GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B.
GATT/CP.5/SR. 14
13 November 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Marine Spa, Torquay,
on Friday, 10 November 1950, at 3.00 p.m.

Chairman: Hon. L. D. WILGRESS (Canada)

Subjects discussed:

1. Continuation of Item 9 - Special Exchange Agreements (GATT/CP.5/16)
2. Item 8 - Consultations on Recent Changes in Import Programmes (GATT/CP.4/31 and GATT/CP.5/24)
3. Item 30 - Assured Life of Tariff Concessions with Respect to Article XIX (GATT/CP.5/22)

1. Continuation of Item 9 - Special Exchange Agreements (GATT/CP.5/16)

M. CASSIERS (Belgium) suggested that the working party which was to deal with this question should limit itself to considering whether appropriate procedures could be worked out for the administration of special exchange agreements. He agreed with the Cuban representative in that, although sympathetic to the New Zealand difficulties, he could not accept a formula whereby an obligation would exist for all of the contracting parties except one. The working party could not ask New Zealand why it did not wish to join the Fund since the Agreement gave it the choice, but it could suggest that New Zealand be not too negative in its attitude to the alternative. He proposed as a possible formula that, for so long as the Contracting Parties did not constitute an organization competent to examine and deal rapidly and secretly with exchange matters, such as devaluation, the contracting parties should authorise the Fund to act, not as it would act toward one of its own members, but as a technical advisory body.

Mr. TONKIN (Australia) referred to paragraph 6 of Article XV providing that contracting parties should either become members of the Fund or enter into a Special Exchange Agreement. This obligation was made specific mainly in order to implement paragraphs 4 and 8. All countries, however, had accepted the obligations contained in the latter two paragraphs, including New Zealand. Since New Zealand was unable to comply with paragraph 6 the problem should be approached from a practical point of view. There were in fact two problems before the Contracting Parties, the immediate one of New Zealand and the long-term question of action under Article XV. If the practical solution were adopted to the first, an extension of time would be granted to New Zealand to enable it to carry on, while other countries would accept its assurance that it would, in the meantime, adhere to all the other provisions of the Article, including paragraph 4. The second problem should also be fully examined by the working party, particularly the United Kingdom proposal. It might be directed to submit a report for preliminary examination at this session; more detailed action to be taken at the Sixth Session.

M. LARRE (France) said that the French delegation considered the terms of the Agreement obligatory on all members, and this applied to Article XV and to paragraph 6. A Special Exchange Agreement had been prepared and there had been no

proposals of amendments. He agreed that it would be desirable for the working party to study this question of procedures for the administration of special exchange agreements.

The CHAIRMAN said that there was general agreement that the question be referred to a working party. He had thought it might be possible to arrive at a satisfactory conclusion at once regarding Burma, Indonesia and Sweden, since no questions arose in their cases, but there would be no difficulty in referring the matter insofar as it concerned those three countries also to the working party. The question of Haiti and New Zealand was more difficult and the working party should take into account the various suggestions for action to be taken. He proposed therefore a working party with terms of reference as follows:

(a) To consider the position of those contracting parties which are not members of the International Monetary Fund and have not yet complied with the resolution adopted at the Fourth Session of the Contracting Parties requiring such countries to enter into a Special Exchange Agreement not later than 2 November 1950.

(b) To examine, in the light of this consideration, the need for the adoption of procedure for the administration of Special Exchange Agreements, and, if such procedures are, in the circumstances necessary, to make recommendations concerning such procedures.

and membership as follows:

Chairman: M. G. JANSON (Belgium)

Members:	Belgium	Haiti	Sweden
	Burma	Indonesia	United Kingdom
	France	New Zealand	United States

This was approved.

