

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## CONTRACTING PARTIES

### REPORT OF THE INTERSESSIONAL WORKING PARTY ON THE COMPLAINT OF CZECHOSLOVAKIA CONCERNING THE WITHDRAWAL BY THE UNITED STATES OF A CONCESSION UNDER THE TERMS OF ARTICLE XIX

#### I. Introduction

1. According to its terms of reference, the Working Party examined "the contention of the Czechoslovak Delegation that, in withdrawing item 1526(a) from Part I of Schedule XX, the United States has failed to fulfil the requirements of Article XIX". The Working Party had at its disposal the following documents:

- (a) A communication of the Acting Chairman of the United States Delegation dated October 19, 1950 (GATT/CP/83);
- (b) A memorandum of the Czechoslovak Delegation circulated on November 7, 1950 (GATT/CP.5/22);
- (c) The record of the discussion in the plenary meetings of the Contracting Parties (GATT/CP.5/SR. 14, 19, 21, 22, 23);
- (d) "Women's fur felt hats and hat bodies". A report of the United States Tariff Commission dated September 1950 which was circulated by the United States representative for the use of the Working Party;
- (e) A statement by the Czechoslovak representative circulated as CP/IW.1/2 and Corr. 1;
- (f) Additional data submitted at the request of the Working Party.

2. The United States representative also circulated to the other members of the Working Party a report prepared by the United States Tariff Commission on the "Procedure and Criteria with respect to the Administration of the 'Escape Clause'". The Working Party took note of this document only insofar as it indicated the methods followed by the Tariff Commission in their investigation, and did not consider it to be part of its task to comment on the views expressed therein which have a bearing on the interpretation of Article XIX.

#### II. The requirements of Article XIX

3. In attempting to appraise whether the requirements of Article XIX had been fulfilled, the Working Party examined separately each of the conditions which qualify the exercise of the right to suspend an obligation or to withdraw or modify a concession under that Article.

4. Three sets of conditions have to be fulfilled:

- (a) There should be an abnormal development in the imports of the product in question in the sense that:
  - (i) the product in question must be imported in increased quantities;
  - (ii) the increased imports must be the result of unforeseen developments and of the effect of the tariff concession;
  - (iii) the imports must enter in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.
- (b) The suspension of an obligation or the withdrawal or modification of a concession must be limited to the extent and the time necessary to prevent or remedy the injury caused or threatened.
- (c) The contracting party taking action under Article XIX must give notice in writing to the Contracting Parties before taking action. It must also give an opportunity to contracting parties substantially interested and to the Contracting Parties to consult with it. As a rule, consultation should take place before the action is taken, but, in critical circumstances, consultation may take place immediately after the measure is taken provisionally.

### III. Existence of the conditions required for action under Article XIX

5. For the purposes of this section the Working Party based itself mainly on the figures and other factual data contained in the Tariff Commission report; the Czechoslovak representative stated that he did not dispute the accuracy of these data, but that he could not agree with the conclusions which the United States authorities drew from them.

6. Increase in imports. The Working Party noted that, according to the available data, the volume of imports of women's fur felt hats and hat bodies into the United States increased substantially in 1948, 1949 and the first six months of 1950 as compared with 1946 and 1947; as from 1949, the imports also exceeded those of 1937. The relevant figures are reproduced below:

<u>1937</u>	<u>1939</u>	<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950 (Jan. - June)</u>
(quantity in dozens)						
52,493	6,372	36,910	15,984	44,646	120,511	61,827 (1)

The increase is even more apparent if the comparison is limited to the value-brackets affected by the withdrawal.

<u>1946</u>	<u>1947</u>	<u>1948</u>	<u>1949</u>	<u>1950 (Jan. - June)</u>
14,140	8,251	36,045	106,426	53,097 (1)

7. Existence of unforeseen developments; relation of these and of the tariff concession to imports. The concessions granted at Geneva were substantial. Taking a simple average for the 4 value-brackets from \$9 to \$24 per dozen the duties from January 1, 1948, were 32.3 per cent. less than the rates of the 1930 Tariff Act. (2)

8. The United States representative stated that about the time the duties were reduced there was a style change greatly favouring hats with nap or pile finishes, a development which was not and could not have been foreseen at the time the concession was granted. As a result of that style change hat bodies with special finishes were imported in increased quantities and represented more than 95 per cent. of the imports of women's fur felt hats and hat bodies in 1949 and in the first six months of 1950. The increased popularity of special finishes, which, as compared with the plain felt hats require

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(1) Provisional figures for January to June 1950; these were the latest figures available to the Tariff Commission at the time of their enquiry. These figures for total imports show, as compared with the corresponding figures for the first six months of 1948 (7,825 dozen) and of 1949 (16,871 dozen) a very substantial increase in the rate of imports in 1950 as compared with 1949 and 1948. Statistics now available indicate that total imports in the period January-November 1950 were 259,032 dozen.

