

5

Historical documents of disputes

5.a Working Party 7 on the Cuban Schedule, membership and terms of reference

RESTRICTED
LIMITED C
GATT/CP.2/WP.7/1
11 September, 1948
ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

WORKING PARTY 7 ON THE CUBAN SCHEDULE

Membership:

Mr. L.D. WILGROSS, Chairman

Cuba

India

Netherlands

United States

Terms of reference:

To consider, in the light of the factual evidence submitted to it, the request of the Government of Cuba relating to the renegotiation of certain tariff items listed in Schedule IX of the General Agreement and the statement of the United States representatives relating to Resolution 530 of the Government of Cuba on the importation of textiles, and to recommend to the CONTRACTING PARTIES a practical solution consistent with the principles and provisions of the General Agreement.

5.b Working Party 7 on Brazilian Internal Taxes, membership and terms of reference

GENERAL AGREEMENT ON TARIFFS AND TRADE	ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE	RESTRICTED LIMITED C GATT/CP.3/WP.7/1 29 April 1949 ORIGINAL: ENGLISH
--	--	---

Contracting Parties
Third Session

Working Party 7 on Brazilian Internal Taxes

To examine, in the light of the provisions of Article III and of the Protocol of Provisional Application and taking into account the remarks made during the discussion in the meeting of the Contracting Parties, the discriminatory internal taxes imposed by the Government of Brazil on products of foreign origin.

Membership

Brazil	France
China	India
Cuba	United Kingdom
United States	

The Working Party will elect its own Chairman.

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.4/SR.15
14 March, 1950.
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fourth Session

SUMMARY RECORD OF THE FIFTEENTH MEETING

Held at the Palais des Nations, Geneva,
On Tuesday, 14 March 1950 at 2.30 p.m.

Chairman: Hon. L.D. WILGRESS (Canada)

- Subjects discussed:
1. Australian Subsidy on Ammonium Sulphate - (continued discussion).
(GATT/CP.3/61 and GATT/CP.4/23).
 2. 1950 Tariff Negotiations: other plans and arrangements.
 3. Review of Brazilian internal taxes
(GATT/CP.3/42).

1. Australian Subsidy on Ammonium Sulphate (GATT/CP.3/61 and GATT/CP.4/23).

Mr. EVANS (United States) said that his delegation had followed the deliberations with great interest, and had come to the conclusion that this difficult question, involving both matters of fact^{and} interpretation of provisions of the Agreement, deserved the closest attention by the Contracting Parties. At this stage his delegation found it difficult to agree that Australia had infringed the provisions of Article I and III of the Agreement; but held the view that concessions granted by Australia, at Geneva, had been impaired in a way that Chile might not be reasonably expected to accept. Steps, therefore, should be taken under Article XXIII of the Agreement, which provided for such cases not necessarily involving any violation of the obligations a contracting party under the Agreement. This delegation, therefore, supported the proposal that a working party should be set up and entrusted with the tasks of studying the facts in relation to the provisions of the Agreement. The report of such a working party would be valuable in guiding the Contracting Parties in dealing with similar cases in future.

Mr. DEUTSCH (Canada) was doubtful whether the case came at all within the preview of Articles I or III; in his view it was more likely to fall under Articles XXIII and XVI. The Working Party should be asked especially to study the provisions of the latter article in relation to this particular case. It would be useful if Australia could supply statistical information on its trade in

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)

GATT/CP.4/SR.15
Page 2.

past years in the products in question, and on their production.

Mr. WALKER (Australia) replied that the statistics of local production of the two products were not satisfactory, and could not be readily supplied. He could give figures relating to consumption and importation of the products and further details would be supplied to the Working Party if the latter considered it necessary. With regard to the suggestion that Geneva concessions had been nullified, he felt it reasonable to say that changes in such war-time measures as subsidies must have been envisaged even at Geneva. When the war-time price-control powers of the Government lapsed, a revision of the existing subsidies became necessary. Such measures were being reviewed annually and revisions made from time to time in accordance with the changing needs of the country. In this connection, he would mention that even the existing subsidy on Ammonium Sulphate was to be reviewed in the course of the present year.

In reply to the Chilean representative, he said that whatever words might have been used by the Australian representative at the negotiations in London, Australia had definitely not accepted that it had infringed any provision of the Agreement, but, in view of the importance attached by Chile to the problem, Australia had agreed to undertake negotiations under Article XXIII with a view to providing a certain degree of satisfaction for Chile. The concessions offered by Australia were, unfortunately, not accepted.

Referring to remarks of the Chilean representative at a previous meeting, Mr. WALKER said he had not meant to cast any doubt on the quality of Chilean Nitrate as a fertilizer, nor had he implied that Nitrate as a fertilizer was intrinsically inferior to Ammonium Sulphate. But, the two fertilizers did have different properties making them more suitable for different purposes and different conditions. The preference in other countries, such as the United Kingdom and Sweden, for one or the other of them was, therefore, not necessarily relevant. The chief characteristics of the two products might be briefly mentioned: Except in the growing of sugar, nitrate could be used only when mixed with other fertilizers. In view of the mechanical process of such mixing account had to be taken of the chemical properties of a fertilizer, such as its moisture absorbing qualities and its readiness to crystalize. It was clear that a fertilizer had to be chosen with

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)

GATT/CP.4/SR.15
Page 3.

due regard to the conditions of agriculture, the properties of the soil, and the nature of the product. Furthermore, the Chilean representative had viewed the question merely as one of the comparative benefits to the industries producing the two fertilizers. From the Australian point of view, however, the abolition or maintenance of such subsidies had to be decided with regard to their impact on agricultural development, and it was in the light of the needs of Australian agriculture that the government had decided provisionally to withdraw the subsidy on one of the products, and to retain it on the other. In other words, it was not a question of two mutually substitutable fertilizers, but a question of the Government's policy with respect to the users of the two products. The present policy of the Australian Government happened to require the discontinuance of the indirect subsidy on green vegetables which were benefiting from the fact that their prices were not controlled.

Mr. SHACKLE (United Kingdom) agreed to the proposal to set up a working party, believing that this was exactly the type of question suitable for detailed study by a working group. The legal question involved seemed to hinge on two facts, namely, the extent of actual damage Chile was likely to suffer from the suspension of the subsidy, and the intrinsic values of the two products with respect to their particular use in Australia. Besides these, there might be technical questions in studying which the Working Party would need help from independent technical experts. He would therefore suggest that the F.A.O. be approached in the first instance and requested to give assistance.

Mr. CASSIERS (Belgium) also agreed to the proposal to refer the question to a working party, and added that in studying the question the working party should not confine its attention to Article XVI, but also to Article III, paragraph 8 (b) and 9, because it was a question of the impact of subsidies on substitutable goods rather than of an impairment of negotiated benefits. Reference should also be made to paragraph 1 of Article XI, which prohibits the use of restrictions other than duties, taxes or other charges, whether made effective through quotas, benefits or other measures.

