GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fourth Session

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Palais des Nations, Geneva,
On Tuesday, 14 March 1950 at 2.30 p.m.

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

Subjects discussed:
1. Australian Subsidy on Ammonium Sulphate - (continued discussion). (GATT/CP.3/61 and GATT/CP.4/23).
2. 1950 Tariff Negotiations: other plans and arrangements.
3. Review of Brazilian internal taxes (GATT/CP.3/42).

1. Australian Subsidy on Ammonium Sulphate (GATT/CP.3/61 and GATT/CP.4/23).

Mr. EVANS (United States) said that his delegation had followed the deliberations with great interest, and had come to the conclusion that this difficult question, involving both matters of fact and interpretation of provisions of the Agreement, deserved the closest attention by the Contracting Parties. At this stage his delegation found it difficult to agree that Australia had infringed the provisions of Article I and III of the Agreement; but held the view that concessions granted by Australia, at Geneva, had been impaired in a way that Chile might not be reasonably expected to accept. Steps, therefore, should be taken under Article XXIII of the Agreement, which provided for such cases not necessarily involving any violation of the obligations a contracting party under the Agreement. This delegation, therefore, supported the proposal that a working party should be set up and entrusted with the tasks of studying the facts in relation to the provisions of the Agreement. The report of such a working party would be valuable in guiding the Contracting Parties in dealing with similar cases in future.

Mr. DEUTSCH (Canada) was doubtful whether the case came at all within the preview of Articles I or III; in his view it was more likely to fall under Articles XXIII and XVI. The Working Party should be asked especially to study the provisions of the latter Article in relation to this particular case. It would be useful if Australia could supply statistical information on its trade in

past years in the products in question, and on their production.

Mr. WALKER (Australia) replied that the statistics of local production of the two products were not satisfactory, and could not be readily supplied. He could give figures relating to consumption and importation of the products and further details would be supplied to the Working Party if the latter considered it necessary. With regard to the suggestion that Geneva concessions had been nullified, he felt it reasonable to say that changes in such war-time measures as subsidies must have been envisaged even at Geneva. When the war-time price-control powers of the Government lapsed, a revision of the existing subsidies became necessary. Such measures were being reviewed annually and revisions made from time to time in accordance with the changing needs of the country. In this connection, he would mention that even the existing subsidy on Ammonium Sulphate was to be reviewed in the course of the present year.

In reply to the Chilean representative, he said that whatever words might have been used by the Australian representative at the negotiations in London, Australia had definitely not accepted that it had infringed any provision of the Agreement, but, in view of the importance attached by Chile to the problem, Australia had agreed to undertake negotiations under Article XXIII with a view to providing a certain degree of satisfaction for Chile. The concessions offered by Australia were, unfortunately, not accepted.

Referring to remarks of the Chilean representative at a previous meeting, Mr. WALKER said he had not meant to cast any doubt on the quality of Chilean Nitrate as a fertilizer, nor had he implied that Nitrate as a fertilizer was intrinsically inferior to Ammonium Sulphate. But, the two fertilizers did have different properties making them more suitable for different purposes and different conditions. The preference in other countries, such as the United Kingdom and Sweden, for one or the other of them was, therefore, not necessarily relevant. The chief characteristics of the two products might be briefly mentioned: Except in the growing of sugar, nitrate could be used only when mixed with other fertilizers. In view of the mechanical process of such mixing account had to be taken of the chemical properties of a fertilizer, such as its moisture absorbing qualities and its readiness to crystalize. It was clear that a fertilizer had to be chosen with

due regard to the conditions of agriculture, the properties of the soil, and the nature of the product. Furthermore, the Chilean representative had viewed the question merely as one of the comparative benfits to the industries producing the two fertilizers. From the Australian point of view, however, the abolition or maintenance of such subsidies had to be decided with regard to their impact on agricultural development, and it was in the light of the needs of Australian agriculture that the government had decided provisionally to withdraw the subsidy on one of the products, and to retain it on the other. In other words, it was not a question of two mutually substitutable fertilizers, but a question of the Government's policy with respect to the users of the two products. The present policy of the Australian Government happened to require the discontinuance of the indirect subsidy on green vegetables which were benefiting from the fact that their prices were not controlled.