Source: Official statistics of the United States Department of Commerce.

(2) This figure is computed by comparing the ad valorem equivalent of the 1930 compound duties at the middle point of the several brackets with the straight ad valorem duties fixed in the Geneva agreement, disregarding the fact that on the value bracket \$18 to \$24 the compound rate of the Act of 1930 had previously been reduced by the 1938 trade agreement with the United Kingdom, to an ad valorem rate of 50 per cent. An appendix table shows further details on this subject.

much larger amounts of hand labour, which is more expensive in the United States than in the exporting countries, created a special problem for the United States producers who were not in a position to adapt themselves to the change in demand in view of a severe competition from imports. He stated that the United States negotiators at Geneva, while realizing the shifting fashions in the hat trade and expecting some increase in imports, had not been aware of the extent that this particular change in taste had then reached in Europe and had not foreseen the degree of the future shift to special finishes or the effect which it, together with the concession, would have on imports. He considered this statement was sufficient to show unforeseen developments.

9. The Czechoslovak representative stated that the term "unforeseen development" should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated. The other members of the Working Party (other than the United States representative) agreed with this view.

10. On the basis of the interpretation accepted by the majority, the Czechoslovak representative maintained that:

- (a) It is universally known that fashions are subject to constant changes - "change is the law of fashion".
- (b) Even the particular change of fashion which took place, viz. the change in favour of velours, could and should have been foreseen. This change was not due simply to a change in the taste of American women; it resulted mainly from the enterprise of the exporters (with their selling organisation in the United States) and of the American milliners, who deliberately produced the new designs and created the demand for them by advertisement and good salesmanship. This change in fashion was thus not only foreseen but deliberately planned in advance.
- (c) The United States negotiators in Geneva in 1947 should have known that velours would become fashionable in the United States of America, since at that time it was well-known, and was commented upon in the trade journals, that velours had already become fashionable in Paris, and it could be expected that the Paris fashion would spread to other countries.
- (d) It was known to the United States negotiators in Geneva in 1947 that Czechoslovakia had for long had an important and special interest in the export of hat bodies with velours and other special finishes, had obtained a concession for this type of hat body in a pre-war trade agreement with the United States of America, and was desirous of obtaining once more a tariff concession on this particular type of hat body. The United States representative agreed that this is the case.

- (e) The United States negotiators in 1947 should accordingly have foreseen that Czechoslovakia's exports of hat bodies to the United States of America would consist primarily of velours and would increase as a result of the tariff concession, and that the Czechoslovak exporters and their selling organisation in the United States of America would do their utmost to create a fashion in velours which would enable them to increase their sales as much as possible. In fact, the Czechoslovak exporters, together with the Italian exporters, created by their selling campaign a new market and new selling opportunities in the United States.
- (f) The causes which produced the change in fashion, and the increased demand for velours in the United States of America were thus not unforeseen, but could and should have been foreseen by the United States negotiators in 1947.
- (g) The other factors in the situation, viz. the level of productivity of the United States industry in hat bodies with special finishes, and the high proportion of wage costs in the total cost of production of these hat bodies have always existed and were known to the United States negotiators. There is no evidence whatsoever that the change in fashion, or this change combined with these other factors, constituted an unforeseen development.

11. The other members of the Working Party, except the representative of the United States, agreed with the Czechoslovak representative that the fact that hat style had changed did not constitute an "unforeseen development" within the meaning of Article XIX. These members and the representative of the United States considered, however, that the United States negotiators in 1947 could not reasonably be expected to foresee that this style change in favour of velours would, in fact, subsequently take place, and would do so on as large a scale and last for as long a period as it in fact did. Moreover, the evidence before the Working Party appeared to indicate that the increase in United States imports of women's fur felt hat bodies in and after 1948 was due primarily to the following causes:-

- (i) The change in demand which took place took the form of increased demand for particular types of hat body, the production of which requires much more labour than does the production of plain-finished hat bodies.
- (ii) As a result primarily of this higher labour content and of the high level of wages in the United States hat body industry, which is not matched by correspondingly high output, the generality of United States manufacturers were unable to produce special finishes which could compete in price or quality with similar imported hat bodies on which import duty was charged at the substantially reduced rates (averaging  $47\frac{1}{2}$  per cent. ad valorem) applicable as a result of the 1947 tariff negotiations.