2. Item 8 - Consultations on Recent Changes in Import Programmes (GATT/CP.4/31 and GATT/CP.5/24)

The CHAIRMAN referred to the report of the working party at the Fourth Session (GATT/CP.4/31) and to the letter addressed to the Fund initiati consultation (GATT/CP.5/24). Background material supplied by the Fund concer the countries in question had been circulated to each country as secret documents and a statement by the United Kingdom had also been circulated as Secret/CP/11. He recalled that towards the end of the Third Session of the Contracting Parties the United Kingdom, in view of the heavy drain on its financial reserves, announced the imposition of severe new measures to curtai imports from hard currency, and notably from dollar, areas. The United Kingdom informed the Contracting Parties of this intensification of restrictions and expressed its willingness to enter into consultation in accordance with the provisions of Article XII: 4(b). The United Kingdom indicated, however, that it would be difficult to undertake such consultations immediately and it was accordingly agreed that they should be deferred to the Fourth Session. At th Fourth Session the matter was considered again. As it was then known that a number of other contracting parties had intensified their restrictions, the

working party established for balance of payments questions was asked to determine which contracting parties "were substantially intensifying import restrictions and should therefore be invited to consult with the Contracting Parties in accordance with Article XII: 4(b)". GATT/CP.4/31). The Working Party reported that the question of intensification arose in the case of Australia, Ceylon, Chile, India, New Zealand, Pakistan, Southern Rhodesia, and the United Kingdom. In the course of the discussions the representatives of those countries said that they were willing to enter into consultation with the Contracting Parties regarding the recent changes in import programmes, and it was accordingly recommended that consultations under Article XII: 4(b) be undertaken with those countries in those terms. The representative of the International Monetary Fund indicated, however, that the Fund could not be ready in the limited time available during the Fourth Session to enter into consultations with the Contracting Parties with respect to all those countries. Accordingly the Working Party recommended that the countries be invited to consult at the Fifth Session and the Fund be formally advised that such consultations would take place. These recommendations were approved by the Contracting Parties.

On 2 June 1950 the Chairman of the Contracting Parties informed the Fund that these consultations would take place at the Fifth Session and initiated a consultation in accordance with the arrangements between the Contracting Parties and the Fund. The Fund provided, before the opening of the Session, substantial documentation, entitled "Background Information", and had also sent a strong delegation prepared to participate in the necessary consultations.

The Contracting Parties had now to decide on a procedure for the carrying out of their consultations with the eight contracting parties involved, and for the consultation with the Fund which was required. He suggested that as the work was extremely detailed it would be advisable to set up a working party immediately and refer the entire question to it.

Sir Stephen HOLMES (United Kingdom) agreed that the question be referred immediately to a working party and wished only to clarify one point. He referred to the Chairman's résumé of the histroy of the consultations and pointed out that in the case of the United Kingdom government this was the third session during which the Contracting Parties were concerned with the consultation. For the other governments involved it was the second. He felt that, in the normal course of events, consultations of this kind should be completed soon after the action with which they were concerned, and should concern themselves only with the situation existing at the time. He did not wish to complain about events as they had developed in this case, but only to point out that the situation was anomolous. If the present situation, whereby a single consultation had extended over a period seventeen months, were claimed as a precedent, it would introduce into a vital part of the Agreement a fundamental change of principle. He wished to make it clear that this should not be allowed to happen. On that understanding he was prepared to proceed immediately with the Working Party and enter into free and full consultations on the intensifications of import restrictions which took place in 1949 without limiting the scope of these consultations to the situation as it then was.

Mr. BROWN (United States) also regretted that these consultations had extended over so long a period and welcomed the attitude of the United Kingdom representative in this matter. He supported the Chairman's suggestion that the question be referred immediately to a Working Party.

The CHAIRMAN proposed as terms of reference:

"To initiate the consultations with Australia, Ceylon, Chile, India, New Zealand, Pakistan, Southern Rhodesia and the United Kingdom under the provisions of paragraph 4(b) of Article XII and in the course of these consultations to consult with the International Monetary Fund as provided for in paragraph 2 of Article XV and to report back to the Contracting Parties".

and membership as follows:

Chairman: Mr. J. J. DEUTSCH (Canada)

Members:

Australia	France
Belgium	Italy
Canada	Pakistan
Chile	United Kingdom
Cuba	United States
Finland	

This was approved.

