Committee on the Treaty-Establishing the European Economic Community

SUMMARY RECORD OF THE MEETING

held at the Palais des Nations, Geneva, on Tuesday, 5 November 1957, at 10 a.m.

Chairman: H.E. Mr. L. Dana WILGRESS (Canada)

Subject discussed: The use of quantitative restrictions

The CHAIRMAN proposed that in accordance with procedures adopted at its first meeting, the Committee confine its discussion to the use of quantitative restrictions for balance-of-payments purposes.

Mr. KAWASAKI (Japan) said that whereas paragraph 5 of Article XXIV clearly provided that the regulations of commerce imposed at the institution of any customs union in respect of trade with third countries should not be, on the whole, more restrictive than the general incidence of the regulations applicable prior to the formation of the union, his delegation had found no specific provisions in the Treaty guaranteeing that this would be the case in the Community. In fact, the provisions of the Treaty seemed to imply that the pace of liberalization in the Community would be conditioned by that of the partner with the weakest external payments position. His Government expected clear and unmistakable assurances from the Member States that import quotas now in force for imports from third countries would not be reduced and that no liberalization measures would be withdrawn. Paragraph 5 of Article III provided that the Member States would aim at securing uniformity in their liberalization lists for third countries or groups of third countries, at the highest possible level. In this respect his delegation wished to know on what basis the Six proposed to make distinctions in the application of their quantitative restrictions between third countries and groups of countries.

Mr. REISMAN (Canada) considered that the arrangements which the Member States would make for the application of quantitative restrictions would reveal the true nature of the Community – whether it aimed at expanding world trade or whether it was, on the contrary, a restrictive economic institution. The provisions of the General Agreement which could be invoked in emergency balance-of-payments situations...
must be construed as broad exceptions to the general rules governing trade between contracting parties. These rules should continue to apply to every contracting party be it a member of a customs union or not. His Government had attempted to appraise the rules and the principles embodied in the Treaty governing the use of quantitative restrictions for balance-of-payments reasons. But neither the provisions of the Treaty nor the memorandum or replies to the questionnaire supplied by the Interim Committee for the Common Market had enabled it to ascertain the exact intent of the Treaty or the nature of the future commercial policy of the Community in this domain. The Canadian delegation was seriously concerned with the references in the Treaty which, though not expressly in direct conflict with the provisions of Article XII of the General Agreement, carried the implication that this Article would no longer apply. For example, paragraph 5 of Article 111 and Article 113, as well as certain other provisions of the Treaty, referred to the obligation to achieve uniformity in the lists of liberalization of the Member States. This seemed to imply that the application of restrictions by these countries would no longer be related individually to the extent to which restrictions were necessary to safeguard monetary reserves, as stipulated in Article XII.

There were also serious apprehensions of the possibility of restrictions being applied by the Six in a discriminatory manner contrary to the provisions of GATT. The Treaty provided for the progressive elimination of quantitative restrictions among the Member States; it also provided that once removed such restrictions should not be reimposed save in exceptional circumstances and with the authorization of the Community if alternative measures had failed to achieve the intended purpose. As a general proposition the Treaty would thus preclude the use of quantitative restrictions among the Member countries. In attempting to reconcile the implications of this with the provisions of the General Agreement, Canadian officials had reviewed two possible interpretations of the intentions of the Treaty. The more optimistic interpretation was that since the Member States could not apply restrictions exclusively to non-Member States without contravening the rule of non-discrimination in GATT, they would forego the use of balance-of-payments quantitative restrictions altogether. The other, rather pessimistic, interpretation was that quantitative restrictions would henceforth always be discriminatory whatever the particular balance-of-payments difficulties might be. Since neither of these interpretations appeared to be tenable, the inescapable conclusion would seem to be that the Member States had taken no final decisions on this question but intended to wait to see the actual situation when the institutions had been developed.

