

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Sixth Session

SUMMARY RECORD OF THE TENTH MEETING
Held at the Palais des Nations, Geneva
on Monday 24 September 1951 at 3.00 p.m.

Chairman: Mr. Johan MELANDER (Norway)

- Subjects discussed: 1. Article XX Time-Limit (Continued)
2. United States Restrictions on Dairy Products

1. Reconsideration of the Time-Limit Fixed in Part II of Article XX
(C/f. GATT/CP.5/32 and SR.16) (Continued from the previous meeting)

Mr. BORRESEN (Norway), supporting the statement by the United Kingdom representative, recalled that at the Fifth Session the United Kingdom and Norway had favoured the proposal to replace the whole of Article XX of the Agreement by Article 45 of the Havana Charter. A compromise solution was adopted extending the time limit in Part II of the Article until January 1 1952. The Norwegian delegation had drawn attention to the different purposes of the provisions of paragraphs (a) and (b) and those of paragraph (c). The problems with which paragraphs (a) and (b) were intended to deal still persisted, and in addition to the shortage of raw materials there were inflationary pressures in many countries which called for remedial measures which could be applied under those provisions. The Norwegian delegation was confident that the proposal to extend the time limit for another two years to serve as an interim arrangement would be accepted by the Contracting Parties without further study.

Mr. THORP (United States) said that, since the question had been thoroughly studied at Torquay and had resulted in a solution which remained generally acceptable to delegations, he believed the same solution should be used again by extending the time limit for two years.

Mr. ISBISTER (Canada) indicated that his delegation would support a further extension for a period of two years.

Mr. SVEINBJØRNSSON (Denmark), referring to the deliberations at Torquay in which a distinction was drawn between the provisions of paragraphs (a) and (b) and those of paragraph (c), said that good reasons still obtained for treating them separately. The validity of paragraphs (a) and (b) should be extended without fixing a time limit so that the Contracting Parties could raise the question at any time they deemed necessary. A time limit should, however, be set for the applicability of paragraph (c) until January 1, 1953. This solution would serve to emphasise the temporary nature of Part II of the Article.

Mr. SVEC (Czechoslovakia) felt that discussion had strayed far away from the main purposes of the provisions of Part II of Article XX. The provisions were intended to enable countries to deal with the legacy of the last world war and not to accommodate shortages unconnected with it. Even if applicable these provisions had not been observed in spirit or in letter; in particular there had been scanty attention paid to the requirement regarding an equitable international distribution of products in short supply. Such shortages as existed could not be said to be shortages arising from the last war, and the control of prices by some economically advanced countries had aimed at the exploitation of underdeveloped raw material producing countries. Thus there was a striking divergence between the existing facts and the principles. In extending the time limit the Contracting Parties should see that these provisions were strictly observed: first, there should be an equitable distribution of materials in short supply, with perhaps the exception of those products referred to in sub-paragraph (b) (i) and (ii) of Article XXI, and secondly the interests of underdeveloped countries should be given more attention than hitherto.

M. CASSIERS (Belgium) was in favour of an extension being granted for another year so that the whole question would come up automatically for study at the next session. The extension, being of a temporary nature, could be granted now, and perhaps again at the next session, without detailed consideration.

M. LECUYER (France), recalling the position his delegation had taken at Torquay, maintained that the three paragraphs under consideration should receive the same treatment with respect to any extension of the time limit. The French delegation, to be consistent, would favour an extension until the beginning of 1954, when the whole question should be re-examined.

Mr. SAHLIN (Sweden) said there appeared to be general agreement regarding the question of extending the time limit. He agreed with the Danish representative that it would be desirable to make a distinction between the various provisions and to accord them different treatment, but the Swedish delegation would not insist on consideration of this at the present time. He would be ready to accept any solution including that of extending the time for two years with respect to all three paragraphs.

Mr. AHMAD (Pakistan) was also in favour of extending the time limit until January 1, 1954, for the whole of Part II of the Article.

Mr. PHILLIPS (Australia) was agreeable to an extension of two years, although he felt that some distinction should be made between paragraphs (a) and (b) and paragraph (c).

