

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Fifteenth Session

Panel on Article XVIII

DRAFT REPORT TO THE CONTRACTING PARTIES

Part I: Notifications by Ceylon

1. In accordance with its terms of reference, the Panel on Article XVIII considered, with the assistance of the representatives of Ceylon and other contracting parties, the notifications submitted by the Government of Ceylon under Section C of Article XVIII. The Panel had before it the notifications by Ceylon (L/1060 and Add.1), a summary note supplied by the Ceylon delegation on the notifications (L/1060/Add.2), and a comprehensive "brief" supplying supplementary information along the lines of the relevant questionnaire (see BISD Seventh Supplement, page 85). The Panel also referred to the text of the Industrial Productions Act of Ceylon, No.18 of 1949 as amended, and to the general considerations concerning the operation of the Industrial Productions Act, as outlined on the last occasion by the Ceylon delegation at the seventh session (see BISD Seventh Supplement, pages 77-78). In considering these notifications, the Panel generally followed the procedures formulated at the sixth session (see BISD, Sixth Supplement, pages 112-115).

2. Regarding Ceylon's right to invoke the provisions of Section C of Article XVIII, the Panel noted that the CONTRACTING PARTIES had decided at their twelfth session that Ceylon fulfilled the requirements of paragraph 4(a) of that Article (see BISD Sixth Supplement, page 14, and Seventh Supplement, page 76). As no basic changes had taken place in the structure of Ceylon's economy since that position was taken, the Panel considered that Ceylon was entitled at present to avail itself of the provisions of Section C of Article XVIII.

3. The Panel addressed itself to the consultation provided for in paragraph 16 of Article XVIII, which involved the consideration of three principal points:

- (a) the purpose of the proposed measure
- (b) whether there were any alternative measures available under the Agreement which could achieve the objective envisaged, and
- (c) possible effects of the measure proposed on the commercial and economic interests of other contracting parties.

4. In the course of the hearings of the Panel the Ceylon delegation withdrew the notification with respect to one group of products (i.e. filter presses and water pumps) and agreed to modify the terms of its notifications in certain respects in a way which, in the view of the Panel, would reduce the restrictive effect of the measures in question. In two other cases the Panel concluded that the measures did not meet the criteria of Section C of Article XVIII. The documents submitted by Ceylon made reference to its intention to renegotiate an item (cotton shirts) bound under the Agreement and included in the Ceylon Schedule, but the Panel was advised by the Ceylon delegation that it would resort to procedures of Article XXVIII.

5. In considering the notifications the Panel has been guided by its understanding that the provisions of Section C of Article XVIII are intended to be used only in special circumstances where no measure consistent with the other provisions of the General Agreement is practicable to permit a contracting party coming within the scope of Article XVIII:4(a) to achieve the purpose of promoting the establishment of a particular industry with a view to raising the general standard of living of its people. While the procedures of Section C of Article XVIII are explicitly intended to facilitate the general economic development of less-developed countries and constitute exceptions to the normal rules of the General Agreement, their use must be limited to cases where the criteria set forth in that Article are fulfilled. It may be recalled that in the past, the Ceylon Government agreed that the regulation of imports under the Industrial Products Act should be resorted to principally to meet the difficulties created by transitory consumer resistance to domestic products and that it recognized that normally Government assistance should take the form of advice given to producers with a view to improving their efficiency and marketing methods and that if protection were required, it should take the form of customs duty and, where practicable, subsidies. It was pointed out moreover that in cases where, as in Ceylon, investors were reluctant to launch new industrial ventures unless they had definite assurances regarding the marketing of their products, the use of tariffs was not as effective as in industrial countries and that the Government had to take this into consideration when granting assistance to new industrial projects. However, the Panel is under the impression that more intensive efforts could be made by the Ceylon Government to explore the possibility of using other permissible measures under the General Agreement for the purpose of achieving its objective. The Panel has found it difficult to recommend the granting of some of the releases requested. The Panel also wishes to place on record its doubts as to the validity of the argument put forward by Ceylon that the quantitative restriction of imports would not have the effect of raising domestic prices as would be the case if increases in customs tariffs were resorted to in order to assist the domestic production concerned. The experiences of many countries have shown that the limitation of supply through quantitative import restrictions usually brings about a lack of balance between the supply and the demand for imported goods which is invariably accompanied by rises in prices. In the case of the IPA of Ceylon the burden that is placed on importers by the domestic purchase requirement is likely to be reflected in the prices at which they sell the imported products on the local market.