3. Item 30 - Assured Life of Tariff Concessions with respect to Article XIX (GATT/CP.5/22).

Mr. BYSTRICKY (Czechoslovakia) referred to document GATT/CP/83 - Withdrawal of Item 1526(a) under the Provisions of Article XIX, submitted by the United States. The actual case involved was sufficiently important to countries such as Italy and Czechoslovakia but these particular interests were a secondary issue compared to the fundamental problem which might face any one of the contracting parties. This was the first time that Article XIX had been invoked and the commercial community would carefully watch whatever decision was arrived at. It was the general opinion that the weakest part of the Agreement was the uncertain legal basis with regard to many of the exceptional measures. The most important of these was that contained in Article XIX. The Contracting Parties should use this occasion to clarify the interpretation of the Article and he requested that the issue be regarded in that light rather than only as between two countires. The economies of the countries involved would not be ruined whatever conclusion was reached. The principle of whether the duration of concessions was assured or whether they could be withdrawn unilaterally at any time was of great importance, however, and whatever the conclusion in this matter it would establish a precedent of great importance.

Mr. BROWN (United States) said that he was indebted to the Czechoslovak representative for raising the question and to the Contracting Parties for the opportunity of discussing it. He agreed that since it was the first case under Article XIX the manner of handling it would be important and he also agreed that the principle involved was one of great significance to the Agreement.

His delegation agreed in the main with parts I and II of the Czechoslovak paper. Article XIX could certainly not be interpreted in the sense that it was sufficient for a contracting party to announce that an emergency had arisen. Paragraph 1 of Article XIX also required proof of "unforeseen developments" and that a product was being imported in "such increased quantities and under such conditions as to cause or threaten seri

injury". He also agreed that there must be a relationship of cause and effect between the increase of imports resulting in injuries and the obligations assumed by members, and that it was not sufficient merely to claim an increase in imports.

Mr. Brown said that he would first recall the origin of this Article and then describe how the United States had approached the problem in this particular case. Article XIX had been inserted into the Agreement as a safety-valve, since in such an instrument involving so many items it was not possible to say at the time of drafting that certain of the rates agreed upon might not cause or threaten injury at a later date. The fact of its being in the Agreement and available for use meant that contracting parties were generally able to go further in their initial concessions than might otherwise have been possible, and in that the existence of Article XIX had contributed to a larger measure of reduction than might otherwise have been the case.

The United States had set about the question of how the requirements of this Article should be fulfilled in the following manner. Firstly, the responsibility for administering applications under this Article was placed in the hands of the United States Tariff Commission which was a bipartisan body of experts with an expert staff. By order of the President it was empowered to consider applications under Article XIX, to hear all persons with any interest in the matter, to make such investigations as it deemed necessary, and to make recommendations direct to the President on its conclusions. In February 1948 the Tariff Commission had prepared a document for the guidance of the public, setting forth the procedures which would have to be followed to establish a case under Article XIX and the criteria which it felt were relevant in any judgment as to whether the Article were being properly invoked. This document was public and had been widely circulated. In describing the criteria considered relevant, this document made the same points made in the Czechoslovak paper, i.e. that an increase in quantities would have to be proved, that unforeseen conditions had arisen, that the increase was the result of the concession and that the product concerned was entering the country under such conditions as to cause or threaten serious injury. The document explained what was meant by an "increase". The increase had to be absolute rather than relative to domestic production and in comparison with a representative period. The document discussed the requirements for unforeseen developments and the question of what was meant by a result of the concession, and went on to analyse what might constitute evidence of injury.

