

DRAFT REPORT BY THE WORKING PARTY ON THE BELGIAN AND  
LUXEMBURG REQUESTS FOR WAIVERS

1. The Working Party, appointed by the Intersessional Committee on 24 June 1955, has examined the requests by the Governments of Belgium and Luxembourg for waivers of obligations under Article XI for specified agricultural products. The Working Party has reached the conclusion that it cannot at this time recommend to the CONTRACTING PARTIES that a waiver be granted to Belgium under the Decision of the CONTRACTING PARTIES of 5 March 1955 and has therefore decided to report to the Intersessional Committee in accordance with paragraph 1(b) of its terms of reference. [The request by the Government of Luxembourg ...] The following are the considerations which have led the Working Party to these conclusions.

I. THE BELGIAN REQUEST

2. The request by the Government of Belgium was submitted in document L/357 and Addendum 1. In Addendum 2 the Belgian Government gives details of the 56 tariff items or part-items which would be subject to the waiver together with supporting considerations and a description of the tariff and restrictive systems in force. In response to requests by members of the Working Party the Belgian delegation furnished additional information concerning agricultural and commercial policy, the administration of import restrictions and the trading arrangements within the Benelux customs union. Members of the Working Party were given copies of the Decision of 3 May 1955 by the Committee of Ministers of Benelux on the harmonization of agricultural policies together with copies of the Agricultural Protocols of 9 May 1947 and 21 October 1950. In the light of this information, the Working Party examined the request, as required by its terms of reference, within the terms of the Decision of the CONTRACTING PARTIES of 5 March 1955 and with reference to the agreed statements which had been included in the report of the Review Working Party which drafted the Decision with the intention that they should serve as a guidance to the CONTRACTING PARTIES when called upon to act under the Decision. During the discussions, the Belgian representative withdrew four of the items which had been included in the request.

3. The Belgian Government's request for a waiver relates to restrictions on imports from countries other than its partners in the Benelux customs union. Generally imports of agricultural products from The Netherlands are admitted free of quota restriction as well as free of duty, but imports of some are subject to minimum prices fixed in accordance with the Agricultural Protocol of 9 May 1947. The restrictions on foreign produce and the minimum price regulations applied to imports from The Netherlands are maintained in order to protect Belgian agriculture which has a higher cost structure than that of neighbouring countries. It is intended that the import restrictions and price regulations will be maintained during a transition period in order to give Belgian farmers time

to make adjustments whereby Belgian produce will become competitive with that of The Netherlands and other countries. The Decision of 3 May 1955 of the Committee of Ministers of Benelux provides for the harmonization of agricultural policies within seven years and a programme of the steps to be taken towards this goal is to be established annually.

4. The Working Party was informed by the Belgian representative that all the measures covered by the application had been in force since 1 January 1955 - which is one of the requirements laid down in paragraph 2 (a) of the Decision of the CONTRACTING PARTIES. Some of the restrictions were not actually applied on that date as they are used to afford protection only during the season of production in Belgium. The Belgian Government considers that the sudden removal of restrictions which have been continuously or seasonally applied would result in serious injury to domestic producers of like products and that the maintenance of these restrictions is necessary to enable producers to make adjustments. Some restrictions, on the other hand, have been "in force" only in the sense that the Government has the power to restrict imports at any time this may be considered necessary. On some products no import limitations have been applied for two years or more, but the Government regards it as essential to the achievement of the aims of its agricultural policy that it should be able to apply restrictions at any time in order to prevent serious injury. The Working Party has not been able to examine the situation of each product in relation to the likelihood of injury in the absence of import restrictions, but agrees, in general, that Belgium agriculture has a good case for special protective measures during a brief transition period.

5. The representative of Belgium stated that it was necessary to put forward this request for a waiver because of the Benelux customs union arrangements. Belgium alone could achieve its purpose in most cases by increases in customs duties, but since there is now a uniform tariff for the Benelux Union additional tariff protection could not be given to Belgian agriculture without at the same time increasing the duties on imports into The Netherlands. The Working Party agrees that it would not be in the interests of the contracting parties generally to see the customs duties for the whole of the Benelux territory increased. Members of the Working Party enquired whether subsidies could be used as an alternative measure. To this the representative of Belgium replied that assistance to agriculture by means of subsidies would not be appropriate for the products in question, as it would be far too costly. He said the Belgian Government grants subsidies to agricultural products only where large quantities must be imported to supplement domestic production, for example cheese; imports of the subsidized products are then admitted without restriction.

6. Thus far, it appeared to the Working Party that there might be no great difficulty in accommodating the request, at least for many of the products concerned, under the Decision of 5 March 1955, but some members were not satisfied that there is "a reasonable prospect" - as required by paragraph 2 (c) of the Decision - "of eliminating the restrictions over a comparatively short period of time". For some products the Belgian Government, clearly, can plan

to remove the restrictions in the near future, but for many others it appears unlikely that Belgian agriculture can sufficiently increase its efficiency to be competitive with agriculture in neighbouring countries within a short period. The Belgian representative acknowledged that his Government had not as yet formulated policies for promoting the efficiency of agriculture nor prepared a programme for the removal of the restrictions. In fact, under the Decision of the Benelux Ministers of 3 May 1955, the Belgian Government is accorded a "probationary period" of one year in which to work out the details of the new policy and to adopt the appropriate legal measures. The Working Party considers that the Belgian Government should furnish evidence that the elimination of the restrictions within a short period may be confidently expected before it can recommend to the CONTRACTING PARTIES that a waiver should be granted under the Decision of 5 March 1955.

