BELGIUM AND LUXEMBOURG REQUESTS FOR WAIVERS

REPORT BY THE WORKING PARTY

I. THE BELGIAN REQUEST

1. The request by the Government of Belgium for a waiver from the obligations of Article XI with respect to a number of agricultural products was submitted in May 1955 in document L/357. This request was examined by the Intersessional Committee and the Committee's report (L/372) has been available to the Working Party. Additional data were submitted in Addenda 1 and 2 to that document. Moreover, following the request by the Intersessional Committee, the Belgian Government submitted in October further additional information (L/357/Add.3), statistical data (L/357/Add.4) and the texts of various protocols and agreements (L/357/Add.5).

2. The request of the Belgian Government was for a waiver under Article XXV. It was, however, the general view that the matter should be examined in accordance with the provisions of the Decision of 5 March on Problems Raised for Contracting Parties in Eliminating Import Restrictions Maintained During a Period of Balance-of-Payments Difficulties. Belgium agreed to cooperate in the effort to bring its request for a waiver within the framework of that Decision and the Working Party has examined it in the terms of the Decision. In order to bring the request into conformity with the provisions of the Decision, Belgium withdrew, in the course of the examination by the Intersessional Committee, the following items for which the request had originally been made: fresh or chilled mutton and lamb, preserved milk and cream in powder without addition of sugar, preserved milk and cream in powder or condensed with addition of sugar, and without at the present Session Belgium withdrew some further items (see paragraph 5 below).

3. The Decision of 5 March 1955 requires that the application for concurrence in the maintenance of restrictions meet a number of requirements, and that the applicant contracting party accept a certain number of undertakings. Accordingly, the Working Party examined the request for each product involved in the light of these requirements and undertakings.

4. Regarding the question whether the restrictions which the Government of Belgium wish to maintain met the exceptional circumstances described in the Preamble of the Decision, the Working Party took note of the fact that the CONTRACTING PARTIES had accepted at the Ninth Session the statement contained in paragraph 79 of the Report of the Working Party relating to the review of the provisions relating to quantitative restrictions (see BISD, Third Supplement, page 192) that "nothing in the Decision would prevent a country in the position of Belgium from availing itself of the facilities of the Decision, in accordance with its provisions".

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5. The first requirement under paragraph 2 of the Decision to be met is that the restrictions for which a waiver is applied should have been continuously in force since 1 January 1955. The Working Party noted that, in the case of some products (ponies of a height between 110 cm. and 145 cm., fresh herring, salted dried or smoked herrings, eggs shelled and sugar), the restrictions had not been continuously in force and had been applied only occasionally. In view of the doubts expressed by the Working Party regarding the eligibility of such restrictions under paragraph 2(a) of the Decision, the Government of Belgium agreed to withdraw its application concerning the products listed above. The Working Party was satisfied that for the other products, the restrictions had been continuously in force.

4. The second requirement to be met is that the sudden removal of the restrictions would result in serious injury to the domestic industry concerned. As the mere existence of a quantitative restriction for a number of years could not be considered as sufficient evidence that its removal would injure the industry substantially, the Working Party proceeded to a detailed examination of the injury which might result from the removal of the various restrictions at the present juncture. The representative of Belgium indicated that the Belgian agriculture is composed mainly of very small enterprises and that average area holdings are the smallest in Western Europe. Nearly all these farms are of the family type and there was almost no opportunity for substitution of other types of agricultural production for those which have to be protected. As the farmer has no qualifications for other employment, it is not possible to shift this population to industrial activities which, in spite of the high level of business activity, does not lack manpower.

7. Even with the maintenance of the restrictive measures, the income from Belgian agriculture is inadequate and, in most cases, the farmer does not receive an income equal to that of an agricultural or industrial worker. The abandonment at this time of the restrictions would probably lower the prices paid to farmers by at least 20 per cent, and would oblige the farmers to run their farms at a loss without reducing the volume of production.