6. As in the past, the Panel has agreed to recommend releases in terms of maximum standard ratios which are high enough to enable the Ceylon Government to operate the Industrial Products Act in all possible contingencies. It feels, however, that a reasonable amount of foreign competition should be permitted in order that adequate incentive would be provided to domestic producers to raise their efficiency and productivity. It would not be in the interests of a developing country to regard imports as additional supplies which are to be tolerated only to fill the gap when the entire domestic production has been marketed. In the case of Ceylon a higher proportion of imports should be admitted through the use of lower standard ratios. The Panel is therefore of the view that it would be desirable for releases to be granted on the basis of lower working standard ratios, subject to reconsideration at the time of the annual review, for increase in the light of prevailing circumstances, rather than on the basis of very high maximum ratios which might not be needed and which, if used, would excessively shelter the domestic industry from foreign competition.

7. The Panel has noted that for a number of these notifications by Ceylon the exporting countries to be affected were not always industrial countries. It suggests that in granting future releases under Article XVIII the CONTRACTING PARTIES may wish to take account of the effects of the proposed measures not only on the economic development of the applicant country, but also on the economy of countries which may likewise be in the early stages of economic development and whose viability and solvency depended predominantly on exports.

Aluminium Foil for Packing

8. The Government of Ceylon intended to place the import of this product under regulation for a period of five years under the Industrial Products Act. The Government of Ceylon considered that this measure was necessary in order to permit the domestic industry to increase its capacity so as to make it competitive in the face of lower-cost imports and that the establishment of a sound aluminium foil industry producing at competitive prices was important to the economy for various reasons; e.g. to meet the requirements of the country's most important (tea) export industry, to stimulate the diversification of the economy in accordance with the Government's policy of encouraging establishment of small-scale industries, and to provide increased opportunities for the use of this type of packing material by other consumer good industries, like foodstuffs. The industry at present had a capacity to supply 45 per cent of total domestic requirements and further investments in 1959 were expected substantially to enlarge the scale of industry.

9. On the basis of the information supplied by the Ceylon delegation, the Panel noted, however, that this industry had been in existence for some years, and that the governmental assistance proposed did not relate to the establishment or substantial expansion of an industry, but rather to the protection of an established industry against severe competition from particular foreign sources of supply. In the view of the Panel, the problem faced by Ceylon was one of a product being imported into Ceylon in such increased quantities and under such conditions as to cause serious injury to domestic producers of the like product, rather than one of marketing difficulties caused by consumer bias. It would

appear that remedy should and could be sought under other provisions of the General Agreement. In the light of these considerations, the Panel concluded that the notification by Ceylon in respect of aluminium foil for packing did not meet the requirement laid down in paragraph 13 of Section C of Article XVIII. It recommends that the Ceylon Government reconsiders the desirability of the proposed measure and to examine other appropriate action consistent with the Agreement.

Wood Screws

10. The Government of Ceylon intended to apply the Industrial Products Act for a period of five years to certain categories of nails and screws. The Ceylon delegation stated that there was at present no industry in Ceylon producing these items. The plant to be installed would have a productive capacity which would, at the outset, be in excess of domestic demand. With an initial capital outlay of Rs. 1,420,000, the firm to be established would provide employment for fifty-nine persons. In the context of the general plan for industrial development, the manufacture of wood screws was considered one of those small-scale industries appropriate for establishment in the private sector. Although the effect of the establishment of this industry on the general standard of living would be negligible by itself, the sum total of contributions made by a series of such small-scale industries could be expected to be substantial. In applying for this release the Ceylon Government undertook not to cut off imports entirely, although the productive capacity of the initial firm would exceed total domestic requirements; the maximum standard ratio to be used in issuing licences under the IPA could be fixed at 9 local to 1 imported, thus reserving 10 per cent of the market for imported products.

