GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
SR. 7/5
13 October 1952
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SUMMARY RECORD OF THE FIFTH MEETING

Held at the Palais des Nations, Geneva
on Thursday, 9 October 1952, at 3 p.m.

Chairman: Mr. Johan MELANDER (Norway)

Subjects discussed:
1. Libyan Products
2. Protocols and Schedules
3. United Kingdom Purchase Tax
4. Sardines - German Treatment
5. Budget
6. Relations with the United Nations

1. Italian Special Treatment for Libyan Products (draft Decision L/43).

The CHAIRMAN referred to the draft Decision concerning a waiver for the application by Italy of special customs treatment on certain products of Libya.

Mr. SVEC (Czechoslovakia) said that he was not in favour of the reference in the second "consideration" to the treatment accorded to Libya before the War. Libya's colonial status then was not a sound basis on which to grant any arrangement between Italy and an independent Libya. As, however, the proposed Decision was in Libya's favour, he considered that it corresponded to the spirit of the United Nations Resolution of December 1950 and would vote in favour.

The Decision was adopted by 26 in favour and none against.

Mr. COOBAR (Libya) thanked the CONTRACTING PARTIES for their action and said that the Libyan Government would endeavour to furnish all information required in its annual reports to the CONTRACTING PARTIES.

2. Status of Protocols and Schedules (L/34)

The SECRETARY referred to document L/34. Since its distribution the time limit for signature of the Torquay Protocol by Brazil, the Philippines and Uruguay had been extended to 31 December 1952, 21 May 1953 and 30 April 1953 respectively. The note on the status of schedules was for the information of contracting parties and corrections or additional information supplied during the session would enable a revised statement to be issued at its close.

Mr. SOUZA (Brazil) referred to the statement in the document that Protocol 2 (special Protocol relating to Article XXIV) had not yet been accepted by Brazil. The Protocol had, in fact, been approved by the Brazilian Congress on 23 December 1951 and this acceptance had been immediately communicated to the Secretariat of the United Nations. He hoped that confirmation by the United Nations of this would soon be sent to the secretariat. As for the First Protocol of Rectifications and Modifications, Mr. SOUZA stated that its acceptance would be considered after the approval of the Torquay Protocol.

Mr. STANGELBERGER (Austria) hoped to have definite information shortly concerning signature by Austria of the First Protocol of Rectifications and Modifications.

Dr. HELMI (Indonesia) declared that instructions for signature of the First Protocol of Rectifications and Modifications had been sent and actual signature should take place shortly.

Mr. PRESS (New Zealand) said that New Zealand had certain difficulties with the First Protocol of Rectifications and Modifications which he intended to discuss with other delegations and the Secretariat during the course of the Session

Mr. IŞIK (Turkey) said that instructions had been given by his government for signature of the First Protocol of Rectifications and Modifications

The CHAIRMAN said that the status of these protocols would be examined again before the close of the Session.

3. United Kingdom Purchase Tax (G/18)

Mr. LECKIE (United Kingdom) said that his Government was glad to be able to report to the CONTRACTING PARTIES the removal of the Purchase Tax discrimination and referred to the explanation contained in the Memorandum (G/18). In drawing up the new arrangements, the Douglas Committee had come to the conclusion that there was no way in which the discrimination could be removed except by complete divorce of the taxation aspect from the utility aspect. Since then, the utility schemes, except those for furniture, on which no discrimination was involved, had been abolished. Mr. Leckie hoped that the item could now be removed from the Agenda of the CONTRACTING PARTIES

Mr. ISBISTER (Canada) welcomed the action of the United Kingdom in this matter. Such meticulous care by a major trading nation to bring domestic legislation into line with the GATT could not but strengthen the fabric and structure of the Agreement.

Mr. Van BLANKENSTEIN (Netherlands) also congratulated the United Kingdom Governmenton the action taken and thanked them both on behalf of the Netherlands Government and of the trading community of his country.

M. LECUYER (France) expressed appreciation of the way in which the matter had been handled. His delegation had examined the new arrangements and was convinced that no discrimination remained.

Mr. SINGH (India) also thanked the United Kingdom for their action.

