

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/1224
3 June 1960

Limited Distribution

CONTRACTING PARTIES
Sixteenth Session

DRAFT REPORT OF THE PANEL ON ARTICLE XVIII ON THE NOTIFICATIONS BY CEYLON

1. In accordance with its terms of reference (W.16/4), the Panel on Article XVIII has considered, in consultation with the representatives of Ceylon and other interested contracting parties, the notifications in respect of aluminium foil, asbestos cement products and certain textile products submitted by the Government of Ceylon in terms of the provisions of Section C of Article XVIII.
2. The Panel noted that notifications in respect of these commodities had been submitted by Ceylon to the CONTRACTING PARTIES at the fifteenth session but that a decision had not been reached because the Ceylon delegation wished to supply additional information in support of the notifications which was not ready at that time. The CONTRACTING PARTIES had agreed at the fifteenth session that, in the case of aluminium foil and asbestos cement products, the Ceylon delegation would be free to submit new information on the difficulties confronting the two industries which could serve as a basis for the further consideration of the notifications on these products at the sixteenth session. The CONTRACTING PARTIES had agreed, also, that in the case of textiles the Ceylon Government should reconsider its notification with a view to preparing a revised statement on which further consultations with Ceylon at the sixteenth session could be based.
3. The Panel noted, further, that in its report to the CONTRACTING PARTIES the Panel on Article XVIII which considered the Ceylon notifications at the fifteenth session had set out the general considerations on the basis of which these notifications had been examined at that time (see BISD, Eighth Supplement, pages 90-92). These considerations, which conformed to the provisions of paragraph 16 of Article XVIII, were related to (a) the purpose of the proposed measures, (b) whether there were any alternative measures available under the Agreement which could achieve the objective envisaged, and (c) the possible effects of the measures proposed on the commercial and economic interests of other contracting parties. The present Panel decided to adopt these considerations as a basis for its deliberations. Account was also taken of the statement in the report of the Tokyo Panel which had recognized Ceylon's right to invoke the provisions of Section C of Article XVIII (Ibid page 90).
4. With regard to aluminium foil and aluminium lining (aluminium foil covered with waterproof and tissue paper for lining tea chests) the Ceylon delegation stated that the industry was started in 1950 on a relatively small scale and had since expanded to the point where it currently had a production capacity of 10,000 cwts. per year.

Owing to various circumstances, including the cost and price advantages enjoyed by certain exporting countries, output had never reached production capacity but had fluctuated between 53 and 73 per cent thereof. This inadequate level of production had prevented the achievement of full efficiency, and it was expected that costs and prices could be substantially reduced and the local product could thereby attain a better competitive position with the domestic market if production were stepped up to the industry's full capacity. However, the principal obstacle to an expansion of sales was not so much the higher costs of production of the domestic industry, but rather a lack of confidence among local users in the consistency of the quality of its products. Although the quality of locally produced foil and lining compared favourably with imported products, the users of lining were generally reluctant to change over from imported products to local products for fear that the quality of the latter might vary in future. As in the other cases in which action under the Industrial Products Act had been considered under Article XVIII, the problem was again one of overcoming resistance and prejudice against a locally produced article. Measures such as import tariffs, tariff quotas and subsidies might to some extent help to overcome any cost or price disadvantage but it was only the kind of measures provided by the Industrial Products Act which would be effective in dealing with such resistance and prejudice.

5. With regard to asbestos cement products, the Ceylon delegation stated that the firm producing these building materials was established in 1957 as a public limited liability company with Government participation. Although the factory was set up in that year substantial production did not start until 1959. The first year was spent in training the operatives and, in the second year, production was hampered by strikes. In the three years of its existence the factory had produced altogether 425,000 cwts., but by the end of 1959 it was faced with an unsold accumulated stock of 36,000 cwts. Furthermore, even the present level of sales had been reached mainly through governmental promotion, chiefly through the enforced purchases of domestic products for use in public institutions. The industry has a potential capacity of 480,000 cwts, which so far could not be reached in the face of the present accumulated stocks and stagnation in sales. While up to 1959 there had been grounds for attributing the difficulties partly to the exports of certain highly industrialized countries which were available at slightly lower prices than local products, present indications were that the prices of local products would hereafter be slightly lower than those of imported products. The problem faced by the industry was not one of high costs of production or inferior quality of its products, but the lack of confidence of consumers in the quality of domestically produced products displayed by local consumers despite the fact that laboratory tests had demonstrated that the domestically produced tiles, ridges and sheets met the requirements of British minimum quality standards. It was thought that because of the hazards of transport and handling of imports from distant sources of supply, the domestic products should have a clear quality advantage over imported products. However, since production had commenced only recently, consumers had not had sufficient opportunity of gaining confidence in the domestic products through actual use. The Ceylon authorities expected that confidence in the quality could be established in three more years, i.e. when the local products would have been put to test for just over six years. In the meantime, measures under the Industrial Products Act were considered indispensable in order to help the industry to work off accumulated stocks and to expand production to a level nearer to capacity, where by the costs of production were expected to be lowered by 11 per cent.

