

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.13/42

18 November 1958

Limited Distribution

CONTRACTING PARTIES
Thirteenth Session

Panel on Article XVIII

NOTIFICATIONS BY CEYLON UNDER ARTICLE XVIII:C

Draft Report

1. In accordance with its terms of reference, the Panel¹ considered, with the assistance of the representatives of Ceylon and of other contracting parties, the notifications submitted by the Government of Ceylon under Section C of Article XVIII of the General Agreement. The Panel had before it statements (L/878/Rev.1) which provided relevant information along the lines of the questionnaire approved by the Intersessional Committee (L/888) and the text of the Industrial Products Act (No. 18 of 1949) of Ceylon. In addition, the Ceylon delegation supplied, at the request of the Panel, further data in amplification of the information given in support of their requests.

2. The Ceylon Government notified its intention to resort to the provisions of Article XVIII:C and requested the CONTRACTING PARTIES to concur in the measures affecting the imports of tooth brushes (Tariff Item No. Ex 899-13.99) and electric bulbs for household use (Tariff Item No. Ex 721-03.33), in accordance with the provisions of Article XVIII:16. Moreover, the Ceylon Government requested the CONTRACTING PARTIES for an extension of the scope of their Decision of 16 November 1956 concerning cotton sarees to a wider range of piecegoods which can be cut into sarees and to sarees of mixed and synthetic fibres. Finally, the Ceylon Government, in view of the practical difficulties in administering the various releases granted by the CONTRACTING PARTIES on different textile items which involve some overlapping of tariff items, requested the CONTRACTING PARTIES that the three releases relating to cotton sarees (including saree cloth and sarees of mixed materials), sarongs and sarong cloth, and the thirteen items of cotton textiles, be merged together in a single release to run concurrently for a period of five years beginning from 27 August 1958.

3. Regarding Ceylon's right to invoke the provisions of Article XVIII:C, the CONTRACTING PARTIES decided at their Twelfth Session² that Ceylon fulfilled the

¹ The Panel on Article XVIII was appointed by the CONTRACTING PARTIES at their Fifth Plenary Meeting of the Thirteenth Session on 18 October 1958.

² BISD, Sixth Supplement, page 113.

requirements of paragraph 4(a) of the Article. In view of the fact that no basic changes have taken place in the structure of Ceylon's economy since that decision was taken, the Panel considers that Ceylon is entitled to avail itself of the provisions of Section C of the Article.

4. For each measure notified by the Ceylon Government, the Panel considered:

- (a) whether the establishment of the particular industry would contribute to the raising of the general standard of living in Ceylon;
- (b) whether alternative measures consistent with the General Agreement were practicable to achieve the objective envisaged; and
- (c) whether the effect of the measure proposed would not be unduly restrictive on the commercial and economic interests of other contracting parties.

In cases where the present notification involved items the duties of which were bound under the GATT, the Panel invited the Ceylon delegation to enter into consultations with the parties interested in accordance with paragraph 18 of Article XVIII.

GENERAL CONSIDERATIONS

5. The Panel noted the statement of the Ceylon representative to the effect that the Ceylon Government has used sparingly the powers it has under the Industrial Products Act. A large number of small-scale manufacturing industries have been set up in Ceylon in the past and the establishment of many more was being contemplated without resorting to the provisions of Article XVIII:C. It was only in a few cases where Ceylon apprehended a strong consumers' and importers' resistance that recourse was sought to the marketing facilities available under the Industrial Products Act. This particular measure has been chosen by the Ceylon Government in the establishment of industries which are the subject of present notifications. As the CONTRACTING PARTIES are aware, the system of marketing under the Industrial Products Act involves the obligation on the part of the importer to purchase a specified quantity of the local product, at a price fixed under the Act, in order to obtain a licence to import a certain quantity of the corresponding product, according to a "standard ratio" determined and published in the Government Gazette. When concurring in the measures proposed on previous occasions by the Ceylon Government, the CONTRACTING PARTIES established a maximum standard ratio which the Ceylon Government undertook to observe.

