

5 July 1955

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

Revision

1. The Working Party, appointed by the Intersessional Committee on 24 June 1955, has examined the requests by the Governments of Belgium and Luxemburg for waivers of obligations under Article XI for specified agricultural and fisheries products. The Working Party has reached the conclusion that it cannot at this time submit a report to the CONTRACTING PARTIES on the Belgian request and has therefore decided to report to the Intersessional Committee in accordance with paragraph 1(b) of its terms of reference. As for the request by the Government of Luxemburg, the Working Party considers that this should be deferred until a decision on the Belgian request has been taken by the CONTRACTING PARTIES. 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 for a waiver from the obligations of Article XI was submitted in document L/357 and Addendum 1. In Addendum 2 the Belgian Government gave details of the 56 tariff items or part-items to which the request relates together with supporting considerations and a description of the tariff and restrictive systems in force. The Working Party examined the request, as required by its terms of reference, within the terms of the Decision of 5 March 1955 on problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties, and with reference to the agreed statements which had been included in the report of the Review Working Party which drafted that Decision with the intention that they should serve as a guidance to the CONTRACTING PARTIES when called upon to act under the Decision. In response to requests by members of the Working Party the Belgian delegation furnished orally 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. During the discussions, the Belgian representative withdrew four of the items which had been included in the request, viz. tariff items 13 b 1, 24 a 2, 24 b and 50 d 3.

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 many items are subject to minimum prices fixed in accordance with the Agricultural Protocol of 9 May 1947. The Belgian representative explained that 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 high cost structure. It is intended that the import restrictions and price regulations will be maintained during a transition period in order to allow time for adjustments to be made whereby Belgian produce will become competitive with that of The Netherlands. 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 have been continuously in force since 1 January 1955 - which is one of the requirements laid down in paragraph 2(a) of the Decision of 5 March. 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 for adjustments to be made. Some restrictions 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. It was suggested that to meet this last type of situation Belgium might have recourse to Article XIX. 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, and is of the opinion that it would be desirable to obtain further information from Belgium regarding the extent of injury which would eventuate in each case if the restrictions currently applied were removed and also regarding the restrictions which have not been applied recently.

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 import 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 agreed that it would not be in the interests of the contracting parties generally to see the import 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 where domestic production supplies only a small part of national requirements, for example cheese; imports of the subsidized products are then admitted without restriction.

6. Thus far, it appeared to the Working Party, subject to further enquiry on certain points, that it might be possible to accommodate the request, at least for many of the products concerned, under the Decision of 5 March 1955. The Working Party then considered whether 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, it was felt

that the Belgian Government could plan to remove the restrictions in the near future, but for many others it was not yet clear in the opinion of some members that Belgian agriculture could become competitive with agriculture in The Netherlands within a short period. The Belgian representative acknowledged that his Government had not as yet formulated policies for harmonizing the agriculture of the two countries nor had it 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 the CONTRACTING PARTIES can concur in their maintenance 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.

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 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 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 completely 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 his Government's request 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. periods of the year during which no imports from countries other than The Netherlands are permitted and other periods when no restrictions are applied. Despite these assurances, some members of the Working Party were concerned about certain aspects of Belgian policy in relation to the provisions of Article XIII. They considered that, whenever practicable, either a global quota should be fixed or quotas should be allocated to exporting countries in accordance with the provisions 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 form a judgment on this system, some members expressed doubt whether the Belgian Government could guarantee that the administration of these restrictions would be compatible with the provisions of Article XIII. The Belgian representative stated that at present 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. Some members of the Working Party were prepared to proceed with the examination of Belgium's request with a view to recommending that the CONTRACTING PARTIES concur in the maintenance of restrictions under the Decision of 5 March. The majority of those who participated in the discussions, however, believed that not all the conditions on which concurrence could be given within the terms of that Decision had been met. In particular, these members considered that the Belgian Government had not provided sufficient 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 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 any other applications, most careful attention should be devoted to the application of 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 which in its opinion 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 submit information 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 1955.

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. Moreover, it appeared to some members that the restrictions in force in so far as they affect a few of the items covered by the Belgian request might be judged to fall within the scope of Article XI or XX of the General Agreement and the Belgian representative undertook to consider this possibility.

15. With the concurrence of the representative of Belgium, the Working Party proposes that the additional information should be furnished not later than 1 September and that the request be considered by the CONTRACTING PARTIES 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.

16. 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 should be considered under clause (a) of paragraph 1 of that Article.