Mr. SHACKLE (United Kingdom) agreed to the proposal to set up a working party, believing that this was exactly the type of question suitable for detailed study by a working group. The legal question involved seemed to hinge on two facts, namely, the extent of actual damage Chile was likely to suffer from the suspension of the subsidy, and the intrinsic values of the two products with respect to their particular use in Australia. Besides these, there might be technical questions in studying which the Working Party would need help from independent technical experts. He would therefore suggest that the F.A.O. be approached in the first instance and requested to give assistance.

Mr. CASSIERS (Belgium) also agreed to the proposal to refer the question to a working party, and added that in studying the question the working party should not confine its attention to Article XVI, but also to Article III, paragraph 8 (b) and 9, because it was a question of the impact of subsidies on substitutable goods rather than of an impairment of negotiated benefits. Reference should also be made to paragraph 1 of Article XI, which prohibits the use of restrictions other than duties, taxes or other charges, whether made effective through quotas, benefits or other measures.

Mr. ALFONSO (Chile) thought it was necessary for him to refute certain facts given by the Australian representative.

Referring to the statement by Australia that the demand for nitrate was limited to industrial purposes, Mr. ALFONSO said that Australia was known to have been desirous of obtaining nitrate in great quantities for agricultural uses, and supported his argument by quoting from various statements made by Australian representatives at F.A.O. meetings, and further illustrated figures for Australian import of Chilean nitrate.

Mr. ALFONSO then emphasized again that his Government was not asking for a preferential treatment for Chilean nitrate, but only that it be given an equal opportunity to compete in a free market, and pointed out that if nitrate was not relatively suitable for Australian soil, then competition would naturally not help its sale in that country. The present greater demand by Australian producers for ammonium sulphate than nitrate could not be regarded as indicating their preference for the former as it had been made cheaper by the discriminatory subsidy.

Referring to the remarks of the Belgian representative Mr. ALFONSO pointed out that the unequal treatment accorded to the two like products clearly interfered with competition, and hence nullified Australia's undertaking to admit nitrate on a competitive basis under duty. The action clearly also contraverted the basic principle of most-favoured-nation treatment embodied in Article I: 1. Furthermore, the spirit of Article XVI was not respected, although it would not be necessary to go into the details of the provision. Wherever Article XXIII: 1 (b) referred to "any measure, whether or not it conflicts with the provisions of this agreement, the case clearly falls under the latter category."

Mr. WALKER (Australia) replied that most of the points mentioned by the Chilean representative were suitable for detailed study by the working party, but he would reply briefly as follows: It was not his impression that the decline in the import of nitrate into Australia was attributable to the abolition of subsidy; figures showed clearly that the decline had begun before that action was taken. He would further point out that the figures presented by Chile did not agree with his own data, but this might be due to the inclusion or exclusion of re-exports or to dissention between Chilean export and Australian import subsidies owing to the lapse of time for shipments to reach Australia. The

import of nitrate for industrial uses, as for the manufacture of other fertilizers, was never covered by the subsidy designed to benefit agricultural producers.

The CHAIRMAN summed up the discussions and suggested a procedure for the study of this question. Besides the facts in relation to Australia's trade and production of the products, and the legal implications of the provisions of the Agreement, the working party might have to study several technical questions, and for this purpose they might need to consult with inter-governmental organizations. He suggested that the Executive Secretary should, in the first instance, enquire if the F.A.O. regional office attached to the E.C.E. in Geneva had any experts on fertilizers, and if not, then other organizations should be approached. If the Working Party so desired, consultation with experts could be arranged by the Executive Secretary. With regard to the legal aspects of the question, certain articles of the Agreement referred to in the Chilean declaration (GATT/CP.4/23), and the representatives of the United States and Canada had supported the view that discussion should take place under paragraph 1 of Article XXIII. The Working Party, therefore, had to determine whether benefit accruing to Chile had been impaired. Other provisions of the Agreement referred to at this discussion were Article XVI, Article I and Article II: 2 and 4. The applicability of these provisions was, however, doubted by certain other representatives. These, as well as those referred to by the Belgian representative, namely Article XI: 1 and Article III: 8 (b) and 9, should also be examined by the Working Party. Following the precedent of past sessions, the CHAIRMAN suggested that a small working party consisting of 5 members should be set up and given sufficiently broad terms of reference which, he proposed as follows:

> "To consider the arguments submitted by the delegations of Australia and Chile, with respect to the Australian subsidy on ammonium sulphate, and to make appropriate recommendations to the Contracting Parties with reference to the relevant provisions of the Agreement".

In reply to a question by the Chilean representative, the CHAIRMAN said that the Executive Secretary would make an enquiry about the availability of experts in Geneva, and would notify the Working Party what technical assistance could be obtained.

Mr. EVANS (United States) suggested that the Working Party should consider first whether, and to what extent, it needed technical assistance before steps were taken by the Executive Secretary to obtain it, since otherwise a massive amount of information might be assembled to serve no useful purpose.

In reply the CHAIRMAN said it was his understanding that the Executive Secretary should be asked to ascertain whether expert assistance was available; the decision as to whether such assistance was called for would in any case be made by the Working Party itself.

The proposal to set up a Working Party, and the proposed terms of reference having been approved, the CHAIRMAN, with the concurrence of the meeting, appointed the following contracting parties as members of the Working Party:

Australia	United Kingdom
Chile	United States
Norway	

with Mr. OFTEDAL (Norway) as Chairman.

2. 1950 Tariff Negotiations: Other Plans and Arrangements.

The CHAIRMAN recalled the discussions on February 27 and 28 when it was agreed that the subject be reverted to after 20 March, the date set for the reply to the questionnaire relating to tariff negotiations. Meanwhile, he invited discussion on any other points which might be disposed of before that date.

Mr. IMHOFF (Federal Republic of Germany) made a statement in which he made four points: His Government regretted that sections of the new German customs tariff could not be supplied to contracting parties until the middle of May; his Government wished to be allowed the same extension of time limit to 15 July for submission of requests on governments requesting concessions from Germany as those governments. The import equalization law relating to agricultural products was neither restrictive nor discriminatory and would be in force only until June 30, 1950, and his Government might have to resign its position if other countries intended to increase their customs tariffs. (The original text of the statement is annexed to this summary record).

Mr. Van BLANKENSTEIN (Netherlands) would like to know first, why the German Federal Republic could not submit its lists of requests by 15 June; as the tariffs of the other countries were

already available to the German Government it would not have the same difficulty in preparing such lists as would other countries because of the absence of a German customs tariff until May of this year. He also wished to know whether the import equalization system would be completely terminated by 30 June. Thirdly, he enquired to which governments the German representative alluded when he intimated that other countries might intend to increase their customs tariffs; the continued binding of existing tariffs contained in the G.TT Schedules was being considered by the Contracting Parties and the intention had been demonstrated that the Schedules were to be revalidated with limited alterations only in exceptional cases and in accordance with Article XXVIII. It would be interesting to know whether the information which the German representative referred to related to any contracting parties or other governments. Further, as there was no German tariff in existence it was also puzzling to hear that the German Republic was contemplating an increase in its tariffs.

Mr. IMHOFF (Germany) replied that no specific governments were mentioned in the communication which he had received from his Government but he would point out that a similar assertion was made in a statement submitted earlier by the Netherlands delegation.

Mr. Van BLANKENSTEIN (Netherlands) replied that the document to which he believed the German representative referred contained a proposition relating to the re-imposition of existing tariff rates after the liberalization of trade and not to any increase in tariff rates.