Mr. DHARMA VIRA (India) supported the United Kingdom proposal for a two-year extension, on the ground that the stringency arising out of the war had not so improved as to render the provisions inapplicable.

Mr. SVEINBJØRNSSON (Denmark) said that although his delegation would prefer the solution it had proposed, it would not press for further discussion.

A two-year extension for all the three paragraphs would be acceptable to his delegation, provided it was understood that his Government reserved its right to raise the question of different treatment for paragraphs (a) and (b) and for paragraph (c) if during the two years a revision of the Agreement should be considered.

The CHAIRMAN closing the discussion said that, subject to the reservation of Sweden, Denmark and New Zealand, there had been general agreement on an extension being granted for a period of two years. He would request the Executive Secretary to prepare a draft resolution under the provisions of Article XXV.

2. Restrictions on Imports of Dairy Products into the United States
(GATT/CP.6/28 & Add. 1)

corr. 1
X Dr. van BLANKENSTEIN (Netherlands), opening the discussion, referred to the enactment in July by the United States Congress of Section 104 of the Defence Production Act of 1951, which empowered the United States Government to restrict the import of dairy products and certain other commodities. Consequently, the import of cheese and casein had been restricted, and the prohibition on the import of butter and milk powder of low fat content had been continued, as required by this law. The production and export of cheese for a very long time had been of major importance to the Dutch economy. The export of cheese had been much lower than pre-war, but improvements in the internal situation of the Netherlands had enabled progressive increases in recent years. The types of cheese which were exported to the United States were not competitive with local production as they consisted of those types which possessed particular qualities and were intended for sale to a special category of buyers at higher prices. In fact the total import of cheese into the United States was equivalent to less than one-twentieth of United States domestic production, and, while domestic production in 1950 was 40% higher than the level in 1939, the quantity of this product imported during that year was smaller than in pre-war days. The import of casein into the United States had been increased between 1950 and 1951, but this increase could not be maintained in face of these new restrictions. The export of butter and milk powder to the United States, which was of primary importance for the Netherlands producers, would also be made impossible by the re-introduction of import prohibitions. Now, after precious amounts of hard currency had been spent on the campaign to secure the United States market, producers had been greatly discouraged by this measure; it was now generally feared that any new initiative to increase exports to the United States would meet with fresh obstacles introduced by the importing country. In the opinion of the Netherlands Government the quantitative restrictions and import prohibitions introduced by the United States Government were, in the first place, contrary to the principles of the General Agreement, in particular to the provisions of paragraphs 1 and 2 of Article XI, and, secondly, would greatly diminish the value of the concessions on butter, cheese and casein which the United States had granted in past tariff negotiations. The Netherlands Government had made known to the Government of the United States, on August 16, its objections to these restrictions and had

therefore acted in accordance with Article XXIII of the Agreement. X

Mr. SVEINBJØRNSSON (Denmark) drew attention to the written statement submitted by his delegation (GATT/CP.6/28) and emphasised that his Government had found it beyond doubt that the import restrictions imposed by the United States Government on cheese were inconsistent with Article XI of the Agreement; the Agreement did not provide for the introduction of quantitative restrictions for the purpose of protecting fully-developed and well-established industries. He agreed with the Canadian representative, Mr. Howe, who remarked in his speech on September 17 that "it was obvious that defence production and national security would seem to have little connection with the import control of cheese". In its efforts to expand exports to the United States, the Danish Government had derived much benefit from the United States Marshall Aid, and some of its export industries had been given encouragement to expand on the basis of advices from the Economic Cooperation Administration authorities. At Annecy, the United States had agreed to lower the import duty on this product from 25% to 15%. It was indeed confusing that, after all these favourable developments, the United States Government should see fit to introduce import restrictions on this very product. While not applying for an authority to withdraw concessions originally made to the United States, the Danish Delegation would request the Contracting Parties to consider whether the new restrictions were contrary to the letter and spirit of the Agreement. Even though Danish exports of cheese to the United States were insignificant as compared with United States production, the Danish delegation would not accept the contention that restrictions would be justified if imports of this product from Denmark and other countries should exceed a certain level. Along with many other international conventions the General Agreement had, for its main purpose, the furthering of free competition and liberalization of trade, objectives on which no other country had put more emphasis than the United States. The present case, apart from its effects on the industries and countries directly affected, had an overall importance in being a test case directly bearing on the general economic policy of the United States. The way in which the question was solved by the Contracting Parties would therefore be of tremendous interest and it was only to be hoped that these restrictions would be promptly withdrawn since no other solution would restore belief in the future of the Agreement.