6. The Panel also considered the view put forward by the Ceylon delegation on 31 October 1958 (W.13/18) that the stipulation in regard to "maximum domestic availability" in the past releases granted to Ceylon for the application of the Industrial Products Act went far beyond the conditions prescribed in the revised Article XVIII. The Panel recognized that it was not the purpose of Article XVIII to put limitations on domestic production and recognized that the attainment of the aims of the General Agreement would be facilitated by the progressive development of the economies of those contracting parties which could only support low standards of living and were in the early stages of

development. The stipulation in regard to the maximum quantity of the local product which could be marketed each year under the Industrial Products Act was not meant to limit the development of the local industry, but was intended to ensure that when the industry had reached a level of production at which the initial difficulties and handicaps could be expected to have disappeared the CONTRACTING PARTIES would have an opportunity to review the situation and to provide for a progressive relaxation of the restriction. In order to meet the request of the Ceylon Government, the Panel has not provided for any maximum domestic availability in respect of the new releases, but suggests that a provision be inserted in the Decision of the CONTRACTING PARTIES to the effect that, should the local production exceed a level specified in the releases, the CONTRACTING PARTIES would revise the maximum standard ratio so as to ensure that imports could compete with the production in excess of that level.

7. As regards the past releases, the Panel felt that it was not necessary at this time to amend them, but it recommends that if the domestic output in Ceylon of regulated products reaches the ceiling specified in the past Decisions while the releases are still valid, the CONTRACTING PARTIES would agree to revise their Decisions accordingly. The Ceylon Government could notify the CONTRACTING PARTIES of the changed situation in the annual report to be submitted pursuant to Article XVIII:6, and the CONTRACTING PARTIES would examine such a notification at the time of the annual review.

8. The Panel noted that the Ceylon Government had imposed a temporary import control on electric bulbs on 19 May 1958 and had brought saree cloth made up of fabric consisting wholly or mainly of cotton also under import control on 27 August 1958, in anticipation of the concurrence of the CONTRACTING PARTIES to the application of the Industrial Products Act to these commodities. The Panel recognized that these measures, which had not been notified to the CONTRACTING PARTIES before they were put into force, were of the type contemplated in the proviso to paragraph 14 of Article XVIII; it expresses the hope that if the need for similar temporary measures should arise in the future, the Ceylon Government would inform the CONTRACTING PARTIES before putting these measures into force.

9. Finally, the Panel noted the assurances given by the Ceylon representative that the proposed measures, in conformity with the obligations of Ceylon under Articles II, III and XIII of the General Agreement, would involve neither any discrimination as between the different sources of supply nor an impairment of the regular channels of trade.

EXAMINATION OF INDIVIDUAL NOTIFICATIONS

A. Tooth Brushes

10. The Ceylon Government proposes to assist the establishment of a factory to manufacture this product in Ceylon. In view of strong consumer resistance the Ceylon Government wishes to apply the Industrial Products Act for a period of five years to facilitate the marketing of domestically-produced tooth brushes by regulating imports of similar products under the Act.

The Panel noted that the factory could give direct employment to about twenty workers and would create incomes of some Rs,50,000 yearly. The capital investment in the initial stage will be Rs,200,000, but it was stated by the Ceylon delegation that this would increase when subsidiary manufacture is undertaken in respect of plastic containers. The prices at which the local products are expected to be sold under the Industrial Products Act are not to be higher than the prices for the imported products, and the import substitution would, therefore, not affect the general level of prices. The Panel considered that the establishment of the new industry could not be expected to make any appreciable contribution to the general standard of living in Ceylon but that this appeared to be one of the marginal cases covered in paragraph 42 of the Report on Quantitative Restrictions approved at the Review Session.¹

11. The Panel went on to discuss the question whether alternative measures were available under the Agreement to achieve the proposed objective. The Ceylon representative stated that a protective tariff was inappropriate since, in view of consumers' resistance, such a measure would fail to secure the marketing of the local product. The Ceylon Government was confident that after five years, the quality of the local product would be recognized and the industry could do without the need of further assistance under the Act. The Panel noted that the maintenance of a certain flow of imports of tooth brushes would act as an incentive to the local factory to improve its efficiency, and the quality of its product. It suggests that the Ceylon Government should impress upon the local manufacturer that it does not intend to continue the application of the Industrial Products Act beyond the proposed period of five years. At the request of the Panel, the Ceylon delegation agreed to bring the maximum standard ratio asked from 9 local to 1 imported down to 7 to 1.

