Working Party had realised the complexity of the Brazilian tax legislation and had noted the difficulty in bringing such legislation into line with the General Agreement. It was worth noting that measures analogous to the Brazilian internal taxes were not entirely uknown in other countries. Any element of discrimination which might remain in the Brazilian tax system after the modifying law was adopted, was not deliberately retained for the purpose of protection but because of the complexity of the laws in question and of the difficulty in properly interpreting Article III of the General Agreement. In reply to the French representative, he pointed out that the tax on spirits would not have any prejudicial effect on the import of such products from France, as one single tax schedule would equally apply to domestic and external products, on the basis of price; the rate of tax would be the same for the same product irrespective of origin if the price was the same.

With the agreement of the meeting, the Report was considered and approved as a whole. The CHAIRMAN thanked the Working Party and its Chairman for the excellent work they had performed.

2. Report of Working Party "H" on Review of Import Restrictions (GATT/CP.5/4

Mr. GUERRA (Cuba), Chairman of the Working Party, introduced the report, which, he thought, was concise and self-explanatory. The scope of the questionnaire, as understood by the Working Party, was limited to restrictions applied under Article XII and their administration; information should be requested only to the extent necessary for an intelligent review and analysis of such restrictions. The Working Party had adopted as its working basis the draft prepared by the Secretariat and had followed as closely as possible the provisions of the General Agreement. Questions had been drafted in a direct and factual manner with a view to facilitating the work of replying to them and of analyzing the replies. The two other points in its terms of reference had also been considered by the Working Party and dealt with in the latter part of the report.

Mr. BYSTRICKY (Czechoslovakia), with reference to paragraph 5 of the General Note in the Report and to question 10, pointed out that since it was not customary for a government to reveal information on its relations with another government without the consent of the latter, it would not be appropriate to require contracting parties to supply information on their bilateral agreements with countries not parties to the General Agreement. Secondly, the General Agreement contained no provision for "group arrangements", and the Contracting Parties should be fully informed of any such arrangements so that they might be studied in the light of Articles I and XIII with which they might be at variance. The draft questionnaire prepared by the Secretariat had contained a question in this connection, but this had been omitted from the draft now submitted. Thirdly, certain contracting parties were applying export restrictions on "strategically important goods" under Article XX of the Agreement without a specific definition as to their nature; contracting parties applying export restrictions should, therefore, be required to provide information, and to that end the Secretariat had circulated a document under the symbol GATT/CP.5/39/Rev. 1.

The CHAIRMAN pointed out that the subject of export restrictions was to be studied by the Contracting Parties, at a later meeting, under another item of the Agenda. As regards the question of "group arrangements", he enquired whether the representative of Czechoslovakia would qualify his proposal to the effect that only such arrangements which were made between contracting parties should be reviewed.

Mr. BYSTRICKY replied that it was clear from his earlier statement that his request regarding "group arrangements" referred only to those arrangements which were in force between contracting parties. He was satisfied that the question of export restrictions would be considered by the Contracting Parties under another item.

Mr. GUERRA (Cuba) drew attention to the purpose of the review of restrictions, which was partly the drawing up of a report under Article XIV: 1(g), dealing with actions deviating from the rule of non-discrimination, and to the implicit definition of "non-discrimination" given in paragraph 1 of Article XIII, which showed that the obligation of a contracting party with respect to non-discrimination covered all its trade relations, including those with countries not parties to the Agreement. The Working Party had, therefore, taken the position that non-discrimination meant the absnece of discrimination in favour of any country, whether or not a contracting party. As regards "group arrangements" the Working Party believed that the questions included in the questionnaire were such that in answering them all information relating to trade restrictions would be supplied, whether they resulted from a "group arrangement" or not. It was, therefore, thought superfluous to have an additional question referring specifically to "group arrangements". Mr. GUERRA added that these views which he had expressed in his capacity as Chairman of the Working Party were fully endorsed by his delegation.