- (iii) In consequence, imported supplies of special finishes were more attractive in price and quality in comparison to the generality of domestically-produced special finishes to such an extent that overseas suppliers were able to secure by far the greater part of the increasing United States market for special finishes; and the volume of imports increased accordingly. Furthermore, the concession had the effect of reducing the price differential between imported special finishes and the better quality of plain felt hat bodies produced in the United States and of encouraging milliners and consumers to give their preference to imported velours and other special finishes.

12. The members of the Working Party, with the exception of the Czechoslovak representative, accordingly considered that the effects of the circumstances indicated above, and particularly the degree to which the change in fashion affected the competitive situation, could not reasonably be expected to have been foreseen by the United States authorities in 1947, and that the condition of Article XIX that the increase in imports must be due to unforeseen developments and to the effect of the tariff concession can therefore be considered to have been fulfilled.

13. Existence or threat of a serious injury. The United States representative produced the following facts. The apparent consumption of women's fur felt hat bodies was lower after the war than before, ranging from 500 to 700 thousand dozen, as compared with 900 to 1100 thousand dozen in the years 1935-1939, but a larger percentage of that reduced demand has been met by imported supplies; the ratio of imports to consumption which averaged 4.5 per cent. before the war and was as low as 3.2 per cent. in 1947 increased to more than 17 per cent. in 1949, and more than 23 per cent. in the first half of 1950. Domestic production in the United States remained at a lower level after the war than was the case before the war. Post-war figures were of the magnitude of 5-600,000 dozen as compared with 900,000 to 1,000,000 dozen before the war.

14. Imports and production, and therefore also apparent consumption, of women's fur felt hat bodies in 1947 were all exceptionally low, and all increased from 1947 to 1948. In 1949 and the first half of 1950, however, both imports and apparent consumption continued to increase, while production declined. The following table shows this decline:

	<u>1948</u>	<u>1949</u>	<u>1950 (Jan. to June)</u>
Quantities in dozens	629,235	565,768	203,235 (1)
Percentage of decrease as compared with 1948 figures	-	10%	18% (2)

(1) These were the latest figures available at the time of the investigation. It has been subsequently determined that total production for January-November 1950 was 607,265 dozen.

(2) Based on production of 247,865 dozen for January to June 1948

Consequently, at the time of the investigation, when imports were increasing rapidly, as indicated above, there had been a substantial decrease in production.

15. A substantial percentage (estimated at over 20 per cent. in 1949 and at over 30 per cent. in the first six months of 1950) of the apparent demand for hat bodies shifted to special finishes. 30 per cent. of imports in 1949 were of these special finishes. As the total consumption did not increase substantially it would appear likely that in 1949 and the first six months of 1950 the imported hat bodies with special finishes replaced to some extent plain felt hat bodies which would have normally been supplied by domestic producers.

16. No data were available to assess the financial losses which firms producing felt hat bodies may have suffered from the increase in imports. In the industry as a whole the production of women's hat bodies represents about 25-30 per cent. of the total production of hat bodies and hats, and it has not been possible to separate the financial results of the production of women's hat bodies from that of men's hat bodies and hats.

17. Inquiries by the United States Tariff Commission however showed that ten out of fourteen manufacturers questioned by it stated that they could not make hat bodies in special finishes at prices competitive with imports.

18. As regards the effects of increased imports on employment, the figures show a decrease in the number of productive workers on felt hat bodies (men's and women's) during the period 1947 to 1949. This reduction was substantial between 1948 and 1949 as indicated below.

Productive Workers Engaged in Making Fur Felt Hat Bodies  
1947 to 1949

	<u>1947</u>	<u>1948</u>	<u>1949</u>
Average number of workers	4,383	4,349	3,717
Percentage decline as compared with 1947 figures	-	1%	15%

19. It is not practicable to segregate employment in the production of women's hat bodies from that in the production of men's hat bodies and hats. Moreover it was difficult to estimate to what extent the reduction in employment is due to increased imports of women's hat bodies and to what extent to other factors including those affecting the production of men's hats. According to the findings of the United States Tariff Commission, a considerable part of this reduction was attributable to increased imports, and this would seem to be supported by the substantial decrease in production of women's hat bodies in 1949 and in the first half of 1950.