11. The Panel discussed with the Ceylon delegation whether any other measures consistent with the General Agreement could achieve the objective envisaged and was advised that the principal obstacle to marketing the local product being consumer resistance and market control by importers having direct relations with foreign firms, such measures as tariffs and subsidies would not meet the requirement. The Ceylon Government was confident that after five years the quality and price of the local product would be such that the industry could continue to exist without the need for further assistance under the Act. At the request of the Panel, the Ceylon delegation agreed to bring the maximum standard ratio from 9 local to 1 imported down to 7 to 1. The Ceylon delegation further assured the Panel that although this maximum standard ratio was desirable in order that all contingencies could be met, the Government would in so far as practicable operate the regulation on the basis of a lower ratio.

12. The Panel then addressed itself to the possible effects of the measure on the commercial and economic interests of other contracting parties. It noted that the reduction of imports to be expected during the next five years would, to some extent, be compensated by the import of capital equipment and raw materials. The representative of a contracting party expressed concern at the effect of this measure on the export of such territories as Hong Kong, which depended to an even greater extent that Ceylon on exports and which were also faced with problems of low standards of living and inadequate development. Upon being assured by the Ceylon delegation that the measure would be

administered with due regard for the interests of traditional sources of supply and most particularly to those of under-developed exporting countries, the Panel agreed to recommend that the CONTRACTING PARTIES concur in the measure proposed, subject to the terms and conditions laid down in the proposed decision.

Aluminium Hollow-ware

13. The Government of Ceylon proposed to apply the Industrial Products Act to imports of household aluminium hollow-ware for a period of five years for the purpose of promoting the establishment of a domestic industry which was considered one of the small-scale industries that could be developed in the private sector in line with the general scheme of industrial development. The Ceylon delegation explained that governmental assistance was needed to overcome trade and consumer resistance. The three factories when completed would have a total capacity of 5,900 cwt. but annual production would be restricted to a small quantity that could be marketed under the measure.

14. The Panel discussed with the Ceylon delegation the causes of the difficulties faced by the industry which had already been in existence, with one firm established in 1955, a second firm in 1958 and another entering into production this year. The impression was gained that these difficulties arose perhaps more from the severe competition from low-cost suppliers abroad than consumer resistance. Insofar as this was the case, the Panel felt that remedies should be found in other measures consistent with the provisions of the General Agreement. Having further discussed with the representative of Ceylon the nature of the industry to be established in relation to the general plan of industrialization, the Panel, however, agreed that a release could be granted. On the other hand, it considered that account should be taken of the effects of the proposed measure on the exporting countries whose economies were in some cases also characterized by low standards of living and inadequate development. In order to limit such effects the Panel believed it desirable that a shorter period and a lower standard ratio than proposed by Ceylon should be prescribed as a condition of the release. It accordingly recommends that the CONTRACTING PARTIES concur in the measures proposed, subject to the terms and conditions laid down in the proposed decision.

Asbestos Cement Products

15. The Government of Ceylon proposed to apply the Industrial Products Act for a period of five years to the import of asbestos ridges, sheets, tiles, and building materials of asbestos cement of unfired and non-metallic minerals. There was only one firm in the industry, which was established by public funds in 1957. For various reasons production had been far below the potential capacity of the factory in the three years of its existence. The present potential capacity of the factory was 480,000 cwt. and it was envisaged that this would be doubled by 1961 through additional investment. There were at present 270 people employed and with the implementation of the expansion scheme, employment would be provided for a further 235 operatives in 1961.