6. The Panel and the representatives of certain contracting parties, notably those of India, Japan and the United Kingdom, discussed with the Ceylon delegation the nature of the problems faced by the two industries and the possibility of using other measures to deal with these problems. Some members of the Panel and other representatives doubted whether the difficulties of these industries were, in fact, caused primarily by traditional consumer resistance to domestic products. In both cases it was thought that imports from particular sources of supply might be principally, or at least partly, responsible for the lack of progress in selling domestic products and that a solution should perhaps be sought in the tariff field rather than through the application of the measures of compulsion provided under the Industrial Products Act. The Panel was therefore faced with the problem of reconciling the measures proposed by Ceylon with the requirement of paragraph 13 of Article XVIII that a contracting party wishing to invoke the provisions of that paragraph can do so only if no measure consistent with the other provisions of the General Agreement is practicable to achieve the objective in question. Also it was considered doubtful whether, in the case of aluminium foil, the industry could qualify for consideration under Article XVIII:C having regard to the fact that it had already been in existence for nearly ten years.
7. The Ceylon representative submitted that the measures under the Industrial Products Act had been considered only as a last resort when all other measures of sales promotion and encouragement to use the local products had been found inadequate. While the development programme embraced some 150 industrial products, only a small number of these products had been given protection under the Act. The Ceylon representative also argued that, although the aluminium foil industry had been set up as far back as 1950, the mere fact that a large part of the industry's total capacity still remained unutilized because of its inability to achieve a greater measure of sales in the domestic market under normal unenforced trading conditions, clearly showed that the industry could not yet be regarded as having been established in the sense contemplated in paragraph 13 of Article XVIII and that it was therefore eligible for consideration under the provisions of Section C of that Article.
8. As to the effects of the measures on the trade and economic interests of other contracting parties, the Ceylon delegation gave the undertaking that, if the requested releases were granted, the Government would take the utmost care in applying the measures sanctioned in order to keep to the minimum any damage that might be caused to the interests of other contracting parties.
9. In this connexion some members of the Panel and some of the representatives of other interested contracting parties questioned the Ceylon delegation on the need of that country to apply standard ratios of the proportions proposed in respect of the products covered by the two notifications. It was pointed out that these ratios, if applied, would reserve the major share of the domestic market for the local products, and might inflict material injury on the export interests of some other contracting parties. In the course of the discussions on this point the Ceylon delegation agreed to amend the ratios proposed for aluminium foil from 4 local to 1 imported to 2 : 1 and to reduce the period for which the requested release was being sought from three years to two years. The Ceylon delegation also agreed to amend the ratio proposed for asbestos cement products from 9 : 1 to 5 : 1.

10. The Panel was not fully convinced that the real nature of the problems with which the Ceylon industries were confronted was such that a remedy therefor could not be sought through the application of other measures which might be consistent with the provisions of the General Agreement. The Panel considered that, even if it was assumed that the difficulties confronting the particular industries were caused primarily by the so-called traditional consumer resistance to domestic products prevailing in Ceylon, it was doubtful whether the proposed measures would in fact be capable of solving Ceylon's difficulties, whether it would be beneficial to the industries concerned and whether it would be consistent with the interests of the consumer and not detrimental to the long-term interests of the economy. At the same time, however, the Panel also concluded that the discussions on the two notifications had equally not convinced it of the validity of the viewpoint expressed by certain other contracting parties, namely, that the Ceylon difficulties were due rather to the competition of low-priced imports from certain external sources than to the factor of consumer prejudice against the domestic products. Nor did the discussions provide conclusive evidence to show that proposed means would result in material injury to the interests of other contracting parties. In these circumstances, and having regard to the general philosophy underlying Article XVIII, the Panel felt that Ceylon should be given the benefit of the doubt which had arisen on these points.