Mr. BYSTRICKY (Czechoslovakia) said that although the Contracting Parties had the right to require information from contracting parties on their trade relations with all countries, a government might nevertheless be unable to submit, as required by General Note 5 and Question 10, the text of a bilateral agreement with a third country without the permission of that country. The question ,would, of course, not arise if the third country were agreeable to the disclosure of the text of such a bilateral agreement. As for "group

arrangements", they undeniably existed and as a new feature in the field of trade restrictions they should be thoroughly explored.

Mr. DI NOLA (Italy) said that whilst there was every reason for the Contracting Parties to be acquainted with the trade measures of every contracting party, it was obviously difficult for a contracting party to supply information on its trade relations with a non-contracting party which objected to such information being made available to the Contracting Parties. He suggested that contracting parties should be required to supply all information on their trade relations with other contracting parties, and, to the fullest extent possible, also information on their trade relations with non-contracting parties.

M. LECUYER (France) felt that it was essential for the Contracting Parties to have access to all bilateral agreements, including those entered into by contracting parties with countries not parties to the Agreement, for otherwise there would be no way of judging whether a contracting party had fulfilled its obligation under the Agreement not to accord more favourable treatment to non-contracting parties. Furthermore, documents supplied to the Contracting Parties were generally classified as restricted, and if necessary could be marked "Secret".

Mr. ARGYROPOULOS (Greece) said he was at a loss to know how any trade agreement of a contracting party could be kept secret from the other contracting parties, for it was clearly only on the basis of a knowledge of its trade dispositions that a government could enter into negotiations with it.

Mr. GUERRA (Cuba) pointed out the obligation imposed on contracting parties by implication in Article XIV: 1(g), requiring them to supply such information.

M. CASSIERS (Belgium) said that he was surprised to hear the contention that information relating to the benefits which a contracting party might have accorded to non-contracting parties could be withheld whilst that relating to benefits accorded to contracting parties must in all cases be revealed. It should be hoped that in the long run every contracting party would feel obliged to make clear to any country with which it intended to conclude a trade agreement that as a contracting party to the General Agreement it was obliged to supply to the Contracting Parties full information on all its trade agreements.

Mr. BYSTRICKY (Czechoslovakia) stated that Czechoslovakia would always comply with the provisions of Articles I and XIII, and had no intention to discriminate in favour of any non-contracting party. Furthermore, his Government was prepared to supply all such information and texts of such agreements to the Contracting Parties as far as it was agreeable to its trade partner concerned. He would support the proposal of the Italian representative that contracting parties should be asked to supply information on their trade relations with non-contracting parties only to the fullest possible extent.

Mr. ARGYROPOULOS (Greece) thought that since contracting parties, in accepting the General Agreement, had accepted the undertaking to supply such information, and since a trade agreement, to be legally in force, must be first published in an official gazette, there was really no question of withholding such information.

Mr. DI NOLA (Italy) said that he wished to make it clear that the Government of Italy was prepared to supply all the information and documentation requested by the questionnaire, but it should be borne in mind that some of the countries with which Italy had entered into trade agreements might object. In reply to the representative of Greece, he pointed out that it had been the policy of some governments not to publish bilateral quota agreements in their official gazettes.

The CHAIRMAN suggested a solution by which the report of Working Party "H" would be adopted in its present form, but the views of the Czechoslovakian and Italian representatives would be recorded in the Summary Record of this meeting. It would, then, be understood that in those cases where difficulty arose owing to the refusal of a non-contracting party to allow the contents or texts of a trade agreement between itself and a contracting party to be revealed to the Contracting Parties, the contracting party concerned should give clearly the reasons for withholding such information or documentation, and should supply all possible information so as to enable the Contracting Parties to judge whether there was any discriminatory element in its trade restrictions.

Mr. GUERRA (Cuba) was in favour of such a solution on the ground that many other difficulties had been raised at the Working Party, and these had been omitted from the report. It should, however, be understood that in the circumstances envisaged the contracting party concerned should nevertheless make every effort to seek agreement with the non-contracting party concerned with the object of making available to the Contracting Parties the text of the agreement in question.

The representatives of Czechoslovakia and Italy agreed to the suggestion of the Chairman, and withdrew their proposal to amend the report itself.

