

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SR.9/31
26 January 1955

Limited Distribution

CONTRACTING PARTIES
Ninth Session

SUMMARY RECORD OF THE THIRTY-FIRST MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 20 January 1955, at 10.30 a.m.

Chairman: H.E. Mr. L. Dana WILGROSS (Canada)

- Subjects discussed:
1. Request by the Danish Delegation for an item to be placed on the Agenda - Danish memorandum on steel export prices in the European Coal and Steel Community
 2. Article XV:6 - Report by Working Party 4 (New Zealand's request for a waiver)
 3. Statement by Chairman of Working Party on Article XVIII Applications
 4. Request for budgetary transfer
 5. Press Release GATT/215

1. Request by the Danish Delegation for an item to be placed on the Agenda - Danish memorandum on steel export prices in the European Coal and Steel Community

The CHAIRMAN referred to the memorandum which had been circulated by the Danish delegation and emphasized that the discussion should confine itself to the question of whether this item should be added to the Agenda of the Ninth Session and should not extend to the substance of the matter.

Mr. ANZILOTTI (Italy) speaking on behalf of the member States of the Community did not consider that the Danish request should be added to the Agenda. Should the CONTRACTING PARTIES, however, agree to place this item on the Agenda, discussion could not usefully begin until the primary question of the competence of the CONTRACTING PARTIES, as brought out in the report of the Working Party (L/305, paragraph 45) had been settled. Furthermore, any question involving the High Authority necessitated discussions among the various member States and between the member States and the High Authority. At least two weeks would be necessary before the matter could be taken up. Finally, the matter should be discussed by the CONTRACTING PARTIES before it was sent to any working party.

Mr. LARRE (France) wished to clarify the matters under discussion. There was, in the first place, the question of the obligations of France in matters of prices. Obviously obligations of states could neither be created nor increased except by the signature of protocols submitted for ratification by parliaments. The obligations of France under the GATT were defined in the Articles of the Agreement and in the various additional protocols. The French delegation had recalled this principle on the occasion of the debate on the waiver in 1952 and their statement on this subject was recorded in the report of the Seventh Session (Basic Instruments and Selected Documents, First Supplement, page 89): "The representatives of the member States stated that they could not, in this matter, accept limitations to their freedom of action which would go beyond the obligations which apply to contracting parties generally." It followed, therefore, that the French delegation did not consider that it had, before the CONTRACTING PARTIES, any obligation with respect to prices and that, therefore, the Danish request could not be considered within the complaints procedure. Where there was no commitment there could be no obligation and, therefore, no complaint.

The French delegation saw great advantage in establishing between the High Authority and the CONTRACTING PARTIES close relations, similar to those which should also exist between the CONTRACTING PARTIES and the International Monetary Fund and the Organization for European Economic Cooperation and other international economic organizations. The French delegation hoped, therefore, that exchange of information would occur on all points of common interest so as to develop this cooperation.

With regard specifically to the Danish memorandum, the French delegation considered that, failing a legal basis permitting the examination of the memorandum within the framework of a complaint, it was nevertheless desirable that countries belonging to the same international organizations and having complementary interests should seek to eliminate difficulties which might arise in their economic and commercial relations through unofficial channels. His delegation considered it desirable that the Danish representative should obtain from the High Authority of the member States, on a basis of courtesy and cooperation, all the clarifications which it might desire.

Mr. CHRISTAKI de GERMAIN (High Authority) associated himself with the statement made by the representative of the member States, and stated that should the CONTRACTING PARTIES decide to place the Danish request on their Agenda and address any questions to the High Authority, other than those addressed to the High Authority during the discussion of the Second Annual Report, he would request a postponement of two weeks.

Mr. MACHADO (Brazil) thought it was clear that the request of the Danish delegation entailed the question of competence which depended in turn upon the interpretation of the Agreement and of the waiver. The arguments of the French delegation showed that their interpretation differed from that of the Danish delegation and it was clear that clarification by the CONTRACTING PARTIES was required. His delegation had expressed this view

in the Working Party from the beginning. Perhaps the Legal and Drafting Committee might undertake to clarify the question of the legal interpretation of the waiver; its membership might have to be reviewed for that purpose.

The French delegation had said it had no obligation in the field of prices. This was, perhaps, a correct interpretation, but since the Community was composed of governments, any policy of the Community was a governmental policy and any action by the Community might reflect upon the obligation of governments under the GATT.

