

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

COM.TD/W/22
23 March 1966

Limited Distribution

Committee on Trade and Development

INTRODUCTION OF THE REPORT OF THE AD HOC GROUP ON LEGAL ADJUSTMENTS TO THE GATT

Statement by Mr. Kaufmann, Netherlands,
(Chairman of the Group) on 17 March 1966

Let me start on the note on which the statement read on behalf of Mr. Collymore was concluded, namely to express my appreciation and gratitude to the members of the Group on Legal Amendments for their collaboration, and to the secretariat for their conscientious assistance without which one doubts that even the limited results of our deliberations would have been possible.

I. Article XXIII Procedures

I have not much to add to the contents of the report which deals mainly with the question of a possible amendment to Article XXIII of the GATT. The result is a set of procedures which may be invoked by less-developed countries when they have recourse to Article XXIII.

The report gives a succinct summary of the work of the Group on Article XXIII, and the Committee will have seen the draft decision on Article XXIII in the Annex to the document. That text contains a number of "square brackets". The principal ones are around paragraphs 7, 8 and 12. The Group was not able to resolve the issues reflected in these three paragraphs, and the Committee will therefore have to arrive at a conclusion itself as to whether it wishes to adopt for transmission to the CONTRACTING PARTIES the text of the draft decision without these disputed paragraphs. A few other square-bracketed passages partly represent consequential changes dependant on those paragraphs.

It can be said that even without the square-bracketed paragraphs, the decision could stand on its own as a useful improvement of the present procedures of the Article XXIII. Actual proof can only be obtained when the decision is put into practice.

The Group considered it within its mandate to propose a draft decision rather than a legal amendment. One of the reasons for which this course is recommended is that much more time would be needed to put into effect an amendment than a decision. An amendment would involve all the inevitable delays of a legal protocol.

II. Surcharges

As regards the use of import surcharges, the Ad Hoc Group has instructed me to make an oral report to the Committee on the current state of our discussion of proposals for the insertion of provisions in Article XVIII which would permit developing countries to use import surcharges for balance-of-payments reasons.

The task as it was originally given by this Committee to the Group seemed, on the surface, quite simple, namely to have a general legalized approval in the context of Article XVIII of the use of surcharges instead of, or in conjunction with, quantitative restrictions, which are already available under Article XVIII for developing countries having balance-of-payments difficulties. When the Group went into a more thorough discussion of what is involved, it found, however, that the question was not as simple as I suppose everybody originally thought. A number of issues came into the foreground, and the Group was not able to come to an agreed single solution. The principal problems which arose were the following:

Question No. 1

Whether, and if so for how long a period of time, surcharges and quantitative restrictions can be imposed on one and the same product. At first the view was put forward by some members that surcharges should be used only as an alternative to quantitative restrictions. Later on the Group came close to agreeing that surcharges and quantitative restrictions could, under certain situations, be imposed on the same products. According to some, however, there should be a rather strict limitation on the period during which such simultaneous imposition of surcharges and quantitative restrictions could be permitted. Others in the Group thought that there should be no time limit for the co-existence of surcharges and quantitative restrictions on the same products.

Question No. 2

Whether surcharges must or must not be necessarily uniform for broad classes of products. In fact practically all members of the Committee seemed to agree that normally surcharges imposed to combat balance-of-payments difficulties should be rather uniform, i.e. uniform for each broad class of products, such as consumer products, raw materials, manufactured products or other large groups. But the question was whether and how this should be legally prescribed. The Group could not agree that the present text of Article XVIII, with respect to quantitative restrictions, requires that such restrictions must be applied to broad classes or products because the present Article XVIII does refer to the general level of imports but contains no explicit words signifying broad classes of products.

Question No. 3

Whether surcharges must or must not be necessarily imposed without discrimination between sources of supply. The present Article XVIII in conjunction with Article XIV appears to provide that a contracting party imposing quantitative restrictions could in special circumstances discriminate as to sources of supply. However, it was felt by some members that this should not be so and that it should be so stated in any text.

Question No. 4

Whether surcharges should or should not necessarily be part of a general measure or a series of measures to improve the balance of payments. A proposal that this should be the case was submitted in the Group, with the requirement that the total effects of such general measure or series of measures should not exceed the limits prescribed in paragraph 9 of Article XVIII. Some members of the Group felt that it was not justified to make such a requirement. They felt that surcharges could stand (from the legal point of view) on their own without being explicitly part of a general measure or a series of measures.

Question No. 5

The scope and periodicity of consultation in relation to the imposition of surcharges. On this question the Group came very close to agreement but time was insufficient to prepare an adequate text. The matter was not much pursued because the other, more important, issues were not resolved. In the earlier discussions the issue was whether consultations on surcharges should extend only to items bound under the General Agreement or whether they should cover the totality of the tariff items on which surcharges were imposed irrespective of whether or not they were included in a GATT schedule. At a later stage the Group came very near to the conclusion that while the consultations might extend to the totality of items on which the surcharges were imposed, any legal recommendations under Article XVIII could be effective only with respect to items on which the contracting party imposing the surcharges has assumed obligations under Article II of the Agreement. On the question of periodicity, namely how often the consultation should take place, there were differing views.

Closely related to these five issues is the question of a definition of surcharges. Probably the majority of the Group agreed that had it been possible to resolve these issues it would have been useful to have included in the text a definition of surcharges. Drafts of such a definition were put forward by two members of the Group and were discussed at considerable length.

It is now up to this Committee to decide how it wishes to proceed. I wish to point out that the mandate given to the Group permits the conclusion that no amendment or generalized procedure is needed so that the present procedure of asking for individual waivers under Article XXV:5 would be continued. Many members of the Group felt, however, that with more time the issues which are outstanding could be provided with a solution and a text drawn up. It is for this Committee to consider and to recommend to the CONTRACTING PARTIES whether or not this work should be continued and if so in what manner.