Intersessional Committee

SUMMARY RECORD OF THE FIRST MEETING

Held at the Palais des Nations, Geneva on Monday, 14 January 1952 at 3 p.m.

Chairman: Mr. Johan MELANDER (Norway)

Subject discussed: Import restrictions announced by the United Kingdom (GATT/CP/134) and procedures for dealing with cases of intensification of import restrictions.

The CHAIRMAN explained that the meeting had been convened to consider whether certain modifications in quantitative restrictions maintained under Article XII amounted to substantial intensification within the meaning of paragraph 4 (b) of the Article and thus required action by the Contracting Parties. He referred to the measures taken by the United Kingdom Government, announced on 7 November, the details of which were published on 20 November. In the interim the Executive Secretary had entered into informal discussions with the United Kingdom Government which was of the opinion that the action taken did not require consultations under Article XII:4 (b). The Chairman and the Executive Secretary had felt this to be a question for consideration by the Intersessional Committee. The meeting had therefore been convened.

The Chairman also referred to action which had been or might be taken by other Commonwealth countries as a result of adverse developments in the balance-of-payments position of the sterling area, and to the meeting of the Commonwealth Finance Ministers presently taking place to review the position of the sterling area as a whole. Southern Rhodesia, in fact, had already announced an extension of its import controls to countries outside the sterling area, and had advised that a memorandum would be submitted. Among the European countries the Government of France had announced on 16 November that they intended to reduce their programme of dollar imports. The Executive Secretary had entered into informal discussions with French officials, who indicated that no final decision had been reached and that provisional measures only were being applied; they had agreed to furnish any information required and, if so desired, would enter into consultations with the Contracting Parties. Press reports had indicated that intensification of import restrictions might be contemplated by other countries, for instance, the report of a statement to this effect by the Swedish Minister of Commerce.

A review of the action taken since the close of the Sixth Session illustrated the difficulties of the Executive Secretary and the Chairman in
carrying out their responsibilities between sessions. The Contracting Parties had decided at their Sixth Session that any decision on the initiation of consultations, which under Article XII 4 (b) were to be undertaken within thirty days, should be made by the Intersessional Committee. This procedure, however, involved a preliminary decision as to whether or not a sufficient **prima facie** case had arisen to justify the convening of the Committee to consider it, and this decision fell upon the Executive Secretary and the Chairman. To assist them in carrying out this task it would be desirable if hereafter contracting parties making significant changes in their import restrictions between sessions would promptly submit a notification in order that the decision could be based upon official information rather than unofficial press reports; any other procedure involved delays which the thirty-day time limit, specified in Article XII 4 (b), did not permit. The Chairman suggested that the Committee might ask the contracting parties willing to comply with this procedure to do so in the future, and might recommend that the Contracting Parties at their Seventh Session insert a provision to this effect in the intersessional procedures.

Mr. JARDINE (United Kingdom) stated that his Government regretted that balance-of-payment difficulties had obliged them to modify their import programme and any adverse effects these modifications might have on the trade of other contracting parties. The United Kingdom had complied with the provisions of paragraph 2 of Annex J by submitting a detailed memorandum (GATT/CP/134) and were prepared to provide any further information if required. His Government did not, however, consider that the Contracting Parties were required under the Agreement to invite the United Kingdom to enter into consultations. In their view they had not intensified their import restrictions within the meaning of Article XII 4 (b). The only imports which had been reduced were additional imports above the maximum total which the United Kingdom would have been able to afford if import restrictions had been applied on a non-discriminatory basis. His Government therefore felt that in notifying the Contracting Parties in accordance with paragraph 2 of Annex J they had complied with their obligations under the Agreement, and that no further action was required.

Dr. van BLANKENSTEIN (Netherlands) said that he could not agree with the contention of the United Kingdom that new import restrictions did not constitute a case for consultations under Article XII 4 (b). The question of consultation was a serious one at the present time when there was danger of wide-spread intensification of import restrictions. Unless such restrictions were subject to some international, multilateral consultation as to their justification nothing could prevent other countries from taking retaliatory measures which could only lead to a spiral of counter-restrictions. If the Contracting Parties accepted the view of the United Kingdom the result would be that a very large field of restrictions could not be discussed under the General Agreement, and intensification of restrictions could take place without consultations. From the legal aspect, he would point out that Annex J only gave permission to discriminate in the application of import restrictions, whereas Article XII 4 (b) referred to intensification of such restrictions. Whether discriminatory or
not, consultations were required whenever import restrictions were substantially intensified. The fact that discussions had taken place elsewhere had no relevance to the underlying principle of consultation under the Agreement.