Mr. SEIDENFADEN (Denmark) said his delegation had never had any doubt as to the competence of the CONTRACTING PARTIES to discuss the questions raised in their memorandum but they would be satisfied to have the question investigated, perhaps during the fortnight which the High Authority had indicated it would require to prepare. They would be equally ready to accept a ruling by the Chairman. The Danish delegation had never interpreted the paragraph of the Seventh Session Working Party's Report to which the French delegate had referred as relating to prices but as relating to export duties and other barriers to export. Concerning another remark of the French delegation, he stated that they already had bilateral contacts with the High Authority but in this case his delegation was submitting the matter for the judgement of the CONTRACTING PARTIES.

Mr. BROWN (United States) thought it clear that the Danish request should be added to the Agenda of the Session. There was a prima facie case that this was a matter that the CONTRACTING PARTIES should consider. The Danish memorandum raised the question as to whether the undertaking of the preamble to ensure that equitable prices were charged by its producers in markets outside the Community was being observed. This was a matter in which the CONTRACTING PARTIES had an interest since the waiver had been granted on that assurance. Clearly there were different interpretations of the preamble, but that was another matter and not relevant to the immediate question of whether the Danish request should be added to the Agenda of the Session.

The CHAIRMAN referred to paragraph 10 of the 1952 Report (Basic Instruments and Selected Documents, First Supplement, page 88) where it was stated that: "the Working Party agreed that the adoption of the Decision would not debar any individual contracting party from having recourse to the provisions of Article XXIII if it considered that any benefit accruing to it under the Agreement was being nullified or impaired". He understood that the Danish complaint was being made under Article XXIII and that they were requesting this to be considered on the grounds that a benefit had been nullified or impaired. The point made by the French representative with regard to paragraph 12 of the same Report was not relevant in this connexion. This was a complaint against the Community which, for the purposes of the waiver, was regarded as a single contracting party.

Mr. LARRE (France) admitted the Chairman's competence to give a ruling on a point of order but the point at issue was a matter of substance and he did not consider that the competence of the CONTRACTING PARTIES could be extended by a simple decision of the majority, irrespective of legal rights.

The Danish delegation had not mentioned Article XXIII in its memorandum and Mr. Larre considered that the Chairman had gone beyond the provisions of rule 18 of the rules of procedure in declaring, without discussion, that this was a matter which related to Article XXIII. Neither the French delegation nor the Italian representative speaking on behalf of the member States had opposed the inclusion of this item on the agenda for examination by the CONTRACTING PARTIES and exchange of information on this matter. The French delegation had only insisted that the complaint procedure could not be invoked where there were no legal commitments. The Chairman had said that the Danish complaint concerned the Community and not the member States. Mr. Larre emphasized that, with regard to export prices, the French Government had not delegated its sovereignty in this field either to the High Authority or to the CONTRACTING PARTIES. A complaint addressed to the High Authority on matters not within its competence would hardly be appropriate. The complaint could only be addressed to the member States and it was as such that France had recalled the limit of its obligations.

Mr. SEIDENFADEN (Denmark) in reply to a question by the Chairman agreed that this was a complaint which would properly be brought under Article XXIII. His delegation, in drawing up its memorandum, had been chiefly concerned with the fact that the Community had not followed the rules of the waiver and had considered that they had a right to complain to the CONTRACTING PARTIES.

Mr. LARRE (France) wished to make it clear that his delegation did not oppose the inclusion of this item on the Agenda of the Session. It only opposed a decision by the Chairman, on his own authority, when the will of the complaining contracting party was not clearly expressed, that the matter was being brought under Article XXIII. They would admit the inclusion of the item but they would not admit without debate how the item should be considered.

The CHAIRMAN said that his ruling had related only to the point of order in connexion with the question of whether to include the item on the Agenda of the Session. This ruling in no way affected the rights and obligations of contracting parties.

It was agreed to include the request of the Danish delegation as a new item on the Agenda of the Ninth Session and to defer the discussion of this item to a subsequent meeting.

