Committee I on Expansion of Trade

DRAFT REPORT OF COMMITTEE I

The following is a re-issue of paragraphs 1 to 12 of the Draft Report (Spec(59)148 and Add.1), containing new texts and re-drafts by the Australian, United States and EEC Delegations.

1. The Committee met from 31 August to September 1959 and addressed itself to the tasks listed in COM.I/4.

I. PARTICIPATION OF AGRICULTURAL EXPORTING COUNTRIES

2. The Committee examined the problem - referred to it by the CONTRACTING PARTIES - of the participation of some agricultural exporting countries in tariff negotiations. In this connection the Committee discussed a number of proposals placed before it by the Australian Government.

* In the discussion on these proposals, the Australian Representative emphasised that the extent to which the more industrialised countries were willing to negotiate on a significant basis in respect of their agricultural trade would contribute to the total effectiveness of the tariff negotiations as part of the moves within GATT for a general expansion of world trade. His Government proposed that the negotiating rules should recognise that certain non-tariff barriers were negotiable. The proposals of the Australian Government in this connection are described in paragraph of this report.

* The Australian Government further proposed that the Committee should consider means by which contracting parties could be assured that concessions which they negotiated would not be frustrated by non-tariff devices. The Australian Representative recalled that many concessions obtained by Australia and other countries in the course of proposed negotiations had been so frustrated. In this connexion the Australian Representative explained that his Government considered that contracting parties which proposed to take action by way of non-tariff barriers having the effect of impairing the value of the tariff concession should use the procedures of Article XXVIII. He pointed out that Article XXVIII was the recognized provision in GATT to deal with the situation where a contracting party was unable to maintain a concession, and his Government considered that the article should also be used in cases where a contracting party could not maintain the value of a tariff concession because it proposed to take action in the non-tariff field such as the introduction of or an increase in an existing subsidy.

*Paragraphs preceded by an asterisk are drafts or re-drafts submitted by the Australian Delegation.

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The Australian Representative said that his Government recognized that Article XXIII was intended to deal with the situation where a concession was impaired, but it considered that action through Article XXVIII would be more appropriate. Under Article XXVIII the onus would be on the contracting party which granted the concession to take action and would require such action to be taken prior to the introduction by any contracting party of measures in the non-tariff field which had the effect of impairing the value of the tariff concession.

The Australian Representative said that it was implicit in the Australian proposal that it would have a retroactive effect in relation to those tariff concessions which had already been impaired by non-tariff action. Further he expressed the view that other contracting parties should consider whether they would find the Australian proposal more acceptable if its application were to be limited to future cases in which a tariff concession were impaired by the non-tariff action. He further pointed out that his Government would wish contracting parties to consider whether the proposal could be given effect by a ruling of the CONTRACTING PARTIES that Article XXVIII should be used in the manner proposed.

Although doubts were raised as to whether the examination of a proposal of this nature would come under the Committee's terms of reference, and although members considered that governments had not had adequate time to study this far-reaching proposal, the Committee agreed to have a preliminary discussion which would be reported to the CONTRACTING PARTIES.

It was not denied that the Australian proposal was logical, but it was felt that there were other considerations to bear in mind. In the first place, the proposal did not take account of the fact that the Agreement contained provisions relating to non-tariff barriers and that those provisions were written into the Agreement for the protection of the tariff concessions. It was understandable that contracting parties might disapprove of this or that provision, they were nonetheless a part of what balance it had been possible to achieve when drafting the Agreement. It was suggested that the Australian Government was in fact much more dissatisfied with these provisions than with the negotiating rules or Article XXIII. Others pointed out that the extension of the proposal to existing concessions would alter the basis on which the concessions had been granted and would therefore require an amendment of the Agreement. Some members expressed the view that despite its limitations the provisions of Article XXIII were the most appropriate in the circumstances. From a practical point of view the fear was expressed that the proposal, if accepted, would so broaden tariff commitments that contracting parties might become much more reluctant to grant concessions.

II. RULES AND PROCEDURES FOR THE TARIFF CONFERENCE

*3. In the course of its earlier meetings, the Committee agreed in principle that the rules for the 1956 negotiations should be adopted with suitable modifications. At its present meeting, the Committee gave further consideration to those rules, including various proposals for modification to them that were placed before the Committee.

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1It was decided to maintain the present title pending decision by the CONTRACTING PARTIES on the contents of Section II(b)(ii) of the Rules and Procedures annexed to the Report.
*4. Australia proposed that the rules should recognize that the aim of the negotiations would be the reduction of certain other barriers to trade as well as of tariffs and that the rules should recognize that negotiations could take place not only on customs duties and the other matters mentioned in the 1956 rules, but also on the level of import restrictions maintained under paragraph 2(c) of Article XI and on the level of those subsidies which operated directly or indirectly to reduce imports.

*5. Import Restrictions maintained under paragraph 2(c) of Article XI The Committee recognized that the CONTRACTING PARTIES had never considered the question whether those restrictions were negotiable and that the CONTRACTING PARTIES were not aware of the import restrictions which individual contracting parties would consider they were entitled to maintain as being consistent with the provisions of paragraph 2(c) of Article XI.

