GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at the Marine Spa, Torquay, England
on Thursday 14 December at 10.30 a.m.

Chairman: Dr. van BLANKENSTEIN (Netherlands)

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

Item 30 - Assured Life of Tariff Concessions with respect to Article XIX (Contd.)

Mr. CORSE (United States) said that his country agreed with the Czechoslovak delegate on the seriousness of the matter, and he assured the Contracting Parties that the United States had not lightly taken the decision to withdraw the concessions on the items involved. A careful and detailed appraisal had been given the matter. The petition had been filed on January 24 of this year. After a preliminary examination, a notice of public hearings on the matter was issued on April 7. These hearings, which were open, were held on May 9 and then, after consideration of the views of the interested parties, analysis by trained technicians and a field investigation, the Tariff Commission announced its findings and the United States Government notified the Contracting Parties in October. The withdrawal covered only those items valued at $9 to $24 a dozen. He reiterated that the Tariff Commission was a fact-finding body and published all the facts pertaining to a case. All these facts were open to public inspection and the Commission clearly could not make any recommendation without grounds for doing so, and Mr. CORSE wished to draw attention to the following facts. First, the imports of these items had increased from 41,000 to 50,000 dozen in 1935-1937 to a peak of 121,000 dozen in 1949 and to an estimated figure of 124,000 dozen in this year. Secondly, the consumption had risen during the 1930s to a peak of over a million dozen in 1937 and then had declined to less than 700,000 dozen in 1949. Domestic production had reached a peak of a million dozen in 1937, declining to 566,000 dozen in 1949 and to 406,000 dozen in 1950. The ratio of imports to production in 1935-1937 was 4.8. In 1947, when the concession was granted, it was 3.3. It had then risen to 7.2 in 1948, 20.4 in 1949 and to an estimated figure of 30.5 in 1950. The employment figures were also relevant to the case. In 1937-1939 there were about 6,000 productive workers in the fur felt hat industry. In 1947 this had declined to 4,400 and by 1950 to 3,800. Between 60% and 70% of these workers were skilled and the average age was very high. Finally, the domestic industry was concentrated in five communities: Danbury, Norwalk, Reading, Philadelphia and Aymesbury. In the Connecticut area the Tariff Commission estimated that 85% of the wages in Danbury and 50% in Norwalk were paid by the hat industry.

A field survey was then conducted covering 15 manufacturers, most of the manufacturers in this industry. Fourteen out of the fifteen had made samples in 1949 or 1950; ten of these indicated that they could not make them at a competitive price with imports. Four had tried to make velours on a commercial basis and three of these four had reported very little profit on a selling price of $18 a dozen. On the present prices there was a loss rather than a profit. The facts therefore indicated that an injury was involved to this particular industry and that some action needed to be taken.

The Czechoslovak representative had charged that the United States had not conformed to the provisions of Article XIX to consult. He did not think that this claim could be sustained. The facts were rather that the consultations were not successful from the point of view of the Czechoslovak delegation. Their proposals that the action taken by the United States be revoked were unacceptable to his Government once the finding had been made that injury was caused. His delegation was engaged in consultations with two of the three other countries involved. Mr. COREA referred to the criteria in paragraph 1 of Article XIX. He thought that no question had been raised as to the increase in imports. On the question of unforeseen developments, it was the opinion of his Government that the change in styles and the impact of this change on the domestic production were unforeseen. In fact, had the change been foreseen, it was doubtful whether the concession would have been granted in the first place. It was hardly necessary to demonstrate that the increase in imports was the result of the concession. If the negotiations were to have any point at all, some increase must be the result of concessions made, but so great an increase was not foreseeable. As to the question of whether the imports were entering under such conditions as to cause or threaten serious injury to domestic producers, he had pointed out that they were entering into a shrinking domestic market and were thus causing increased difficulty to domestic producers.

It should be clear to the Contracting Parties that his Government regretted finding it necessary to invoke the escape clause but after an objective enquiry into the situation it had been determined that injury was being caused, and having so determined, it was necessary to take action. Finally, his delegation disagreed with the charge made by the Czechoslovak delegation that the United States had violated Article XIX by this action.