Mr. SVEC (Czechoslovakia) joined the other delegations in expressing appreciation of the respect shown by the United Kingdom for the principles of GATT. A few minor technical points of the new system interested his Government, but they would take them up through diplomatic channels.

Mr. DI NOLA (Italy) also thanked the United Kingdom for their action.

The CHAIRMAN said that there was general appreciation of the action taken by the United Kingdom Government to bring its internal legislation into line with the provisions of the Agreement. It was to be hoped that other contracting parties would follow this example of strict compliance with its terms.

Mr. LECKIE (United Kingdom), on behalf of his Government, thanked the various delegations for their expressions of appreciation. His Government was grateful to the CONTRACTING PARTIES for the patience and understanding they had shown.

4. Treatment of Imports of Sardines ("Brislings") by Germany (L/16 & L/36)

Mr. THOMMESSEN (Norway) referred to the Norwegian Government's Note (L/16) explaining the discriminatory treatment by the German Federal Republic of Norwegian sardines. Discrimination related to customs duties, to the German import tax called "Umsatzausgleichsteuer", and to import restrictions, since sardines from clupea pilchardus had been placed on the free list from 1 April, 1952, while Norwegian sardines were still subject to quantitative restrictions. His Government considered that the discrimination with regard to customs duties and import tax was inconsistent with Articles I and III of the Agreement, while the discriminatory import restrictions were inconsistent with Article XIII:1. In the view of the Norwegian Government, Norwegian sardines from clupea sprattus and clupea harengus and sardines made elsewhere from clupea pilchardus were "like" products in the meaning of the GATT and should be accorded the same treatment under the most-favoured-nation provisions.

Mr. Thommessen explained that from the beginning of the export of sardines by Norway to Germany in 1880 until the entry into force on 1 October 1951 of the new German customs tariff, Norwegian sardines and sardines made in other countries from clupea pilchardus were subject to the same duty. A Trade Agreement with Portugal in 1923 accorded Portuguese sardines more favourable treatment but equality was r estored by an exchange of notes between the Norwegian and German Governments in 1925 and 1927. The draft of the new German Tariff presented at Torquay stipulated the same duty for all canned products of the clupoid family. At Torquay the Norwegian delegation obtained reductions for Norwegian products "brisling" and "sild" to 25% and 20% respectively. The Norwegian delegation constantly stressed during the negotiations that the Norwegian products should in no way

be treated less favourably than sardines of clupea pilchardus. An assurance that this would not be done was given by the German Delegation. Nevertheless, the German Government concluded a Trade Agreement with Portugal four months after Torquay whereby the rate of duty for sardines of clupea pilchardus was reduced to 14%. By so doing they had nullified the concessions obtained by Norway at the Torquay Conference, as it was no longer possible to sell the Norwegian products on the German market.

Mr. Thommessen referred to the Note by the German Delegation (L/36) where it was stated that clupea sprattus, clupea harengus and clupea pilchardus could not be held to be "like products" in the sense of the General Agreement. The General Agreement did not define "like products", and although the method of tariff classification was of interest, the classification of products under different tariff items would not preclude their being deemed to be like products. It would be found that sardines from clupea pilchardus, clupea sprattus and clupea harengus were, with very few exceptions, classified under the same tariff item, subject to the same customs duty, and classified under the same numbers of reference in the statistics of foreign trade.

The Norwegian Government, however, held the view that these criteria alone were not decisive. The decisive factor was how two directly competitive products were dealt with commercially. To the trade and to the general public in almost all countries, including Germany, small fish of the clupea family, canned in oil or tomato sauce, were considered "like products". All these products were directly competitive and substitutable and were sold at practically the same prices. If, through discriminatory customs treatment or internal taxation, one of these products were made more expensive than the other, the consumers would stop buying the product which had been affected by the discriminatory measures and this factor clearly showed that "like products" were involved and that any discrimination against one of these products was contrary to the letter and spirit of the General Agreement. It was clearly contrary to the spirit of the Agreement to permit the development of discrimination between countries by means of splitting up tariff items into numbers of sub-categories.