12. The Panel then addressed itself to the possible effects of the measure on commercial and economic interests of other contracting parties. It noted that the reduction of imports to be expected from the measures during the next two years would be compensated to some extent by the importation of capital equipment worth at least Rs,55,000, and estimated recurrent import expenditure on raw materials and spares amounting to about Rs,130,000 per year. According to data supplied by the Ceylon representative relating to the likely trend of domestic consumption during and at the end of the period for which the release is requested, it would seem that the total volume of imports of tooth brushes, after falling from 1.1 million pieces in 1957 to about 650,000 pieces in 1960, is expected to rise to about 3 million pieces in 1963, if no other factory is established in Ceylon during this period. The Panel recommends that the CONTRACTING PARTIES concur in the measure proposed, as modified by the Ceylon representative, subject to the terms and conditions laid down in the draft Decision.

¹ BISD, Third Supplement, page 182.

B. Electric Bulbs

13. The Ceylon Government proposes to assist the establishment of an industry to manufacture electric bulbs of the household type, 230 volts, 15 to 100 watts. The Ceylon Government wishes to apply the Industrial Products Act for a period of three years to facilitate the marketing of locally-produced electric bulbs of household types by regulating imports of like products under the Act. The Panel noted that the industry could give direct employment to about seventy workers and is likely to increase national income by some Rs.290,000 yearly. It was stated by the Ceylon representative that the capital investment in the initial stage will be Rs.2.6 million, that the scale of output planned was 2 million bulbs a year, and that arrangements have been concluded with a foreign group for the supply of technical and managerial assistance. The Panel noted that the price which the consumer would have to pay for the local product was not expected to be higher than the price paid for the imported product and that the quality aimed at was to be up to standard specifications. The production would not include bulbs for the motor-car industry or torch bulbs. The Panel considered that although the establishment of the new industry could not be expected to make any significant contribution to the general standard of living in Ceylon, it would not impose a burden on the consumer and would have a net positive effect on the economic development of Ceylon. This again appeared to be one of the marginal cases covered in paragraph 42 of the Report on Quantitative Restrictions approved at the Review Session.¹

14. As in the case of tooth brushes, the Ceylon representative explained that there were no alternative measures available under the Agreement to assist in the establishment of this industry. The Ceylon Government was confident that within three years the quality of the local product would be recognized and that the need for further assistance under the Act would not be required. The Panel suggested that, as in the case of tooth brushes, the Ceylon Government would be well advised to make it clear to the local manufacturer that the application of the Act would not exceed the proposed period of three years. The Ceylon delegation agreed to bring the maximum standard ratio from 9 local to 1 imported down to 7 to 1; the Panel welcomed this change which would act as an incentive to the local industry in maintaining its standards up to those of the imported ones.

15. Concerning the possible effects of the proposed measure on the commercial and economic interests of other contracting parties, the Panel observed that the reduction of imports in the initial years of the Industrial Products Act control would be compensated to some extent by the importation of capital equipment worth about Rs.650,000 and estimated recurrent import expenditure of raw materials and spares amounting to Rs.560,000 per year. According to data supplied by the Ceylon representative it would seem that the total volume of imports after falling from 2.2 million pieces in 1957 to 1.2 million in 1959, would rise to 2.9 million in 1961. As the proposed scale of output

¹ BISD, Third Supplement, page 182.

at 2 million bulbs per year on a single shift basis is expected to remain unchanged during the full period of the release, the net imports during the whole period would not be less than at present although, of course, the exporters would not be allowed to participate in the expected increase in total consumption. The Panel recommends that the CONTRACTING PARTIES concur in the measure proposed, as modified by the Ceylon representative, subject to the terms and conditions laid down in the draft Decision.