16. In the course of the discussion, the Panel was made aware of the fact that the difficulties faced by the industry arose principally from the relatively high costs of production which had recently been aggravated by low-cost imports from particular sources, or by disruptive pricing policies of certain industrialized exporting countries. Insofar as this was the case the Panel felt that remedy should be sought in other measures such as tariff rebates to reduce the cost of imported raw materials, such as cement, on which a relatively high duty is levied at present. It realized that these measures, even though relevant, required facilities and mechanisms which might or might not be at the disposal of a less-developed country like Ceylon, but it found it difficult to escape from the conclusion that the difficulties and problems faced by Ceylon were not such as could be considered under Section C of Article XVIII. The Panel therefore recommends that the Ceylon Government reconsiders the advisability to resort to the proposed measure and to examine the possibility to seek remedy in other measures consistent with the provisions of the General Agreement.

Textile Goods

17. In considering the notification in respect of these items the Panel noted that the intention of the Ceylon Government was to modify in various respects the release contained in Section 3 of the Decision taken by the CONTRACTING PARTIES at the thirteenth session as set out in BISD, Seventh Supplement, pages 26-27, which replaced all previous releases on textile items. The Panel considered the notification on the basis of the notes by the Ceylon delegation contained in documents L/1060/Add.1, L/1060/Add.1/Corr.1, L/1060/Add.2 and the written "Brief" on the subject. While recognizing that the principle of general coverage for textile imports had been accepted by the CONTRACTING PARTIES in their last release, the Panel was concerned at the extent of the proposed modifications and the complexity of the problems involved. The Ceylon delegation, in supplementing the written submissions, further indicated that it intended to modify the provisions of the Industrial Products Act so that imports could be regulated either by value or by quantity in relation to local purchases, instead of, as at present, by quantity only.

18. The Panel, having examined the material before it, came to the conclusion that the notification deserved a detailed examination which would require more time than was still available at this session and that the documentation did not constitute an adequate basis on which a valid recommendation could be formulated by the Panel for submission to the CONTRACTING PARTIES to enable them to take a decision. It proposed, and the Ceylon delegation agreed, that the Government of Ceylon re-examine the text of its notification with a view to drawing up a more comprehensive and systematic statement of considerations in support of the request which would be considered by the CONTRACTING PARTIES at their next session. The Ceylon Government should feel free to consult the secretariat on the preparation of that material.

19. The Ceylon delegation, while agreeing to this procedure, stressed the urgency of the problems faced by the Ceylon textile industry, which might possibly require emergency action by Ceylon prior to the matter being taken up again by the CONTRACTING PARTIES.

20. The Panel noted from the report submitted by the Ceylon Government for the review under paragraph 6 of Article XVIII, (see Part II of this report), that when applying for the release on textile items at the thirteenth session the Ceylon delegation had inadvertently omitted to refer to one item which should have been covered by the requested release. In implementing the measure authorized under that Decision, the Government of Ceylon had included that item and now wished to request an additional release to cover this particular product. The Panel agreed that this omission should be repaired, since the inclusion of this item would be consistent with the considerations which had led the CONTRACTING PARTIES to grant that release. It recommends that a supplementary release be granted subject to the terms and conditions laid down in Section 3 of the proposed decision.

Part II. - Review under Article XVIII:6

21. The Panel was instructed by its terms of reference to carry out the review under paragraph 6 of Article XVIII, which should cover the measures on which releases had been granted under the revised provisions of Article XVIII. The Ceylon delegation stated that, of the measures in respect of which such releases had been granted since the revised provisions came into force in October 1957, those relating to the import of crown corks, bicycle tyres and tubes, tooth brushes and electric bulbs had not been used. The report which the Ceylon Government had furnished for purposes of the review therefore covered the remaining two groups of products only, namely textile items and plywood chests for packing.

22. The Panel welcomed the statement by the Ceylon delegation that releases obtained under Article XVIII were used only when the need for protection became evident after the industry was set up and when there were no alternative measures consistent with the General Agreement.