8. In order to maintain a production whose cost and price structure exceeds that of foreign competitors by a substantial percentage, the Government of Belgium fixes normative prices called "prix de direction" which the Government tries to maintain by protective measures. The Government of Belgium sees to it however that domestic prices do not exceed these normative prices in order to avoid a raise in wages which are based on the cost of living. On the basis of information at its disposal, the Working Party concluded that this requirement had also been met for the products listed in the Belgian application as revised. The Working Party then considered whether it would be practicable at this time for the Government of Belgium to resort to measures consistent with the provisions of the General Agreement in lieu of the quantitative
restrictions now in force. The Working Party considered in particular the extent to which subsidies and tariffs could be applied and came to the conclusion that, in the light of the statements and documents submitted and in view of the participation of Belgium in the Benelux Customs Union, it did not appear to be practicable, at the present juncture, to devise alternative measures for the products concerned. It noted however that some of the restrictions had been applied primarily to protect domestic producers against imports under abnormal trading conditions, in particular when the sales were made on consignment. The working Party considered that problems of dealing with abnormal trading were of a different kind than the problems associated with normal trade, and expressed the view that it should be possible to replace most, if not all, of these restrictions by other measures consistent with the General Agreement in a relatively short time.

9. The Working Party noted that, in the case of eggs and pork, for which a waiver was requested. Belgium exported some quantities of these products. The representative of Denmark pointed out that these export surpluses might be the result of protection by quantitative restrictions supplemented by an internal system of minimum prices. The representative of Belgium indicated that these exports were only occasional and they related to eggs of a size which could not easily be marketed in Belgium. As regards pork, Belgium was an importer of pork and the occasional exports were due to the irregular cyclical production of pigs. The Working Party noted the statement by the Belgian representative that the export of pork was spasmodic with the exception of a particular type of product (fat bacon) which could not be easily distinguished from the similar products for which a restriction was applied for, and that the export of eggs were occasional. It concluded that there was no real risk of such exports creating any serious disturbance on export markets and thus affecting the interests of other countries.

10. The Working Party then proceeded to examine whether there was a reasonable prospect of eliminating the restrictions over a comparatively short period of time as required in paragraph 2(c) of the Decision. In this respect, the Working Party agreed that an important factor was the Agreement of 3 May 1955, entered into by the Government of Belgium with the Kingdom of the Netherlands providing for the harmonization of the agricultural policies of the two countries during a period of seven years from the date of that Agreement. The Working Party felt that the enactment on 29 July 1955 of the law establishing an Agricultural Fund and the recent establishment of special administrative machinery were also steps which indicated a reasonable prospect for the development of appropriate measures designed to ensure the elimination of the restrictions. Finally, in arriving at the judgment that the requirements of paragraph 2(c) were satisfied, the Working Party had regard to the intention of the Government of Belgium to submit more precise and detailed information as soon as practicable after 3 May 1956 on the measures to be developed for the elimination of the restrictions. Under these arrangements agreed between
Belgium and the Kingdom of the Netherlands, working plans would be developed each year; accordingly a permanent commission had been set up to carry out this work. Details of these working plans for the first year would become available at some time after 3 May 1956.

11. The Working Party then examined whether the Government of Belgium was prepared to accept the undertakings set forth in paragraph 3 of the Decision. It noted the formal undertaking by the Government of Belgium to eliminate the restrictions within a period of seven years. This involved an undertaking by that Government to develop and apply appropriate measures to that effect. The Working Party considered that the measures already taken by the Government of Belgium and referred to in paragraph 10 above were measures designed towards the elimination of the restrictions within a comparatively short period of time and that the arrangements already made by Belgium afforded a guarantee that these measures would be further developed.

12. The Belgian Government has also undertaken to provide, as contemplated in paragraph 3(b) of the Decision, a reasonable share of the Belgian market in the products concerned. The Belgian delegate expressed the intention of his Government not to restrict access to the Belgian market beyond the degree of restriction now and previously applied. The Working Party did not attempt to pass judgment on the question whether the existing measures of control were such as to satisfy the requirements of Section A, paragraph 3(b) relating to the provisions by Belgium of a fair and reasonable share of the market to other contracting parties. Under the terms of the waiver Belgium would undertake to provide such a share, and the question as to whether particular arrangements governing the various commodities satisfied this undertaking from time to time would, where necessary, be a matter for discussion between Belgium and those contracting parties having an interest in the commodities concerned. In the event of disagreement the facilities of the CONTRACTING PARTIES would be available for assisting in a settlement of the matter.

13. While any question of a fair share of the Belgian market for a particular product would be dealt with as in paragraph 12 above, the Working Party noted that the Belgian Government proposed to eliminate completely in some years the restrictions on selected products, but that it would progressively relax the restrictions on other products, whilst in some cases these methods might be combined.
14. Having satisfied itself that the Belgian request met the necessary requirements and that Belgium was prepared to accept the required undertakings, and that the Decision of 5 March 1955 was therefore applicable, the Working Party addressed itself to the question of the conditions and limitations to which the concurrence of the CONTRACTING PARTIES should be subjected.