Upon a similar suggestion by the Chairman in relation to the question of requiring information concerning "group arrangements", it was agreed that the understanding be placed on record that whereas "group arrangements" were not specifically mentioned in the Questionnaire, information on "group arrangements" insofar as they involved trade restrictions, should nevertheless be supplied, as information relating to all trade measures of a contracting party was implicitly required by the Questionnaire.

In reply to a question by Mr. HUQ (Pakistan) in connection with Question 11, the CHAIRMAN said that it would be in order for a contracting party to describe the policy and the programme for a fiscal year ending at the middle of 1951; it was clearly impossible to require a contracting party to submit any policy or programme which it had not formulated.

At the suggestion of the CHAIRMAN, and with the consent of the meeting, the report was considered and approved as a whole. The CHAIRMAN expressed appreciation on behalf of the Contracting Parties to Mr. GUERRA and his Working Party for their work in drawing up the report.

3. Report of Working Party "J" on Special Exchange Agreements (GATT/CP.5/44)

M. JANSON (Belgium) presented the report on behalf of the Working Party. Having outlined the work which the Working Party had performed pursuant to the two sections of its terms of reference, he proposed the adoption of the recommendations of the Working Party, which were embodied in paragraphs 3, 4 and 9 of the report. The Working Party proposed an extension of time for

action by Burma, Sweden and Haiti under Article XV, paragraph 6, to the opening date of the Sixth Session. It was also recommended that Indonesia, when it had deposited an instrument of acceptance of its special exchange agreements, should be considered as having fulfilled its obligations under Article XV, paragraph 6. As regards the procedural arrangement recommended by the Working Party in accordance with the second part of its terms of reference, M. JANSON emphasized its three chief characteristics: it was simple in form, general in application, and had a provisional character. The Working Party had felt that an elaborate procedure might not be even as effective in covering all situations which might arise; that a procedure should be applicable to all contracting parties under similar circumstances; that a procedure recommended in present circumstances should be open to re-examination, if found to be inadequate or at any time the Contracting Parties might consider the question of adopting general procedures. The procedure, however, involved no delegation of power and no decision could be taken in connection with a special exchange agreement except by the Contracting Parties themselves.

The CHAIRMAN thanked M. JANSON for his statement and proposed the adoption of the recommendations of the Working Party. The recommendations embodied in paragraphs 3, 4 and 9 of the report were considered in turn and were approved. The Report was then adopted as a whole.

Mr. BYSTRICKY (Czechoslovakia) suggested that in view of the comparative advantages of membership in the Fund, it was unlikely that any contracting party would accept a special exchange agreement on a permanent basis. The advantages were: the advice which the Fund, as a body of financial experts, could provide to its members, the foreign exchange which a member of the Fund could purchase from it, and the prompt consideration which the Fund, with its Executive Board permanently in session, could give to any application from its members.

Mr. SAAD (International Monetary Fund) was in full agreement with the views of the Czechoslovak representative that there was no advantage in signing a special exchange agreement when a contracting party could become a member of the Fund.

Mr. MAKATITA (Indonesia) pointed out that his country had made arrangements for the acceptance of a special exchange agreement.

4. The Assured Life of Tariff Concessions with Respect to Article XIX (GATT/CP.5/22) (Resumed discussion)

The CHAIRMAN informed the meeting that the consultations between the Czechoslovak and United States delegations on this question had not resulted in a solution. The Contracting Parties were now requested to give consideration to this item which had been retained on the Agenda.