Mr. ALFONSO (Chile) thought it was necessary for him to re-
fute certain facts given by the Australian representative.

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)

GATT/CP.4/SR.15
Page 4.

Referring to the statement by Australia that the demand for nitrate was limited to industrial purposes, Mr. ALFONSO said that Australia was known to have been desirous of obtaining nitrate in great quantities for agricultural uses, and supported his argument by quoting from various statements made by Australian representatives at F.A.O. meetings, and further illustrated figures for Australian import of Chilean nitrate.

Mr. ALFONSO then emphasized again that his Government was not asking for a preferential treatment for Chilean nitrate, but only that it be given an equal opportunity to compete in a free market, and pointed out that if nitrate was not relatively suitable for Australian soil, then competition would naturally not help its sale in that country. The present greater demand by Australian producers for ammonium sulphate than nitrate could not be regarded as indicating their preference for the former as it had been made cheaper by the discriminatory subsidy.

Referring to the remarks of the Belgian representative Mr. ALFONSO pointed out that the unequal treatment accorded to the two like products clearly interfered with competition, and hence nullified Australia's undertaking to admit nitrate on a competitive basis under duty. The action clearly also contravened the basic principle of most-favoured-nation treatment embodied in Article I: 1. Furthermore, the spirit of Article XVI was not respected, although it would not be necessary to go into the details of the provision. Wherever Article XXIII: 1 (b) referred to "any measure, whether or not it conflicts with the provisions of this agreement, the case clearly falls under the latter category."

Mr. WALKER (Australia) replied that most of the points mentioned by the Chilean representative were suitable for detailed study by the working party, but he would reply briefly as follows: It was not his impression that the decline in the import of nitrate into Australia was attributable to the abolition of subsidy; figures showed clearly that the decline had begun before that action was taken. He would further point out that the figures presented by Chile did not agree with his own data, but this might be due to the inclusion or exclusion of re-exports or to dissention between Chilean export and Australian import subsidies owing to the lapse of time for shipments to reach Australia. The

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)

GATT/CP.4/SR.15
Page 5.

import of nitrate for industrial uses, as for the manufacture of other fertilizers, was never covered by the subsidy designed to benefit agricultural producers.

The CHAIRMAN summed up the discussions and suggested a procedure for the study of this question. Besides the facts in relation to Australia's trade and production of the products, and the legal implications of the provisions of the Agreement, the working party might have to study several technical questions, and for this purpose they might need to consult with inter-governmental organizations. He suggested that the Executive Secretary should, in the first instance, enquire if the F.A.O. regional office attached to the E.C.E. in Geneva had any experts on fertilizers, and if not, then other organizations should be approached. If the Working Party so desired, consultation with experts could be arranged by the Executive Secretary. With regard to the legal aspects of the question, certain articles of the Agreement referred to in the Chilean declaration (GATT/CP.4/23), and the representatives of the United States and Canada had supported the view that discussion should take place under paragraph 1 of Article XXIII. The Working Party, therefore, had to determine whether benefit accruing to Chile had been impaired. Other provisions of the Agreement referred to at this discussion were Article XVI, Article I and Article II: 2 and 4. The applicability of these provisions was, however, doubted by certain other representatives. These, as well as those referred to by the Belgian representative, namely Article XI: 1 and Article III: 8 (b) and 9, should also be examined by the Working Party. Following the precedent of past sessions, the CHAIRMAN suggested that a small working party consisting of 5 members should be set up and given sufficiently broad terms of reference which, he proposed as follows:

"To consider the arguments submitted by the delegations of Australia and Chile, with respect to the Australian subsidy on ammonium sulphate, and to make appropriate recommendations to the Contracting Parties with reference to the relevant provisions of the Agreement".

In reply to a question by the Chilean representative, the CHAIRMAN said that the Executive Secretary would make an enquiry about the availability of experts in Geneva, and would notify the Working Party what technical assistance could be obtained.

5.c Working Party on Australian Subsidy on Ammonium Sulphate, terms of reference and composition. Summary Record of the Fifteenth Meeting of the CONTRACTING PARTIES held on 14 March 1950 (*continued*)

GATT/CP.4/SR.15
Page 6.

Mr. EVANS (United States) suggested that the Working Party should consider first whether, and to what extent, it needed technical assistance before steps were taken by the Executive Secretary to obtain it, since otherwise a massive amount of information might be assembled to serve no useful purpose.

In reply the CHAIRMAN said it was his understanding that the Executive Secretary should be asked to ascertain whether expert assistance was available; the decision as to whether such assistance was called for would in any case be made by the Working Party itself.

The proposal to set up a Working Party, and the proposed terms of reference having been approved, the CHAIRMAN, with the concurrence of the meeting, appointed the following contracting parties as members of the Working Party:

Australia	United Kingdom
Chile	United States
Norway	

with Mr. OFTEDAL (Norway) as Chairman.

(...)

5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary
Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.5/SR.6
9 November 1950
ORIGINAL : ENGLISH

CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE SIXTH MEETING

Held at the Marine Spa, Torquay
on Monday, 6 November 1950, at 3 p.m.

Chairman: Hon. L. D. WILGRESS (Canada)

- Subjects discussed:
1. Informal Guidance for the Press
(Press Release/15 - draft)
 2. Draft Agreement on the Importation
of Insecticides (GATT/CP/79)
 3. Brazilian Internal Taxes (GATT/CP.3/42,
para.17, GATT/CP.4/SR.21 and GATT/CP/72)
 4. Australian Subsidy on Ammonium Sulphate
(GATT/CP.4/39)

(...)

389

(...)

3. Brazilian Internal Taxes (GATT/CP.3/42, para.17, GATT/CP.4/SR.21, GATT/CP/72)

The CHAIRMAN explained the purpose of this agenda item by drawing attention to the information contained in GATT/CP/72.

Mr. CASTRO RENEZES (Brazil) confirmed the information that the executive department of the Brazilian Government had submitted to Parliament on June 2nd a message requesting the approval of a draft law designed for the purpose of adjusting the discriminatory internal taxes which had been judged by the Contracting Parties to be in conflict with the principles of Article III

5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950
(continued)

GATT/CP.5/Sk.6
page 4

of the Agreement and the Protocol of Provisional Application. In view of the length of the draft law, the Brazilian delegation would request that the Contracting Parties set up a working party to examine it with a view to advising as to the adequacy of the measures proposed and their conformity with the relevant provisions of the General Agreement.

Mr. CASTRO LEMEZEES further explained that, this year being an election year in Brazil in which members of the legislature had to spend much time in campaigning, the proposed law had not received consideration by Parliament. He hoped, however, that it would receive consideration in the near future.

M. LECUYER (France) said he was satisfied with the explanation as regards the delay on the part of Brazil to take final action, but pointed out that this was the third time the question had come up for consideration. He agreed to the request of the representative of Brazil for the setting up of a working party which would consider measures for the rectification of the present rather unsatisfactory situation.