The CHAIRMAN wished to clarify the legal position of the debate. The Czechoslovak delegation had complained that the United States had not conformed to Article XIX, paragraph 1 (a) when they had withdrawn the concession granted to Item 1526(a) of the United States Schedule. The United States had accepted the debate on this point and replied. The Czechoslovak delegation had indicated that they did not intend to apply paragraph 3 (a) of Article XIX which gave them the right to suspend equivalent obligations or concessions, thus indicating that the principle of the question was more important than the damage involved. The Czechoslovak representative had also asked the Contracting Parties to prevent the United States from the alleged infringement. It was difficult to see how this complaint could be brought under Article XIX; it would more appropriately be referred to the Contracting Parties under a procedure of the type envisaged in Article XXIII. He further contended that the consultations between his delegation and the United States delegation had been unsuccessful and that the United States were maintaining a measure which he considered to be a violation of the Agreement. This was therefore the basis of the present debate, and if the Contracting Parties were to proceed in an orderly manner, they should limit themselves first to the question of whether the United States had in fact conformed with the provisions of Article XIX, paragraph 1.

Mr. DI NOLA (Italy) said that the situation of fact and law had not changed since the matter was first discussed in the Contracting Parties. As regards the facts, the situation remained the same, only aggravated by the circumstance that the measure in question was already being applied and that, therefore, for the moment at least, no relief could be expected. The legal situation was that, on the basis of Article XIX, no action other than entering into consultations was possible. The only power given to the Contracting Parties under Article XIX was to examine whether the retaliatory measure permitted to the injured party by paragraph 3 was in proportion to the injuries it had sustained.

It was as well that this was so because the greater rigidity of multilateral trade agreements as compared with bilateral agreements had made it necessary to establish this escape clause. But if it had also been provided that the Contracting Parties should pronounce on the question of the critical circumstances before a country could have recourse to this Article, the necessary flexibility and urgency would have been lost. The situation would be quite different if Article XXIII were invoked, but even if the Contracting Parties were, under that Article, to decide that the measure adopted by the United States Government was not justified, the result would still be that the injured party could have recourse to retaliatory measures. This same result could be reached more rapidly on the basis of Article XIX, and Mr. DI NOLA said that the Italian delegation wished the case to remain on the basis of Article XIX.

As to the results of the negotiations undertaken in this matter, Mr. DI NOLA declared that for the moment they were negligible. This was due, however, to technical difficulties, and he was certain that when the negotiations were resumed in January it would be possible to arrive at a satisfactory agreement. The United States Government, which until the present time had been concerned to assist the economic rehabilitation of Italy, could not fail to provide a new outlet for Italian exports to make up for the loss suffered as a result of this action.

M. LECUYER (France), referring only to the legal basis of the action under consideration, thought the decision of the United States was within the framework of Article XIX. This Article was an exception to the other articles of the Agreement. A special procedure was involved and should be conformed to. At the time of the drafting of the Agreement governments had wished to put in an escape clause which would give them a certain security and possibility of rapid action with regard to the concessions undertaken. It was probable that the application of this text presented some risks and it was certain that the Contracting Parties should guard against its frequent use. Nor could he agree with the Italian representative that this article was a helpful one. Since it was in the Agreement, however, his Government was prepared to proceed on the basis of consultations.

The CHAIRMAN explained that he had cited Article XXIII because the Czechoslovak representative had clearly brought a complaint. Article XIX did not give the possibility of making a complaint before the Contracting Parties, but as Article XIX was one of the obligations of the Agreement, if the Czechoslovak delegation insisted on the complaint procedure it would clearly have to be taken under Article XXIII.

