

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.5/SR.7
8 November 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fifth Session.

SUMMARY RECORD OF THE SEVENTH MEETING

Held at the Marine Spa, Torquay, England,
on Tuesday, 7 November 1950 at 10.30 a.m.

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

Subject discussed: Amendment of last paragraph of Part II of Article XX of the General Agreement to correspond with Article 45 of the Havana Charter (GATT/CP.5/17).

Amendment of last paragraph of Part II of Article XX of the General Agreement to correspond with Article 45 of the Havana Charter (GATT/CP.5/17)

Sir Stephen HOLMES (United Kingdom) said that the aim of the United Kingdom proposal was to substitute for the date of January 1st 1951 in Part II of Article XX, which had been fixed as a closing date for the transitional period in which Contracting Parties might take measures to cope with shortages of supply and meet the requirements of price-fixing policies, even if they were not fully compatible with other articles of the Agreement, the more flexible formula contained in Article 45 of the Havana Charter. As a result of continued shortages, balance of payments difficulties, and other economic problems, it had been necessary for many countries to maintain restrictive measures. Although the framers of the Agreement had considered that the circumstances requiring the maintenance of such measures would be transitional; these conditions had, in fact, continued longer than had been contemplated and were still existent. His country had had limited resort to such measures, and the discussions at the Fourth Session had shown that other countries had employed them to a much greater extent. The present outlook did not make it appear practicable to abolish the restrictions. It was important, in view of urgent action which might have to be taken by governments, that they should not be hampered by having to seek the approval of the Contracting Parties, who might not be in session when the need for such action arose. He referred to the corresponding provision in the Havana Charter which left the necessary latitude. At Geneva it had been thought that by the end of 1950 the difficulties of the post-war transitional period would have been removed. At Havana, however, they had been less optimistic, and he proposed that the Contracting Parties follow the text of the Charter. This course involved no serious risk since it would be open to the Contracting Parties at any time to set a new date.

Mr. MELANDER (Norway), pointing out that the proposal was also made by Norway, expressed his full agreement with the representative of the United Kingdom. The exceptions under Article XX were of two kinds: those which, by their nature, could be considered as permanent (Part I), and those which could be considered as of a temporary character (Part II). As regards the latter, he thought that while the first two exceptions were still necessary to meet situations of short supply and the requirements of price fixing, the third point, concerned with the liquidation of surpluses arising from the exigencies of the war, no longer required their attention. He therefore urged the Contracting Parties to introduce the more flexible rule.

Dr. GUERRA (Cuba) voiced the strong opposition of his delegation to the United Kingdom proposal, which, if accepted, might prove equivalent to a waiving of many of the most important provisions of the Agreement. He feared that the

amendment might be used to cover other purposes than those in view of which Article XX had been drafted. He had heard a reference by Sir Stephen Holmes to balance of payments difficulties, which made him feel that it was essential strictly to limit any resort to this clause. The articles concerning balances of payments had been most thoroughly discussed at Geneva and Havana and had been drafted to meet all reasonable needs. When drafting the Havana Charter it had been possible to avoid fixing a time-limit to the exceptions of Part II because the imminent establishment of the ITO was expected. This organization was considered capable of keeping a close watch over the application of the Charter. But without an ITO, and with the Contracting Parties meeting only once or twice a year, his delegation felt that the proposal before them might create loopholes for the introduction of measures which might not be justifiable.

Mr. REISMAN (Canada) expressed his support for the views put forward by the representative of Cuba. His delegation did not feel that at this stage the Agreement should be amended piecemeal. A number of amendments to bring the Agreement into conformity with the Charter had been made in 1948 but these amendments were a well-balanced selection of a larger number which had been proposed. If any further amendments were to be made, attention should be paid to the need for the maintenance of the balance which had been kept up to now in the Agreement.

When the Geneva Conference drafted the exceptions contained in Part II, they had had very specific cases in mind; the Contracting Parties were now being asked to accept an interpretation of points (a) and (b) with much broader implications. He had been particularly disturbed by Sir Stephen Holmes' reference to balance of payments difficulties, which made him feel that points (a) and (b) were now being construed to cover situations which had never been envisaged.

If specific cases, which were worthy of consideration, were brought before the Contracting Parties, he felt sure that they would be fairly dealt with.

M. LARRE (France) said that the text of the Agreement had been considered provisional by the drafters, who had specifically provided in Article XXIX for its revision, if, by September 30 1949, the Havana Charter had not entered into force. Decisions on this point had been postponed, and the Agreement remained in its provisional state. It would not, however, be reasonable to maintain in force an article in a form which was stricter than that of the Charter. And while he understood the disadvantages of piecemeal modification, he felt it would be more disadvantageous to keep the Article as it was. He submitted two possibilities: either to adopt the text of Article 45 of the Charter or to modify the date in Article XX to 1 January 1953.

Dr. BOTHA (South Africa) spoke in favour of the amendment, which appeared purely designed to adapt the Agreement to present conditions. He expressed his support for the proposal purely and simply as an amendment to the Agreement to make it conform to new conditions. He felt that it was unnecessary and undesirable to relate the proposed amendment to the text of the Havana Charter, which was a separate document.