20. This evidence of decline in employment should be viewed in the light of the particular vulnerability of workers in this industry to small declines in production and employment. Over 80 per cent. of the workers are either skilled or semi-skilled; and their age is in general high. Thus a large majority of those employed would appear to be skilled workers with families dependent upon them. The social difficulties of a decline in employment in the industry would be likely to be accentuated by its geographic concentration. For instance, it is estimated that 85 per cent. of the factory wages in Danbury and 50 per cent. in Norwalk are ordinarily paid by the fur felt hat industry. Thus the effects of a relatively small decline in production might be aggravated by the lack of other employment opportunities locally and by the indirect effect on most other business activities of these communities. Figures for employment in the fur felt hat industry (men's hats as well as men's and women's hat bodies), and of general unemployment, in Danbury and Norwalk, tend to support the view that imports have contributed to a decline in employment in the case of the manufacture of women's hat bodies.

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21. The Czechoslovak representative maintained that neither the data submitted by the United States representative nor the actual developments in the United States hat industry during the decisive period 1947 - 1950 proved that there was any injury or threat of it to the workers, by far the largest group of producers:

- (a) The figures for changes in the average number of productive workers employed in the fur-felt hat bodies industry were not conclusive. The comparison with the pre-war situation had to be discarded as the whole structure of the industry was admittedly on a different footing after the war. The United States figures for employment in different sections of the United States hat industry were based on estimates and did not show how the average was computed or whether seasonal workers were included.
- (b) The downward trend of employment which was slight in 1948 and more marked in 1949 was attributed by the United States authorities investigating the situation largely to factors other than the influence of increased imports. Nothing definite was adduced to support the view that the increased imports had some effect on employment. The Report of the Tariff Commission admits that "the proportion attributable to that factor cannot be estimated with any degree of precision".
- (c) The conclusion as to whether there was any injury to the workers caused by the increased imports should necessarily take into account not only the decrease in average numbers employed but also the actual figures of unemployed hat workers. These figures were not available. The decrease in employment in the areas concerned was attributed largely to other factors than increased imports. The contention that there was a causal relationship between the increased imports in hat bodies with special finishes and the employment situation in the United States hat industry remained extremely doubtful.

- (d) The assumption of the United States representative that the decrease in employment probably affected the skilled and older workers was not substantiated by any evidence. On the contrary, it would be more reasonable to assume that the skilled workers were not affected at all since the domestic production of hat bodies with special finishes, requiring a larger number of skilled workers, admittedly increased. The statistics of employment showed an upward trend in employment during the first half of 1950. It was highly probable that this resulted from the increasing domestic production of hat bodies with special finishes.
- (e) All this, together with the fact that the wage rates of the workers in the United States industry for women's fur felt hat bodies were not affected, proved that the increased imports caused or threatened no injury to the workers.

22. The Czechoslovak representative maintained further that the increased imports of hat bodies with special finishes did not threaten the United States domestic production of those types. On the contrary, the change in fashion created by the foreign suppliers and their selling organisation and the resulting increase in demand for those types created an opportunity for the domestic producers to start and expand rapidly a production of these types:

- (a) Admittedly there was no production of hat bodies with special finishes in the United States in 1947. The domestic producers started to produce them in 1948 under the influence of the expanding market. The increase in the United States domestic production of hat bodies with special finishes is quite clear from the following table based on the data supplied by the United States representative:

	<u>Production</u> (in thousand doz.)	<u>Increase compared with the previous year</u>	<u>Index in comparison to 1948</u>
1947	no production		
1948	15	-	100
1949	25	66%	166
1950	100 (1)	400% (1)	666 (1)

The comparison between the rate of increase in imports and the rate of increase in the domestic production of hat bodies with special finishes shows that domestic production had increased in higher proportion than imports.

	<u>Index of Imports</u>	<u>Index of Domestic Production</u>
1948	100	100
1949	269	166
1950	580	666 (1)

- (1) Based on figures obtained by the Czechoslovak representative from his own source of information in the United States of America. The estimate arrived at by doubling the output in the first half of the year 1950 would be 50,000 dozen.

The actual position of the domestic production of hat bodies with special finishes was, according to the data furnished by the United States representative, as follows:

- 15 manufacturers accounted for most of the total domestic production of women's fur felt hat bodies;
- 14 of them had made velours or samples of velours in either 1949 or 1950;
- 10 of these 14 stated that they could not make a competitive product and sell it at prices competitive with imported hat bodies. The prices quoted by these firms ranged from \$25 to \$28 per dozen. This statement was not examined;
- 4 of the above 14 quoted their price as \$18. Obviously these 4 were the only ones whose production was on anything like a satisfactory basis. It appears from the United States data that out of the total production of 25,000 dozen in the first half of 1950 these four produced 25,00 dozen, one of whom was satisfied with a price of \$18. It is obvious that the other ten were producing nothing but samples and that their production was in an experimental stage and that this was the real cause of their high cost of production and inability to compete.

