

GENERAL AGREEMENT ON TARIFFS AND TRADE

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8 November 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE EIGHTH MEETING

Held at the Marine Spa, Torquay,
on Tuesday, 7 November 1950, at 3 p.m.

Chairman: Hon L. D. WILGRESS (Canada)

Subject discussed: Continuation of discussion on Item 26 of the Agenda:
Amendment of the last paragraph of Part II of Article XX
to correspond with Article 45 of the Havana Charter.
(GATT/CP.5/17)

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Mr. GUERRA (Cuba) said that he would be prepared to accept the proposed compromise of a definitive date in Article XX and agreed with the United States' suggestion of 1 January 1952. With reference to the original United Kingdom proposal that the extension of time apply only to sub-paragraphs (a) and (b) of Part II of Article XX, he felt that such a distinction should not be drawn between surpluses and shortages. It would be found on investigation that certain shortages as well as surpluses had disappeared since the war. In any case the justification put forward was the prospect of new shortages in the future arising from the needs of the armaments programme, rather than the past or present situation. The armaments programme was already causing the creation of stockpiles of raw materials and it was essential to the raw-material producing countries that the provisions for orderly liquidation contained in sub-paragraph (c) should be retained. The Agreement as a whole could be considered as a balance between importing and exporting countries, and sometimes this balance was to be found in individual Articles. This was such an Article, and he would not be prepared to accept the extension of the escape clause unless sub-paragraph (c) were also covered.

Mr. TONKIN (Australia) said that while Australia, like Canada, was opposed in principle to piecemeal application of the Charter by the insertion of various provisions in the Agreement, he did not think that this proposal came under that definition. When this Article had been drafted, it had been thought that the Charter would be in effect by 1951, and some action was now necessary by the Contracting Parties to adjust the position, especially in view of the fact that certain factors which were then operating still continued. His Government was very interested in preserving its rights under sub-paragraphs (a) and (b) in particular. There were still shortages of certain goods, and price control and other restrictive measures continued, of necessity, to be in operation. He preferred the suggestion that the Havana Charter version be used, but he had nevertheless been impressed by the reasons given by the United States representative, and was prepared to accept 1 January 1952 as a compromise. As to the retention of the application of the proposal to sub-paragraph (c), he agreed with the New Zealand representative that more information would be necessary.

Mr. GARCIA OLDINI (Chile) said that the situation which, at the time the Agreement was drafted at Geneva, had permitted a certain optimism, had altered by

the end of the Havana meeting, and the text of the Charter made no mention of a date and left full latitude to the Organization. While the Charter text perhaps presupposed the existence of an Organization, the situation now was different to that envisaged at the time of the drafting of the Agreement, and this fact should be taken into account. He had seen originally no objection to accepting the United Kingdom proposal, and he did consider that to fix a new date would be to fall into the original error of Geneva. If a date were to be fixed for the extension of the escape clause, it would be advisable to make the extension at least two years. It was, however, absolutely essential that the extension cover all the sub-paragraphs of Part II of the Article. Sub-paragraph (c) was the only guarantee to primary countries, in the present situation, of building up large stocks, and its exclusion could not be contemplated. Frequent attempts had been made to introduce Chapter VI of the Charter into the Agreement, and were that Chapter with its provisions to safeguard primary countries included, there would be no need to conserve this paragraph. In the present circumstances, however, he agreed with the Cuban representative that to eliminate sub-paragraph (c) would be to destroy the balance of the Article. If it were eliminated he would vote against such action and reserve the position of his government both with respect to the Article and to the Agreement itself.

Sir Stephen HOLMES (United Kingdom) was impressed by the general support given to the United Kingdom proposal, but thought there might be some misapprehension as to its scope. There was no intention to abandon sub-paragraph (c), but only that, with respect to sub-paragraphs (a) and (b), the date of 1 January 1951 be replaced by the more flexible provisions of the Charter. Sub-paragraph (c) would continue to be ruled by the date in the Agreement. In any case, sub-paragraph (c) was surely to be read as applying to the past. The reference to "the war" could only mean the war just over.

He disagreed with the suggestion of the Cuban representative that the Charter provisions were only appropriate to a situation where the Organization was in existence. It seemed to him that the provisions of the Charter were more appropriate to the present situation, where no permanent executive body kept matters under constant review, but recourse was to be had only at the regular meetings of the Contracting Parties.