Mr. COPPOLA D'ANNA (Italy) pointed out that Italy had been directly affected by the measure, especially in view of the basic period chosen for the application of those restrictions. 1948, 1949 and 1950 were lean years as far as Italian export of cheese was concerned; the average export of cheese to the United States in those years amounted to 5,000 tons as compared with the pre-war average of 11,500 tons. The reasons behind this measure were not comprehensible or appreciated in Italy, since the kinds of cheese exported by Italy to the United States were all of a special type and were destined for a special market. In exchange for the tariff concession made by the United States on this product Italy had given compensatory concessions during past negotiations, which had thus been impaired within the meaning of Article XXIII of the Agreement. Furthermore the Italian delegation considered that the measure was inconsistent with the principles and provisions of the General Agreement and

sincerely hoped that the United States Government would reconsider its position with a view at least to mitigating the damaging effects.

Mr. PRESS (New Zealand) associated himself with the statements made by the previous speakers. He emphasised that his Government considered this to be the most important item on the Agenda of this session and believed nothing less than the whole future of the Agreement was involved. Taking account of the important role played by the United States, in conjunction with the United Kingdom, in the furthering of the principles embodied in the Agreement, such a serious departure from both the spirit and letter of the Agreement could not but cause great concern. Considerable damage had been done to the Agreement in view of the ammunition which would be provided to its critics who were thus enabled to reinforce their argument that two sorts of justice existed for the contracting parties. New Zealand had in recent years made rapid progress in relaxing its import controls and in so far as these restrictions reduced her dollar earnings they would affect the further progress which could be made towards the final goal of multilateral trade. Moreover the psychological effect referred to by the Netherlands representative had been tremendous even where the real interests involved were comparatively small. The New Zealand delegation proposed to continue discussion with the United States under Article XXIII of the Agreement on the grounds that benefits which should accrue to New Zealand directly or indirectly had been injured by the introduction of these restrictions.

Mr. BORRESSEN (Norway) also supported the foregoing statements. Although the export of cheese was not of vital importance to Norway, his Government had endeavoured to promote this trade with the United States as a part of its general effort to solve the dollar problem. Norway and Italy had obtained concessions on this product from the United States at Torquay, only to be nullified by these restrictions. The measure was contrary to the bilateral agreement reached between Norway and the United States at Torquay, as well as to the provisions of Article XI of the General Agreement. The issue depended very much on the action to be taken by the United States Government in the near future, and it was hoped that a solution could be found during this session. In case, however, that a solution were not envisaged a working party could be instituted, under Article XXIII of the Agreement, to study the question and make recommendations regarding appropriate action which the United States Government would be asked to take.

Mr. PHILLIPS (Australia) reminded the meeting that, in addition to cheese, the restrictions and prohibitions affected butter, milk powder and casein. This impairment and nullification of the concessions granted by the United States to New Zealand and Australia in 1947 had hindered the proper marketing arrangements made by the two Governments. The Australian Government had addressed an aide mémoire to the United States Government, which should be considered as the initiation of consultation under Article XXIII of the Agreement. His delegation hoped that the United States Government would be able to take steps within the near future, with a view to removing its imports prohibition on butter, as well as on the other products.

M. LECUYER (France) stated that the French Government had communicated with the United States Government on this subject on August 30. The interest which his Government had in this question was of a different nature. Since France only exported special kinds of cheese to the United States which were sold at a price twice as high as that of other kinds of cheese, there was little competition between the French exports and the United States product. The basic period chosen by the United States for the purposes of the restrictions was particularly unfair since the French exports to the United States in those years were about only one half of the corresponding quantities in pre-war years. It was worth noting that United States exports were also indirectly affected since the curtailment of imports had caused the French Government to buy fewer Californian oranges. The measure was therefore damaging to the interests of both countries. It was hoped that the United States Government would be able to dispense with this measure as soon as possible.