- (b) The United States contention that the domestic production of plain felt hat bodies was "to some extent" affected by the increased imports of velours does not bear examination. It might have been expected that the domestic production of plain hat bodies would decrease because the producers switched over to the production of special finishes and therefore part of their productive capacity which previously was concentrated only on plain hat bodies would be absorbed by the production of velours. But in fact total domestic production of hat bodies in the United States did not decrease at all.

	<u>Domestic production</u> (in thousand dozens)	<u>Increase as compared</u> <u>with previous year</u>	<u>Index in</u> <u>comparison</u> <u>with 1947</u>
1947	487	-	100
1948	629	+ 29%	129
1949	566	- 10%	116
1950 (1)(est.)	650	+ 15%	133

The domestic production of women's fur felt hat bodies was thus 33 per cent. above the level of 1947 when the concession was granted.

The actual development of the domestic United States production of women's fur felt hat bodies from 1947 to the end of 1950 was such that there was no serious injury caused to it by the increasing imports of velours. The Czechoslovak representative referred to a graph drawn by him from the United States data showing the actual development

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- (1) Arrived at by adding an estimate of 43 for December to the United States figure of 607 for the first eleven months in 1950.

(1)

of United States production. What in fact happened was that the change in fashion created a new market and the demand was such that in 1949 and in the first half of 1950 the exporters and also the domestic producers were unable to fulfil all the orders they received for the special finishes. The market for plain felt hat bodies remained stationary; the domestic production of these types was estimated in thousand dozens by the Czechoslovak representative at 487 in 1947, 614 in 1948, 541 in 1949 and 550 in 1950. The action taken by the United States Government operated not to protect the domestic industry from a threat of injury but to protect an attempt by the domestic producers to capture and monopolise the new market by killing the import trade and to accumulate profits which previously never came their way. The application of Article XIX in this respect was improper.

- (c) The United States producers of hat bodies with special finishes were not at a serious competitive disadvantage with the foreign suppliers: the domestic production was sufficiently protected by the reduced tariff (40-55 per cent.) plus other expenses of importation. The United States representative was not able to give any definite figure for the percentage of wage cost in the domestic product. The Czechoslovak representative provided the figures for this cost in the British production of velours 37 - 45 per cent. The proportion may be somewhat lower in the Czechoslovak production, which is not the result of cheaper labour in Czechoslovakia but of the higher productivity of the Czechoslovak industry. In any case, it was doubtful whether the percentage of the wage-cost in the United States products could be higher than the percentage rates of duty fixed at Geneva. Even those United States producers whose prices for samples were obviously burdened by the cost of experimental production were able to sell at \$25 - \$28. The bulk of the imported hat bodies sold in the United States market at prices ranging from \$19 to \$35 per dozen. The illusion of a competitive disadvantage is due to the fact that the selling prices of the domestic producers were compared with the lowest price of the imports (\$19) and not with the range of prices. No data concerning the profits and dividends of the United States manufacturers of women's hat bodies were available and there was no evidence that those profits and dividends were unfavourably affected by the situation after the tariff concession had been granted.

23. Lastly, the Czechoslovak representative, without questioning the good faith of the United States Tariff Commission, maintained that it was misled when suggesting the withdrawal of the tariff concession and the United States authorities mistaken when resorting to this measure. On the basis of a graph (1) showing the curves of the domestic production month by month in 1948, 1949 and 1950 and comparing this curve with the time-table of the stages of the American action the Czechoslovak representative stated that:

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(1) See document CP/IW.1/2/Corr. 1

American action the Czechoslovak representative stated that:

- (a) The investigation started when the United States production was low, this being the normal situation in the beginning of the year;
- (b) The Report to the President alleging serious injury was presented at a date when domestic production had already reached its usual seasonal peak. Statistics later available showed that in 1950 the seasonal peak was the highest since the war;
- (c) The withdrawal was proclaimed at a time when domestic production was increasing considerably. The Czechoslovak representative maintained that the United States authorities could and should at that time have taken account of the latest trend in domestic production and have accordingly refrained from withdrawing the tariff concession. Resort to Article XIX was no longer necessary.

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24. The views of the other members of the Working Party on the question of serious injury were as follows. Since the Working Party was required to consider whether the action taken by the United States in autumn 1950 fulfilled the requirements of Article XIX, the question here to be considered is whether serious injury or a threat thereof to the United States women's hat body industry could be considered to have existed at the time of the United States Tariff Commission investigation on which the United States action was based; and data which have subsequently become available, e.g. on production and imports in the second half of 1950, are irrelevant to this question.