Sir Stephen Holmes had also been impressed by the reluctance of contracting parties to contemplate anything in the nature of an amendment. It seemed to him that if an improvement could be made to the text it was only sensible to make it by any means at hand.

Finally, the argument had been advanced that this amendment could lead to abuse. However, the United Kingdom proposal in no way altered the present safeguards in the Article, and contracting parties could intervene at any moment and set a date by which time the measures referred to would have to be removed. If the date of 1 January 1951 were simply altered to a later date, he thought that contracting parties would find themselves repeating these same arguments in a year or two years' time.

Mr. BROWN (United States of America) emphasised that the Article under discussion was an exception to the general rule, introduced to deal with a transitional period. Human experience and common sense taught that measures introduced for such periods tended to become permanent. The United Kingdom representative had said that there was no real difference between a situation where you had a definite date and one where no date was specified, however,

there was surely a material difference in that in the first case the burden of proof would rest on the contracting party wishing to make use of the exceptions, and in the latter, on the contracting party opposing the exceptions. It was principally for that reason that the United States opposed the change in the form suggested by the United Kingdom.

With regard to sub-paragraph (c), the representatives of Cuba and Chile had put forward good reasons for treating it in the same manner as sub-paragraphs (a) and (b), and the words "the war" in sub-paragraph (c), mentioned by the United Kingdom delegate, were also to be found in sub-paragraph (b). He thought that common ground between the divergent views so far expressed might be found in the proposal of the French representative, with the amendment suggested by the United States.

Mr. GUERRA (Cuba) wished to emphasise his previous statement that it was future shortages that were contemplated rather than past or present ones, and whatever treatment was given to that situation should also apply to surpluses. With regard to the remarks of the United Kingdom representative on the existence of a permanent Organization, it was desirable and necessary that the situation be periodically reviewed and the use of this Article discussed from time to time as would be the case if a definite date were fixed. He consequently agreed with the representative of the United States.

Mr. M. LARRE (France) proposed a resolution, in the following terms:

"The Contracting Parties, considering that the circumstances which caused the insertion of Article XX, Part II in the General Agreement had not disappeared by the date originally fixed,

Resolve not to require the removal of the measures which had been or would be instituted within the terms of paragraphs a, b, c of Part II of Article XX before a date to be fixed later and which would not in any case be earlier than 1 January 1952 (or 1 January 1953)."

The CHAIRMAN summarised the discussion. There had been considerable opposition to the original United Kingdom proposal of altering the last paragraph to conform to the Havana Charter Article; and the compromise suggested by the French and United States representatives of specifying a later date had received a certain amount of support. There had also been opposition to the exclusion of sub-paragraph (c) from the coverage of the proposed extension of time, and finally, there had been opposition to the proposed use of the amendment procedure. A decision had, therefore, to be made on (1) the method of amending this Article, whether by amendment or by resolution; if a resolution were decided on, attention might be turned to the French proposal, leaving the Secretariat to prepare a draft for consideration later. (2) The coverage of such an amendment or resolution would also have to be decided - whether sub-paragraphs (a) and (b) only were to be included, as proposed by the representative of the United Kingdom, or whether all three sub-paragraphs (a); (b) and (c) would be included. (3) Finally, a decision should be made as to whether to adopt the original proposal for extension in the manner contained in the Havana Charter, or one of the two dates proposed, 1 January 1952, suggested by the United States representative, or 1 January 1953 suggested by the French representative.

In reply to a remark by Mr. GUERRA, the CHAIRMAN said that a decision could first be taken on the coverage of the amendment or resolution.

Mr. JOHNSON (New Zealand) thought it would be helpful to clarify the point of principle raised by the United Kingdom representative as to the interpretation of the words "the war" in sub-paragraph (c). He thought there could be no doubt that these words referred to the last war, but if this interpretation were accepted and inserted in the record it would be of assistance.

Mr. BROWN (United States) suggested that a considered interpretation would unduly prolong the present discussion. His delegation was prepared to debate at length on the meaning of this paragraph and he thought it preferable to confine the discussion to the issues clearly before them. It would not be the proper procedure to make a casual interpretation in the abstract on an important provision that might at a later date be of concern to a contracting party.

Mr. MELANDER (Norway) said that he was not clear as to the implications of a resolution procedure or an amendment procedure, and it might be helpful to the Committee as a whole to have a working party set up to deal with this entire question.