Mr. ISBISTER (Canada) agreed with the statements which had been made by all the previous speakers and in particular with the representative of Denmark that the introduction of these restrictions would not be regarded simply as an isolated instance affecting the interests of particular producers or particular countries, but would be taken as a significant case with far-reaching implications and ramifications. Not only were the provisions of the General Agreement contravened, but benefits which should accrue to contracting parties had been impaired and in some instances totally nullified. The Canadian Government had on two occasions exchanged concessions with the United States Government on a wide scope and, until this measure was introduced, there had been no complaint by either party about any impairment. It was therefore particularly regrettable that this should have happened. In the past, when unforeseen circumstances had given rise to difficulties between them, the Canadian and the United States Governments had always been ready to examine the facts, but in the present case it had been difficult to find any grounds for the action whatsoever. Whereas a year or so ago a surplus of dairy products had been accumulating in the United States and sold at support prices, there was at present every indication of a strong market, with surplus stocks being constantly reduced, sometimes even to the vanishing point. But, as had been indicated by previous speakers, these facts as well as any statistics were not of direct relevance to the case since the fundamental point was that the provisions of the Agreement had been infringed. On the other hand it should be noted that prompt steps had been taken by the administrative branch of the United States Government to seek rectification of the anomalous situation. Whether the Canadian delegation would lodge a formal complaint would therefore depend on developments. His delegation had entered into consultation with the United States delegation in the manner envisaged in Article XXIII and would seek redress through the Contracting Parties only if and when this consultation should fail to produce a satisfactory solution. Any such application would be made at a sufficiently early date for the Contracting Parties to consider it at the present session. In conclusion, Mr. Isbister suggested that this item should be kept on the Agenda for the time being. He disagreed with the Norwegian proposal that a working party should be set up to examine the question, since no differences regarding factual details existed such as to require closer examination.

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X Mr. TUOMINEN (Finland) was also of the opinion that the provisions of Article XI had been infringed and that steps should be taken in accordance with Article XXIII. He produced figures to show that both Finnish production and exports of cheese had been increased since the war as a result of his Government's effort to expand exports to the United States. Since the enactment of the Defence Production Act, hopes for expanding that market had to be abandoned. Finland was only interested in not completely losing its prewar markets and would sincerely hope that the United States Government would see its way to withdrawing these restrictions. Mr. Tuominen agreed with the Canadian representative that there was no need to set up a working party. X

Mr. CALDER (United Kingdom) said that, although these measures did not materially affect his country's interests, his Government attached great importance to the question in view of the fundamental principles involved. Apart from the effects these restrictions might have on the export interests of European countries, the United Kingdom Government was deeply concerned that the provisions of the Agreement should be observed by all adhering countries. It was far from clear how these measures could be reconciled with the provisions of Article XI or indeed with the general objectives of the Agreement. It was therefore appropriate that the Contracting Parties should express their views as clearly as possible, as had been done at this meeting. Their desire to see prompt and effective remedial action by the United States should be conveyed to that Government.

Mr. TAUBER (Czechoslovakia) said that he was impressed by the pertinent statements made by the other delegations, which had strongly and appropriately expressed their views on the action taken by the United States. His country did not particularly suffer from the measure in question, but he hoped that the Contracting Parties would always be prepared to defend the spirit of the General Agreement.

Mr. BORRESEN (Norway) stated that in the light of the discussion he wished to withdraw the proposal he had made for the appointment of a working party. He agreed with the Canadian representative that the matter should be retained on the Agenda for further discussion if necessary.

Mr. SAHLIN (Sweden) associated himself with the statement by the United Kingdom representative regarding the importance of observing the principles of the General Agreement.

