GENERAL AGREEMENT
ON TARIFFS AND
TRADE

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CONTRACTING PARTIES
Fifth Session

WORKING PARTY F ON AMENDMENT TO LAST PARAGRAPH OF PART II OF ARTICLE XX

DRAFT REPORT

The Working Party addressed itself in the first instance to point (2) of its terms of reference, i.e. "Whether the proposed extension of the date limit should apply to all three sub-paragraphs of Part II of Article XX or only to sub-paragraphs (a) and (b)". The view was expressed at the outset of the discussion by the representative of the United Kingdom that this question could not properly be examined except on the basis of a consideration of the various types of measures which were being applied or might have to be applied under sub-paragraphs (a) and (b) on the one hand, and sub-paragraph (c) on the other. Such an examination would enable the Working Party to appreciate the necessity for the extension of the time period in respect of measures applied under sub-paragraphs (a) and (b), and at the same time demonstrate that the same considerations did not apply to sub-paragraph (c). This view was supported by the representatives of Norway and New Zealand. Most members of the Working Party felt that it was not within the terms of reference of the Working Party to embark upon such a detailed examination and they felt moreover that it would not be practicable to do so at the present session of the Contracting Parties. They felt that a sufficient measure of agreement had been manifested in the discussion in the plenary meetings of the Contracting Parties that any extension agreed upon with respect to (a) and (b) should apply equally to (c). Of these the representatives of , and felt that a detailed examination might possibly disclose a basis for differentiating between the treatment to be accorded to sub-paragraphs (a) and (b) on the one hand, and sub-paragraph (c) on the other.

It being found impossible to arrive at an agreed conclusion on the basis of either of the two views thus advanced, the Working Party gave more detailed consideration to the nature of the exceptions envisaged in the three sub-paragraphs and in particular in sub-paragraph (c). The representative of the United Kingdom developed at some length the reasons which in his view justified a differentiation between the treatment to be accorded to paragraphs (a) and (b) on the one hand, which dealt with shortages, and (c) on the other, which dealt with surpluses. In his view the difficulties envisaged under (c) no longer existed or should no longer exist. The stocks referred to under paragraph (c) should by now have been liquidated or, if not, the question could be dealt with on a case by case basis and considered by the Contracting Parties. The problems with which sub-paragraphs (a) and (b) were intended to deal were, however, of a much more persistent character requiring the application for a considerable time to come of various measures which might not otherwise be consistent with the Agreement. Shortages continued to exist and also countries which were experiencing balance of payments difficulties had for that reason limited access to certain sources of supply, which imposed upon them the need to take measures of the type contemplated under paragraphs (a) and (b). While the United Kingdom pointed out that there was considerable ambiguity as to the scope of sub-paragraph (c) and that it might be used as a justification for protective import restrictions in a manner entirely contrary to the principles and objectives of the Agreement, other members of the Working Party felt that the same problem arose with respect to sub-paragraphs (a) and (b), namely that they, too, contained a considerable element of ambiguity as to their scope and might be used to justify protective measures contrary to the principles and objectives of the Agreement.

The representatives of Chile and Cuba felt that if any extension were to be agreed as to any of these sub-paragraphs it should in any case apply to sub-paragraph (c) which was of vital importance to primary producers, since it was they who would suffer from the absence of any provision for the orderly liquidation of surpluses of primary products. Paragraph (c) called for

consultation with a view to international action which afforded some safeguard for the interests of primary producers. The new circumstances, such as needs for rearmament programmes, which had been adduced by those who favoured an extension of the period for sub-paragraphs (a) and (b), as aggravating and prolonging the problem of shortages, also created the danger of the accumulation of surpluses, which were of great concern to the primary producing countries. The safeguard of sub-paragraph (c) providing for consultation, was, therefore, of great importance to them, particularly as neither Article 32 nor Chapter VI of the Havana Charter were included in the General Agreement.

The representative of the United Kingdom, whilst sympathizing with the anxieties of the primary producing countries, felt that paragraph (c) did not afford them any guarantee; on the other hand, the acceptance by contracting parties of the obligations of Article XXIX, which involved acceptance of the principles of Chapter VI and of Article 32 of the Havana Charter, did give them some protection.

As regards the length of the extension, whether applied to (a) and (b) only or to all three sub-paragraphs, a majority of members were in favour of a short period in view of the importance of the exceptions involved. The United Kingdom, Norway and New Zealand, who, as explained above, favoured an extension in the case of (a) and (b) but not of (c) felt that the date to be inserted in the Article should be left for subsequent determination by the Contracting Parties.

Since most members of the Working Party felt that it was not possible at this session to examine in detail the types of measures which might be taken under sub-paragraphs (a), (b) and (c), the Working Party agreed to recommend that all three sub-paragraphs should as an interim measure be prolonged until 1 January 1952, so as to enable a more thorough examination at the next Session of the question of what extension, if any, should be made with respect to each of the three sub-paragraphs.

As regards the method to be adopted to give effect to the interim solution recommended by the Working Party, it is considered that the most practicable and expeditious method would be by way of a decision of the Contracting Parties under Article XXV:5(a) waiving until January 1, 1952, the obligation of contracting parties instituting or maintaining measures under Part II of Article XX to discontinue them. A draft of a Resolution to this effect is submitted with this report for consideration by the Contracting Parties.

DRAFT RESOLUTION

WHEREAS it is provided in Article XX that nothing in the General Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures described in Part II of Article XX, and that measures instituted under the said Part II of Article XX which are inconsistent with other provisions of the General Agreement shall be removed as soon as the conditions giving rise to them have ceased and in any event not later than January 1, 1951

and WHEREAS the conditions due to the war have not improved at the rate and to the extent expected when the General Agreement was drafted

the CONTRACTING PARTIES DECIDE by a two-thirds majority in accordance with Article XXV (5) (a) to waive until 1 January 1952 the obligation of contracting parties instituting or maintaining measures under Part II of Article XX to discontinue them.