25. Two main types of data are available, viz. (a) data relating to the quantities of imports and of United States production, and (b) statistics of employment in the United States hat industry, and of unemployment in certain hat producing areas.

26. As regards the former, the statistics bearing on the relation between imports and domestic production up to mid-1950 show a large and rapidly increasing volume of imports, while at the same time domestic production decreased or remained stationary. On the whole, therefore, they constitute evidence of some weight in favour of the view that there was a threat of serious injury to the United States industry.

27. On the other hand it is noteworthy that the Tariff Commission Report contains the following statement:-

"Imports of hat bodies of these special finishes have to some extent affected domestic production of hat bodies of plain felt, particularly those in the higher-priced ranges. More especially, however, these imports have severely limited the establishment and expansion of domestic production of these special finishes."

28. In this respect, it must be commented that any proposal to withdraw a tariff concession in order to promote the establishment or development of domestic production of a new or novel type of product in which overseas suppliers have opened up a new market is not permissible under Article XIX but should be dealt with under other provisions of the Agreement, such as Article XVIII. On the other hand it may be permissible to have recourse to Article XIX if a new or novel type of imported product is replacing the customary domestic product to a degree which causes or threatens serious injury to domestic producers. The statement quoted in paragraph 27 would tend to weigh against the view that serious injury was caused or threatened to the domestic industry. Nevertheless, the statistics up to mid-1950 appear on the whole to indicate a material degree of displacement of domestically-produced plain felt hat bodies by imported velours and other special finishes; since moreover the hat bodies with special finishes imported in the last three years have been sold at prices substantially lower than before in comparison with plain-finished bodies, thus bringing the former into the medium-priced range, in which they were not previously available, it may well be that they would later, if the United States had not raised the rates of import duty, have displaced domestically produced plain-finished hats to a considerably greater degree.

29. Employment and unemployment statistics are inconclusive. Annual average figures of employment in the production of fur felt hat bodies show a decrease of about 15 per cent. in the average number of workers so employed in 1949 as compared with 1947; these figures, however, relate to the production of bodies for men's and women's hats and it is not clear how far this reduction is due to decreased demand for domestically-produced women's hat bodies and how far to other factors, especially since the greater part of the workers concerned are employed in producing men's hat bodies. Figures of total unemployment in Danbury and Norwalk, where hat-making is the predominant industry, show a relatively substantial increase in unemployment in 1949 as compared with 1947 and 1948; the movement in the figures of total unemployment in these towns, however, differs considerably from the movement in the figures of employment in hat-making therein, so that no great degree of significance can be attached to these statistics.

30. To sum up, the available data support the view that increased imports had caused or threatened some adverse effect to United States producers. Whether such a degree of adverse effect should be considered to amount to "serious injury" is another question, on which the data cannot be said to point convincingly in either direction, and any view on which is essentially a matter of economic and social judgment involving a considerable subjective element. In this connection, it may be observed that the Working Party naturally could not have the facilities available to the United States authorities for examining interested parties and independent witnesses from the United States hat-making areas, and for forming judgments on the basis of such examination. Further, it is perhaps inevitable that Governments should on occasion lend greater weight to the difficulties or fears of their domestic producers than would any international body, and that they may feel it necessary on social grounds, e.g. because of lack of alternative employment in the localities concerned, to afford a high degree of protection to individual industries which

in terms of cost of production are not economic. Moreover, the United States is not called upon to prove conclusively that the degree of injury caused or threatened in this case must be regarded as serious; since the question under consideration is whether or not they are in breach of Article XIX, they are entitled to the benefit of any reasonable doubt. No facts have been advanced which provide any convincing evidence that it would be unreasonable to regard the adverse effects on the domestic industry concerned as a result of increased imports as amounting to serious injury or a threat thereof; and the facts as a whole certainly tend to show that some degree of adverse effect has been caused or threatened. It must be concluded, therefore, that the Czechoslovak Delegation have failed to establish that no serious injury has been sustained or threatened.

IV. Extent and duration of the action taken by the United States

31. Extent of the Action. Article XIX provides that the action under paragraph 1 should be limited to the extent necessary to prevent or remedy the injury. In this connection two points were considered:

- (a) the scope of the products affected by the withdrawal;
- (b) the resulting intensification of tariff protection.