Mr. GARCIA OLDINI (Chile) agreed with the United States representative. He also was prepared to debate at length as to the interpretation of sub-paragraph (c), particularly as his interpretation was contrary to the interpretation of the New Zealand representative. As to the question of whether to use a resolution procedure or amendment procedure, the most that a resolution could do would be to alter the date for all three paragraphs. Any elimination of sub-paragraph (c) from the scope of the date in the last paragraph would clearly be an amendment.

The CHAIRMAN said there were now two proposals before the Committee as to procedure: one to refer the questions at issue to a Working Party, and the other the proposal put forward by the Chair to decide now on the various points. He explained that, whatever procedure were adopted, either amendment or resolution, a 2/3 decision of the Contracting Parties would eventually be required; an amendment under the terms of Article XXX and a resolution because it would be equivalent to a waiver of obligations and would also require a 2/3 vote under the terms of Article XXV: 5(a).

Sir Stephen HOLMES (United Kingdom) supported the Norwegian proposal for a working party.

It was agreed by a vote of 15 to 9 to set up a working party to consider the best means of attaining the objective of amending the last paragraph of Part II of Article XX, composed as follows:

Belgium	New Zealand
Canada	Norway
Chile	Italy
Cuba	United Kingdom
France	United States

Chairman: M. Cassiers (Belgium)

2.2. Suggestions for standard practices to minimize commercial uncertainty and hardship under the administration of import licence and exchange control (GATT/CP.5/8)

Mr. BROWN (United States) said that many business men engaged in foreign trade had experienced difficulties and uncertainties because of the way in which the various controls, necessary under the present conditions, were administered. Uncertainty was the greatest difficulty to any trader and definite information would be preferable even if in some cases it was definite information of severe controls. Other countries might have experienced the same difficulties and the United States had thought therefore that it would perhaps be useful for the Contracting Parties to agree on some general principles to be applied in connection with the administration of import controls. Suggested standards were set out in the statement submitted by his Delegation, and it might be useful to establish a Working Party to study them.

Mr. STEYN (Union of South Africa) said that he had considered with interest the United States proposals and agreed in principle with the objective of eliminating unnecessary hardship. His country had already had some experience with the problem and had found it necessary to establish special machinery for consultation between the import control authorities and the commercial community. In establishing these procedures they had been assisted by suggestions put forward by governments of some other countries. The South African delegation was prepared to support the objectives of the United States proposal but he wished also to emphasize the necessity of taking into account the differences between various countries. He could see certain difficulties in the United States statement, but this was a matter for a working party to consider.

Dr. VAZNA (Czechoslovakia) welcomed the United States proposal and agreed to its usefulness. In commercial relations, however, the export side had also to be taken into account, and the proposal seemed incomplete in that this was omitted. As presently worded, it appeared that only importing countries caused hardship by the administration of restrictions. This might be true at a time of a buyers' market, but in the sellers' market that had existed since the war, hardship was often caused by the exporting countries. In order to complete the aim of this paper of a "fuller implementation of the general provisions and intent of the GATT" Dr. Vazna suggested the addition of the words "and export" after the word "import" in the title, in the sixth line of the first paragraph, in paragraph 2 and in paragraphs 4 and 9.

M. LARRE (France) supported the suggestion to create a working party. He thought its terms of reference should be limited to the proposal as set forth by the United States since the questions of exports had already been subject to debate in the Contracting Parties and the legal difference between the two types of controls had been fully discussed. With respect to the scheduling of working parties in general, he hoped that it could be done in such a manner as to enable all delegations, large or small to be represented.

Mr. PENTEADO (Brazil) supported the United States proposal in principle. Any general standard that was set up should not, however, be so rigid as to defeat its own purposes and furthermore standards should be carefully worded so as to avoid any possibility of transferring control from the government to the importers. As examples of possible difficulty in wording that might be considered by the working party when it met, he pointed to the

words "when due" in paragraph 1, to paragraph 3, to the percentage contained in paragraph 6 and to the question of the type of communication in paragraph 8. He supported the setting up of a working party to consider these matters.

The CHAIRMAN said that the discussion would be continued on the following day. The remarks of the French representative would be borne in mind when a time-table was drawn up for the meetings of working parties at the close of the plenary meetings.

The meeting adjourned at 6.30 p.m.

