

GENERAL AGREEMENT ON TARIFFS AND TRADE

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BELGIAN AND LUXEMBURG REQUESTS FOR WAIVERS

Report by the Working Party
appointed by the Intersessional Committee

(Adopted by the Committee on 8 July 1955)

1. The Working Party, appointed by the Intersessional Committee on 24 June 1955, has examined the requests by the Governments of Belgium and Luxemburg for waivers of obligations under Article XI for specified agricultural and fisheries products. The Working Party has reached the conclusion that it cannot at this time submit a report to the CONTRACTING PARTIES on the Belgian request and has therefore decided to report to the Intersessional Committee in accordance with paragraph 1(b) of its terms of reference. As for the request by the Government of Luxemburg, the Working Party considers that this should be deferred and should be considered by the CONTRACTING PARTIES along with the Belgian request at the Tenth Session. The following are the considerations which have led the Working Party to these conclusions.

I. THE BELGIAN REQUEST

2. The request by the Government of Belgium for a waiver from the obligations of Article XI was submitted in document L/357 and Addendum 1. In Addendum 2 the Belgian Government gave details of the fifty-six tariff items or part-items to which the request relates together with supporting considerations and a description of the tariff and restrictive systems in force. The Working Party examined the request, as required by its terms of reference, within the terms of the Decision of 5 March 1955 "on problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties", and with reference to the agreed statements which had been included in the report of the Review Working Party which drafted that Decision with the intention that they should serve as a guidance to the CONTRACTING PARTIES when called upon to act under the Decision. In response to requests by members of the Working Party the Belgian delegation furnished orally additional information concerning agricultural and commercial policy, the administration of import restrictions and the trading arrangements within the Benelux customs union. Members of the Working Party were given copies of the Decision of 3 May 1955 by the committee of Ministers of Benelux on the harmonization of agricultural policies together with copies of the Agricultural Protocols of 9 May 1947 and 21 October 1950. During the discussions, the Belgian representative withdrew four of the items which had been included in the request, viz., tariff items 13 b 1, 24 a 2, 24 b and 50 d 3.

3. The Belgian Government's request for a waiver relates to restrictions on imports from countries other than its partners in the Benelux customs union. Generally imports of agricultural products from The Netherlands are admitted free of quota restriction as well as free of duty, but imports of many items are subject to minimum prices fixed in accordance with the Agricultural Protocol of 9 May 1947. (Fish are an important exception: fish imports from The Netherlands are not subject to minimum prices but there are quantitative restrictions on certain items.) The Belgian representative explained that the restrictions on foreign produce and the minimum price regulations applied to imports from The Netherlands are maintained in order to protect Belgian

agriculture and fisheries, which have a high cost structure. It is intended that the import restrictions and price regulations will be maintained during a period of transition in order to allow time for adjustments to be made whereby Belgian produce will become competitive with that of The Netherlands. The Decision of 3 May 1955 of the Committee of Ministers of Benelux provides for the harmonization of agricultural policies within seven years and a programme of the steps to be taken towards this goal is to be established annually.

4. The Working Party decided to make a general examination of the Belgian request within the provisions of the Decision of 5 March, and then to examine it in detail on a product-by-product basis.

5. The Working Party was informed by the Belgian representative that all the measures covered by the application have been continuously in force since 1 January 1955 - which is one of the requirements laid down in paragraph 2(a) of the Decision of 5 March. The Belgian Government considers that the sudden removal of restrictions which have been continuously or seasonally applied would result in serious injury to domestic producers of like products and that the maintenance of these restrictions is necessary for adjustments to be made. Some restrictions have been "in force" only in the sense that the Government has the power to restrict imports at any time this may be considered necessary. On some products no import limitations have been applied for two years or more, but the Government regards it as essential to the achievement of the aims of its agricultural policy that it should be able to apply restrictions on such products at any time in order to prevent serious injury. It was suggested that Belgium might consider whether this last type of situation could be met by recourse to Article XI:2(c) or Article XIX. The Working Party has not been able to examine the situation of each product in relation to the likelihood of injury in the absence of import restrictions, and is of the opinion that it would be desirable to obtain further information from Belgium regarding the extent of injury which would eventuate in each case if the restrictions currently applied were removed and also regarding the restrictions which have not been applied recently.