With regard to the German import tax levied on Norwegian products, Mr. Thommessen said that the reason given by the German Government for the levy of 6% ad valorem on the Norwegian sardines was apparently that a tax had been levied on the German product at various phases of production. But the foreign producer also often had to pay taxes in his own country. To charge the imported products a countervailing tax under these circumstances was in his opinion contrary to Article III:2. That Article provided that no higher internal tax or charge of any kind should be levied on an imported product than the one levied on the finished product when sold domestically. Any additional charge which discriminated against the imported product was therefore contrary to the General Agreement.

Mr. Thommessen said that bilateral negotiations on this question between Norway and Germany had proved unsuccessful and for this reason this matter was now brought before the CONTRACTING PARTIES in accordance with Article XXIII:2. He suggested that the CONTRACTING PARTIES might establish a working party to deal with the case and that the working party be asked to submit a draft of an appropriate recommendation to be sent by the CONTRACTING PARTIES to the Federal Government of Germany.

Dr. HAGEMANN (Germany said that his government regretted that it was unable to accept the Norwegian thesis that the differential treatment accorded to sardines, sprats and little herring was discriminatory in the sense of the most-favoured-nation clause. Germany did not consider that the Norwegian products and sardines were "like products" in the sense of Article I of the Agreement. Nor could he accept the view that at Torquay Germany had agreed to accord the products of Norwegian origin the same treatment as that reserved for Portuguese sardines. Traders and consumers, at least in Germany, clearly distinguished between sardines in oil on the one hand and sprats and small herring on the other. Moreover, the species clupea sprattus and harengus could on no grounds - zoological, biological or physiological - be compared with clupea pilchardus. The Comité International de la Conserve at Brussels in 1949 had, at the request of the delegations of France, Portugal, Spain, Morocco, Belgium and the Commonwealth countries, asked the representative of the FAO that the term "sardines" be reserved exclusively for the species clupea pilchardus. The tariff schedule of Germany, as well as those of other countries, listed these products under separate items. Finally, the Brussels Nomenclature draft of 1949 distinguished between sardines, sprats and herrings.

Dr. Hagemann said that his delegation was prepared to discuss the question with the CONTRACTING PARTIES and in a working party, but would take, in such discussions, the view that the most-favoured-nation clause did not apply to the products in question in respect of either customs treatment or the German tax, and that Article XIII could not be applied to their import regime.

Mr. SEIDENFADEN (Denmark) said that Denmark was in the same situation as Norway in this matter. It was too complicated for discussion by the CONTRACTING PARTIES as a whole and he supported the Norwegian proposal to refer the question to a working party.

M. LECUYER (France) said that while he agreed that arbitrary discrimination by means of tariff classification was to be avoided, he did not consider such to be the case under consideration. In fact, only the species clupea pilchardus was considered to be sardines. They were quite distinct from sprats and small herring and in France it would be against the law not to differentiate them clearly in labelling. He supported, however, the reference of the matter to a working party.

Mr. SAHLIN (Sweden) expressed sympathy with the Norwegian view. The practical result of the German treatment was damage to the Norwegian product. It was desirable that a solution should be found within the spirit of the Agreement rather than on a strictly legalistic interpretation of the term "like products".

Mr. ISBISTER (Canada) said that Canada had frequently been disturbed by the meaning to be attached to the phrase "like products". He had been impressed by the Norwegian statement and supported the establishment of a working party to consider this matter

Mr. SINGH (India) said that he had been impressed by the validity of of the Norwegian case. The matter was importance for the Norwegian economy and he supported the establishment of a small working party to consider the question.

Mr. SVEC (Czechoslovakia) considered that the CONTRACTING PARTIES must take account of any complaint concerning the application of the most-favoured-nation clause whether the basis of the complaint were zoological or legal. With regard to the case in question Mr. Svec stated that the CONTRACTING PARTIES might be interested to know that the question of whether Scandinavian small fish should be considered "like products" to sardines had been before the Czechoslovak courts in 1930 and a decision had been handed down that they should be considered "like products". Mr. Svec supported the reference of the matter to a working party.

The CHAIRMAN said there was general agreement to refer the matter to a working party and proposed that a single working party might be established to deal with this and other cases of complaint on the agenda. The terms of reference for such a working party could not be established at the moment. It would, however, be helpful to whatever working party was to deal with the Norwegian complaint if all delegations would inform the Secretariat as soon as possible of the provisions of their tariffs and the practice in their various countries with regard to clupea pilchardus, clupea harengus and clupea sprattus.

