

Restricted

CONTRACTING PARTIES

GATT/CEA.2/W/3
April 11, 1949

Committee on Special Exchange Agreements
Second Session

STATEMENT OF THE NEW ZEALAND DELEGATION

For the convenience of other committee members the following statement of its views concerning procedures involving prior approval has been prepared by the New Zealand Delegation.

New Zealand's views on this matter are not based on any opposition to prior approval as such, nor do we consider that any such question of principle arises. We do however consider that such a procedure is inappropriate to the particular circumstances of a Special Exchange Agreement. Our view is based on the practical consequences likely to result from attempting to apply the procedure to actual situations, and on the relationship of the Special Exchange Agreement to the General Agreement itself.

1. The New Zealand Delegation considers that it is inconsistent with the precedent established by the General Agreement to provide in the Special Exchange Agreement procedures for prior approval. Such procedures, while found in the articles of agreement of the Monetary Fund, are not generally employed in the General Agreement itself. In accordance therefore with our view that the Special Exchange Agreement should wherever possible take the General Agreement as its model, we consider that prior approval should be avoided in the Special Exchange Agreement. Particularly relevant in this connection are the provisions of Article XII of GATT which relate to the imposition and maintenance of quantitative regulation of imports because of balance of payments difficulties. The subject matter of this article is more closely analogous than that of any other article of GATT to the subject matter of the Special Exchange Agreement and therefore Article XII procedures should, we consider, be adapted to cover matters within the scope of the Special Exchange Agreement.

2. In fact, to follow any different procedure would give rise to a serious anomaly. Under Article XII of the General Agreement a contracting party faced with balance of payments difficulties is able to impose, without prior approval, import restrictions to protect its monetary reserves. There may well be circumstances in which exchange controls could be employed so as to achieve the same effect; this is implicitly recognised in Article XV (5) of GATT. Under the London draft of the Special Exchange Agreement, however, a contracting party would not be able to impose such exchange controls without prior approval. It seems to us that this situation clearly shows that the present draft of the Special Exchange Agreement goes beyond ensuring that a non-member of the Fund will not frustrate the objectives of GATT; it imposes further important procedural obligations on the contracting party concerned.

3. Not only do we consider that prior approval is contrary to the precedent of the General Agreement; we also consider that it is a procedure which could not be carried out in practice even if provision were made for it in the Special Exchange Agreement.

The London draft of the Special Exchange Agreement and the later report prepared by the Committee assume that the International Monetary Fund has certain powers in relation to the Special Exchange Agreement which we consider should remain solely in the hands of the CONTRACTING PARTIES. This assumption is that the Monetary Fund will determine for instance whether a proposed change of par values is to be approved or whether the imposition of exchange controls is to be permitted. This assumption is made clear both in paragraph 8 of the report itself and in Article XIII paragraph 5 of the draft annexed to the report. New Zealand does not consider that such powers under the Special Exchange Agreement should be in the hands of the International Monetary Fund. It is unreasonable to expect a country to surrender to an international organisation of which it is not a member power to make decisions on so important matters. We would stress that this is a matter of principle and our objection does not arise because the Monetary Fund is the organisation, the objection is to any organisation of which we are not member having power to decide such matters in relation to our exchange actions.

4. We further consider that the allocation of such powers to the Monetary Fund would be contrary to the provisions of the General Agreement. Article XV paragraph 2 of the General Agreement states that the "CONTRACTING PARTIES" shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance.... with the terms of a special exchange agreement....". New Zealand considers that the approval or disapproval of a change in par values or imposition of exchange controls goes beyond determining whether action is or is not in accordance with the terms of an agreement. It is a determination as to the desirability or necessity of an action in the light of economic conditions. Therefore we consider that the CONTRACTING PARTIES are not entitled to accept without question the opinion of the Fund on such matters. They must themselves consider and give a decision on any such cases as they arise.

5. Any application for prior approval must therefore be dealt with by the CONTRACTING PARTIES themselves. That requires either a special session of the CONTRACTING PARTIES or postponement of decision until the next regular session. The CONTRACTING PARTIES meet only at fairly lengthy intervals, hence considerable delay may be involved before a decision is obtained, and serious damage may be caused to the economy of the country concerned. Moreover, the longer remedial action is delayed, the more serious will the situation become, and the more drastic will be the action which will eventually have to be taken.

Even if the CONTRACTING PARTIES happened to be in session at the time when the need to take action arose, a non-member of the Fund requiring to obtain the prior approval of the CONTRACTING PARTIES would still be subject to the likelihood of greater and more damaging delay than a member of the Fund would be in similar circumstances. In the first place, delay would occur for consultation between the Fund and the CONTRACTING PARTIES; only one organization is involved in the case of a member of the Fund. Secondly, during the period of consultation a Fund member may cover a deficit in its balance of current payments by drawing on the resources of the Fund. Those resources are not available to a non-member of the Fund, so that the need for quick action is even greater. Thirdly, there is probably a natural reaction on the

part of the Fund to protect its resources against heavy drawings by giving early approval to such measures as may be necessary to ensure the continued viability of the applicant. There can be no certainty of an equivalent favourable predisposition towards a non-member of the Fund either on the part of the Fund or of the CONTRACTING PARTIES. We therefore consider that some procedure other than that at present proposed would be more appropriate to actual conditions under a special exchange agreement.

6. An additional reason for deleting provisions involving prior approval is the need for the preservation of secrecy. It is generally recognised that the effectiveness of Governmental action in exchange matters is likely to be frustrated if advance information of the Government's intention leaks out. It is important in this connection to remember that prior consideration under a Special Exchange Agreement may well involve a greater risk of leakage than prior consultation under Fund agreement, because two groups of representatives and of staff are involved.

7. New Zealand therefore considers that procedures involving prior approval should be deleted from a Special Exchange Agreement for three particular reasons: -

- (a) The Precedent of the General Agreement.
- (b) The impracticability of the procedure in the particular circumstances of the Special Exchange Agreement.
- (c) The need for secrecy.

8. Instead of providing for prior approval we would propose provision for prior consultation where practicable, adopting a wording somewhat similar to that of paragraph 4 (a) of GATT Article XII. In addition there would be a considerable safeguard against unnecessarily harmful action in exchange matters through a complaint procedure which could be initiated by any other contracting party whose trade was injured by the action. Such a complaint procedure would, we consider, be very effective in avoiding wrongful actions by a non-member of the Fund. Such a contracting party would always have to consider the possibility that the CONTRACTING PARTIES would authorise other contracting parties to take compensatory action of great severity against it, either under this special complaint procedure or under Article XXIII of the General Agreement.