7. Members of the Working Party also enquired about the undertaking, to which the Belgian Government would be obligated, to grant to other contracting parties "a fair and reasonable share of the market" for the products concerned and "to allow imports representing a total share of the market as favourable as that obtaining on the average during the preceding three years". Members solicited information concerning the administration of the restrictions in the past and the Government's intentions for the future, but did not feel certain that Belgian policy was in all ways compatible with this undertaking. For example, it appeared to some members that a restriction which had not been applied during the past two or three years but is to be retained for application in case of need could not comply with the requirement that "the total restrictive effect of the measure shall at no time ... exceed the effect of the restriction in force on 1 January 1955". It was suggested that a situation in which restrictions had not been applied recently but might be applied in the future might, possibly, be met by measures consistent with the General Agreement. In this connexion, the provisions of Article XI and Article XIX might be examined.

8. The requirement that the applicant contracting party shall agree to undertake to "carry out a policy for a progressive relaxation of each restriction and for its elimination" over a comparatively short period of time was considered in the light of paragraph 89 of the Review Working Party's report setting down an agreed interpretation of paragraph A.3(c) of the Decision to the effect that this does not necessarily oblige the contracting party to "increase automatically each year the amount to be imported" etc. The representative of Belgium said that his Government could accept this undertaking; the scope of importation would be broadened whenever possible, though generally his Government would prefer to proceed with the elimination of the restrictions by liberating products when possible rather than by gradually increasing the amounts that could be imported.

9. The Belgian representative said his Government was confident that all of the restrictions covered by the proposed waiver could be applied in a non-discriminatory manner. For many products, however, this question would not arise as there are closed and open seasons, i.e. period of the year during which

no imports from countries other than The Netherlands are permitted and other period when no restrictions are applied. Despite the assurances members of the Working Party were concerned about certain aspects of Belgian policy in relation to the provisions of Article XIII. They considered that when ever practicable either a global quota should be fixed or quotas should be allocated to exporting countries on the basis of trade in a representative period in accordance with the provision of Article XIII. For a few products included in the application, imports from countries other than The Netherlands are controlled in accordance with the terms of bilateral trade agreements. Although further information would be required before the Working Party could pass judgment on this system, some members expressed doubt whether it could guarantee that the administration of the restrictions would be compatible with the provisions of Article XIII. The Belgian representative stated that there is no state trading in any of the products covered by his Government's request and that, therefore, the second part of paragraph B.2 of the Decision is not relevant.

10. The condition that a contracting party to whom a waiver is granted shall communicate regularly "the total amount of the product the importation of which will be authorized by it during the following licensing period" was examined in the light of paragraph 90 of the report of the Review Working Party. In that paragraph it is recognized that it may not always be practicable to announce in advance the quantity of imports that will be admitted.

11. The Belgian representative assured the Working Party that his Government would readily undertake to submit annual reports on progress made in the relaxation of restrictions, etc., as required by paragraph B.4 of the Decision.

12. While some members of the Working Party are prepared to proceed with the examination of Belgium's request with a view to recommending that the CONTRACTING PARTIES grant a waiver under the Decision of 5 March, a majority of those who participated in the discussions believe that the conditions on which a waiver can be granted within the terms of that Decision have not yet been met. In particular, these members consider that the Belgian Government has not provided evidence that there is a reasonable prospect of the restrictions being eliminated within a short period. Moreover, there is the difficulty that the Government of Belgium has asked for a waiver for seven years whereas the maximum period allowed by the Decision is five years.

13. Members of the Working Party are conscious of the fact that they were appointed to examine the first application for a waiver under the so-called hard-core Decision adopted at the Review Session, that probably other applications will be submitted in 1956 and 1957, and that the Belgian Government had to prepare its application without guidance from the CONTRACTING PARTIES as to the kind of information they would require. It appears desirable that on this first occasion, which will inevitably set a precedent for the treatment of other applications, most careful attention should be devoted to the general principles embodied in the Decision and to the basic considerations that should govern the judgment of the CONTRACTING PARTIES in taking action under the Decision. Accordingly, the Working Party appends hereto a tabulation of the matters that should be investigated in connexion with each application for a "hard-core" waiver. The Working Party suggests that the Intersessional Committee should invite the Belgian Government to re-submit its application in the manner proposed and should recommend to the CONTRACTING PARTIES that this tabulation be adopted for use by any other contracting party which may wish to make an application under the Decision of 5 March.

14. Members of the Working Party have expressed their keen appreciation of the readiness of the Belgian representatives to answer all questions concerning the restrictive measures involved in their Government's request and to furnish information on all aspects of Belgian policy. Nevertheless, members feel that additional information is required before the CONTRACTING PARTIES can reach a decision on the application. The points on which supplementary information is required are also listed in the appendix to this report and the Working Party hopes that this will be furnished when the application is re-submitted.

15. With the concurrence of the representative of Belgium, the Working Party proposes that Belgium's application be re-submitted not later than 1 September and that it be considered early in the Tenth Session. In deciding upon this recommendation, the Working Party is not unmindful of the statement by the Belgian Government (document L/357) that it will wish to know the fate of its request before signing the protocols amending the General Agreement. In view of the delay in dealing with its request the Belgian Government may ask for an extension of the time limit for signing those protocols when it expires on 15 November. Finally, the Working Party wishes to record its view that while Belgium's application for a waiver is under consideration by the CONTRACTING PARTIES, no complaint under Article XXIII concerning any of the import restrictions covered by the Belgian request would be considered under clause (a) of paragraph 1 of that Article.