15. Paragraph 2 of Section B of the Decision of 5 March 1955 provides that no restriction authorized under it should be administered in a way inconsistent with the provisions of the General Agreement relating to the non-discriminatory application of quantitative restrictions. The Working Party noted the assurances given by the representative of Belgium that even in the cases where bilateral commitments had been entered into for the administration of quotas, such commitments would not prevent the Government of Belgium from observing the relevant provisions of the General Agreement. Some members of the Working Party felt that questions in this respect arose from the Customs Union association of Belgium with the Netherlands and Luxemburg. These members noted that goods originating in the Netherlands or Luxemburg and entering Belgium might be subject to the same import restrictions as like goods originating in other countries; they might be subject to some, but not as much restriction; or they might be exempt from restriction while the entry into Belgium of the like goods originating in other countries was restricted. The Working Party did not regard it as necessary or practicable to resolve such questions at this time. However, in view of the circumstances of the case, the Working Party did not consider that Belgium should be required to reimpose or intensify restrictions on imports from the Netherlands of products covered by the proposed waiver. It was also agreed that the adoption by the CONTRACTING PARTIES of the Draft Decision annexed to this Report should not be regarded as carrying any implications for the future on the points raised above in one way or the other. The Working Party considered, however, that in view of the Belgian Government's statement that the process of harmonization agreed on with the Government of the Netherlands constitutes a safeguard for the removal of restrictions against imports from other contracting parties, it may be expected that these latter restrictions will be reduced and removed as rapidly as the restrictions against similar imports from the Netherlands.

16. Finally, the Working Party wishes to place on record that the provisions of paragraphs 3, 4 and 5 of Section B of the Decision of 5 March 1955 apply to the waiver to be granted to the Government of Belgium.
17. The Working Party then considered for what period the concurrence of the CONTRACTING PARTIES should be given. As it was agreed that the waiver should be granted under the Decision of 5 March 1955, the Working Party considered that the period should not exceed five years, as is expressly provided for in that Decision. It recognized, however, that the Government of Belgium, in the application of measures designed to eliminate the restrictions, would meet particular difficulties as a result of its association with other contracting parties in the Benelux Customs Union. Its policy would have to be harmonized with the agricultural policies of those countries and, for that reason, the Working Party was prepared to recommend that these circumstances should be considered by the CONTRACTING PARTIES as being exceptional and deserving consideration under the provisions of paragraph 5(a) of Article XXV of the General Agreement.

18. This conclusion led the Working Party to recommend that the waiver be extended for another period of two years under paragraph 5(a) of Article XXV on the understanding that this extension would only apply to those restrictions which would not have been eliminated by 1960 - which the Working Party expects to be very few in number - and that all restrictions would be eliminated as soon as practicable without waiting for the end of the first period of five years, or until the end of 1962 for the remaining ones. The Working Party wishes also to point out that this part of the Decision would have to secure the majority required under paragraph 5(a) of Article XXV. It wishes also to point out that, if its recommendations are accepted by the CONTRACTING PARTIES, all restrictions maintained by Belgium on agricultural products would be finally eliminated at a time when all remaining restrictions, the maintenance of which might be authorized under the Decision of 5 March 1955 would also have to be discontinued. It is also understood that the extension of the waiver until 1962 would be subject to all the conditions and limitations which are applied under the Decision of 5 March 1955 during the initial five-year period. The Danish representative was not able to accept the conclusion of the Working Party on this point: he stated that his Government would be prepared to accept the granting of a waiver for five years under the Decision of 5 March 1955, but could not agree to an extension of the concurrence beyond a period of five years.

19. Finally, the Working Party wishes to draw the attention of the CONTRACTING PARTIES to some statements and comments which it appears useful to place formally on record.

20. The Working Party indicated in paragraph 5 above that the Belgian representative agreed to remove from the request a number of items which, in the Working Party's opinion, could not be considered as having been continuously in force since 1 January 1955. The Belgian representative withdrew these requests on the understanding that the General Agreement contained provisions which would be available to the Belgian Government in order to meet the problems and difficulties which it attempted to meet by resorting to the restrictions on imports.
21. In this connexion, some members of the Working Party stated that the
readiness of the Belgian Government to withdraw these items from its appli-
cation has played an important part in forming the attitude of their
governments to the application for a waiver.