5. Financial Statement for 1952 and Budget Estimates for 1953 (L/20 and L/13 & Add.1).

The DEPUTY EXECUTIVE SECRETARY referred to the Note on Financing of the 1952 Budget (L/20) and drew attention to the need for decision by the CONTRACTING PARTIES firstly approving the audited accounts for 1951; secondly as to whether the Executive Secretary should be authorised to write off the contributions of countries which had not become contracting parties for the 1951 and, if necessary, the 1952 budgets; and, thirdly, giving authority to arrange with the United Nations Inspection Service for the auditing of the accounts for 1952.

As a result of strict control exercised over all items of the budget, substantial savings had been effected. The receipt of contributions during 1952 had been encouraging and an improvement over the preceding year. Nevertheless, there were still outstanding arrears of some 10% which was substantial for a small budget. The Working Party might give attention to ways and means designed to avoid these delays in payment. It was desirable also that the Working Party should consider the proposal to authorise writing off the contributions of Korea, the Philippines and Uruguay which took part in the tariff negotiations but had not yet become contracting parties.

The Deputy Executive Secretary then referred to the budget estimates for 1953 (L/13 and Addendum 1). The general plan of the budget was to reduce the total estimates as compared with the previous year. This was possible because the 1952 budget included non-recurrent expenditures relating to the purchase of furniture and equipment resulting from the transfer of the Secretariat to the Villa La Chêne, and repayment to the ICITO for the expenses of the Second Session of the CONTRACTING PARTIES. Hence the estimates for 1953 amounted to $353,650 as compared with over $400,000 in 1952. The income budget proposed for 1953 contemplated that the amount of contributions should be equal to the total expenditure and that there should be no drawing on cash surplus

as in 1951 and 1952. This would involve a slight increase in contributions. It would also help to settle the problem of the ICITO's debt to the United Nations. The effect of the original arrangements between the CONTRACTING PARTIES and ICITO had been different from what was contemplated, and in effect ICITO had indirectly subsidised the CONTRACTING PARTIES during 1948, 1949 and 1950. It seemed that the CONTRACTING PARTIES would be well advised to consider means of repaying this debt and thus enabling ICITO to discharge its responsibility to the United Nations. The means proposed would involve no additional contributions on the part of contracting parties.

The CHAIRMAN remarked that the budget estimates for 1953 had been prepared on the assumptions that the CONTRACTING PARTIES would have one session in 1953 in Geneva, that the intersessional arrangements would continue much as in 1952 and that the programme of the Secretariat would remain substantially the same. The debt which the CONTRACTING PARTIES owed to ICITO was for the period 1948-1950. It would be advisable for a working party to examine the question of this repayment.

Mr. TONKIN (Australia) referred to the indebtedness of the CONTRACTING PARTIES to ICITO and the United Nations. The settlement made in 1948 had been made in the light of conditions then existing. Since that date circumstances had changed considerably and it appeared to him incumbent upon the CONTRACTING PARTIES to examine the matter afresh with a view to meeting their contractual obligations.

M. LECUYER (France) said that he was gratified by the economy of the budget. Any increase in the contributions meant for his country an increase in expenditure of hard currency, and he would require instructions.

The CHAIRMAN suggested that these matters be referred to a working party. He proposed as members Canada, Czechoslovakia, Denmark, France, Indonesia, Turkey, United Kingdom, United States, with Mr. Adarkar (India) as Chairman, and as terms of reference, the following: "to examine any questions arising in connection with the financing of the 1952 budget and the proposals for the budget of 1953, and to submit recommendations thereon".

The establishment of a working party so constituted was agreed.

6. Relations with the United Nations (G/16)

The CHAIRMAN referred to the report by the Executive Secretary on his consultations with the Secretary-General of the United Nations regarding relations between the CONTRACTING PARTIES and the United Nations. The report pointed out that de facto arrangements at the secretariat level had been in existence for some time by means of the arrangements between the ICITO and United Nations Secretariats. They had proved satisfactory and there appeared no need for a change.

The CONTRACTING PARTIES took note with approval of the contents of the report.

The meeting adjourned at 6.25 p.m.