C. Saree Cloth

16. As regards sarees, the Ceylon Government does not ask for a concurrence in a new measure, or renewal of a former release; its intention is to broaden the scope of the Decision approved by the CONTRACTING PARTIES on 16 November 1956 so as to include products such as saree cloth and sarees of mixed materials with cotton, silk, or synthetic fibre as a base. The contention of the Ceylon Government is that the release granted in 1956 can easily be made ineffective by the imports of such piecegoods and sarees of mixed materials which would be in a position to displace domestic products.

17. As the object of the request was to re-define the scope of the release already granted, the Panel limited its consideration to the question whether the extension proposed was necessary to achieve the objectives pursued by the Ceylon Government when it applied for a release in 1956. At that time Ceylon intended to protect its domestic production of cotton sarees so as to enable it to reach, within five years, an output of 2 million yards.

18. The Panel noted that the Ceylon Government did not take immediate advantage of the release in respect of cotton sarees and that the figures of imports of saree cloth in rolls, sarees, and saree cloth of other materials, appeared to bear out the contention of the Ceylon representative that the imports could easily compete with and displace local products. It was only on 27 August 1958 that the Industrial Products Act was applied to cotton sarees and controls introduced on imports, but as indicated in paragraph 8 above, the control was not limited to cotton sarees but was extended also to saree cloth made wholly or mainly of cotton. The Panel recognized that the present request to re-define the scope of cotton sarees was similar to the one considered by the CONTRACTING PARTIES at their Twelfth Session in respect of sarongs. The production of cotton sarees did not expand as anticipated during the last two years, and part of the production remained in stock because of abnormal competition not contemplated in 1956. In view of the possibility of such import substitution, the Ceylon Government considers it necessary to regulate, on the one hand, the imports of some cotton piecegoods, cotton camboys and fabrics of synthetic fibres which are readily capable of being converted into sarees and, on the other hand, the imports of sarees of mixed materials. The Panel concluded that the considerations which led the CONTRACTING PARTIES to extend the scope of the release on sarongs in 1957 would apply equally to the present case.

19. The Panel then considered whether the effect of the extension required by the Ceylon Government would not be to intensify the restrictive effect of the release already granted. Noting that the Ceylon Government had no intention of restricting the import of such goods beyond what was strictly necessary to avoid the diversion referred to above, the Panel was of the opinion that the application of the Industrial Products Act should be limited to those piece-goods which were actually competing with the local production of sarees and that the release should be extended only insofar as would be necessary to cover materials which can be substituted for sarees. The Panel recognized that most of the tariff items to which the Ceylon Government would wish to extend the release of 1956 in respect of cotton sarees are already covered, at least in part, by the releases granted in respect of sarongs and thirteen items of cotton textiles by the CONTRACTING PARTIES on 28 November 1957; it recognized also that there were serious practical difficulties in defining exactly the types or specifications of the cloth which could be used for the manufacture of sarees. The Panel attempted last year to define sarong cloth but it was indicated by the Ceylon representative that the customs authorities in Ceylon had found it practically impossible to follow the recommendations of the Panel and to evolve a satisfactory decision acceptable to both importers and local manufacturers. This had proved the more difficult as there has been a shift in consumer preference for sarongs of the plain variety, the cloth for which cannot be easily identifiable, and a similar trend was in evidence in respect of sarees. The Panel agreed, therefore, that unless a definition was agreed upon by the countries participating in the consultation referred to in paragraph 20 below, the release should refer simply to saree cloth on the understanding that the Ceylon Government should try, at the next annual review, to propose a definition of saree cloth which should be acceptable to exporting countries.

20. The request for broadening the scope of the release on cotton sarees so as to include saree cloth and sarees of mixed materials involved tariff items 841-05.20, 841-05.21, 652-02.05 and 653-05. Ceylon originally negotiated tariff concessions in respect of the first three items with the United States and on the last item with France, Italy and the United States. The representative of the United States waived the right of his Government to be consulted, whereas India claimed a substantial interest in all four items; Japan and the United Kingdom claimed interest in respect of the last two items; these claims were recognized by the Ceylon delegation. In these circumstances, the Panel considered that these countries should be deemed to have a substantial interest for the purposes of paragraph 18 of Article XVIII. The Ceylonese delegation entered into consultations with all the countries mentioned above.