11. Without prejudice, therefore, to the intent or the purposes of the provisions of Section C of Article XVIII, and without, in any way wishing to pronounce on the merits or otherwise of the interpretation which the Ceylon delegation had placed on the words "establishment of a particular industry" appearing in paragraph 13 of that Article, the Panel recommends that the CONTRACTING PARTIES acting under paragraph 16 of Article XVIII, should concur in the measures proposed with regard to the two products in question, subject to the limitations regarding the duration of the releases and the maximum standard ratios prescribed in the attached draft Decision.

12. With regard to the release sought for the textile items, the Panel noted that the new request differed substantially from the one presented at Tokyo and was of much more limited scope. At Tokyo the request had been for an extension release granted at the thirteenth session to cover eleven more tariff items whereas the new request related only to the thirteen grades of piecegoods which come under Tariff Item 652-02,05 and 653-05 but which were excluded from the release granted at the thirteenth session. Since both these items were those on which Ceylon had assumed obligations under Article II of the Agreement, the Panel concluded that the appropriate procedures to follow should be those set out in paragraph 18 of Article XVIII. The Ceylon delegation stated that in making this application, Ceylon was concerned about the continuous increase in its imports of the products classified under these two tariff items which consisted largely of sarces and sarce cloth. These imports provided direct competition to domestically produced cotton piecegoods, cotton sarces and cotton camboys, i.e. products covered by releases already granted under Article XVIII.

13. The Panel therefore recommends that Ceylon should, in accordance with paragraph 18 of the Article, enter into consultations with the Governments of France, Italy and the United States with which the particular concessions in

Schedule VI annex to the General Agreement were negotiated, and with any other contracting parties having a substantial interest in the export to Ceylon of the products in question. In accordance with the customary procedure, the Panel recommends that contracting parties wishing to claim such a substantial interest should notify the delegation of Ceylon and, unless these claims were contested by Ceylon, should be deemed to have been "determined by the CONTRACTING PARTIES to have a substantial interest therein" in the export to Ceylon of the products concerned. The Panel further recommends that the Intersessional Committee (or any other permanent intersessional body to be set up by the CONTRACTING PARTIES) should be given the necessary powers to complete the procedure provided for in paragraph 18 of Article XVIII.

ANNEX

Draft Decision

CONSIDERING that the Government of Ceylon is eligible under paragraph 4(a) of Article XVIII to have recourse to the provisions and procedures set out in Section C of that Article;

CONSIDERING that the Government of Ceylon has notified the CONTRACTING PARTIES pursuant to paragraph 14 of Article XVIII, of the special difficulties which it meets in the establishment or substantial expansion of particular industries and of its intention of applying the Industrial Products Act to the import of certain products in order to overcome these difficulties; and

CONSIDERING FURTHER that the Government of Ceylon believes that there is, in present circumstances, no measure consistent with the provisions of the General Agreement which is practicable in order to give the governmental assistance required to achieve the objective proposed consistently with the terms of paragraph 13 of Article XVIII,

The CONTRACTING PARTIES, acting under paragraph 16 of Article XVIII,

CONCUR in the application by the Government of Ceylon of the Industrial Products Act No. 18 of 1949, as amended, to the products specified below subject to the terms and conditions laid down in this Decision; and

AGREE to release the Government of Ceylon from its obligations under the relevant provisions of the General Agreement to the extent necessary to enable it to apply the measures thus concurred in.

1. Aluminium lining used in Tea Packing - Ex 684-02.01 (Aluminium foil)

The release in respect of the product specified above is valid for a period of two years, effective from the date on which it is first brought under regulation under the Industrial Products Act. For the purpose of issuing import licences under that Act, the standard ratio between the local products and the corresponding imported product shall not exceed the proportion of two to one.

2. Asbestos Ridges - 661-09.01
Asbestos Sheets - 661-09.02
Asbestos Tilos - 661-09.03
Building materials of asbestos cement;
of unfired non-metallic minerals, other } 661-09.99

The release in respect of the products specified above is valid for a period of three years from the date on which the product is first brought under regulation under the said Act. For the purpose of issuing import licences under that Act the standard ratio between the local products and the corresponding imported products shall not exceed the proportion of 5 : 1.