Mr. BROWN (United States) stressed the difference in the spirit and substance which existed between the exceptions in Part I and those in Part II of Article XX which had been referred to by the delegate of Norway. The former

were of a type normally inserted in trade agreements and were, therefore, of a permanent character. The latter were temporary exceptions intended to meet exceptional difficulties in the transitional period. He deplored the tendency for temporary measures to become permanent. Any temporary exceptions should be kept under constant review. He agreed with the delegates of Cuba and Canada that it would be unfortunate to accept the United Kingdom proposal.

He could not agree with the remark of the delegate of Norway that the question of the liquidation of temporary surpluses was no longer important. Such difficulties might still exist. He did not think that contracting parties had forgotten the effort which the United States had made to produce surpluses over their own needs in order to make foodstuffs and raw materials available to the rest of the world. The effects of these efforts were still with them.

Without entering into a detailed discussion of the subject he felt he must register his agreement with the remarks of the representatives of Cuba and Canada to the effect that the Contracting Parties had been asked to give to Part II a somewhat broader interpretation than had been expressed in its first draft.

He felt, however, that there was some justification for the proposal before them, particularly in a case where urgent steps had to be taken by a contracting party at a time when the Contracting Parties were not in session. He had been impressed by the suggestion made by the representative of France, and thought that the proposal might best be disposed of by changing the date at present specified in Article XX. The problem of shortages was likely to concern Contracting Parties in the near future. It might be necessary to institute controls in this period, and, in particular, before the next session of the Contracting Parties. By the date of that session the Contracting Parties would know more on this point. They would also know more about the prospects of the Havana Charter. The fundamental attitude of the United States' delegation towards temporary measures made him reluctant to accept the date of 1953, and he proposed 1952, a date which could be extended if it should prove necessary. He also wished to suggest that the Contracting Parties give consideration to the possibility of effecting the amendment by resolution rather than by a formal amendment of the Agreement. He believed that this procedure had been followed in similar cases in the past.

M. CASSIERS (Belgium) felt that the General Agreement established as a rule that measures designed to cope with shortages and with the requirements of price control would have to be justified before the Contracting Parties. Part II of Article XX provided a temporary exception to this rule, which allowed measures to be taken up to a certain date without any justification having to be submitted to the Contracting Parties. It followed that to accept the United Kingdom proposal would be equivalent to making the exception the rule and the rule the exception. The acceptance of this amendment might, therefore, have a catastrophic effect on the Agreement. He felt that the wiser solution would be some form of resolution which, without amending the Agreement, would provide that the provisions of Article XX would not be invoked up to some such date as 1 January, 1952, to compel a contracting party imposing or maintaining measures after 1 January, 1951, to justify its action before the Contracting Parties.

He thought that comparison with the text of the Havana Charter was misleading in that Article 45 of the Charter, though admittedly more flexible, presupposed the existence of an International Trade Organization to act as a fully equipped

safeguard of the letter and spirit of the Charter.

Mr. JOHNSON (New Zealand) spoke in support of the proposal of the United Kingdom and Norway, and felt that some distinction should be drawn between the provisions relating to shortages and price control, and those relating to liquidation of surpluses. It did not appear to him that the present position was such as to justify the extension of the time limit in the latter case. As regards the former, two provisions, however, he agreed that circumstances would justify the extension of the time limit at least, until 1 January 1952.

Mr. SVEINBJØRNSSON (Denmark) said that he had intended to request instructions from his government in the light of the discussions on this item. He felt, however, that he could support the proposal of the United States except with regard to point (c), on which he agreed with the representative of New Zealand.

Mr. DI NOLA (Italy) said his country suffered from constant demographic pressure, which made the problem under discussion of particular concern to Italy. His country had achieved considerable industrial development, which was accompanied by dependence on a substantial measure of imports of foodstuffs and of all their raw materials. This placed the Italian economy in a position of inferiority in periods of world scarcity and of control of exports.

For this reason Article XX was of particular importance to Italy. While they looked forward to the day when the shortage and maldistribution of raw materials would cease, there was no denying the necessities of existing conditions.

It was true that under the present text, extensions beyond the date fixed could be granted in particular cases, but no organization existed which could give a prompt reply to an applicant. The present session would consider proposals for the more effective administration of the Agreement, so that he hoped the situation would be different in a year's time. Meanwhile, however, he associated himself with the proposal of the U.S.A., which would enable the Contracting Parties to keep the matter regularly under review.

Mr. DESAI (India) pointed out that controls did not seem to be diminishing in intensity. Some countries, which had been maintaining controls had reached the point of considering their removal, but they, in common with other countries which had not hitherto felt the need for controls, were faced with the necessity for instituting and extending controls to meet present conditions. He therefore supported the proposed amendment. While favouring the proposed extension of the date to 1 January, 1953, he would be prepared to accept the United States' proposal of 1952 in view of the hope that by the beginning of 1952 machinery would be available to enable the Contracting Parties to keep the matter under constant review.

The meeting adjourned at 1 p.m.