6. The representative of Belgium stated that it was necessary to put forward this request for a waiver because of the Benelux customs union arrangements. Belgium alone could achieve its purpose in most cases by increases in import duties, but since there is a uniform tariff for the Benelux Union additional tariff protection could not be given to Belgian agriculture without at the same time increasing the duties on imports into The Netherlands. The Working Party agreed that it would not be in the interests of the contracting parties generally to see the import duties for the whole of the Benelux territory increased. Members of the Working Party enquired whether subsidies could be used as an alternative measure. To this the representative of Belgium replied that assistance to agriculture by means of subsidies would not be appropriate for the products in question, as it would be far too costly. He said the Belgian Government granted subsidies to agricultural products where domestic production supplied only a small part of national requirements, for example cheese; imports of such products would then be admitted without restriction.

7. The Working Party then considered whether there was "a reasonable prospect" - as required by paragraph 2 (c) of the Decision - "of eliminating the restrictions over a comparatively short period of time". For some products, it was felt that the Belgian Government could plan to remove the restrictions in the near future, but for many others it was not yet clear in the opinion of some members that Belgian agriculture could become competitive with agriculture in The Netherlands within a short period. The Belgian representative acknowledged that his Government had not as yet formulated policies for harmonizing the agriculture of the two countries nor had it prepared a programme for the removal of the restrictions. In fact, under the Decision of the Benelux Ministers of 3 May 1955, the Belgian Government is accorded a "probationary period" of one year in which to work out the details of the new policy and to adopt the appropriate legal measures. The Working Party considers that the Belgian Government should furnish evidence that the elimination of the restrictions within a short period is in reasonable prospect, before the CONTRACTING PARTIES could concur in their maintenance under the Decision of 5 March 1955.

8. The requirement that the applicant contracting party shall agree to undertake to "carry out a policy for a progressive relaxation of each restriction and for its elimination" over a comparatively short period was considered in the light of paragraph 89 of the Review Working Party's Report setting out an agreed interpretation of paragraph A.3(c) of the Decision to the effect that this does not necessarily oblige the contracting party to "increase automatically each year the amount to be imported" etc. The representative of Belgium said that his Government could accept this undertaking; the scope of importation would be broadened whenever possible, though generally his Government would prefer to proceed with the elimination of the restrictions by completely liberating products when possible rather than by gradually increasing the amounts that could be imported.

9. Members of the Working Party also enquired about the undertaking, to which the Belgian Government would be obligated, to grant to other contracting parties "a fair and reasonable share of the market" for the products concerned and "to allow imports representing a total share of the market as favourable as that obtaining on the average during the preceding three years". Members solicited information concerning the administration of the restrictions in the past and the Government's intentions for the future, but did not feel certain that Belgian policy was in all ways compatible with this undertaking.

10. The Belgian representative said his Government was confident that all of the restrictions covered by his Government's request could be applied in a non-discriminatory manner. For many products, however, this question would not arise as there were closed and open seasons, i.e. periods of the year during which no imports from countries other than The Netherlands are permitted and other periods when no restrictions are applied. Despite these assurances, some members of the Working Party were concerned about certain aspects of Belgian policy in relation to the provisions of Article XIII. They considered that, whenever practicable, either a global quota should be fixed or quotas

should be allocated to exporting countries in accordance with the provisions of Article XIII. For a few products included in the application, imports from countries other than The Netherlands are controlled in accordance with the terms of bilateral trade agreements. Although further information would be required before the Working Party could form a judgment on this system, some members expressed doubt whether the Belgian Government could guarantee that the administration of these restrictions would be compatible with the provisions of Article XIII. The Belgian representative stated that at present there is no state trading in any of the products covered by his Government's request and that, therefore, the second part of paragraph B.2 of the Decision is not relevant. As for the discrimination in favour of The Netherlands, the Belgian representative took the view that it was fully justified by the terms of Article XXIV. This view received considerable support, but some members reserved their position on this point.

11. The condition that a contracting party to whom a waiver is granted shall communicate regularly "the total amount of the product the importation of which will be authorized by it during the following licensing period" was examined in the light of paragraph 90 of the Report of the Review Working Party. In that paragraph it is recognized that it may not always be practicable to announce in advance the quantity of imports that will be admitted.

12. The Belgian representative assured the Working Party that his Government would readily undertake to submit annual reports on progress made in the relaxation of restrictions, etc., as required by paragraph B.4 of the Decision.

