GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
L/1646
24 November 1961
Limited Distribution

CONTRACTING PARTIES
Nineteenth Session

Original: English

APPLICATION OF GATT TO INTERNATIONAL TRADE IN TELEVISION PROGRAMMES

Statement made by the United States Representative on 21 November 1961

In view of the crowded agenda which the CONTRACTING PARTIES face and the work most delegations are doing in preparation for the ministerial meeting, I approach with some hesitation a subject which must necessarily occupy some more of the time of this assembly. I will, however, try to be as brief as the subject allows. My purpose today is to introduce a problem to which the CONTRACTING PARTIES should devote serious consideration, although further discussion of this problem may be deferred, if that is your wish, until later in this session.

The background of the United States request for consideration of the problem of trade in television programmes is briefly as follows. Since the General Agreement was drawn up recorded television programmes have become an important article of commerce, and their importance is growing rapidly. Every year sees a multiplication in the number of television stations and the number of broadcasting facilities in the world. Many of these broadcasting stations are State owned but the proportion of independent, commercially operated facilities is rapidly increasing.

The treatment of imported television programmes, whether recorded on video tape or photographed on film, varies greatly from country to country. Some markets are relatively free to the importation of foreign programmes. Others are severely restricted by governmental measures which limit the percentage of total viewing time that may be devoted to programmes not produced by the domestic industry.

In order to place the problem in all its important dimensions before the CONTRACTING PARTIES, it is necessary for me to speak briefly about the legal status of these restrictions under the GATT. In doing so I want to make clear that I am not pressing the legal issue at this time, but it is necessary to bring it up so that the CONTRACTING PARTIES can appreciate why there is a problem involved which they cannot well afford to ignore if the integrity of the General Agreement is to be maintained.

Article III of the Agreement governs the use of internal quantitative regulations which affect the sale or use of imported products. In general, it establishes a rule of national treatment with certain exceptions. The

most important exception is that in paragraph 6 which permits the maintenance of an internal quantitative regulation which was in force on any of certain dates, the latest of which was 24 March 1948. I think there can be no question that regulations which limit the showing of imported television programmes fall within the obligations laid down in Article III. If it were to be argued that recorded television programmes are not products in the sense in which the word is used in this Article, how can we explain the fact that the CONTRACTING PARTIES found it necessary to write a separate Article - Article IV -- relating to restrictions on the showing of cinema films and very explicitly to state that the provisions of that Article represented an exception to the provisions of Article III? On the other hand it may be contended that the exception in Article IV itself applies to recorded television programmes, but this contention clearly breaks down on two counts, when we examine the language of Article IV. Not all television programmes are films some are on video tape. Even more important, a restrictive measure in order to benefit from the exception provided in Article IV must take a form which is simply not applicable in the case of television programmes.

I said that the United States is not at this time pressing the legal issue. This is because we realize that even where television is not government owned, governments have quite properly taken a special interest in it because of its importance as a cultural and informational medium. Even if this were not so, it is inevitable that a fairly large proportion of television time will be taken up with programmes of purely local interest, such as weather reports, news broadcasts and local sporting events. But after allowance is made for such local programmes, there is still a substantial portion of time in which the selection of programmes could quite properly conform to more commercial criteria such as consumer demand.

Here I feel I must attempt to dispel a misunderstanding. I realize that there is a widely held view that if any country were to permit consumer demand alone to rule it would be subjecting the minds of its people, and particularly its young, to a flood of crime shows, equestrian violence and infantile entertainment. This need not be so. We are not asking that governments refrain from adopting any standards of excellence they may wish. What we do object to is the establishment of arbitrary distinctions based simply on the sources of television programmes. In the United States, a television viewer can find, on one channel or another, and during the most popular viewing hours, a wide selection of documentary programmes on world events, educational programmes on such subjects as nuclear physics or medicine, travel programmes which will take him to parts of the world which he may never be able to visit, and entertainment involving the best that the world of music and the dramatic arts can offer. Furthermore, there is no reason why the country concerned should not preserve the purity of its own language. American programmes, for example, are being shown in many countries of the world with the native language of the viewers dubbed in. If for some perverse reason, an English-speaking country prefers its own version of Shakespeare's tongue to that which is current in the mountains of North Carolina, I assume that his version could be similarly applied. If practitioners of one of the other brands of English should be shocked by the thought of Hannibal speaking to his elephants in the language of Hollywood, I know of no reason why he cannot be made to speak in accents that would sound more familiar to the inhabitants of southern England.

Incidentally, the American broadcasting companies are hungry for more worthwhile programmes. They are glad to show foreign material when they can obtain it - and do. There are no governmental or private restrictions in the United States on the use of programmes produced abroad.

This, then, is the background of our request to the CONTRACTING PARTIES. A whole new field of commerce has come into being since the General Agreement was drafted and it is growing rapidly. It cannot be contended that the GATT is inapplicable to a new product simply because it is new. True, we are dealing with a product which is important not only commercially but culturally and as an informational link between friendly countries. But surely that does not disqualify it for GATT consideration. The CONTRACTING PARTIES must show themselves capable of dealing with a matter of such importance.

Our minds are open as to just how the GATT should deal with this issue but we have reached some conclusions as to methods that would not be appropriate. We do not think, for example, that it would be adequate simply to interpret Article IV as covering television programmes. There are very real differences between the conditions under which moving picture films and television programmes are displayed. For example, in nearly every city in the world a movie-goer has a wide choice among moving picture theatres. There is thus a strong element of competition among theatres to obtain the best material or at least that which the public likes - no matter what its source. For this reason, it was safe to draw up Article IV on the assumption that popular and commercial pressures would prevent a government from limiting too drastically the use of imported films. Furthermore, the viewing public can see the material of its choice at the time of day it chooses. If a viewer wants to see a foreign film, he can see it at the most favourable time of day for him. He is not required, as he may be in the case of television, to limit his choice to the programme which happens to be on the air at the most convenient time. Neither of these conditions is applicable to television at the present time and will not be applicable until there are far more competing television stations available to the average viewer. For these reasons, the United States feels that, whether the solution should be an adaptation of Article IV, whether it should take the form of a resolution of the CONTRACTING PARTIES or some other form, it should provide that reasonable proportion of favourable viewing time during which imported programmes would be permitted to compete with programmes produced by the domestic television industry.

We do not ask, Mr. Chairman, that the CONTRACTING PARTIES arrive at a final solution to this difficult and complicated problem at the present session. We do propose, however, that a working party be established to explore present aspects of this question and present, not too late in 1962, to the next session or to the Council, recommendations which will enable the CONTRACTING PARTIES to cope with a problem which is clearly within their competence and concerning which they have a clear responsibility.