Sir Stephen HOLLES (United Kingdom) was doubtful what terms of reference could be given to the working party. Would the working party be asked to recommend modifications to the Brazilian bill, which it was understood was already before the Brazilian Congress?

Mr. CASTRO LEMEZEES (Brazil) replied that the purpose would be for the Contracting Parties to ascertain whether the contents of the draft law adequately met the complaints. The matter had not been settled up to now, chiefly because of the involved procedures required for the passing of a legislation, and the Brazilian Government had done its best to meet the wishes of the Contracting Parties.

M. LECUYER (France) said that, while he understood the difficulties, his delegation would hope that the agenda item could be disposed of before the end of this session.

Mr. SCHMITT (New Zealand) thought it was awkward to suggest that a ruling could be given by the Contracting Parties on the merits of domestic legislation. If the Brazilian delegation would make available the necessary data and consult with the other contracting parties interested in the matter, including France, satisfactory adjustment might be reached between these contracting parties without the help of a working party. It might, therefore, be more expeditious for the Contracting Parties merely to take note of the facts and ask the Brazilian delegation to consult direct with the affected contracting parties. The item could be kept on the agenda and the Contracting Parties could return to it at the end of the consultation between the interested parties.

Mr. BROWN (United States) thought that since a question of principle was involved, and since the question had been examined by the Contracting Parties as a group, it would be appropriate that the matter be again examined by the Contracting Parties.

Mr. CASTRO LEMEZEES (Brazil) thought that it would be contrary to procedure under Article XXIII if direct consultation were carried out once again at this stage.

Mr. REISMAN (Canada) was of the opinion that although the Contracting Parties should always give such guidance as was requested by any contracting party, such an obligation did not necessarily involve the procedure suggested - i.e., consideration by a working party. In the present case, however, as both parties had agreed to such a procedure it would perhaps be advisable to set up a working party as requested.

Mr. SCHMITT (New Zealand) thought that the Contracting Parties would be establishing a dangerous precedent if they proceeded to pass judgment on a draft legislation which had already been submitted by a government to its

5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950
(continued)

GATT/CP.5/SR.6
page 5

legislature. It should therefore be made very clear in the present case that the examination of the Brazilian bill had been carried out at the explicit request of the contracting party concerned.

M. LECUYER (France) suggested that as the question had been submitted to the Contracting Parties and studied by a Working Party in the past, it could be regarded merely as a continuation of the unfinished work of a past session. The French delegation had not ventured to suggest any other procedure because, if for no other reason, the Brazilian delegation had thought this was the most expeditious way of dealing with the question.

Mr. CASTRO MENEZES (Brazil) said that the Brazilian delegation believed that its government had done all in its power to regularise the discrepancies, and that the proposed legislation contained provisions which adequately met the views of the Contracting Parties. The present request was calculated to make manifest its attitude and to acquaint the Contracting Parties with the measures its government had adopted. Either course proposed would be acceptable to the Brazilian delegation.

M. LECUYER (France) pointed to some possible confusions in the discussions. It had been understood by the French delegation that the Brazilian delegation had requested the setting up of a working party in order to make known what had been proposed by its government in response to the recommendations of the Contracting Parties. It had not been contemplated that changes in the legislation should be proposed by the Contracting Parties to the Brazilian government.

Mr. DI NOLA (Italy) was not sure whether Article XXIII was applicable in the present case, but believed that the remarks made by the New Zealand delegate were pertinent and deserved attention. An impasse would be created if the working party should propose any recommendations which happened to be unacceptable to the Brazilian delegation. In his opinion, the best procedure would be to request that the two delegations carry out consultations and see whether the Brazilian bill was satisfactory to the directly affected contracting party or parties.

Mr. OLDINI (Chile) said that since the Brazilian delegation had no objection to either solution, it would be up to the Contracting Parties to make a choice. In his opinion, the fact that the Brazilian Government had asked the Contracting Parties for technical advice ruled out any question of sovereignty.

The CHAIRMAN, summing up the situation, said that the Brazilian delegation had proposed that a working party be set up - a procedure which had received the support of the representatives of the United Kingdom and France; on the other hand, the representatives of New Zealand and Italy had drawn attention to the danger of creating a precedent in which the Contracting Parties regarded themselves competent to consider a draft legislation which was before a national parliament. It was up to the Contracting Parties to decide which was the more appropriate course to take.

A vote was taken, and the Contracting Parties approved by 18 votes to 3 the proposal to set up a working party to study the Brazilian draft legislation. Upon the proposal of the CHAIRMAN, the following terms of reference and composition for the working party were adopted:

"As requested by the delegation of Brazil, to examine the draft legislation prepared by the Government of Brazil for presentation to its legislature, which legislation is intended to settle the matters covered by item 17 of the Agenda, and to advise on the conformity of such draft legislation with the relevant provisions of the General Agreement and the Protocol of Provisional Application".

**5.d Working Party on Brazilian Internal taxes, terms of reference and composition. Summary
Record of the Sixth Meeting of the CONTRACTING PARTIES held on 6 November 1950
(continued)**

GATT/CP.5/SR.6
page 6

Chairman: Dr. A. ARGIROFOULOS (Greece)
Members: Brazil Greece
 Chile United Kingdom
 France United States

(...)

Source: Document GATT/CP.5/SR.6 of 9 November 1950.

5.e Working Party 8 on Netherlands Action under Article XXIII:2, membership and terms of reference

GENERAL AGREEMENT	ACCORD GENERAL SUR	
ON TARIFFS AND	LES TARIFS DOUANIERS	<u>RESTRICTED</u>
TRADE	ET LE COMMERCE	W.7/1/Add.8
		28 October 1952
		Special Distribution

WORKING PARTY 8 ON NETHERLANDS ACTION UNDER ARTICLE XXIII:2Membership:

Chairman: Dr. Treu

Austria	Germany
Burma	Haiti
Brazil	Sweden
	Southern Rhodesia

Terms of reference:

To consider the measure which the Government of the Netherlands has notified that it intends to take in accordance with Article XXIII:2 and to report to the CONTRACTING PARTIES as to the appropriateness of such measures, having regard to the equivalence of the measure proposed to the impairment suffered by the Netherlands as a result of United States restrictions on imports of dairy products.

GROUPE DE TRAVAIL N° 8 SUR LES MESURES PRISES PAR LE GOUVERNEMENT DES PAYS-BAS CONFORMEMENT AU PARAGRAPHE 2 DE L'ARTICLE XXIIIComposition:

Président: Dr. Treu

Allemagne	Brésil
Autriche	Haiti
Birmanie	Rhodésie du Sud
	Suède

Mandat:

Examiner les mesures que le gouvernement des Pays-Bas a l'intention de prendre, au titre du paragraphe 2 de l'article XXIII, ainsi qu'il l'a notifié aux PARTIES CONTRACTANTES; faire rapport aux PARTIES CONTRACTANTES sur le point de savoir si ces mesures sont indiquées du point de vue de leur équivalence avec les avantages découlant de l'Accord pour les Pays-Bas et qui se trouvent annulés du fait des restrictions à l'importation de produits laitiers instituées par les Etats-Unis d'Amérique.