13. At the conclusion of the Working Party's study some members would have been willing to proceed with a view to recommending concurrence by the CONTRACTING PARTIES in accordance with the provisions of the Decision of 5 March. A majority of the members, however, felt that on the basis of the information before it the Working Party could not determine whether or not such concurrence should be recommended. In particular, these members considered that the Belgian Government had not provided sufficient evidence that there is a reasonable prospect of the restrictions being eliminated within a short period. Moreover, there is the difficulty that the Government of Belgium has asked for a waiver for seven years whereas the maximum period allowed by the Decision is five years.

14. Members of the Working Party are conscious of the fact that this is the first occasion on which an application for a waiver has been examined within the terms of the so-called hard-core Decision adopted at the Review Session. The Belgian Government had applied for a waiver under Article XXV and therefore without reference to the provisions of that Decision, but even if it had applied for a concurrence under the Decision it would have had to prepare its application without detailed guidance from the CONTRACTING PARTIES as to the kind of information they would require. It appeared desirable that on this occasion, which will inevitably set a precedent for the treatment of any other applications, most careful attention should be devoted to the application of the general principles embodied in the Decision and to the basic considerations that should govern the judgment of the CONTRACTING PARTIES in taking action under the Decision.

Accordingly, the Working Party submits in Annex A a tabulation of the matters which in its opinion should be investigated in connexion with each application for a "hard-core" waiver. The Working Party suggests that the Intersessional Committee should invite the Belgian Government to submit information in the manner proposed and should recommend to the CONTRACTING PARTIES that this tabulation be adopted for use by any other contracting party which may wish to make an application for approval to maintain restrictions in derogation of Article XI where a concurrence under the Decision of 5 March is sought or where the terms of that Decision may be relevant.

15. Members of the Working Party have expressed their keen appreciation of the readiness of the Belgian representatives to answer all questions concerning the restrictive measures involved in their Government's request and to furnish information on all aspects of Belgian policy. Nevertheless, members feel that additional information is required before the CONTRACTING PARTIES can reach a decision on the application. The points on which supplementary information is required are listed in Annex B. Moreover, it appeared to some members that some of the restrictions in force might be judged to fall within the scope of Article XI or Article XX of the General Agreement, and the Belgian representative undertook to consider this possibility.

16. With the concurrence of the representative of Belgium, the Working Party proposes that the additional information should be furnished not later than 1 September and that the request be considered by the CONTRACTING PARTIES early in the Tenth Session. In deciding upon this recommendation, the Working Party is not unmindful of the statement by the Belgian Government (document L/357) that it will wish to know the fate of its request before signing the Protocols amending the General Agreement. In view of the postponement of a decision on its request the Belgian Government may ask for an extension of the time limit for signing those Protocols when it expires on 15 November.

17. Finally, the Working Party wishes to record its view that while Belgium's application for a waiver is under consideration by the CONTRACTING PARTIES, no complaint under Article XXIII concerning any of the import restrictions covered by the Belgian request should be considered under clause (a) of paragraph 1 of that Article.

II. THE LUXEMBURG REQUEST

18. The request by the Government of Luxemburg for a waiver from the obligations of Article XI was submitted in document L/358. In the addenda to that document the Luxemburg Government gave an account of the situation of agriculture in Luxemburg and details of the 23 tariff items or sub-items to which the request relates. The Luxemburg Government considers that the need of Luxemburg's agriculture for protection is of a structural character and cannot be regarded as temporary or transitional and therefore its application is made under Article XXV:5(a) and not under the Decision of 5 March. In this connection attention was drawn to paragraph 76 in the Report of the Review Working Party which drafted the Decision of 5 March, which states that the adoption of the Decision would not preclude any contracting party from availing itself of the provisions of Article XXV:5(a) and that this procedure "might be appropriate in the case of Luxemburg whose representative submitted that the difficulties of his country could hardly be met by action under the Decision". Although the Luxemburg Government was not asking for a concurrence under the Decision of 5 March, members of the Working Party considered that it would be useful to examine the request in the first instance in the light of the criteria laid down in that Decision. The Luxemburg representative furnished orally additional information concerning the protection for agriculture and the administration of the restrictions on imports.