Dr. GUERRA (Cuba) did not wish to discuss the facts of the case, but did wish to set forth the point of view of his Government with regard to Article XIX. He considered that this matter involved fundamental questions of principle and the interpretation by the Contracting Parties of Article XIX in this case might determine the attitude of Cuba to the whole of the Agreement. For a country such as his own, with a very low tariff, most of which was bound in the Agreement, it would not have been possible to go along with the policy of liberating trade unless it had the guarantee contained in this Article. Had there been the possibility that the lowered tariffs might have come into conflict with the progress of economic development in any given case, it might not have been possible for Cuba to enter into the Agreement, and it would certainly not have been possible to reduce and bind its tariffs as it had done.

He would not, of course, advocate a widespread use of Article XIX, nor was any country entitled to abuse it. In his view, the article as it was written established, as far as it was possible to do so, objective criteria which enabled countries to measure and judge whether the article was reasonably invoked. These objective criteria were the increase of imports and the

existence of an injury. The causal relationship between the granting of the concessions and the increase of imports was somewhat less objective but still could fairly be measured. A much less objective criterion was the question of whether unforeseen development and several types of happening (such as technological changes, currency devaluations, new or augmented subsidies) might be involved.

The Cuban Government could not, under any circumstances, accept the thesis of the Czechoslovak delegation that, because increase of trade was a general objective of the Agreement, all other considerations must be ignored when a country was faced with an increase of imports in any given case. If such an interpretation were accepted the whole safeguard of Article XIX would be lost, and a country such as his own might well hesitate to rebind its schedule. In his view, and without reference to the present complaint, where the question of unforeseen developments was in doubt, this should not be allowed to over-ride the considerations of the objective criteria he had listed. He thought that a country which was faced by a greater increase in imports than was expected at the time the concession was granted, where damage was being caused, and where there was a causal relationship between the concession and the import increase, should have the right to invoke Article XIX, whether or not "unforeseen developments" could be proven. The safeguard contained in Article XIX gave the Agreement sufficient flexibility to protect countries with developing industries.

M. CASSIERS (Belgium) agreed with the Chairman's statement regarding the legal position. As soon as the Czechoslovak representative complained of the abuse of Article XIX he was basing himself on Article XXIII. Although no provision for investigation existed under Article XIX, the Czechoslovak delegation could make a complaint before the Contracting Parties under Article XXIII and ask that an enquiry be undertaken. Under Article XIX the only possible action was the withdrawal of an equivalent concession. Under Article XXIII, on the other hand, the Contracting Parties could make recommendations. He agreed with the Cuban representative as to the importance of Article XIX and the fact that it should be used for its own specific purpose. However, it could hardly be the intention that the power of judging whether the conditions of Article XIX were fulfilled or not rested solely with the country applying the Article. He thought, therefore, that the complaint should be accepted under Article XXIII and an investigation made.

Mr. SCHMITT (New Zealand) wished to record the view of his government that the Contracting Parties would not be proceeding properly if they decided that action could be taken under Article XXIII in the first instance. The "matter" referred to in this Article could only relate to the nullification or impairment of a specific benefit or objective. It could not require the Contracting Parties to investigate in the first instance as to whether a contracting party was carrying out the legal obligations of the General Agreement as a whole, nor as to the legal status of any particular action under some other provision of the Agreement. This interpretation was borne out by the wider provisions of the Havana Charter articles. His Government considered it an important principle that Article XXIII provided for the settlement of disputes on practical matters with the Contracting Parties acting as mediators. The Article did not provide for decision on the legality or illegality of actions taken by the Contracting Parties nor for the Contracting Parties to act as judge.

The CHAIRMAN said that he was not prepared to give any ruling or to continue the discussion on the problem posed by the New Zealand representative. From the debate on the general question it was apparent that no contracting parties, except those immediately concerned, were prepared to pronounce on the merits of the case. It was clear that any discussions could only proceed on the basis of Article XXIII and it had already been pointed out that that Article, in the final instance, could only lead to permission to make retaliatory withdrawals. The same objective could be obtained by applying Article XIX, with the same regrettable result. He therefore asked the Czechoslovak representative whether he would be prepared to accept that the Contracting Parties take note that the consultations between the United States and Czechoslovakia on this item had not led to agreement, which would entitle Czechoslovakia to make use of the provisions of Article XIX para. 3.

The meeting adjourned at 1.10 p.m.