Mr. BYSTRICKY (Czechoslovakia) stated that the request of Czechoslovakia regarding this agenda item had been motivated not only by the interests of Czechoslovakia but also by the consideration of the important principle involved, Article XIX being one of the principal pillars of the General Agreement which was now, for the first time, invoked by the United States. Once the provision was invoked it could be resorted to again against any other contracting party, and it was not surprising that many countries had felt that their interests were threatened by the mere existence of Article XIX. Mr. BYSTRICKY then quoted a passage from the Swiss Bankers' Bulletin of 23 October 1950 which referred to the deep concern that had been aroused in

Europe by the element of uncertainty created by the so-called 'escape clause' in the commercial treaties of the United States. The Bulletin referred to the agreement, under inexorable pressure, by the Swiss Government to the inclusion of such an escape clause in its new commercial treaty with the United States. Such a provision in commercial treaties had the effect of creating anxiety for businessmen all over the world; it created the possibility of trade conditions being changed at a moment's notice. Czechoslovakia had accepted the General Agreement, which included such a clause, under no inexorable external pressure but of its own free will. What it objected to strongly was not the provision but the arbitrary violation of the provision by the United States, which was its chief author. Mr. BYSTRICKY then read extracts from letters exchanged between the Czechoslovak and United States delegations to show that Czechoslovakia had made every effort to reach an understanding with the United States and was prepared to accept any reasonable solution, but that the United States delegation had flatly refused to give any consideration to the request of Czechoslovakia, or to engage in a consultation with a view to arriving at a compromise solution. At a subsequent meeting between the experts of the two delegations the United States delegation had again indicated that it was in no position to reconsider its action under Article XIX but suggested that Czechoslovakia might consider the possibility of withdrawing some of its concessions as a compensatory measure. To this the Czechoslovak delegation had replied that it had no intention to start a repercussive process of withdrawals of tariff concessions and that in any case action taken under Article XIX, paragraph 3, required no prior consultation. In short, Czechoslovakia was prepared to accept a compromise solution whereas the United States, which had knowingly violated the provisions of the Agreement, had tenaciously refused to engage in any consultations.

Mr. BYSTRICKY then referred to a report, dated February 24, 1948, of the United States Tariff Commission to the House Ways and Means Committee, in which it was stated that four conditions must be fulfilled before an action could be justifiably taken under the "escape clause". It was stated there that:

(i) there must be a quantitative increase in imports;

(ii) such quantitative increase of imports must be a consequence of unforeseen circumstances;

(iii) such quantitative increase of imports must be a consequence of tariff concessions; and

(iv) the increase in imports must be in such quantities and under such conditions as to cause or threaten serious injury to domestic producers.

These conditions were also referred to in a report of the Commission to the United States President. Apart from the first regarding an actual increase in import of the product in question, Mr. BYSTRICKY maintained that the measure taken by the United States with respect to ladies' felt hats had not fulfilled these conditions. The increase in imports was by no means the consequence of an unforeseen development; the existing rates of import duty of 47 and 50% ad valorem must be by all standards considered as very high, and taking account of the comparative prices of the products of foreign and domestic origin on the American market, it had to be admitted that the reduction in import duty was by no means responsible for the increase in the imports; and the report of the Tariff Commission, which stated that the increase in imports had affected the expansion and development of the domestic production,

had clearly borne out the belief that the United States had adopted the measure with a view to protecting its own industry and for its expansion. The same report stated that domestic production of the product in question had increased by threefold since 1948. By depriving the American public of the right to purchase foreign products of a better quality at a lower price, the measure taken by the United States Government merely served the interests of two or three big manufacturers who had influence with the Government. In conclusion, Mr. BYSTRICKY, with reference to a passage from the Neue Zürcher Zeitung which expressed the hope that the Torquay Conference would show enough courage to face the question and to give it a just solution, requested that the Contracting Parties adopt a resolution to the effect (a) that they had examined the announcement by the United States delegation of the withdrawal of the concessions granted on item 1526 (a) and had come to the conclusion that the conditions laid down in Article XIX for action under it had not been fulfilled by this measure, and (b) that they recommend to the United States Government that the measure be revoked.

The CHAIRMAN ruled that a certain passing remark in Mr. BYSTRICKY'S statement, which reflected on the good faith of the United States Government, was unparliamentary and contrary to the spirit and traditions of the Contracting Parties, and should be withdrawn. Mr. BYSTRICKY maintained that the chief contention in his statement was that the United States Government had failed to fulfil the international obligation which it had undertaken under the General Agreement.

The Discussion was to be resumed at the next meeting.

The meeting rose at 6.30 p.m.