In order to allay the fears that were in the minds of contracting parties, the Member States of the Community should give clear indications of their intentions and undertakings as regards the future policy to be pursued in the implementation of the Treaty. The Member States should bear in mind that their action would have profound influences on the shaping of commercial policies in other countries. These policies would be influenced more by the manner in which the Member States intend to conduct their trade with them than by whatever legalistic interpretations they might place on the Articles of the General Agreement. If other countries were left with the feeling that they were being
treated unfairly and that their access to the market within the Community had been made insecure or if they felt that the balance of rights and obligations under the General Agreement had been upset, they would no doubt adopt restrictive commercial policies. It was, therefore, of extreme importance that insofar as possible the Six Member States should give unequivocal assurances which would show that they intended to contribute to the harmonious development of world trade and to the progressive elimination of restrictions on international trade.

Mr. CORSE (United States) said that his delegation was in general agreement with the views expressed by the representative for Canada. His Government had always been greatly concerned about the use of quantitative restrictions for balance-of-payments purposes and had accepted these broad exceptions to the general rules of the Agreement because it considered that in certain circumstances it was the best way to handle external payments difficulties. As was well known, his delegation had always urged that these restrictions be progressively relaxed and eliminated when conditions no longer justified their maintenance. It was mainly because progress in this field had not always been satisfactory, that the trade programme of the United States administration had been the object of serious criticism. Like the delegate for Japan, he wished to know how the Member States would secure uniformity in their lists of liberalization in regard to third countries? This was a problem of immediate concern as it would arise at the very outset of the transitional period. Other matters would also require clarification. Would, for instance, the restrictions instituted to deal with new balance-of-payments difficulties be non-discriminatory? How would restrictions be intensified if that were needed? If discriminatory import restrictions were instituted it would be necessary to weigh carefully the advantages to be expected from increased competition within the Community as against the disadvantages resulting from increased discrimination.

Mr. GARCIA OLDINI (Chile) recalled that the application of quantitative restrictions was subject to the conditions laid down in Article XII. The freest interpretation by the CONTRACTING PARTIES of the rules concerning the use of quantitative restrictions was laid down in Article XVIII (revised), which provided for special, somewhat more lenient, rules applicable to under-developed countries. These special provisions were not applicable to the Six which could be expected to abide by the quantitative restriction provisions of the General Agreement in their most strict interpretation.

The rules for the application of quantitative restrictions in the European Community would need further study and clarification. What would be the policy of the Community, for example, at the very beginning of its existence, at a time when Germany could no longer have recourse to the provisions of Article XII and when, in the case of France, the CONTRACTING PARTIES had recognized a right to intensify quantitative restrictions? Would only France restrict its imports? Or the other Member States as well? The information given by the Interim Committee for the Common Market had not shed light on the intentions of the Community in this respect.
Mr. Oldini read the reply to question 42 and said that if the objectives of the Member States, as laid down in the Treaty, were clear, the techniques which they would adopt to attain these objectives were still unknown. Although he understood the difficulties of the Six in giving precise answers to his question, the CONTRACTING PARTIES could not discharge their functions under paragraph 7(a) of Article XXIV if they were left in the dark about the intentions of the Community in this important field.

Mr. VALLADAO (Brazil) realized the difficulties of the Member States in co-ordinating their commercial policies in the field of quantitative restrictions. They had to understand, however, that the CONTRACTING PARTIES must consider the provisions of the Treaty in this respect with great care. It was not merely a legal issue of conflicting interpretations of certain provisions of the General Agreement. If the Community, whatever provisions it might invoke, impeded access to the markets of its Members, it would jeopardise the world-wide multilateral trading system which had so painfully been established since the war. This access could be hindered by maintaining excessive duties and quantitative restrictions, or by stringent arrangements for agricultural products. He fully supported the views expressed by the representatives of Canada and Chile, but before his delegation could reach conclusions as to whether the use of quantitative restrictions, as provided for in the Treaty, was in conformity with the General Agreement, it would await the results of the discussions in the various sub-groups which the Committee would no doubt create to study the other provisions of the Treaty in which his Government had a particular interest.