Mr. IMHOFF (Germany) referring to the question by the Netherlands representative said that although he himself was not certain as to the exact meaning of his Government's instructions it was clear that since the pre-war German tariff had been in force since 1902 and had become obsolete, a thorough revision was necessary. Besides it was also desirable on technical grounds to have a new tariff on an ad valorem basis. At any rate, the German delegation had declared a week ago that its Government would abide by the principle laid down in paragraph 3 (iv) of the Memorandum on Tariff Negotiations and that it had no intention to increase its tariffs.

Mr. SVEINBJORNSSON (Denmark) thanked the German representative

for his answer to the question on the German import equalization system and for the confirmation that the system would be completely abolished on 30 June, 1950.

Mr. SHACKLE (United Kingdom) wished to associate himself with the remarks of the Danish representative and added that it would be desirable if the German requests could be sent out as soon as possible as there was no reason why the postponement of the date for the submission of lists of requests by contracting parties to Germany should entail any delay in the other direction, the tariffs of the other governments having been available to the German government. The objective of avoiding competitive raises of tariffs should not be defeated; if delays and obstacles similar to those encountered at Annecy were not to occur again at Torquay a late revision of its tariff by any participating government must be avoided.

The CHAIRMAN proposed that the question be left for reconsideration after March 20.

The CHAIRMAN recalled the statement made by the Netherlands representative at the 12th meeting, which, he pointed out, should be discussed under this agenda item, as it primarily concerned tariffs.

Mr. SHACKLE (United Kingdom) felt that it would be unnecessary to appoint a working party to study the question; by so doing the Contracting Parties might waste much time in endless references to the provisions of the Agreement. The precise incidence of particular tariff rates on the trade of a country and especially the economic effect of tariffs was all but unascertainable. Even if the protective effect of a tariff could be demonstrated in numerical figures, which was obviously not the case, it would still be difficult to see what action could be taken to implement the Netherlands proposal. He would therefore suggest that contracting parties bear in mind the provisions of paragraph 2 (d) of Article 17 of the Havana Charter and negotiate in accordance with the relevant rules in the Memorandum on Tariff Negotiations. He hoped that the proposal to have this studied by a working party would not be pressed. Finally, Mr. SHACKLE wished to observe that the action and consultation contemplated in the last part of Mr. Spierenburg's statement at the 12th meeting would be conducted within the terms of the General Agreement.

Mr. EVANS (United States) thanked the Netherlands delegation for the good service it had done in reminding contracting parties of the provisions of Article 17: 2(d) of the Havana Charter. He would draw attention to the fact that in past negotiations the United States had agreed to lower substantially its tariffs in exchange for the binding of lower tariffs by other countries. The United States had observed and would continue to observe that principle in conducting its negotiations and there was no reason why the principle could not be observed in practice without elaborate stipulations.

Mr. DEUTSCH (Canada) wished to associate himself with the remarks of the United States representative and assured the contracting parties that Canada would give special attention to this rule in the forthcoming tariff negotiations.

Mr. Van BLANKENSTEIN (Netherlands) agreed with the United Kingdom representative that it would be difficult to compare different levels of tariffs. However, he felt that a valuable yardstick had been given by the Chairman, that is, the equality of access to international markets, the absence of quantitative restrictions and the general reduction of tariffs, which were the chief objectives of the Agreement. He was gratified to hear the remarks of the Canadian, United Kingdom and United States representatives that this principle would be observed at the forthcoming negotiations.

In summing up the CHAIRMAN said that the discussion had clearly shown that contracting parties recognized the importance of the rule that "the binding against increase of low duties or of duty-free treatment should in principle be recognized as a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences." Since there was no support for the proposal to set up a working party it would suffice to record that the Contracting Parties took note of the statement delivered by the chairman of the Netherlands Delegation on March 6, 1950 (GATT/CP.4/SR.12) and the subsequent discussions.