- 5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

IC/SR.38
19 May 1958

Limited Distribution

Intersessional Committee

SUMMARY RECORD OF THE MEETINGS

Held at the Palais des Nations and the
Bâtiment Electoral, Geneva,
on 14 April – 2 May 1958

Chairman: Mr. L.K. JHA (India)

- Subjects discussed:
1. Adoption of Agenda
 2. German Import Restrictions
 3. Administrative Questions
 4. Arrangements for Thirteenth Session
 5. Panels for Conciliation
 6. United States Action under Article XIX
 7. Italian Discrimination against Imported
Agricultural Machinery
 8. French Assistance to Exports of Wheat and Flour
 9. European Coal and Steel Community
 10. European Economic Community
 11. European Free-Trade Area
 12. Article XXVIII Negotiations
 13. New Zealand Consultations under Articles XII and
XIV
 14. Request by Denmark for Authority to enter into
Renegotiations
 15. Definitive Application of the Agreement
 16. Next Meeting of the Committee

1. Adoption of Agenda

The CHAIRMAN introduced the Agenda as distributed in IC/W/69 for approval.

The Agenda was adopted.

(...)

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

(...)

5. Nomination of Panels

The CHAIRMAN drew attention to the disputes and differences on the Agenda which had been referred to the Committee for consideration. Should the Committee decide to establish panels to examine any of these matters it might be appropriate to adopt procedural arrangements designed to meet certain practical difficulties that had been experienced in the past with regard to the availability of members when meetings of a panel are deferred to give time for further bilateral discussion. He also proposed that in future such panels should be called "panels for conciliation" instead of "panels on complaints".

In order to meet the problems referred to by the Chairman, the Committee agreed to the following procedures for the nomination of panels for conciliation during the period prior to the Thirteenth Session:

- (1) The Intersessional Committee, when seized of a matter arising under Article XXIII, may, upon the request of the applicant contracting party, establish a panel to enquire into, and report on, the matter.
- (2) If however, it is desired that the convening of the panel shall be deferred to some unspecified future date, in order to afford a further opportunity for bilateral consultation, the Intersessional Committee shall designate the panel but it shall be understood that the Chairman of the CONTRACTING PARTIES may appoint substitutes, if necessary, for any member or members of the panel who may not be available at the time when the need to convene it arises.

(...)

395

(...)

10. European Economic Community

As instructed by the CONTRACTING PARTIES the Committee continued the examination of the relevant provisions of the Treaty establishing the European Economic Community, pursuant to Article XXIV:7, in the light of the Twelfth

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38
Page 17

Session Reports on tariffs, the use of quantitative restrictions, trade in agricultural products and the association of overseas countries and territories; it also considered what means could be developed to establish effective and continuing co-operation between the CONTRACTING PARTIES and the EEC. The Committee furthermore had before it the Report of the Working Party appointed by the Committee to study the problems which the association of overseas territories raised for the trade of other contracting parties to the General Agreement (L/805/Rev.1 and Addenda).

The Committee heard a statement from the representative of the European Economic Community in which he outlined the progress made in setting up the basic institutions of the Community since the entry into force of the Treaty on 1 January 1958.

The following is a brief summary of the views and proposals put forward in the discussion in which most members participated¹:

Common External Tariff

Members expressed the view that if the objectives of the Community and of the GATT were to be attained the common external tariff should be as low as possible. In order to assist contracting parties in their analysis of the common tariff and to enable them to consider proposed procedures for the negotiations envisaged in Article XXIV:6 the EEC was requested to provide the common external tariff and the following explanatory material as soon as possible, and in any case by 1 July 1959:

- (1) a "key" permitting cross-reference and comparison of rates and commodity descriptions in the common tariff and of related statistical classifications with those in the previous individual tariffs and trade statistics of the Member States;
- (2) an indication of all changes in rates, commodity descriptions and statistical classifications;
- (3) an indication of how the common tariff rates are derived from the previous tariff rates;
- (4) an exact description of the products upon which concessions have been made in the individual GATT schedules of the Six;

¹ The views of the Six Member States and the EEC, however, are set out in the statement by Baron Sneyers de Meeûs, appended hereto.

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38

Page 18

- (5) an indication of the country or countries with which concessions were initially negotiated and of the principal suppliers, with the amounts of trade involved.

Quantitative Restrictions

Many members held the general view that until such time as the financial and economic relations of the Member States were fully integrated, so as to constitute in effect one unit for balance-of-payments purposes, the maintenance or imposition of quantitative restrictions must be justified in accordance with basic GATT rules and on an individual country basis.

Agricultural Provisions of the Treaty of Rome

Members pointed out that it was essential that in the formulation of a common agricultural policy the Community should take due account of the importance of preserving both traditional trade patterns and the GATT objective of expanding multilateral trade. Such regard for the trade interests of third countries, exporters of agricultural products, took on added significance in view of the tendencies for excessive short-term fluctuations in prices of primary products and widespread resort to agricultural protectionism that have become so pronounced in recent years. Accordingly, a number of members expressed the desire for the immediate provision of some appropriate machinery which would enable the CONTRACTING PARTIES to follow and consider together with the Six the measures to be taken in the course of establishing the common agricultural policy and organization and the relationship of these measures with the provisions of the General Agreement.

It was further observed that effective channels of communication could be established with the Community in the agricultural field within the framework of usual GATT methods and procedures. Such communication would consist of normal collaboration and continuing exchanges of information and views on matters of common concern among trading partners.

Attention was drawn to a conference of Member States to be convened at Stresa in July 1958 in accordance with Article 43(1) of the Treaty of Rome with the aim of comparing their agricultural policies. Some members considered it would be useful if, when this conference had ended, the Six, using the normal machinery of the CONTRACTING PARTIES, could provide information on that conference. It would also be desirable to afford contracting parties some means of commenting on the information received.

The Association of the Overseas Territories to the European Common Market

Some members considered that the Working Party's Report to the Committee established the fact that the arrangements proposed would clearly prejudice the trade interests of many under-developed countries which were dependent for their economic development on the export of only a few tropical or semi-tropical products. It was inequitable that the economic development of the

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38
Page 19

overseas territories should be artificially promoted at the expense of the aspirations of other under-developed countries and there could be serious political consequences in some adjacent areas. These members proposed, therefore, that some procedures be set up which provided for multilateral consultations between the Six and producing countries which considered that their trade would be affected with a view to discussing the value and extent of any measures that could be taken to alleviate any resulting damage to their trade; each commodity could be dealt with separately and some co-ordinating machinery should be established to supervise the discussions.