Mr. LECUYER (France) thought that contracting parties were faced with a difficult, delicate legal question which resulted from the juxtaposition in a single agreement of two texts drafted at different times. He agreed with the delegate of the Netherlands that Article XII governed the application of all import restrictions, whereas Article XIV and Annex J only set forth the conditions under which discrimination was permitted. Article XIV, including Annex J, could only be invoked in cases where Article XII applied. From the legal point of view, therefore, a substantial intensification of import restrictions, regardless of whether they were applied discriminatorily or not, fell under Article XII and were properly the subject of consultations. If any other view were taken, countries which operated under Article XIV would be less favourably placed than those which had elected to be governed by Annex J.

Mr. JARDINE (United Kingdom) replied that he had not intended to imply that the countries governed by Annex J should be in a more favourable position than those governed by Article XIV, (b) or (c). The contention of his Government was that a measure affecting the additional imports permitted by Article XIV would not require the Contracting Parties to invite the country taking the measure to enter into consultations. The United Kingdom measures could be divided into three classes; namely, the slowing down in the stock-piling programme; a reduction in dollar imports; and a reduction in the imports from other countries which had hitherto been admitted under Open General Licence. Annex J did not apply either to the slowing down in the stock-piling programme nor to dollar imports the reduction in which was not in any case of such dimensions as to call for consultations. Regarding the third category, the United Kingdom Government considered that the facilities hitherto granted had been made possible by the permission to discriminate given in Annex J. These provisions of the Agreement permitted but did not oblige discrimination, and it was for individual countries, rather than for the Contracting Parties, to determine whether, and to what extent, they should avail themselves of the permission to discriminate, and the Contracting Parties had no power either to ask them to extend their imports or to object if the volume of additional imports was subsequently reduced. If the interpretation of the Netherlands and French delegates were accepted, countries would be obliged to consult whenever balance-of-payment difficulties compelled them to withdraw concessions which had been granted even on a temporary basis. This would surely be undesirable, since it would discourage countries from taking any risks in pressing forward with liberalization schemes. The provisions of Article XII were relevant only to the operation of restrictions applied under that Article, and not to the discriminatory application of those restrictions provided for in Article XIV and Annex J.

Mr. Jardine said that, as far as the practical side of the matter was concerned, the question had been fully discussed in the O.E.E.C. where arrangements had been made for bilateral discussions between the O.E.E.C. countries affected and the United Kingdom. It would be difficult for the
Intersessional Committee to arrive at an agreed conclusion on the interpretation of Article XII read in conjunction with Annex J, and, since the practical issues were already covered by the O.E.E.C. procedures, it might be advisable to defer consideration of the question of whether consultations were required, to the next session of the Contracting Parties when the general question of balance-of-payment restrictions maintained under Article XIV:1 (g) would be discussed.

Dr. van BLANKENSTEIN (Netherlands) considered it essential not to confuse the question of whether consultations were required under Article XII:4 (b) for the United Kingdom case and whether the United Kingdom was justified in intensifying restrictions. The last question was not at issue; it had been discussed at length in the O.E.E.C. and his Government had always admitted that the measures taken by the United Kingdom were justified. The United Kingdom, however, maintained that there was no obligation to consult with the Contracting Parties on this matter since there was no obligation for countries to avail themselves of the provisions of either Article XIV or Annex J. With this point of view he disagreed. He referred to paragraph 2(a) of Article XII, setting forth the conditions under which contracting parties could institute, maintain or intensify import restrictions; if restrictions were not necessary for the purposes stated in that paragraph, contracting parties were obliged to liberate their trade or at least increase the possibilities of imports, and to this end should make use of the possibilities for discrimination provided in the General Agreement. It was Article XIII rather than Article XII which provided for restrictions to be applied on a non-discriminatory basis, except where otherwise permitted under Article XIV. He could not, therefore, agree with the contention of the United Kingdom representative that Article XII:4 (b) only referred to non-discriminatory restrictions.