3. Review of Brazilian Internal Taxes (GATT/CP.3/42, para 19).

The CHAIRMAN drew attention to the report of Working Party 7 of the Third Session and especially to paragraphs 17 to 19 thereof, which stated that the Brazilian Government had already called the

attention of the Brazilian Congress to all existing laws providing for different levels of taxation with respect to domestic and imported products in order to bring those laws into conformity with Article III of the General Agreement and that a statement had been made by the Brazilian Delegation that its Government was willing to send a further message to Congress asking it to proceed as soon as possible with amendment of all such laws and in particular the law of 1948. The question was to be reviewed at this session in the light of action taken by the Brazilian Government.

Mr. MOREIRA DA SILVA (Brazil) stated that according to the information available although the Administrative Branch of his Government had made recommendations, the Brazilian Congress had so far not acted upon them. The Contracting Parties would be informed when the legislature had proceeded with any such amendments.

Mr. EVANS (United States) said that he understood that previous delays in such action had been due to Congressional procedures relating to budget matters. It was not clear whether provision had been made for such amendments in the budget for the current year. He would therefore hope that a specific statement on the steps taken would be made during the session.

Mr. PHILIP (France) remarked that the reply had been long expected. In view of the long delay he would expect that at least some indication be given even if it related only to administrative action in proposing the amendments to Congress.

Mr. SHACKLE (United Kingdom) trusted that as detailed information as possible would be supplied before the end of this session.

Mr. EVANS (United States) suggested that it would be helpful if information could be supplied on specific actions taken with respect to each of the laws referred to in the Working Party report.

Mr. MOREIRA DA SILVA (Brazil) regretted that he was not able at the moment to give the information requested, but said he would telegraph his Government at once to ask for precise information, adding that he appreciated the disappointment which had been caused to the other contracting parties.

The CHAIRMAN proposed, and the meeting agreed, to leave the matter on the Agenda and to revert to it before the end of this session.

The meeting adjourned at 5.40 p.m.

A N N E X

Declaration made by Mr. Ludwig Imhoff, the Observer for Germany at the 15th Meeting on 14 March, 1950, (Original text provided by the German delegation).

Mr. Chairman,

Will you allow me to answer some questions which have been put to the German Delegation in the course of the last plenary meetings.

Firstly, different Delegations have expressed their wish to obtain in advance sections of the new German customs tariff draft. Therefore, I have requested my Government to give me information if sections of our customs tariff draft could be submitted in advance. My Government has now informed me that - at its regret - it will not be possible to do so, because a new draft must be an harmonious whole, and besides there are technical reasons why singular sections cannot be submitted before. The complete draft of the customs tariff will be submitted by the middle of May, as it has been stated in the plenary meeting of the 28 February, 1950.

Secondly, according to the wishes of the Delegation of the United Kingdom and other Delegations, the Federal Republic agrees to postpone until the 15th of July the term of the 15th of June for acceptance of the lists of requests of the other countries. But on our side, I think, we should also have the possibility to send our lists of requests in a corresponding delay to those countries to whom we shall not yet have sent lists of requests on the 15th June and who will send us their lists of requests not earlier than the 15th of July.

Thirdly, in the plenary meeting of the first of March, according to the wish of the Delegation of Denmark, the German Delegation has made a preliminary statement about the German law concerning the Import Equalization on agricultural products. As a representative of the Ministry of Agriculture has now arrived, some details can be given, which may be of interest also for other delegations. The German Import Equalization Law has been changed in such a manner that it is in no way of restrictive character. By changing the equalization amounts the existing internal prices are not altered. Neither is the Import Equalization a discrimination to any other country. Under the conditions now existing

it will be uniform for all countries. The Import Equalization is a transitional measure. The law on the Import Equalization will be in force until the 30th of June this year. In the meantime the number of items under equalization amounts has become smaller and also the amounts have been diminished.

Besides may I mention, news has reached my Government that other States have the intention to increase the customs tariff rates. My Government is very impressed by this news. It would be a difficult situation for Germany if other States would come to a considerable raise of customs duties. Therefore, my Goevernment has instructed me to make a reserve as follows: If other States should increase their customs tariff rates, the Federal Government would have to prepare similar measures, that means the Federal Government would have to follow the lead.