Mr. CHRISTENSEN (Denmark) said that the problems raised by the use of quantitative restrictions for balance-of-payments reasons in the Community were entirely different from those arising from the common tariff, from trade in agriculture and from the association of the overseas territories. Indeed, in this case, there was no actual question of conformity or conflict with the provisions of the General Agreement since it could be assumed that the quantitative restrictions would be dismantled pari passu with the improvement in the external payments situation of the Member States. Article XII provided every contracting party with the possibility, under specified conditions, to introduce or maintain quantitative restrictions for balance-of-payments purposes. The establishment of a customs union did not extend or reduce the rights of a contracting party under that Article. The Member States which were operating under the provisions of Article XII were, at present, allowed to apply restrictions in a discriminatory manner, and it was difficult to assess the problems that might eventually arise in connexion with the application by the Six countries of Articles XII to XIV. The machinery which GATT had already adopted to deal with problems arising under Article XII could, if they were adapted, be expected to take good care of any problems which might arise from the use of quantitative restrictions in the Community. He felt that no time should be wasted in discussing theoretical problems which might or might not arise in the future.

Mr. SANDERS (United Kingdom) said that after the clear and balanced exposition by the representative of Canada he would only stress that in relation to the use of restrictions on imports from third countries his delegation
agreed that Article XII would continue to apply to individual members of a
customs union or free-trade area. He recognized that a stage could come in the
institution of a customs union which was also aiming at economic union, when
the economic and financial relations of the constituents would be so intimately
integrated that it could be appropriately regarded as a single entity for purposes
of the International Monetary Fund and the General Agreement. Though that
might become the case one day, it would be a long way off. Further points
that needed elucidation could appropriately be taken up in a working party where
further clarification could be obtained on what certain provisions of the Treaty
may mean and on the way in which they may be operated.

Mr. SWAMINATHAN (India) said that after the exposition by the Canadian
representative it did not seem necessary to dwell on the general aspects of the
question before the Committee. During recent Article XII consultations, when
the discriminatory aspects of quantitative restrictions in international trade
had been discussed, his delegation had repeatedly pointed out that India did not
fully benefit from certain liberalization measures applied by Western European
countries despite its membership in the sterling area which removed every need
for discrimination on currency grounds. For its ability to purchase capital
goods and other goods from the rest of the world, India depended on exports of
certain commodities, including cotton textiles. At present very few of these
textiles were exported to continental Europe, and none at all to France. Imports
by India from OEEC countries, on the other hand, were very large in volume.
These would not be maintained if India were in the future denied access to the
markets of the most important countries of the OEEC. Exports to the Six would
be exposed to high tariffs and highly competitive conditions of manufacture, and
if in addition to that the functioning of the Treaty were to introduce discriminatory
quota restrictions, the pattern of trade of India might have to change and evolve
in a way which might not benefit the widening of trade on a multilateral basis.
In concluding, Mr. Swaminathan hoped that these views, which were those of many
under-developed countries, would be borne in mind when the problems of quantitative
restrictions were being discussed in a sub-group.

Mr. WESTERMAN (Australia), supporting the views expressed by the Canadian
representative and other delegates who had spoken along similar lines, said that
the provisions of the Treaty concerning the use of quantitative restrictions were
not clear. The CONTRACTING PARTIES would need to examine not only the general
principles and policies which the Community would follow in this field but also
the consequences which the use of import restrictions might have on particular
commodities, e.g. sugar, coffee and wheat.

The Treaty was of such outstanding importance that the CONTRACTING PARTIES,
when addressing themselves to this issue, could not but consider the worst
consequences which it might have on international trade. The Treaty provided
for the progressive relaxation of quantitative restrictions as between the Member
States. In the circumstances, third countries would find it difficult to keep
access to the markets of the Community. Furthermore, if, as a result of this
internal liberalization of trade, the balance-of-payments of a Member State
deteriorated, it might intensify its restrictions on imports from third countries.
If, on the other hand, the payments position of one of the Six improved, the other Member States would very likely be granted the benefits of a lion's share of the relaxations.

Articles 108 and 109 of the Treaty raised further problems. Firstly, Member States might increase imports from another Member in balance-of-payments difficulties, thereby causing a fall in their imports from third countries. They could also intensify restrictions against outside countries. Secondly, if a Member State were in a persistent creditor position, the other partners of the Community might cut imports from outside rather than from the persistent creditor. If the Six construed these two articles to permit such developments, these provisions would be contrary to the basic philosophies of both the General Agreement and the International Monetary Fund.