Dr. van Blankenstein referred to the discussions taking place in the O.E.E.C. As a member of the O.E.E.C., and in view of these discussions, he would not insist that consultations be instituted by the Contracting Parties at an early date. In fact, if the Contracting Parties were satisfied that the discussions in Paris covered all the countries affected by the United Kingdom measures, he would consider it sufficient for the Contracting Parties simply to take note of the fact. The general principle of whether consultations were required remained, however, and it was important that this Committee or the Contracting Parties should decide without delay that cases such as the United Kingdom case were subject to consultations under the Agreement. His Government considered it particularly important since the United Kingdom might not be the only country involved. Discussions were presently taking place in London which might result in further restrictions, and in some cases by countries which were not members of the O.E.E.C. It seemed clear to him that restrictions must be dealt with on an international basis through the General Agreement. Otherwise if countries imposed, or intensified restrictions, and then refused to consult, there would be serious consequences in the form of retaliatory measures by other countries which would not otherwise be justified.

Mr. MOORE (United States) agreed generally with the Netherlands and
French delegates that this was a problem that should be dealt with in such a manner as to preserve the strength of the General Agreement as a multilateral forum for discussion and to prevent retaliatory action. Contracting parties were, however, confronted with the fact that a situation in a country with depleted reserves could not be permitted to continue and that action was required to arrest the decline. The United States considered that there was a good case for postponing a determination as to whether the United Kingdom was obliged in this case to consult under Article XII:4 (b). The measures taken had fallen primarily on the trade of the O.E.E.C. countries and there had been discussions between the countries most affected. Although his government did not regard the O.E.E.C. as in any way a substitute for the General Agreement, the discussions which had taken place there reduced the urgency of the problem and the difficult legal issue which had been raised required time for consideration. The present time was one of transition in the whole field of the action to be taken by countries in balance-of-payment difficulties, and a discussion a few months hence would probably be more fruitful than one at the present time. He wished it to be clear, however, that if the position changed, and the United Kingdom took further drastic action the position of his Government would probably be different.

Mr. HEWITT (Australia) said that the question was being treated as a technical point and that he was not persuaded by the argument of the Netherlands representative. He drew attention to the draft of Annex J and relevant sections of Article XIV which showed that action taken under Annex was exceptional and for a limited period. Paragraph 1(g) of Article XIV referred specifically to consultations in March 1952 on exceptions still applied under Annex J. The point of view of the Netherlands and that tentatively expressed by the United States was virtually that the consultations should embrace not only measures still in force under Annex J but also measures that had been temporarily in force but subsequently withdrawn. As the United Kingdom representative had shown, that clearly was not expressed in either Article XII or XIV.

As to the substance of the point it was clear that there were to be consultations at the next session on remaining measures applied under Annex J. The Netherlands representative had expressed satisfaction with discussions which were to take place in the O.E.E.C. It seemed clear that in the case under discussion consultations were technically not required. The consultations that would take place with the Contracting Parties later in the year would provide sufficient opportunity to examine the exceptions still being applied by the United Kingdom under Annex J.

The CHAIRMAN said the Committee should agree on a question of procedure: whether to decide now if the United Kingdom was obliged to consult under Article XII:4 (b), or to postpone a decision on this matter, without prejudice to the merits of the case, to a later stage. The discussion had shown that the United Kingdom and Australia believed there was no obligation to consult while the Netherlands and France opposed this view. The United States agreed that the decision should be postponed.
Mr. COUILLARD (Canada) said that his government considered that both the United Kingdom and French cases should be postponed until the time of the consultations provided for in Article XIV:1 (g). After listening to the debate, which had raised fundamental issues affecting the entire Agreement, he felt even more strongly that a decision should be postponed. This was a matter for the Contracting Parties to solve in a broader context than the subject of the present meeting. Until the legal issue was solved, this Committee could hardly go on to consider whether there was substantial intensification of import restrictions. He therefore agreed with the United States delegate that both matters should be taken up by the Contracting Parties at their next session.

Mr. DHARMA VIRA (India) agreed with the Canadian delegate that this was a fundamental issue and that a decision on such an important matter could not be taken by the Intersessional Committee. In his view, the provisions concerning quantitative restrictions were divided into three sections: non-discriminatory imports, discriminatory restrictions on imports and discriminatory relaxation of restrictions on imports. They could not all be treated in the same manner, and he sympathized with the view expressed by the United Kingdom that the party concerned should be at liberty to reduce its imports taken under the latter provisions without being required to enter into consultations. However, he thought this was a matter for decision by the Contracting Parties at their next session.