23. The Panel took note of the report furnished by Ceylon concerning the operation of the releases relating to textile items and plywood chests. In view of the fact that the release on textiles was to be modified in a substantial way, for which purpose the Ceylon Government had now been requested to supply supplementary information, the Panel felt that there might be advantage in postponing the completion of the review pending receipt of that information. It appeared to be both desirable and convenient if the review and the consideration of the request for modification, which were both related to the same products and measures, were undertaken at the same time. For these reasons, the Panel proposes that the review under paragraph 6 of Article XVIII which has been initiated at this session be conducted at the next session. In the meantime, the secretariat should be asked to discuss with the Ceylon authorities what additional information could usefully be supplied by the latter which would facilitate the conclusion of that review. It was suggested by the Panel that, among other things, statistical data might, whenever possible, be supplied to show the changes in the relationship between prices of the local and imported products during the period of validity of a release.

24. Some representatives of contracting parties took the opportunity to call attention to certain aspects of Ceylon's regulation of textile imports and made a number of suggestions. One representative called attention to the total prohibition on the import of one textile item which was introduced in December 1958, and which was in force for one month, without any adequate information or explanation given by the Ceylon Government. The same representative also suggested that whenever the local stock of a product to be marketed under the Industrial Products Act became exhausted, that fact should be announced in public notices issued under the Act, so that importers would know that for the time being imports were free of regulation and not subject to the requirements relating to the purchase of domestic products. Another representative called attention to the excessively broad manner in which Ceylon officials, for the purposes of the I.P.H., had sometimes classified imports of materials which could be made into sarongs and sarees. The Panel agreed that all these points could be taken up when the review was concluded at the sixteenth session.

Part III - Notification by Cuba

25. The Panel was asked by the CONTRACTING PARTIES also to examine the notification by the Government of Cuba of its intention to continue to apply the quota restriction on imports of henequen and sisal, for which a release granted by the CONTRACTING PARTIES under Article XVIII expired recently. The Panel made a preliminary examination of the supporting statement supplied by Cuba (L/1031/Add.1) and heard a statement by the representative of Cuba.

26. The Panel wishes to recall that the documentation was not available until Friday 13 November, and the time-table for the session requires that all working parties and panels complete their work by Wednesday 18 November. The notification by Cuba related to the renewal under the revised provision of Article XVIII, of a release which had been granted ten years ago and extended five years ago, under the old provisions of the Article. Careful consideration would have to be given to the differences in the criteria to be used in dealing with the case, changes in the nature, circumstances and requirements of the industry and the prospects of its becoming competitive through a further extension of the release. In view of the complexity of the problems involved and the short time available, the Panel reached the conclusion that it would be prepared to postpone consideration of the notification until the sixteenth session. This was agreed to by the Cuban delegation. The Panel further recommends that it be placed on record that the Government of Cuba, having informed the CONTRACTING PARTIES of its intention to continue to resort to Article XVIII, should be considered free to invoke the provision of Article XVIII, Section C, insofar as this is necessary to maintain the measure in question until such time as the CONTRACTING PARTIES take a decision at their next session.

ANNEX

PROPOSED DECISION ON NOTIFICATIONS UNDER SECTION C OF ARTICLE XVIII

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 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. (a) Nails and screws, other than wire nails of iron and steel
(Ex 699-07.02)
- (b) Nails and screws, brass and alloys of copper (Ex 699-07.10)

The release in respect of the products 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. 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 7:1.

2. Aluminium hollow-ware, domestic (699-14.01)

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.

3. Manufactures of artificial silk and synthetic fibres, including any admixture thereof, where the artificial silk is not less than 50 per cent by weight - n.e.s. - Sarees (841-05,03)

The release in respect of the product specified above is granted under the same terms and conditions as laid down in Section 3 of the Decision of 22 November 1958; the effect of the present release will be that this product will be deemed as if the item has been included in Section 3(a) of that Decision.