The CONTRACTING PARTIES therefore needed clarification from the Member States as to what the Treaty provided concerning the use of quantitative restrictions. The answers supplied by the Interim Committee of the Common Market had not been reassuring. The Institutions of the Community should, immediately after their establishment, clarify what the Interim Committee had been unable to clarify.

Mr. STUYCK (Belgium) said that a number of speakers had expressed their anxieties regarding the future policy of the Community in the field of quantitative restrictions, and he hoped he would be able to reply to most of the questions asked. For the rest, complementary explanations would be furnished to the sub-group. To dispel the fears of the Japanese delegate with regard to this point, he recalled that Article 234 of the Treaty, which requires the Member States to take into account their international obligations, places them under a strict obligation which no other provision of the Treaty could invalidate. Thus, the provisions of the Treaty which envisage the bringing into uniformity, at the highest possible level, of their liberalization lists applying to third countries, would be implemented in conformity with Article XI and the following Articles of the General Agreement.

The Canadian representative in his statement had indicated that only balance-of-payments difficulties described in Article XII of the General Agreement authorized contracting parties to apply quantitative restrictions in the manner described in that and the following Articles. Mr. Stuyck underlined that, with regard to this point, the Member States of the Community had undertaken in the Treaty to eliminate quantitative restrictions among themselves in conformity with the provisions of paragraph 8 of Article XXIV. The delegate for Canada seemed to have confused the obligation to eliminate quantitative restrictions among the Member States with the obligations of the Member States towards third countries in conformity with the provisions of Article XII. That the elimination of quantitative restrictions among the Member countries of a customs union could be carried out without similar liberalization measures being taken with regard to third countries was a result of the very terms of paragraph 8 of Article XXIV. This interpretation was confirmed and implicitly recognized in the case of the customs union between the Union of South Africa
and Southern Rhodesia and had never been questioned by the CONTRACTING PARTIES. Furthermore, a similar process applied within the framework of the Benelux Union during the last ten years had never led to objections. Therefore, the Member States felt entitled to eliminate quantitative restrictions among themselves, without having to extend this liberalization to countries which were not members of the Community, and that they were right in maintaining that the measures which they proposed to take were in conformity with Article XXIV.

The representative of Chile had expressed concern regarding the commercial policy of the Community. It was difficult to give precise replies in this field. In effect, it would remain for the institutions of the Community to establish the rules of the commercial policy of the Member States and these would be established in accordance with circumstances prevailing at any moment which could not be foreseen. In any case the intentions of the Six Member States were clearly set out in the Preamble to the Treaty where they declared themselves desirous of contributing, through a common commercial policy, to the gradual elimination of restrictions on international trade, not only among themselves but also between the Community and third countries. Furthermore, Article 110 declares their intention to contribute, in accordance with the common interest, to the development of world trade and to the progressive elimination of restrictions on international trade.

The representative of Australia had expressed fears that should one of the Member States find itself in grave balance-of-payments difficulties the policy of the Community, as provided in the Treaty, would result in the reduction, if not the elimination, of imports from third countries. On the contrary, the operation of the Community would allow the country in difficulties to continue to import the same products through the intermediary of the other Member States in such a way as to pay for its purchases not in hard currency such as dollars, but in a currency of the Community. Like the representative of the United States, he felt that the CONTRACTING PARTIES should examine the Treaty in a practical manner. The CONTRACTING PARTIES had never paused to give consideration to theoretical cases; they had always striven to find practical solutions for the problems of the moment and, in the case of the Community, this method would seem likely to yield the best results.

Mr. WESTERMAN (Australia) pointed out that the practices adopted by the OEEC in exchanging quotas were discriminatory and not in compliance with the General Agreement. If his delegation had not raised this issue before it was because it had felt that generally the OEEC had operated to the benefit of world trade.

The CHAIRMAN said that the discussion had shown a substantial measure of agreement for the establishment of a sub-group which would study in detail the various points raised during the debate.