Most members recognized the importance of this question to contracting parties in the process of economic development, and considered that where problems were shown to exist realistic solutions should be sought within a multilateral framework and that any arrangements reached should be consistent with the GATT rule of non-discrimination. The object of any such arrangements should be to prevent any significant diminution of third countries' present export trade to the Six as a result of the association of the overseas territories. They should also provide a reasonable opportunity for third countries to share in any increased demand resulting from the establishment of the Common Market. These members considered that traditional GATT principles and methods of procedure, in particular the provisions for consultations under Article XXII, were flexible enough to deal effectively with the problem.

Several members proposed that the Working Party on the Association of the Overseas Territories should continue its work as recommended in paragraphs 7 and 9 of its report including an examination of the effects of the association on the import trade of the A.O.T's.

Statement by the representative of the EEC

The representative of the European Economic Community then made a statement which summarized the Community's point of view in reply to certain points that had been raised. The full text of this statement is appended hereto.

Conclusions

There was general agreement on the following conclusions, but it was noted that the Six Member States of the European Economic Community could not give their concurrence until after reference to the Council of Ministers. The representative of the EEC undertook to communicate the views of the Council to the Executive Secretary by the end of May. It was agreed that if the conclusions proved unacceptable to the Council, the CONTRACTING PARTIES would be confronted with a new situation which would require early consideration:

1. The Committee noted with satisfaction that the rapid progress towards the establishment of the institutions described in the statement by the representative of the Six would facilitate early and close co-operation between the CONTRACTING PARTIES.

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38
Page 20

2. The Committee noted the reports of the sub-groups established at the Twelfth Session, as well as the reports of the Working Party which had been carrying out an examination of the possible effects of the provisions of the Rome Treaty relating to the association of the overseas territories with the EEC. The Committee also heard a series of statements by members of the Committee relating to these various matters and a similar statement from the representative of the Community.

3. In the light of these statements and reports, the Intersessional Committee:

- (a) Felt that it would be more fruitful if attention could be directed to specific and practical problems, leaving aside for the time being questions of law and debates about the compatibility of the Rome Treaty with Article XXIV of the General Agreement.
- (b) Noted that the normal procedure of the General Agreement and the techniques and traditions of the CONTRACTING PARTIES in applying them, were well adapted to the handling of such problems.
- (c) Suggested that in the first instance the procedures of Article XXII would be the most appropriate for this purpose. This Article enables any contracting party or contracting parties to seek consultation with other contracting parties on any matter affecting the operation of the General Agreement. Moreover, under this Article it is the obligation of contracting parties to afford adequate opportunity for such consultations.
- (d) Felt that the procedures of paragraph 1 of Article XXII were adequate to deal with questions affecting more than one contracting party, and that for such questions it would be perfectly consistent with the terms of the Article, and would facilitate the attainment of results consistent with the basic principles and objectives of the General Agreement, for the countries concerned to arrange for joint consultations in which all contracting parties which consider that they have a substantial trade interest in the matter might join, and also for the outcome of the consultations to be communicated to the CONTRACTING PARTIES. The Committee therefore recommends that in such cases it will be appropriate to adopt the procedures indicated in the annex below.
- (e) Pointed out that the normal procedures of Article XXII were of general applicability and could, therefore, be invoked by those contracting parties whose most immediate concern related to the various matters covered by the terms of reference of

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38

Page 21

the Working Party on Associated Overseas Territories. If these matters were to be handled in this way, it would be possible to suspend the activities of the Working Party for the time being, after the completion of the reports on commodities which have already been discussed by it.

4. During the Committee's discussion, a number of contracting parties expressed the desire for close contact with the Community regarding the working-out of the agricultural policy of the Community. The representatives of the EEC pointed out that the working-out of this policy would be a lengthy process and that the work of the Ministerial Conference at Stresa would be confined to comparing the agricultural policies of the Member States and in particular to establishing a balance sheet of their requirements and resources. The Committee recognized that the working-out of the agricultural policy would be a matter of years. The Committee took note of this statement, but assumed that the Community would furnish to the CONTRACTING PARTIES from time to time such information as the Six Member States would have furnished initially to comply with paragraph 7 of Article XXIV if the agricultural policy were developed and set out in the Rome Treaty itself.

5. Members of the Committee and the representatives of the Community re-affirmed the views they had expressed at the Twelfth Session concerning the maintenance or imposition of quantitative restrictions for balance-of-payments reasons. As regards the common tariff, the Committee noted with satisfaction the statement by the representative of the Community to the effect that the latter will endeavour to supply within the envisaged time-limit the common external tariff and the fullest possible documentary material regarding this tariff.

6. The Committee welcomed the spirit of co-operation and understanding which had prevailed in these discussions, which they felt would greatly facilitate the discussion when the CONTRACTING PARTIES resume their examination of the Rome Treaty pursuant to Article XXIV.

Annex on Procedures

The contracting parties interested in possible consultations under Article XXII on questions affecting the interests of a number of contracting parties, as a matter of convenience and in order to facilitate the observance of the basic principles and objectives of the General Agreement, agree on the following procedures:

- (a) any contracting party seeking such a consultation under Article XXII shall at the same time so inform the CONTRACTING PARTIES;
- (b) any other contracting party asserting a substantial trade interest in the matter, shall advise the consulting countries of its desire to be joined in the consultation;

5.f Panels for Conciliation and European Economic Community, Annex on Procedures, Summary Record of the Meetings of the Intersessional Committee held on 14 April – 2 May 1958 (*continued*)

IC/SR.38
Page 22

- (c) such contracting party shall be joined in the consultation providing the consulting countries agree that the claim of substantial interest is well founded;
- (d) if the claim to be joined in the consultation is not accepted, the contracting party concerned shall be free to refer its claim to the CONTRACTING PARTIES;
- (e) at the close of the consultation, the consulting countries shall advise the CONTRACTING PARTIES of the outcome;
- (f) the Executive Secretary shall provide such assistance in these consultations as the parties may request.

(...)

Source: Document IC/SR.38 of 19 May 1958.

5.g French Exports of Wheat and Flour, appointment of the Panel. Summary Record of the Eighth Meeting of the CONTRACTING PARTIES held on 23 October 1958

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

SR.13/8
30 October 1958

Limited Distribution

CONTRACTING PARTIES
Thirteenth Session

Pages 30/31

SUMMARY RECORD OF THE EIGHTH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 23 October 1958, at 2.30 p.m.

Chairman: Mr. L.K. JHA (India)

- Subjects discussed:
1. Election of Officers
 2. Rules of Procedure, amendment
 3. Closing Date for the Thirteenth Session
 4. Panel on French Exports of Wheat and Flour
 5. United States Agricultural Waiver
 6. United States Restrictions on Dairy Products
 7. Report on Consultation under Article XII:4(b)
with New Zealand
 8. Consultations under Article XXII
 9. Italian Discrimination against Imported
Agricultural Machinery

(...)