32. The United States Government has not withdrawn the concession relating to item 1526(a) in its entirety; the concession granted for women's hats and hat bodies valued at less than \$9 per dozen, and those valued at more than \$24 per dozen, as well as those on men's and boys' hats and hat bodies remain unaffected, as those products do not meet the requirements of Article XIX: the value-brackets for women's wear unaffected by the withdrawal, which constituted a substantial part of the total import of hats and hat bodies prior to 1948, have accounted for slightly more than 10 per cent. of the imports since that date.

33. As regards the change in protection, the withdrawal of the concession had the effect of restoring the compound rates specified in the Tariff Act of 1930; the duty position would thus be the same as before the Geneva concession was made, except that the hats and hat bodies between \$18 and \$24 per dozen would also lose the benefit of the reduced rate of 50 per cent. which had been in force since January 1939. The average percentage by which the withdrawal of the concessions in the Geneva agreement increased the rate of duty on the four value-brackets ranging from \$9 to \$24 per dozen was 49.0 per cent. (1)

34. The Czechoslovak representative questioned whether the substantial increases in rates of duty involved in the withdrawal were necessary to prevent or remedy the alleged injury and whether

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(1) This figure is computed by (1) calculating for each of the four value brackets concerned the ad valorem equivalent of the restored compound rate at the middle point of the bracket, and expressing the excess of this ad valorem equivalent over the straight ad valorem rate fixed in the General Agreement as a percentage of the latter, and (2) taking an average (unweighted) of the four percentages thus obtained. Further details are given in the Appendix table.

the re-establishment of prohibitive duties to enable an uneconomic industry to prolong its existence was consistent with the purposes of the General Agreement.

35. The other members of the Working Party considered that it is impossible to determine in advance with any degree of precision the level of import duty necessary to enable the United States industry to compete with overseas suppliers in the current competitive conditions of the United States market, and that it would be desirable that the position be reviewed by the United States from time to time in the light of experience of the actual effect of the higher import duties now in force on the economic position of the United States industry.

36. Duration of the United States action. Article XIX also provides that action under paragraph 1 should be limited to the time necessary to prevent or remedy the injury. The United States Government decided to withdraw the concession without a specified time limit as to the duration of such withdrawal, in order to remedy the injury which in their view had already been caused, and to prevent its threatened continuation and aggravation. In this connection, the United States representative stated that there would be serious practical difficulty in limiting the duration of the withdrawal. Procedures comparable to those followed in the case of the negotiation of a new trade agreement concession by the United States might have to be utilized before any lower rates of duty could again be applied to women's fur felt hat bodies. Moreover, the consultations with two contracting parties under paragraph 2 of Article XIX would in all probability result in agreement with respect to compensatory adjustments, and if the concession were restored at a later date, it would bring in question continuation of such adjustments.

37. As regards the case under review, the other members of the Working Party were of the opinion that the evidence pointed rather to temporary difficulties in the industry and did not exclude the possibility of a successful adjustment in a near future which would enable producers to dispense wholly or in part with the additional protection afforded by the action taken under Article XIX.

38. The domestic production figures for the first eleven months of 1950 showed that the downward trend which influenced the United States authorities in September to conclude that a serious injury had been caused or threatened had been arrested, at least temporarily. It was generally agreed that no firm conclusion could be drawn from these data, since the second half of 1950 has to be considered in many respects as abnormal. These facts, however, provide additional reasons for considering it desirable that the position should be kept under review, in order that the 1947 tariff concessions may be wholly or partially restored, as required by Article XIX, if and as soon as the United States industry is in a position to compete with imported supplies without the support of the higher rates of import duty.

39. As regards the technical difficulty about compensatory adjustments, the French and Italian representatives expressed the view that this was not insuperable, and stated that they would be prepared to restore the balance of the concession if the United States Government decided later that it could restore the concession on hats and hat bodies.

V. Procedural Requirements of Article XIX

40. Paragraph 2 of Article XIX requires that a contracting party proposing to take action under the Article shall give notice in writing to the Contracting Parties as far in advance as may be practicable. The report was made by the Tariff Commission to the President on September 25 1950; notification was sent to the Contracting Parties on October 19; the withdrawal of the concession was proclaimed at the beginning of November and entered into force on December 1. It should also be noted that a public announcement was made on October 19 regarding the proposed withdrawal.

41. Paragraph 2 also provides that the Government taking action under Article XIX shall afford an opportunity to consult with it. The United States Government afforded this opportunity on and after October 19 and three contracting parties substantially interested availed themselves of this opportunity.