Mr. THORP (United States) felt that the view he had expressed at the time when this item was considered for inclusion on the Agenda, that it was an appropriate item for discussion at this session had been borne out by the proceedings of this meeting. To explain the circumstances in which the question had arisen, he gave a short description of the constitution of the American Government which was based on the principle of a division of powers. The Defence Production Act was a comprehensive piece of legislation covering a wide range of provisions designed to meet the present emergency. The Section 104 in question had been included in the Bill as an amendment at the last stage of its enactment without receiving proper consideration by the responsible committees of the Congress; it had been recommended by a committee which had limited

acquaintance with international problems. The President of the United States, while unable to veto the whole Act in view of the time factor, had indicated his objection to certain of its provisions, including those of Section 104, and had later sent a message to Congress to indicate his dissatisfaction with these provisions. On August 29 the Secretary of State submitted a specific request to the chairman of the appropriate committees of Congress for the repeal of Section 104. Hearings were held on this subject on August 31, in which Mr. Thorp, together with the Under Secretary of Agriculture, testified strongly in support of the repeal. (The statements made by Mr. Thorp and Mr. McCormick before the committee were to be circulated to the Contracting Parties in GATT/CP.6/28/Add. 1). On September 20, the Senate Banking and Currency Committee, after carrying out further hearings through a sub-committee, submitted its report to the Senate in favour of the proposed repeal. If favourable action were taken by the Senate it was to be expected that the bill repealing that Section would get through the House of Representatives without delay.

In the light of these facts Mr. THORP wished to present two conclusions. First, vigorous efforts had been made by the executive branch of his Government for the repeal of Section 104. Some time might be needed for the repeal to come into effect and his delegation hoped that the Contracting Parties would appreciate the efforts and give his Government an opportunity to complete its action; should these efforts not result in a satisfactory solution his Government would be prepared immediately to enter into consultation with the Contracting Parties with a view to providing compensatory concessions. Secondly, this episode must be regarded as an isolated incident and must not be held as an indication of any reorientation of the basic policy of the United States, which had not changed since the renewal of the Reciprocal Trade Act early this year. The manner in which the amendment of the Act was passed by Congress clearly indicated that it was not a considered revision of the basic policy of the United States.

Corr 1
 X Dr. van BLANKENSTEIN (Netherlands) thanked the United States representative for his clear and full statement and proposed that the Contracting Parties should take note of the statement by the United States representative and, while awaiting further developments, should retain this item on the Agenda of this session and, if necessary, for the next session. X

Corr 2
 Mr. SVEINBJØRNSSON (Denmark) also thanked the United States representative for his interesting statement, and agreed with the proposal of the Netherlands representative. X With respect to the remarks of the United States representative that his delegation would be prepared to enter into consultation, Mr. Sveinbjørnsson felt that it would not be in accordance with the General Agreement to follow such a course; nothing short of the abolition of the restrictive measures would be satisfactory since what was involved was not merely a matter of interests but a question of principle. It was also hoped that the unanimous opinion expressed by the Contracting Parties would be reported by the United States delegation to its Government.

The CHAIRMAN, summing up the discussion, outlined the three conclusions which had been reached. First, there was general agreement that Section 104 of the Defence Production Act was an infringement of Article XI of the General Agreement. That the provisions of that Article were contravened was accepted by the United States delegation, and, to rectify the situation, the executive branch of the United States Government was making serious efforts to get the repeal of that Section. Secondly, it was clear that if these efforts should fail to produce satisfactory results the matter would have to be considered under Article XXIII of the Agreement regarding impairment and nullification; this might involve withdrawals of concessions by other contracting parties; and it was hoped that this would not prove to be necessary. Thirdly, several representatives had pointed out that the outcome of this important test case might affect the attitude of many contracting parties to the future application of the General Agreement. On this point the United States representative had submitted that enactment of Section 104 of that Act should not be regarded as a considered action by the United States representing a change of policy.

The CHAIRMAN restated the proposal that (a) this item should be retained on the agenda for the time being, and (b) consideration should be given at the end of the session, in the light of the circumstances then prevailing, to the question whether it should be placed on the Agenda for the next session.

This was agreed.

The meeting rose at 7 p.m.