21. At the time the Panel ended its hearings, it had not been informed that the consultations had been successfully completed. It recommends, therefore, that the Intersessional Committee should be given necessary powers to complete the procedure provided for in paragraph 18 of Article XVIII. The Panel recommends that the CONTRACTING PARTIES should concur in the measure proposed, subject to the terms and conditions laid down in the draft Decision on the understanding that this Decision would become operative only when the procedure set forth in paragraph 18 of Article XVIII is completed.

D. Request to cover the Releases with respect to Textile Items in a single Decision

22. To resolve the difficulties of definition and administration, and more particularly to eliminate the practical inconvenience resulting from the fact that some tariff items are governed by different releases, the Ceylon delegation proposed that all the releases relating to textiles be merged together in a single one, to run for a period of five years beginning from 27 August 1958; and on the basis of anticipated levels of production and consumption by 1963 a uniform maximum standard ratio of 1 to 1 be applied to all products covered by that release.

23. The Panel considered with the Ceylon representative the various implications of the latter's proposal (W.13/23). After a careful consideration of the maximum restriction which Ceylon would be entitled to apply on imports of textiles under the releases already agreed upon by the CONTRACTING PARTIES, and the effect of the extension of the release on cotton sarees, the Panel came to the conclusion that the standard ratio of 1 : 1, applicable to a maximum expected availability of 100 million yards by 1963, would give to the exporting countries the assurance that imports would not normally fall under 100 million yards by 1963, whereas, in the present circumstances, these imports might be restricted to a level close to 60-70 million yards.

24. The Panel also took into consideration the practical advantages for importers which would result from the adoption of the proposal by the Ceylon Government. Instead of having to satisfy three types of controls for the import of such goods, the importers would be subject to only one formality in each case, and they would be free to choose from a wide range of local products. The Ceylon representative informed the Panel that the proposal was discussed with the importers who were in favour of this solution; and accordingly the Ceylon Government had deferred the application of the Industrial Products Act to sarongs and sarong cloth and some cotton textile items. In this connexion the Panel noted that the proposal of the Ceylon Government would involve an extension to 27 August 1963 of the validity of the release on sarongs and sarong cloth, which would normally expire on 13 October 1962. It felt that, in view of the fact that the measure contemplated under the release was not yet in operation, such extension of the **time-limit would not** be unreasonable.

25. The Panel then concluded that the request by Ceylon should be accepted and the text of the draft Decision has been worded accordingly. This involves a modification of the maximum standard ratio which will be 1 local to 1 imported for an estimated production of 100 million yards of textiles of the type regulated under the Industrial Products Act. Should the output of local textiles in Ceylon exceed this figure, the CONTRACTING PARTIES would revise the standard ratio in the way indicated in paragraph 6 above. If the Ceylon Government finds in any given year that there is a likelihood that the production of regulated products will lead to an increase of the domestic availability beyond a figure of 100 million yards in the following year, it should notify the CONTRACTING PARTIES in its annual report under Article XVIII:6, and the CONTRACTING PARTIES would modify the maximum standard ratio at the time of the annual review, in the light of the prevailing circumstances.

26. Before concluding its report, the Panel wishes to express its appreciation of the collaboration given by the Ceylon delegation in the course of the hearings.

DRAFT DECISION

27. The Panel submits to the CONTRACTING PARTIES, for consideration and approval, the following draft Decision. As indicated in the report, the sections of the Decision relating to items, the duty on which is bound under the General Agreement, will become operative only when the procedures provided under paragraph 18 of Article XVIII have been completed.