22. On the other hand, the representative of Denmark stated that although
his Government was prepared to grant a "hard core" waiver to Belgium, it felt that
such a waiver should not apply to products like pork and eggs of which
statistics show that Belgium have had quite considerable and continuous
export surpluses.

23. Having regard to the provisions of Article XXIV, the Working Party
considers that the CONTRACTING PARTIES should record their view that the
granting of a waiver to Belgium on the basis of its application would not
later constitute a justification for extension of the same or comparable
restrictions on imports into the Netherlands or Benelux as a whole for the
protection of the Netherlands production and that any request by the
Netherlands, or by Benelux as a whole, for restrictions for that purpose
would have to be examined on its merits in the light of the requirements of
the Decision of 5 March 1955.

24. As a result of its examination of the Belgian request in the light of
the terms of the Decision of 5 March 1955, the Working Party submits to the
CONTRACTING PARTIES the following draft decision for consideration and
approval.

DRAFT DECISION

CONSIDERING that the CONTRACTING PARTIES, in their Decision of 5 March,
1955 (relating to problems raised for contracting parties in eliminating
import restrictions maintained during a period of balance-of-payments
difficulties) established a procedure for temporarily waiving the obligations
of a contracting party under Article XI of the General Agreement;

CONSIDERING that this procedure required that any application for such
a waiver must meet the requirements outlined in Section A, paragraph 2 of
the Decision, that the applicant contracting party must undertake the
obligations set out in Section A, paragraph 3 of the Decision, and that any
concurrence that may be given by the CONTRACTING PARTIES pursuant to the
Decision must be subject to the conditions and limitations set out in
Section B of the Decision;

CONSIDERING that the Belgian Government has requested the CONTRACTING
PARTIES, acting pursuant to the Decision of 5 March 1955 to waive temporarily
its obligations under Article XI to the extent necessary to allow the
maintenance of restrictions applied on imports of the products listed in the
Annex to this Decision;
CONSIDERING that the restrictions have been continuously in force since 1 January, 1955;

CONSIDERING that their temporary maintenance is necessary to enable the domestic industry to adjust itself to the situation of serious injury which would be created by the sudden removal of the restrictions;

CONSIDERING that at the present time it would not be practicable for the Belgian Government to resort to alternative measures consistent with the General Agreement;

CONSIDERING that there is a reasonable prospect that the restrictions will be eliminated over a comparatively short period of time inasmuch as:

(a) the Belgian Government entered into an Agreement with the Netherlands Government on 3 May 1955 which provides for the harmonisation of the agricultural policies of the two countries during a period of seven years commencing from the date of that Agreement,

(b) the Belgian Government has enacted legislation in the Law of 29 July 1955 Establishing an Agricultural Fund and has also established administrative machinery for the development of appropriate measures designed to ensure the elimination of the restrictions,

(c) the Belgian Government will submit to the CONTRACTING PARTIES more precise and detailed information as soon as practicable after 3 May 1956 on the measures to be developed for the elimination of the restrictions;

CONSIDERING that in view of the Belgian Government's statement that the process of harmonization agreed on with the Government of the Netherlands constitutes a safeguard for the removal of restrictions against imports from other contracting parties, it may be expected that these restrictions will be reduced and removed as rapidly as the restrictions against similar imports from the Netherlands;

CONSIDERING that the Belgian Government accepts the undertakings set forth in Section A, paragraph 3 of the Decision of 5 March 1955;

THE CONTRACTING PARTIES

DECIDE that the provisions of the Decision of 5 March 1955 are applicable to the request submitted by the Belgian Government;
DECIDE to grant a concurrence under the Decision of 5 March 1955 for a period of five years from the date of the present Decision in respect of the maintenance of restrictions on the products listed in the Annex hereto;

CONSIDERING further that in the case of Belgium, having regard principally to the difficulties that may be expected to be involved in the harmonization of the agricultural policies of the members of the Benelux Customs Union, exceptional circumstances exist;

DECIDE further that, pursuant to paragraph 5(a) of Article XXV, the terms of this waiver shall be extended to 31 December 1962, with respect to those remaining restrictions which by reason of the exceptional circumstances referred to above the Belgian Government may not be able to eliminate within the period of the above concurrence.

ANNEX

List of products ...