The Representative of Australia argued that the proposal of his Government as to the negotiability of import restrictions was limited to those restrictions which are maintained under paragraph 2(c) of Article XI; consequently, other import restrictions which could be justified under Article XI and other provisions of the General Agreement would not be affected. The proposal was that countries which so wished should be entitled to negotiate concessions on import restrictions maintained under paragraph 2(c) of Article XI. In the view of the Australian Government, the provisions of that paragraph and those of paragraph 4 of Article XIII left some scope for negotiations as well as for consultation.

Some members of the Committee pointed out that a distinction between import restrictions applied pursuant to Article XI:2(a) and those maintained under the other provisions of the General Agreement could not easily be made. Some representatives expressed their fear, that even if such a distinction were feasible - which might become possible following the consultations of Committee II - the Australian proposal risked opening the door to the negotiation of import restrictions other than those provided for in Article XI:2(c). This in turn might lead to quantitative restrictions becoming an instrument of commercial policy.

It was questioned whether it would be at all possible from a logical point of view to authorize negotiations of the restrictions permitted by this paragraph. They were in fact only permitted to the extent that they were "necessary" to the enforcement of certain types of governmental measures. There could hardly be any question of negotiating these restrictions, since they were either "unnecessary" in which case they constituted a violation of the Agreement, or they were "necessary" in which case there was no room for negotiation. In fact, for a contracting party to grant a concession in the form of a reduction of the level of restrictions would be equivalent to giving away something it was not entitled to possess.

* The Australian representative said that he recognized that a distinction should be drawn between subsidies which were "necessary" in terms of paragraph 2(c) of Article XI and those which, although they might be applied in connexion with measures which limited domestic production or marketings, were not necessary to the operation of such arrangements. It was not the intention under the Australian proposal to negotiate on those restrictions
which were not an integral part of the protective system and which could not be justified under that provision of the General Agreement. On the other hand, "necessary" restrictions should be regarded as negotiable in the same way as other elements of the arrangements covered by paragraph 2(c) of Article XI. It could well be that negotiations for the reduction of these restrictions would form part of wider negotiations on the products concerned.

Finally, some members were concerned about the fact that the administration of negotiated import quotas might be handled in a discriminatory way especially if such quotas were established on a country basis. In this connexion, the Australian representative pointed out that the results of such negotiations could take the form of global quotas or of country quotas in conformity with the provisions of Article XIII. He said also that it was certainly the intention to avoid any element of discrimination arising out of such negotiations and he further pointed out that this question of the non-discriminatory application of concessions could not be confined to any negotiations of restrictions justified under paragraph 2(c) of Article XI but arose in relation to negotiations on the non-tariff matters referred to in the 1956 rules as well as in connexion with tariff quotas.

Subsidies  The Committee considered the Australian proposal that the negotiating rules should explicitly recognize that negotiations could take place on the level of subsidies including any form of price or income support which operated directly or indirectly to reduce imports. Some members stated that they were prepared to incorporate in the negotiating rules all that had been agreed by the CONTRACTING PARTIES with regard to the negotiability of subsidies, particularly at the Review Session. Other representatives stated that their governments were in a position to agree to the inclusion of the CONTRACTING PARTIES' ruling contained in the BISD, third supplement, page 225, paragraph 14. Others, however, whilst recognizing that the CONTRACTING PARTIES had already decided that subsidies could be negotiable simultaneously with tariffs, pointed out that they would be most reluctant to support a reference in the rules to the negotiability of subsidies unless their governments were prepared to give serious consideration to any requests for concessions in this field. They could not say at present whether their governments would be prepared to do so. They therefore wished to leave the question open pending further discussion by the CONTRACTING PARTIES.

The Representative of Australia argued that even if there were no earlier cases of negotiations of subsidies under the GATT and although the 1956 rules made no mention of the above-mentioned ruling of the CONTRACTING PARTIES of 1955, these facts could not be held to mean that such a step could not be taken for the forthcoming negotiations. After all the Australian proposal only amounted to setting out explicitly in the negotiating rules what had been clearly laid down by the CONTRACTING PARTIES at the Review Session. It was the view of the Australian Government that their proposal did not go beyond the scope of the CONTRACTING PARTIES' ruling in the sense that the latter does not exclude the negotiation of subsidies on products for which the customs duty is not at the same time the subject of negotiation. The Australian representative pointed out that whilst it might be expected that as a usual practice negotiations on the level of a subsidy would take place at the same
time as negotiations on the level of a tariff, there might be circumstances in which a negotiation could take place on the level of the subsidy without concurrent negotiations on the tariff. Some members of the Committee disagreed with the Australian interpretation of the 1955 ruling.