19. The Belgium-Luxemburg Convention of 23 May 1935 established a common regime for the regulation of imports and exports and provided, as an exception to the general rules and for the purpose of protecting the agriculture of Luxemburg, that Luxemburg would have the right to regulate unilaterally the imports of certain products across all frontiers including the common frontier with Belgium. Within the more recent Benelux arrangements Luxemburg is authorized to maintain these restrictions but the range of products is slightly extended and it is to this extended group of products that the present request for a waiver from the provisions of Article XI relates. Thus Luxemburg wishes to obtain recognition by the CONTRACTING PARTIES of the special protection which its agriculture enjoys within the Benelux customs union. The twenty-three items may be imported, whether from the partners in the customs union or from other countries, only under licence, and these licences are granted whenever supplies are required to supplement domestic production. In nearly all these products, however, Luxemburg is almost self-sufficient and in a few cases there is a small surplus for export. Because of the dependence of 20 per cent of the population on agriculture and the impossibility of competing with the agriculture of other countries, it is Luxemburg's policy to reserve the home market for domestic produce at remunerative prices and this involves the payment of consumers'

subsidies. The Luxemburg representative stated that his Government is convinced that, in view of the very small population and size of the country, this special protection does not materially affect the commercial interests of other contracting parties and that its recognition would not establish a significant precedent.

20. The representatives of Belgium and Luxemburg explained the relationship between the requests submitted by their respective Governments. A restriction on an item which appears in both requests will be maintained by Luxemburg after it has been eliminated by Belgium; while applied by Belgium it will be administered by the Belgian authorities and thereafter it will be administered in a non-discriminatory manner by Luxemburg. A restriction applied to an item which is on the Belgian list only will control importation into the whole territory of the Economic Union and when it is eliminated no restriction will remain on imports into Luxemburg. In the administration of restrictions on items in the Luxemburg list only there will be no discrimination between sources of supply.

21. The Working Party considered that the arrangements for the protection of Luxemburg's agriculture are so closely associated with the protective measures which apply to the whole of the Belgo-Luxemburg Economic Union that the requests by the two Governments should be examined and decisions taken by the CONTRACTING PARTIES at the same time. The Working Party felt considerable sympathy with the Luxemburg request but considered that, in view of its recommendation that the Belgian request should be taken up at the Tenth Session, a decision on the Luxemburg request should be taken at that time. The Luxemburg representative agreed to this proposal. Therefore the Working Party has not considered the terms and conditions on which a waiver might be granted to Luxemburg. Members of the Working Party suggested that the Luxemburg Government might be able to furnish additional information and documentation along the lines proposed in the Annexes to this Report. The representative of Luxemburg said that he doubted whether there was any further information that could be given, but that his Government would consider the possibility of supplementing the information which had been submitted with the application; if further information could be supplied it would be submitted to the Executive Secretary by 1 September so that the application could be considered early at the Tenth Session.

22. The representative of Luxemburg stated that the position of his Government in relation to the signing of the Protocols amending the General Agreement was the same as that of the Government of Belgium and that, in view of the postponement in considering its request, his Government might also ask for an extension of the time-limit for signing the Protocols.

23. As in the case of the Belgian request, the Working Party wishes to record its view that while Luxemburg's application for a waiver is under consideration by the CONTRACTING PARTIES no complaint under Article XXIII concerning any of the import restrictions covered by the Luxemburg request should be considered under clause (a) of paragraph 1 of that Article.

ANNEX A

QUESTIONNAIRE IN RELATION TO EACH ITEM INCLUDED IN
AN APPLICATION UNDER THE DECISION OF 5 MARCH 1955

1. Product.
2. Tariff item number.
3. Provisions of tariff:-
 - (i) Rate of duty;
 - (ii) Whether duty bound under the General Agreement;
 - (iii) Any special features relating to the administration of the tariff item, such as seasonal rates, tariff quotas, etc.
4. Nature of the quantitative import restriction, showing with appropriate detail:
 - (i) Whether the restriction takes the form of a complete prohibition, a seasonal prohibition, a quota system or a licensing arrangement;
 - (ii) If a seasonal prohibition, the periods during which imports are (a) admitted from all supplying countries, (b) admitted from some supplying countries only, and (c) prohibited entirely or admitted only under special permission;
 - (iii) If quotas or import licences are not available for all supplying countries, the basis for establishing quotas and granting licences;
 - (iv) The size and allocation of quotas;
 - (v) Method of determining and administering quotas or licences, including the rôle of any advisory or other committees that may exist.
5. The reasons why it is considered necessary to maintain the restriction and the considerations that cause the restriction to take its particular form.
6. The date of imposition of the restriction.
7. Statistics of imports (by sources of supply), exports and national production during each of the last three years.
8. The period required for the complete removal of the restriction.
9. The likely effect of the sudden and complete removal of the restriction.