(...)

SR.13/8
Page 33

4. Panel on French Exports of Wheat and Flour

The CHAIRMAN recalled that at a meeting held in April 1958 the Inter-sessional Committee had appointed a Panel to examine a complaint by the Government of Australia concerning subsidized exports of wheat and flour. The Panel was composed of Mr. F. Gundelach (Denmark), and Mr. R. Arents (Belgium), under the chairmanship of Mr. T. Swaminathan (India). The Panel was to meet again during the Session, but Mr. R. Arents would not be available. The Chairman proposed that Mr. E.C. Boissvain (Kingdom of the Netherlands) be invited to serve on the Panel in place of Mr. Arents.

This was agreed.

(...)

5.h Turkey - EEC Customs Union, terms of reference and membership of the Working Party.
Summary Record of the Eleventh Meeting of the CONTRACTING PARTIES held on
25 March 1965

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

SR.22/11
8 April 1965

Limited Distribution

CONTRACTING PARTIES
Twenty-Second Session

Page 120/121

SUMMARY RECORD OF THE ELEVENTH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 March 1965 at 2.30 p.m.

Chairman: Mr. J. LACARTE (Uruguay)

	<u>Page</u>
<u>Subjects discussed:</u>	
1. Trade of less-developed countries - report by the Committee on Trade and Development (cont'd)	120/121
2. European Economic Community - Agreement of Association with Turkey (cont'd)	124
3. United States/Canada Agreement on Automotive Products - report by Working Party	125
4. Definitive application of the GATT (cont'd)	133
5. Programme of meetings	133
6. Election of officers	133
7. Closing statement by the Chairman	134

(...)

403

(...)

2. European Economic Community - Agreement of Association with Turkey (cont'd)

The CHAIRMAN recalled that discussion on this item had been adjourned at the tenth meeting to allow time for consultations between interested delegations on the terms of reference for the working party which had been proposed by the United Kingdom delegation. Agreement had been reached on the following text:

To carry out, under the provisions of paragraph 2 of Article XXII, a consultation in respect of the following question raised by the United Kingdom:

"The application by Turkey of Article XXIV:5(a) and of Article XXIV:6 when in the course of forming a customs union with the European Economic Community the Turkish Government reduces its tariff in successive stages towards the Community on the one hand and towards other contracting parties on the other."

5.h Turkey - EEC Customs Union, terms of reference and membership of the Working Party.
Summary Record of the Eleventh Meeting of the CONTRACTING PARTIES held on
25 March 1965 (*continued*)

SR.22/11
Page 125

The CONTRACTING PARTIES agreed to establish a working party with these terms of reference, and the Chairman proposed the following membership under the Chairmanship of Mr. F.P. Donovan (Australia):

Austria	Nigeria
Brazil	Norway
European Economic Community	Turkey
India	United Kingdom
Madagascar	United States

This was agreed and the CONTRACTING PARTIES concurred in requests by Canada, Israel, Sweden and Switzerland to be added to the Working Party.

The CHAIRMAN then enquired whether the five points he had proposed at the tenth meeting as the conclusions of the discussion were acceptable.

The five points proposed by the Chairman were agreed, as follows:

- (a) to adopt the report of the Working Party;
- (b) to note the diverging views which exist with regard to the compatibility of the Ankara Agreement with the General Agreement;
- (c) to note that the parties to the Agreement are prepared to provide further information on the plan and schedule for the formation of the customs union and, in particular, to provide the text of the Additional Protocol;
- (d) to keep the matter on the agenda of the CONTRACTING PARTIES, so that at any time when any contracting party feels that it would be useful to resume the examination of the provisions and implementation of the Agreement, it could bring the matter forward for discussion either during the course of a session or at a meeting of the Council which would also have the authority to submit the matter to a working party if so requested;
- (e) to note that this would not prejudice the responsibilities of the CONTRACTING PARTIES under the General Agreement nor the rights of individual governments under relevant provisions of the GATT.

(...)

5.i Working Party on United States Tobacco Subsidy, membership and terms of reference

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

ACCORD GENERAL SUR RESTRICTED
LES TARIFS DOUANIERS L/2902
ET LE COMMERCE 9 November 1967
Limited Distribution

CONTRACTING PARTIES
Twenty-Fourth Session

PARTIES CONTRACTANTES
Vingt-quatrième session

WORKING PARTY ON UNITED STATES TOBACCO SUBSIDY

Chairman: Mr. A. Mahmood (Pakistan)

Membership

Canada	Jamaica	Switzerland
Germany, Fed. Rep.	Japan	Turkey
India	Malawi	United Kingdom
		United States

The Commission of the European Communities will participate in the Working Party.

Terms of reference

To conduct on behalf of the CONTRACTING PARTIES consultations under Article XXII:2 with respect to the export subsidy on unmanufactured tobacco introduced by the Government of the United States in June 1966 and to report to the CONTRACTING PARTIES.

GRUPE DE TRAVAIL DE LA SUBVENTION DES ETATS-UNIS
AUX EXPORTATIONS DE TABAC

Président: M. A. Mahmood (Pakistan)

Composition

Rép. féd. d'Allemagne	Inde	Malawi
Canada	Jamaïque	Royaume-Uni
Etats-Unis	Japon	Suisse
		Turquie

La Commission des Communautés européennes participera aux travaux du Groupe.

Mandat

Procéder, au nom des PARTIES CONTRACTANTES, aux consultations prévues à l'article XXII:2 en ce qui concerne la subvention appliquée par le gouvernement des Etats-Unis depuis juin 1966 à l'exportation des tabacs non fabriqués; faire rapport aux PARTIES CONTRACTANTES.

5.j Greece – Preferential Tariff Quotas to the USSR, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 15 July 1970

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

C/M/63

31 July 1970

Limited Distribution

COUNCIL
15 July 1970

MINUTES OF MEETING

Held in the Palais des Nations, Geneva,
on 15 July 1970

Chairman: Mr. Erik THRAHE (Denmark)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Greek preferential tariff quotas to the USSR	1
2. Central African Economic and Customs Union	2
3. Agriculture Committee	3
4. Committee on Trade in Industrial Products	3
5. Article XXVIII:1 - Renegotiations 1969	5
6. Article XXVIII:4 - Request by Japan	5
7. Import Restrictions	7
8. Anti-Dumping Practices	9
9. Balance-of-Payments import restrictions - reports of the Committee on consultations with:	10
(a) Peru	
(b) Uruguay	
10. Uruguay - import surcharges	11
11. EEC emergency action on table apples	12
12. Financial and administrative questions	13
(a) Final position of the 1969 budget of the GATT	13
(b) Final position of the 1969 budget of the International Trade Centre	13
(c) Deviation from United Nations Staff Rules	14
(d) Provision of funds for Conference on Effective Protection	14
(e) Committee on Budget, Finance and Administration	14
13. Trade with Poland	15
14. Committee on Anti-Dumping Practices	15

1. Greek preferential tariff quotas to the USSR (L/3406)

The Chairman recalled that at the last Council meeting the United States delegation had raised the question of preferential tariff reductions granted by Greece to the USSR for specified quantities of certain commodities. The Council had agreed to revert to the matter at its next meeting and had urged the Greek

5.j Greece – Preferential Tariff Quotas to the USSR, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 15 July 1970 (*continued*)

C/M/63
Page 2

Government to consider appropriate ways for bringing the arrangement into conformity with the GATT. In the meantime, the Greek delegation had circulated a request for a waiver, contained in document L/3406.