In the case in question, the industry affected made an application to the Tariff Commission. The latter made a preliminary investigation and concluded that there was a prima facie case sufficient to justify a study. The Tariff Commission then gave public notice to all concerned that a study was to be undertaken and that public hearings would be held to which any person or group or country could come and present their views if they so desired. It was the custom of his government to see that these notices were circulated to the various Embassies and Legations in Washington, in addition to wide notice in the press, trade journals, chambers of commerce, etc. Hearings were held and extensive testimony was taken, but the Tariff Commission was still not satisfied that it had adequate knowledge on which to base a judgment, so experts on hats were sent into the field to look into the conditions in the various factories and the competitive factors involved, and to have discussions with members of the trade. As a result of this investigation and of the hearings, the Tariff Commission concluded that a case had been made out under the escape clause, and recommended that action be taken on the

concession granted in Geneva on certain types of hats and that, in view of the seasonal factors involved, this action be taken no later than 1 December.

At the time the recommendation was made a report was submitted to the President which was published at the end of September. At the time the recommendation was made public by a press release, its general conclusions were stated and also the detailed report was available to anyone interested. It was the custom of his government that such announcements were sent to the Embassies and Legations in Washington. Mr. Brown said that he was not aware of any comments or representations made to the State Department or to the Tariff Commission by any interested government during the course of the procedure described above.

He wished to point out one salient fact which emerged from this investigation. When the concession had been made on hats, an increase in imports to the United States was of course anticipated. It was not anticipated, however, that imports which had previously provided 5 per cent of domestic consumption would rise to over 30 per cent of domestic consumption, and that domestic production would show a significant absolute decline. Neither had certain very unusual changes in the condition of the hat trade been expected.

Once the United States had concluded that action should be taken under the escape clause it had proceeded to notify the Contracting Parties as was its obligation and desire under the General Agreement. The United States also offered to consult with the Contracting Parties or with any interested contracting party on the situation arising from this action. No request had yet been made by the Czechoslovak delegation for such consultation. He was prepared to consult with any country at any time to see how the situati could best be dealt with.

He hoped that this résumé of the procedures which had been followed in his country would be of interest to other countries and that any other contracting party so situated would approach the problem with equal care.

The latter part of the Czechoslovak paper referred to the rates on hats in other countries which were substantially lower than those to be in operation in the United States after 1 December, together with some general observations on the situation in the United States. He pointed out that Schedule XX contained 1,333 paragraphs, some of which dealt with one, but most with several items. If the number of items were counted the figure would reach somewhere between 2,500 and 3,000 and the number of individual tariff rates was greater than that. The purpose of this process of negotiation that was being carried on was to lower tariffs generally, and Mr. Brown felt that his government had made a substantial contribution to this effort. Furthermore, in spite of the several thousand rates and items involved there had only been to date 20 applications for action under Article XIX, and of the only one had resulted in action. He felt this placed the matter more in perspective, at least as far as his own delegation was concerned.

On a point of order, he wished to say that at the end of the Czechoslovak paper there was a formal proposal that the Contracting Parties "place on record that the unilateral action of the United States is not in accordance with the stipulations of Article XIX and recommend that the United States government revoke its intention in view of the serious consequences which its steps may have on the whole Agreement". He hoped that the explanati he had given would satisfy the Czechoslovak delegate and enable him to withdr

his proposal. If this were unfortunately not the case he would have to request that the record be cleared and the Contracting Parties vote to reject the proposal.

Mr. DI NOLA (Italy) said that the action taken by the United States also affected Italy and was much regretted since his country had been making great efforts to increase exports to the United States. An increase in exports to the dollar area for a country like Italy, dependent to so great an extent on imports such as wheat and oil from the dollar area, was imperative. The customs provisions until the present time had permitted a satisfactory division of work between the industries in the two countries. Italian industries had concentrated on high quality goods requiring much labour, while the United States had devoted itself to cheaper quality for a large market where manpower was short and expensive. His government, hoped, however, to obtain a modification in an amicable and satisfactory manner. He did not pretend to any great competence in interpreting the provisions of the Agreement, but one of its cardinal principles to his mind was that, when the economic interests of one contracting party set it against another, it was the duty of the first contracting party to consult and try to reach a satisfactory solution. Only in the event of the failure of such consultation could arbitrary and one-sided action be taken. The United States delegation had indicated their readiness to consult, and such consultations should therefore now be undertaken.