Mr. KASTOFT (Denmark) was not fully convinced by the United Kingdom and Australian arguments, but he shared the view of the United States that for practical reasons consideration of the matter should be postponed until the Seventh Session. He wished to state, however, that the measures taken by the United Kingdom had increased the discrimination between the sterling area and other non-dollar countries. Consequently his agreement that consideration of the matter be postponed, had no bearing on his Government's view of the questions of substance.

Dr. van BIANKENSTEIN (Netherlands) said that as far as the United Kingdom import restrictions were concerned, he would agree with the proposal to postpone a decision as to whether consultations were required or not. He did wish to point out, however, that there was the possibility that the United Kingdom might be forced to further intensify its restrictions or that other countries might intensify restrictions before the next session of the Contracting Parties. That interval was sufficiently long for the process of retaliatory measures to begin. Twenty-five per cent of the Netherlands trade, for example, was carried on with the sterling area, and if any intensification of restrictions should result from the present talks in London, and if there was a widespread denial that consultations were required, he could not answer for the results. He agreed, therefore, that a decision on the matter be postponed but proposed that if there were any new intensifications of restrictions, the Intersessional Committee should be convened to discuss the question again.

The CHAIRMAN said that there appeared to be agreement to defer a decision on the fundamental issue. The Netherlands proposal that the Committee should be convened in case of any further important restrictions brought him back to his
original remarks on the difficulty experienced by the Executive Secretary and Chairman in deciding in the absence of notification by governments, whether intensifications were or were not substantial. Even with notifications it would still be difficult to decide whether the degree of intensification called for a meeting of the Committee or not. He therefore proposed that the countries represented on the Intersessional Committee should agree to notify the Executive Secretary of any intensification of import restrictions, whether the country concerned considered the intensification substantial or not, and that they should provide detailed information on the sectors of trade and the countries affected by the measures in order to assist the Executive Secretary and himself in deciding whether to convene the Committee. Finally, the Executive Secretary and himself should have authority to enter into informal contacts with the countries most likely to be affected.

The EXECUTIVE SECRETARY said that the question of official and prompt notification was fundamental. A decision on this point by the Intersessional Committee would not be binding on the Contracting Parties as a whole, but if the Committee wished to make a recommendation to the Contracting Parties it was to be hoped that the members of the Committee would act in accordance therewith, and that other contracting parties would also be willing to act on the recommendation pending its adoption by the Contracting Parties.

If the Committee agreed that contracting parties should notify any intensification and accepted the formula proposed by the Netherlands delegate, it appeared that the procedure would be as follows: as soon as a contracting party submitted a notification and it was the judgment of the Chairman and Executive Secretary that the notification constituted a prima facie case of a substantial intensification of import restrictions, even if the intensification involved raised the same legal issue as the present United Kingdom case, the Intersessional Committee would be convened to consider the matter. He explained that he had already received a communication from Southern Rhodesia enclosing an import control order issued on 19 December which introduced a system of import licensing on imports from the non-dollar area which had not previously been in force. The Southern Rhodesia Government intended to provide a memorandum giving details of this system which would be distributed to contracting parties as soon as received. When this memorandum was received it would be for the Chairman and himself to decide whether the measures constituted a substantial intensification of restrictions. This was a case that might arise within a few days. The possibility of similar cases arising from the discussions presently taking place in London had also been mentioned. It should be clear, therefore, that postponement of a decision on the interpretation of Article XII:4 (b) read together with Annex J might not prevent the same problem being placed before the Committee in the immediate future.

He added that two further meetings of the Intersessional Committee were in any case planned before the next session of the Contracting Parties, one in February to discuss the date and place of the session which would involve consideration of the arrangements and timetable for the Article XIV:1 (g) consultations, and another six weeks before the opening of the Seventh Session.
to review the Agenda and do other preparatory work. Any question of initiating consultations which arose in the future could be referred to one or the other of these meetings, unless it were of so serious a nature as to require convening a special meeting of the Committee.

Mr. AHMAI (Pakistan) thought there could be no harm in a recommendation by the Intersessional Committee that contracting parties should notify the Executive Secretary of intensified restrictions in the interests of good administration and to facilitate the work of the Secretariat. It might not always be possible, however, to send such notification before the information was available through the press. However, on the matter of calling a meeting to consider any new intensification, it seemed to him that there should be a complaint from a contracting party before a meeting was called.

The CHAIRMAN summarized the proposed procedures which were agreed to in principle. It was agreed that a text of the procedures would be submitted for approval at the next meeting.

The meeting adjourned at 6.30 p.m.