The representative for Greece drew attention to the exceptional circumstances under which this request for a waiver had been made. Greece was a developing country with balance-of-payments problems, which it was trying to solve. With this aim in view, the Government had concluded a number of bilateral trade agreements for the export of certain agricultural products. Its bilateral agreement with the USSR covered such agricultural products which were not readily saleable elsewhere. He also recalled that, as a result of Greece's association with the European Economic Community, imports from the USSR had fallen. In an effort to achieve trade balance the Greek authorities had granted special tariff quotas to the USSR for the total value of US\$4,250,000, which represented only one sixth of Greek imports from the USSR. He also recalled that despite the various difficulties Greece was encountering in its development, the Government applied a liberal import régime; it was clear that should the Greek balance of trade deteriorate his authorities would no longer be in a position to pursue such a liberal policy. He appealed to the Council to examine favourably his Government's request in the light of these special circumstances and suggested that it be considered in a working party.

The Council established a Working Party with the following terms of reference and membership:

Terms of Reference

"To examine the request by the Government of Greece for a waiver from its obligations under Article I of the General Agreement in order to reduce the customs duties on certain products manufactured in, and coming from the USSR, as specified in the Special Protocol of 13 December 1969; and to report to the Council."

Membership

Argentina	Greece
Canada	Japan
Ceylon	Nordic countries
Chile	United Kingdom
European Communities	United States
and their member States	Yugoslavia

Chairman: Mr. B. Meers (Australia)

(...)

5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

C/M/108
6 October 1975

Limited Distribution

COUNCIL
25 September 1975

MINUTES OF MEETING

Held in the Palais des Nations, Geneva,
on 25 September 1975

Chairman: Mr. K.A. SAHLGREN (Finland)

	<u>Page</u>
<u>Subjects discussed:</u>	
1. Canada - Import quotas on eggs	1
2. Committee on Balance-of-Payments Restrictions - Consultation with Portugal	3
3. Association between the European Economic Community and Greece	4
4. Brazil - Increase of bound duties in Schedule III	4
5. Brazil - Prior import deposits	5
6. Developments in United States trade policy	5
7. Greece - Increase of bound duty	6

1. Canada - Import quotas on eggs (L/4222, L/4223, L/4207)

The Chairman drew attention to document L/4207 containing a notification by Canada on the introduction of import quotas for eggs and egg products.

The representative of the United States said that the Canadian action had been discussed bilaterally, but that it had so far not been possible to arrive at a solution of the problem. The key issues in the discussion concerned the question of the consistency of the Canadian action with the provisions of Article XI and whether there existed a nullification or impairment of tariff concessions in respect of these products. His delegation was, therefore, looking for an advisory ruling from the Council in order to assist the parties in finding an amicable solution to this problem. His delegation had asked for this meeting of the Council in order to present a request for a working party to consider the three issues set out in document L/4223 and to report to the Council by 1 December 1975.

5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975 (*continued*)

C/M/108
Page 2

As to the nature of the problem, he said that the quantity of United States fresh, processed and frozen eggs permitted to enter Canada since 5 July had been limited by a quota. According to the Canadian Government, this quota was part of a comprehensive domestic supply management and market control system for eggs. He expressed doubt that the Canadian Government could control egg production in this way. His authorities had been informed by the Canadian Government that the actual level of imports for 1975 had been calculated on the basis of average annual global imports during the period 1969-73. As a consequence, United States access to the Canadian market in 1975 had been limited to 1/3 per cent of estimated production for the same period. This had prevented the continuation of a recently-established upward trend in United States egg exports to Canada.

The representative of Canada said that the global import quota on eggs and egg products had been introduced to support a domestic supply management programme that fulfilled the criteria set out in paragraph 2(c) of Article XI. He stated that, in his opinion, the measures taken did not reduce the total of imports relative to the total of domestic production of eggs in Canada. In setting the actual levels under the quota his Government had paid due regard to the proportion of imports to production during a previous representative period (1969-1973). His delegation was ready to accept the United States proposal to establish a working party and to co-operate in its deliberation.

The representative of the European Communities felt that as in the present case an advisory opinion was being sought, the usual conciliation procedure would have required the establishment of a panel rather than of a working party, composed of government representatives.

The representative of the United States replied that the setting up of a panel would have implied that the bilateral consultations had already proved unsuccessful. His delegation did not seek a decision under the provisions of Article XXIII:2, but rather asked the CONTRACTING PARTIES or the Council to assist the parties in their consultations to solve a particular issue which had arisen. In this respect the use of a working party which could meet at short notice was appropriate and not inconsistent with GATT procedures.

The representative of the European Communities pointed out that in his view on the basis of earlier precedents a panel would have been more appropriate for the rendering of an advisory opinion. Furthermore, if as a result of the work of the working party the parties concerned could not arrive at a solution, a possible recourse to Article XXIII would still require the setting up of a panel. He noted that the two parties had agreed on a procedure so that the Community would not maintain its objections. This did not imply however that the Community could agree that the procedure was the appropriate one in this case.

5.k Canadian Import Quotas on Eggs, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 25 September 1975 (*continued*)

C/M/108
Page 3

The Council agreed to set up a working party with the following terms of reference and membership:

Terms of Reference:

To examine the matters referred to the CONTRACTING PARTIES by the Government of the United States (L/4223) concerning the imposition of import quotas for eggs and egg products by the Government of Canada (L/4207) and report thereon to the Council.

Membership:

Australia	India
Brazil	Japan
Canada	United States
EEC and member States	

Chairman:

Mr. Eggert (Finland)

The Chairman said that the working party would be convened at a date to be set in consultation with the parties concerned.

(...)