42. As regards the timing of the consultation, two procedures are outlined in Article XIX. As a rule, there should be "prior consultation", but in certain exceptional circumstances, the action may be taken provisionally, provided that consultation takes place immediately afterwards. The United States Government invoked the second procedure, although by giving notice more than a month before the withdrawal entered into force, it enabled exporting countries to enter into consultation before the duties were actually raised. The United States importers usually initiate price lines and samples for the season as early as December or January, and early contracts are made at that time; the United States Government considered therefore that if the entry into force of the withdrawal had been later than December 1, 1950 damage would have been caused which it would have been difficult to repair. Although the withdrawal was announced as early as October 19, it could be considered as provisional since it would have been legally possible to reconsider the measure before December 1. It was pointed out, however, that the issue of a public announcement would have, in practice, made it more difficult to revoke the measure contemplated.

43. Although agreement was not reached with all the interested parties in the course of consultations, the United States withdrew the concession as it was free to do in accordance with the terms of paragraph 3 of Article XIX.

44. The Czechoslovak representative questioned whether the action taken by the United States was "provisional" and whether the critical circumstances existed in this case.

45. The other members of the Working Party were of the opinion that the procedure followed by the United States Government was within the terms of Article XIX. They noted that the proceedings before the Tariff Commission could not have escaped the notice of the exporting

countries who thus had an opportunity of consulting with the United States Government under Article XXII of the Agreement; they also recognised that the duration and publicity of these proceedings in the United States may have increased the possibilities of forestalling and speculation, and that these special circumstances would naturally lead the United States authorities to the conclusion that it was necessary to act quickly as soon as the decision was taken to withdraw the concession.

46. In this connection the Working Party wishes to draw the attention of the Contracting Parties to the desirability of delaying, as far as practicable, the release of any public announcement on any proposed action under Article XIX, as a premature disclosure to the public would make it difficult for the government proposing to take action to take fully into consideration the representations made by other contracting parties in the course of consultations.

## VI. Conclusions

47. The following paragraphs contain the conclusions arrived at by the members of the Working Party other than the Czechoslovak and the United States representatives.

48. These members were satisfied that the United States authorities had investigated the matter thoroughly on the basis of the data available to them at the time of their enquiry, and had reached in good faith the conclusion that the proposed action fell within the terms of Article XIX as in their view it should be interpreted. Moreover, those differences of view on interpretation which emerged in the Working Party are not such as to affect the view of these members on the particular case under review. If they, in their appraisal of the facts, naturally gave what they consider to be appropriate weight to international factors and the effect of the action under Article XIX on the interests of exporting countries, while the United States authorities would normally tend to give more weight to domestic factors, it must be recognised that any view on such a matter must be to a certain extent a matter of economic judgment and that it is natural that governments should on occasion be greatly influenced by social factors, such as local employment problems. It would not be proper to regard the consequent withdrawal of a tariff concession as ipso facto contrary to Article XIX unless the weight attached by the government concerned to such factors was clearly unreasonably great.

49. For the reasons outlined above, these members came to the conclusion that there was no conclusive evidence that the action taken by the United States under Article XIX constituted a breach of that Government's obligations under the General Agreement.

50. They wish however to point out that in their opinion, action under Article XIX is essentially of an emergency character and should be of limited duration. A government taking action under that Article should keep the position under review and be prepared to reconsider the matter as soon as this action is longer necessary to prevent or remedy a serious injury. In the case under review, events which have occurred after it was decided to raise the duties would indicate that it would be desirable for the United States government to follow the trends of consumption, production and imports in the following months with a view to restoring the concession on hat bodies in whole or in part if and as

soon as it becomes clear that its continued complete withdrawal cannot reasonably be maintained to be permissible under Article XIX.

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Appendix

Women's fur-felt hat bodies: Recent changes in rates of duty on the value brackets affected by the United States action under Article XIX

Bracket Per dozen	Tariff Act of 1930, and position in 1951: ad valorem equivalent of the compound duties		Ad val. rate at <u>middle of bracket</u> 1930 act : 1948 and 1951 :		Per cent reduction:	Per cent increase
	At bottom of each bracket	At top of each bracket			1930-1948:	1948- 1951
\$9 - \$12	80.6	66.7	73.65	55.0	25.3	33.9
\$12 - \$15	75.0	65.0	70.0	47.5	32.1	47.4
\$15 - \$18	71.7	63.9	67.8	47.5	29.9	42.7
\$18 - \$24 (1)	75.0	62.5	68.75	40.0	41.8	71.9
	Simple average-----				32.3	49.0

(1) The rate on this bracket was reduced by the 1938 trade agreement with the United Kingdom to 50 per cent. ad valorem. The withdrawal of the Geneva concession restored the rate to the level of the Tariff Act of 1930.