* The Committee took note that the CONTRACTING PARTIES had ruled that there was nothing that prevented negotiations on subsidies simultaneously with negotiations on tariffs. However, the Committee could not at this stage agree either that it was desirable to incorporate this decision in the rules for negotiations or that the 1955 decision was as extensive as the interpretation given to it by Australia. It therefore decided to leave it to the CONTRACTING PARTIES to determine whether the negotiating rules should make reference to the negotiability of subsidies.

7. Internal Taxes Both the Australian and the Indian Governments had proposed that internal taxes be listed in the negotiating rules as matters subject to negotiation. The representatives of these countries supported by others pointed to the serious restrictive effects on imports of such taxes which particularly affected agricultural commodities like tobacco, tea and coffee. These taxes were no less effective in reducing imports than customs duties and, where they were imposed on a product which was the subject of a tariff binding in the GATT, could render that binding meaningless. Moreover the Havana Charter in an Interpretative Note to Article 17 made provision for the negotiability of internal taxes where applied to products not produced domestically in substantial quantities and the Haberler Report had recommended the incorporation in the negotiating rules of this Note. Other representatives, while indicating their sympathy with the proposal and the arguments put forward, referred to the difficult task of governments in search of revenue to finance ever increasing demands of a social, economic and developmental character and considered that the general complexity of the problem required further consideration by the CONTRACTING PARTIES. Agreement could not be reached and the Committee therefore refers the proposal to the CONTRACTING PARTIES (see Draft Rules and Procedures II (3)(ii)). The Representative of Brazil wished to record his disappointment for the Committee's failure to adopt this proposal to which his Government attached the greatest importance and reaffirmed his desire to see the CONTRACTING PARTIES adopt the Haberler proposal. The Representative of the United States made it clear that the United States could not negotiate on its internal excise taxes. The Representatives of the Community stressed the legal difficulties which the negotiation of internal taxes raised inside the Community and recalled the doubts expressed at the time of the examination of the question by Committee III with respect to the real advantages which less-developed countries might derive from the reduction of internal taxes.

8. Proposals by the Government of India Besides the negotiability of internal taxes dealt with in paragraph 7 above, the Indian Government made a number of proposals relating to the negotiation of tariffs. It was found that in most cases the Indian suggestions were covered by the old rules; the discussion is summarized in paragraphs 9 to 13 hereunder.

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1 United States proposal.
2 EC proposal.
9. **Joint Negotiations** With respect to the proposal that contracting parties be allowed to negotiate jointly on products of common concern the Committee agreed that the traditional rule in this matter, which has been maintained in the draft rules annexed hereto (paragraph II(b)(i)) was designed to permit this type of negotiation. At the same time, the Tariff Negotiations Committee was instructed in the 1956 rules (VI(c)) to facilitate among others this very type of negotiation; this rule has been maintained and strengthened with respect to multilateral negotiations in general by an amendment proposed by the Swedish Government. Moreover there were examples of joint negotiation in the history of GATT tariff conferences.

10. **Evaluation of Concessions** The Committee examined the proposal that the CONTRACTING PARTIES lay down rules for the evaluation of concessions based on the relative importance of a commodity in the exporting country, rather than its relative importance to the trade of the importing country. This proposal could not be accepted in view of the traditional attitude of the CONTRACTING PARTIES, reaffirmed at the Review Session (BISD, Third Supplement, page 219, paragraph 33) that "governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings".

11. **Ceiling Bindings** To give less-developed countries the margin of flexibility they need for meeting essential developmental needs the Indian Government proposed that the Rules allow bindings at certain ceilings rather than at existing or reduced levels. It was pointed out that this was expressly provided for in the Rules (see Annex, Section VII(a)) according to which a contracting party might "reduce the duty, bind it at its then existing level, or undertake not to raise it above a specified higher level".

12. **Binding of Average Levels of Duties** The Indian Government with a view to allowing greater elasticity of movement to less-developed countries proposed that it be made possible for a contracting party to enter into commitments with respect to the average level of duties under a tariff heading or commodity group, while allowing free movement of the individual rates within that group. The Committee does not consider that commitments of this kind are ruled out by the Agreement.

13. **Unilateral concessions.** Members of the Committee expressed sympathy with the point raised by the Indian Government which was supported by other less-developed countries. It was pointed out however that Article XXVIII bis recognized the special needs of less-developed countries and confidence was expressed that CONTRACTING PARTIES would bear this in mind in the course of the forthcoming negotiations. It was not considered expedient to make any change in the negotiating rules. Moreover as the Indian Government had itself indicated the problem had been taken up by Committee III.

14. **Drafting of legal texts** The Committee felt it was premature to discuss the form of the instrument or instruments which would embody the results of the
conference. It is proposed that this task be assigned to the Tariff Negotiations Committee (see Draft Rules VI(g)).

15. Offers of Concessions The Committee agreed to re-affirm the established principle that the offers made by one contracting party to another shall be based on the assumption that the latter will in its offers meet all the requests addressed to it by the former.

16. The Committee recommends that the CONTRACTING PARTIES should approve the Draft Rules and Procedures annexed to this report, subject to the further examination of the proposals contained in square brackets.