2. Article XV:6 - Report by Working Party 4 (New Zealand's request for a waiver) (L/306)

Dr. NAUDE (South Africa, Acting Chairman of Working Party 4 on Balance-of-Payments Restrictions) introduced the report of the Working Party which had been agreed to without dissent by the Working Party. During the discussion one member had suggested that the text should make clear that, in the consultations provided for in the waiver, the CONTRACTING PARTIES would consider whether the special circumstances that gave rise to the waiver still existed. The Working Party understood and wished recorded that this would necessarily be the case and that there was no need to make specific reference to it in the waiver. The waiver referred to the principles of the IMF and he thought it should be clear that this reference was to the essential purposes of the Fund and not to its procedure. The Working Party had discussed the duration of the waiver and considered the possibility of placing a specific time limit. Since the proposal by New Zealand contained provision for annual consultation and for special consultation at the request of any interested contracting party, and in view of the fact that the CONTRACTING PARTIES could, as a result of these consultations, decide to terminate the waiver, the Working Party considered that any specific time limit would be unnecessary.

Mr. BROWN (United States) supported the conclusions of the Working Party. His delegation had been interested in this matter for some time and were gratified at the result. He wished also to express to the New Zealand delegation the appreciation of his delegation of their cooperation and constructive attitude during the discussion.

Mr. HAYTA (Turkey) supported the recommendation of the Working Party.

Mr. WHITE (New Zealand) said that his delegation had accepted the changes made by the Working Party, realizing that waivers were not lightly to be granted and that they should contain adequate safeguards. This waiver seemed to his delegation to contain such safeguards. The purpose was to heal a technical breach of the Agreement rather than to allow an escape from its obligations and the granting by the CONTRACTING PARTIES of the waiver would be of great assistance to his country.

The waiver was adopted in accordance with Article XXV:5(a), by thirty-two votes in favour, none against.

Mr. WHITE (New Zealand) thanked the CONTRACTING PARTIES.

3. Statement by Chairman of Working Party on Article XVIII Applications

Mr. GOERTZ (Austria, Chairman of the Working Party) wished to present a verbal interim report on the progress of the Working Party and to inform the CONTRACTING PARTIES of the procedure being followed in the case of certain negotiations arising out of the provisions of paragraph 5(a) of Article XVIII. The delegation of Ceylon had requested certain releases and the CONTRACTING PARTIES, by approving the preceding reports of the Working Party (L/269 and L/289), had recommended that contracting parties considering themselves substantially interested in the items concerned should notify the Working Party in accordance with Article XVIII:3(b). By the dates specified in those reports, the United Kingdom had indicated its interest in plywood chests; the United Kingdom and the United States in glassware; and Czechoslovakia, India, Japan, the United Kingdom on behalf of Hong Kong and the United States in ready-made shirts. At a meeting of the Working Party on 11 January, the representative of Ceylon had indicated the willingness of his Government to include these countries in the negotiations. Article XVIII:3(b) required the CONTRACTING PARTIES to establish a time schedule for the conduct of the negotiations. The Working Party, in agreement with Ceylon and the countries concerned, requested the CONTRACTING PARTIES to agree to designate 1 February 1955 as the date for the completion of these negotiations.

The CONTRACTING PARTIES agreed to the date suggested by the Working Party.

4. Request for budgetary transfer (L/310)

The CHAIRMAN referred to the request by the Executive Secretary for authority to transfer from the unappropriated balance of Part I, Section 2, Intersessional meetings of the 1954 budget, an amount of \$3,523.79 to Part I, Section 1, Ninth Session of the CONTRACTING PARTIES, of the same budget.

On the suggestion of the representative of Turkey the Executive Secretary's request was unanimously approved.

5. Press Release GATT/215

Mr. MACHADO (Brazil) referred to the Press Release relating to the special problems of dependent overseas territories which had been issued that morning and which contained excerpts from the statement made last November by the President of the Board of Trade and stated that a Working Party had been set up to consider the United Kingdom proposals. This was correct as far as it went but it did not, of course, contain all the information on this question and he hoped that in the future press releases would more adequately reflect the discussion which had occurred in the Plenary Session.

The CHAIRMAN observed that press releases were issued according to rule 38 of the rules of procedure which provided that the Chairman might, after a private meeting, issue a communiqué to the press. Press releases did not normally refer to the substance of the discussion, particularly when no final decision had as yet been reached. The press release to which the Brazilian delegate referred had been issued only to indicate that the proposal had been made and that the matter was being considered by the CONTRACTING PARTIES. Due note would be taken of the concern of the Brazilian delegation.

The meeting adjourned at 12.30 p.m.