5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

C/M/120
2 June 1977

Limited Distribution

COUNCIL
23 May 1977

MINUTES OF MEETING

Held in the Palais des Nations, Geneva
on 23 May 1977

Chairman: Mr. C. DE GEER (Sweden)

<u>Subjects discussed:</u>	<u>Page</u>
1. Arrangement Regarding International Trade in Textiles - Annual Review	1
2. Consultations on trade with Poland	3
3. Agreement between Finland and Hungary	4
4. United States - Imports of automotive products	5
5. United States - Suspension of customs liquidation regarding certain Japanese consumer electronic products	5
6. Tax legislation	
(a) United States tax legislation (DISC)	
(b) Income tax practices maintained by France	
(c) Income tax practices maintained by Belgium	
(d) Income tax practices maintained by the Netherlands	8
7. Revision of salary scales	11
8. Erosion of salaries	11
9. Working Party on trade with Hungary	13
10. Greece - Increase of bound duty	14
11. Sweden - Renegotiation under Article XXVIII:4	14
12. European Communities - Agreements with Egypt, Jordan, Syria and Lebanon	14
13. Papua New Guinea-Australia Agreement	15

(...)

5.I United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)

C/M/120
Page 5

(...)

5. United States - Suspension of customs liquidation regarding certain Japanese consumer electronic products (L/4500)

The representative of Japan¹ stated that following countervailing duty investigations by the United States since 1972 the United States Treasury Department had determined that the exemption from commodity taxes upon the export of certain electronic products from Japan should not be subject to countervailing duties. Thereupon, a United States corporation, the Zenith Radio Corporation, had instituted an action for a review of this determination and on 12 April 1977 the United States Customs Court ruled that the exemption or refund of the Japanese commodity tax on the products concerned constituted a bounty or grant under United States law and the Court directed that countervailing duties be assessed. Subsequently, customs liquidation regarding these products had been suspended and a bonding procedure had been introduced requiring bonds equal to the amount of estimated countervailing duty.

¹The text of the statement had been distributed in document C/W/288.

(...)

5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)

(...)

C/M/120
Page 6

It was Japan's view that the Court ruling and the subsequent United States action was in clear contravention of the provisions of the General Agreement, in particular paragraph 4 of Article VI and the note to Article XVI, and consequently impaired Japan's rights under the GATT.

He said that the present administrative action, which had been put into effect pending the final outcome of the judiciary, already seriously affected trade in the products concerned, which amounted to \$1.89 billion in 1976. The potential impact of the action could go much further through possible proliferation of similar actions affecting a large number of contracting parties. Because of these serious trade implications he requested the Council to establish a Working Party to examine the decision of the United States Customs Court in Zenith Radio Corporation versus United States, and the subsequent United States action, in the light of the provisions of Article VI:4 of the GATT and the note to Article XVI, and to report to the Council. It was his understanding that such consideration would also include the examination of the consistency or otherwise of the United States action with the provisions of the General Agreement.

He also called the Council's attention to the fact that Japanese electronic products had been subject to numerous harassments in the United States, due to often duplicating procedures under different legal provisions. These required Japanese companies to invest heavily in man-hours and legal expenses and constituted a major trade issue.

The representative of the United States said that he could not agree with some of the conclusions drawn by the representative of Japan with regard to the effect on trade of the United States action, and the question of its consistency with the GATT. He pointed out that the United States had not imposed countervailing duties and he did not believe that the bonding procedures were a serious impediment to trade. Furthermore, the Court decision was not part of any programme to harass Japanese products. His Government was appealing the decision of the Customs Court. He agreed to the creation of a working party with the terms of reference proposed by the representative of Japan.

The representative of the European Communities expressed his delegation's deep concern at the decision of the United States Customs Court in this case. He said that this decision ran counter to rules established for over fifty years in a number of bilateral agreements and confirmed in the General Agreement. The decision of the Customs Court raised serious implications for world trade in general, since it asserted as a matter of law that the reimbursing of indirect taxes was, in fact, a subsidy and was subject to the payment of countervailing duties. He said that the European Communities expected the United States Government to fulfil its obligations under the GATT. If the measure was not abolished soon, it could easily be extended to other products and thus threaten

5.1 United States Suspension of Customs Liquidation regarding certain Japanese Consumer Electronic Products, terms of reference and membership of the Working Party. Minutes of Council Meeting held on 23 May 1977 (*continued*)

C/M/120
Page 7

world trade as a whole, since the United States trading partners would not remain passive in case of such a development. He further pointed out that Zenith Radio Corporation itself was domiciled in five Federal States and obtained exemption from sales taxes in those States. It furthermore enjoyed the fiscal benefits of DISC, which were considered by a panel as being inconsistent with the provisions of the GATT. He supported the setting up of a working party to examine these questions and stressed that his delegation reserved all its rights under the relevant provisions of the General Agreement, to which the EEC might wish to have recourse in the light of further developments of the situation. He suggested that the matter be examined not only in the light of the Articles mentioned but also bearing in mind all other relevant provisions of the GATT.

The representatives of Finland, speaking on behalf of the Nordic countries, and Canada supported the creation of the working party.

The Council agreed to set up a Working Party on the United States/Zenith case with the following terms of reference and membership:

Terms of Reference:

To consider the decision by the United States Customs Court in Zenith Radio Corporation versus the United States and the subsequent United States action in the light of the provisions of paragraph 4 of Article VI of the General Agreement and the Note to Article XVI, and to report expeditiously to the Council.

Membership:

Australia	Japan
Brazil	Malaysia
Canada	Sweden
European Communities and their member States	Switzerland
India	United States
	Yugoslavia

Chairman: Mr. E. Farnon (New Zealand)

The Council agreed that the Working Party was free to discuss the matter under other relevant provisions of the GATT, even though this was not specifically mentioned in the terms of reference.

The Chairman said that in view of the need for the Working Party to carry out its work expeditiously, the Working Party should be convened as soon as possible.

(...)

World Trade Organization
154, rue de Lausanne
CH-1211 Geneva 2
Switzerland
Tel: +41 (0)22 739 51 11
www.wto.org

WTO Publications
Email: publications@wto.org

Copies can be ordered from:
WTO Online Bookshop
<http://onlinebookshop.wto.org>

Report designed by the WTO's Graphic Design,
Printing and Documents Distribution Section.
Printed by the World Trade Organization.

Image credits:
Cover: © WTO.

© World Trade Organization 2018
Print ISBN 978-92-870-4262-0
Web ISBN 978-92-870-4263-7
Published by the World Trade Organization.

GATT disputes: 1948-1995 (Volume 2) compiles documents regarding dispute settlement procedures under the General Agreement on Tariffs and Trade (GATT) 1947 and other selected documents. It complements Volume 1, which provides a comprehensive overview of dispute settlement activities under the GATT 1947 and a one-page case summary for each of the 316 disputes brought by GATT contracting parties from 1948 to 1995, when the GATT was superseded by the World Trade Organization (WTO). The two volumes offer insights into the evolution of dispute settlement under the GATT 1947, which served as the foundation for the Dispute Settlement Understanding created by the Marrakesh Agreement Establishing the WTO.



World Trade Organization
Centre William Rappard
Rue de Lausanne 154
CH-1211 Geneva 2
Switzerland
Tel. switchboard: +41 (0)22 739 51 11
email: enquiries@wto.org
www.wto.org