10. Methods of adjustment to enable such effect to be avoided and prospective time-table for such adjustments.
11. Policy for progressive relaxation of the restriction.
12. Alternative measures compatible with the General Agreement and reasons why resort to them is considered impracticable. (The reply to this question should deal at least with the principal measures formally open to the contracting party).
13. Undertaking to grant other contracting parties a fair and reasonable share of the market: amount of market to be assured to these other parties and method of determining amount; method whereby administration of the restrictions will be adjusted if necessary to comply with this undertaking.
14. Undertaking of non-discrimination: method whereby administration of the restriction will be adjusted if necessary to comply with this undertaking.

ANNEX B

QUESTIONS RELATING TO THE BELGIAN REQUEST

1. L/357 refers to a review of the restrictions which will be maintained by the Belgian Government. Are there any quantitative restrictions on imports of any agricultural or fishery items other than those listed in L/357/Add.2? If so, what are they and what are the Belgian Government's intentions in regard to them? Does the Belgian Government propose to release immediately the items which were withdrawn from L/357/Add.2 during the discussions in the Working Party?
2. What are the obligations Belgium has undertaken in Benelux as regards imposition of tariffs or quantitative restrictions against third parties and the granting of preferences to The Netherlands? The reply should be accompanied by relevant documents, including L'Accord de Pré-Union of 15 October 1949 (Annex 4 Chapter 1) referred to in Article 7 of the Protocol of 21 October 1950?
3. The Protocol of 21 October 1950 requires Belgium, so long as it retains products on List A, to impose restrictions on imports of these products from third countries. Is not this requirement qualified by Belgium's obligations under the General Agreement?
4. Having regard to the statements by the Belgian representative referred to in paragraph 6 of the Report above, what would be the objections from the point of view of (a) Belgium and (b) The Netherlands to replacing Belgium's quantitative restrictions on imports from third countries by charges on imports from such countries into Belgium not chargeable on similar imports into The Netherlands? Would the objection be the same in the case of List A items and other items? Does the Customs Union provide for the imposition of such charges in any circumstances?
5. What is the history of the policy for establishing free exchange of agricultural products within Benelux? What progress in this policy has been achieved to date?

6. Will the Belgian Government describe the various means available to it and/or to the Netherlands Government for attaining a common level of agricultural prices and give as much indication as possible of the means which are likely to be adopted?

7. How is it expected that the policy of harmonization will affect the relation of Benelux costs to those of other countries?

8. It is noted from statements of the Belgian delegation that Belgium intends to reduce the restrictions by eliminating them product by product rather than by a progressive relaxation of each restriction. Could the Belgian Government give a more precise indication than hitherto of the time by which it is hoped to remove the restrictions at any rate on some of the products?

9. It is noted that for a number of items, particularly fish and certain horticultural items, imports from The Netherlands are not regulated either by minimum prices or any other arrangements. In regard to certain of these items, the Belgian delegation has already indicated that it might be possible for restrictions to be abandoned comparatively soon. Could the Belgian Government give an indication of when and on what conditions they might hope to eliminate, or at any rate to start on substantial reduction of, the restrictions? What are the obstacles which stand in the way? Do they include the need for consultation or co-ordination of action with The Netherlands?

10. Would the Belgian Government provide further information concerning the Benelux Agreement of 3 May 1955, including information as to the extent to which action has been taken under that Agreement by the Belgian Government, the nature of the proposed Agricultural Fund, whether there is provision in the Agreement to deal with the situation should it not be possible to harmonize agricultural policies completely within seven years and whether there is provision in the Agreement concerning the liberalization of imports of any particular products and, if so, the nature of such products.

11. In answering the questionnaire set out in Annex A, will the Belgian Government:

- (a) in answering question 4, provide separate information for the restrictions on imports from The Netherlands and from other suppliers?
- (b) in answering question 5, provide information to explain the reasons for any difference between the treatment accorded to imports from The Netherlands and imports from other countries?
- (c) in answering question 7, show the extent to which the demand in the BLEU is normally met by imports from The Netherlands and other countries; give production statistics for BLEU and export surplus figures for The Netherlands?
- (d) in answering question 8, in cases where a difference in costs between the BLEU and The Netherlands is the basic reason for the restriction, provide an indication of the cost difference?