M. LECUYER (France) said that France's exports were also substantially affected by the action of the United States, although less so than those of Italy and Czechoslovakia. He agreed with Mr. Di Nola's interpretation of the Agreement, and wished only to add that it was apparent that the United States had given careful consideration before undertaking this action, and that the procedure which had been followed conformed to Article XIX and opened the way for consultation. He was awaiting instructions from his government which would permit him to undertake consultations and fully expected to arrive at a satisfactory solution.

Sir Stephen HOLMES (United Kingdom) agreed that any action, especially the first of its kind taken under the terms of Article XIX, should be carefully examined. All countries were concerned with the dangers inherent in the Article. He was doubtful of the argument made by the United States representative that the existence of the Article had contributed much to the scope of the concessions granted. The procedure did, however, provide for consultation with the individual contracting parties affected, and also with the Contracting Parties as a whole. In this instance he thought that the individual contracting parties would do well to take advantage of the offer of consultation. This was not a case at the present stage for full consultation by the Contracting Parties. He hoped, however, that any consultation would be directed to the question of what had been the unforeseen developments in the terms of the Article and whether they were really unforeseeable, and also to the question of the relationship of cause and effect between the concessions and the increased imports. It had been useful to hear the full statement of the United States.

Mr. MELANDER (Norway) said that the issue was whether the action of the United States was in accordance with the stipulations of Article XIX, and whether, if that were found not to be the case, the United States should be asked to revoke its action. This was the first case under Article XIX and it was right to consider closely the interpretation of the Article. To his mind, Article XIX, paragraph 1, laid down a rule, and paragraphs 2 and 3

provided that consultation between individual contracting parties might take place if one thought that the rule was not being followed. The Contracting Parties as a whole were not given the opportunity to express an opinion until after such consultations had taken place. In this case consultations had not taken place and he considered that the proposal was out of order. Article XXIII was available to a contracting party that considered that a benefit had been nullified or impaired and under that Article the Contracting Parties were obliged to consider the case. That Article had not been invoked here. If this interpretation was correct, then it would not be necessary to consider whether the United States had acted in accordance with Article XIX.

Mr. BYSTRICKY (Czechoslovakia) thanked the United States representative for his statement but said that he had come to a number of conclusions with which he (Mr. Bystricky) could not agree. Mention of the total number of concessions granted in relation to the one withdrawn was irrelevant since one item for a single country could mean more than a thousand others. Furthermore, he had never questioned the fact that the constitutional procedures of the United States had been complied with. The Tariff Commission was however a United States authority, and the question was whether to leave one country the task of judging if the conditions of Article XIX were met or not. The first condition of that Article, that of unforeseen developments, had not been convincingly argued. Furthermore, in spite of the tariff reductions at Geneva, the United States duty on this item was still the highest in the world - 55% - and he saw no relationship between the reduction of such a tariff and increased imports. No proof had been brought, either, to the second condition of causing or threatening serious injury. He therefore maintained the content of his paper.

He thanked the United States delegate for his offer of consultation, which he accepted with pleasure. After the consultation had taken place, the matter could then be brought to the Contracting Parties and he hoped it would be possible to report that a satisfactory conclusion had been reached.

The CHAIRMAN was glad that the Czechoslovak delegate agreed to take advantage of the offer of consultation. This enabled the Contracting Parties to conclude that the best manner of dealing with the case was for consultations to be carried out between the United States and the countries most concerned, in accordance with the procedures of Article XIX. The legal position had been clearly stated by the delegate of Norway.

It was agreed to leave the parties concerned to proceed to a consultation and the Contracting Parties would look forward to hearing the outcome.

The CHAIRMAN explained that this concluded all the discussions on the Agenda items possible at this time in plenary session. Plenary meetings would be adjourned for some time while the working parties got on with their work.

The meeting adjourned at 7.15 p.m.