DRAFT DECISION CONCERNING THE APPLICATION BY CEYLON
OF MEASURES PURSUANT TO SECTION C OF ARTICLE XVIII

CONSIDERING that the Government of Ceylon has notified, pursuant to paragraph 14 of Article XVIII, the special difficulties which it meets in the establishment or substantial expansion of particular industries, and its intention of applying the Industrial Products Act to the imports of certain products in order to remedy these difficulties, and 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 FURTHER 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, and that the Government of Ceylon has conducted consultations with the contracting parties interested as provided for in paragraph 18 of that Article,

the CONTRACTING PARTIES

CONCUR in the application of the Ceylon Industrial Products Act No. 18 of 1949 to the products specified below, subject to the terms and conditions laid down in the following paragraphs; accordingly, the Government of Ceylon is released of its obligations under the relevant provisions of the General Agreement to the extent necessary to give effect to this Decision.

1. Ex 899-13.99 Tooth brushes

The release in respect of the product specified above is valid for a period of five years, effective from the date on which it is first brought under regulation under the Industrial Products Act, provided that 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 seven to one. Should the annual domestic production of tooth brushes exceed 2 million pieces, the CONTRACTING PARTIES shall revise the maximum standard ratio.

2. Ex 721-03.33 Electric bulbs for household use - other than
torch bulbs - 15 to 100 watts

The release in respect of the product specified above is valid for a period of three years from the day on which the product is first brought under regulation under the said Act; provided that, for the purpose of issuing import licences under that Act, the standard ratio between the local product and the corresponding imported product shall not exceed the proportion of seven to one. Should the annual domestic production of household electric bulbs exceed 2 million pieces, the CONTRACTING PARTIES shall revise the maximum standard ratio.

3. (a) Ex 656-04.99	Bed linen
841-05.04	Manufactures of artificial and silk synthetic fibre (including any admixtures thereof where the artificial silk content is not less than 50 per cent by weight n.e.s.) - sarongs
845-05.14	Manufactures of cotton sarongs, mill-made
841-05.15	Manufactures of cotton sarongs, handloom
841-05.22	Manufactures of mixed material - cotton mixed with less than 50 per cent of any other material - sarongs, mill-made
841-05.23	Manufactures of mixed material - cotton mixed with less than 50 per cent of any other material - sarongs, handloom
841-05.10	Manufactures of cotton camboys, mill-made
841-05.11	Manufactures of cotton camboys, handloom
841-05.12	Manufactures of cotton sarees, mill-made
841-05.13	Manufactures of cotton sarees, handloom
841-05.20	Manufactures of mixed materials - cotton mixed, with less than 50 per cent of any other material - sarees, mill-made
841-05.21	Manufactures of mixed materials - cotton mixed, with less than 50 per cent of any other material - sarees, handloom

(b) Products falling within the following tariff descriptions in so far as they can be used for the manufacture of the products specified in paragraph 5(a) of the Decision of the CONTRACTING PARTIES of 28 November 1957 or can be cut into sarees and sarongs:

Ex 652-02.01	Cotton piecegoods (bleached)
Ex 652-02.02	Cotton piecegoods (dyed)
Ex 652-02.03	Cotton piecegoods (colour woven)
Ex 652-02.04	Cotton piecegoods (printed)
Ex 652-02.99	Cotton piecegoods (others)

(c) Products falling within the following tariff description in so far as they can be cut into sarongs or sarees:

Ex 653-05	Piecegoods in which the weight of artificial silk and synthetic fibre, including any admixtures thereof where the artificial silk content is not less than 50 per cent n.e.s.
-----------	---

This release replaces the releases granted by the CONTRACTING PARTIES on 16 November 1956 in respect of cotton sarees, mill-made and handloom (841-05.12 and 841-05.13) and on 28 November 1957 in respect of cotton sarongs and sarong cloth and thirteen items of cotton textiles. This release is valid until 27 August 1963; provided that for the purposes of issuing import licences under the said Act, the standard ratio between the local product and the imported product shall not exceed the proportion of 1 to 1. Should the domestic production of all types of textiles including such apparel as sarees and sarongs exceed 100 million yards, the CONTRACTING PARTIES would revise the maximum standard ratio.

4. In accordance with paragraph 20 of Article XVIII, the application of the Industrial Products Act to the importation of the products specified in this Decision shall comply with the provisions of Article XIII of the Agreement and the provisos set forth in paragraph 10 of Article XVIII.