

6 September 1955

Working Party on Commodity ProblemsBRIEF NOTES ON THE FIFTH AND SIXTH MEETINGSheld on Monday, 5 September 1955Relationship between SACA and GATT (continued)

The representative of Belgium thought that a fundamental link between SACA and GATT would have been established if the former were prefaced by the same objectives as the latter. On the organizational level SACA should possess wide authority, but there should be provisions for recourse to the CONTRACTING PARTIES in order to ensure a uniform interpretation of those objectives.

The representative of France considered that the objectives of SACA, which covered not only the trade in commodities but also their production, consumption and distribution as well as the development of resources and investments, were much wider in scope than the objectives of GATT dealing with international trade. It was, therefore, unreasonable to subject SACA to the control of the CONTRACTING PARTIES. In a later intervention, the French representative clarified the point by indicating that in his view the competences of SACA and GATT were different in nature, the one "vertically" covering all aspects of commodity arrangements, and the other concerning only international trade. The question of relationship between the two arose only at the point where their respective activities crossed paths. Consequently, SACA should be autonomous within its own field and should have a link with GATT only in regard to trade problems.

The representative of Japan considered that SACA should be separate from the GATT and should be fully autonomous.

The representative of Czechoslovakia said that leaving aside the international bodies which had either competence only in a section of the commodity field or which had only a provisional status, there were only two international bodies capable of undertaking the operation of an Agreement of this nature, namely, GATT and the Economic and Social Council. SACA should have the widest support and membership and consequently it should be under the aegis of the Economic and Social Council of the United Nations.

The representative of Belgium said he could not accept the view that the objectives of SACA were broader in scope than those of GATT, and he referred to the very broad language used in Article I of the (revised) GATT. Article I of the draft SACA, as it stood at present, contained both objectives and other provisions; for instance, paragraph (a) thereof set out an objective, whereas other paragraphs, e.g. paragraph (c), described the means by which the objectives would be achieved. This confusion should be rectified in the re-drafting.

The representative of Indonesia considered that SACA should be autonomous. It would be unreasonable to allow contracting parties to GATT not signatories SACA to interfere with the activities of the latter involving the interests of other countries which for various reasons had not joined GATT. Further, GATT should not be overloaded with activities outside its proper scope. It should be possible to work out a formula by which a relationship would be established which took account of these considerations.

The representative of Ceylon thought that the question raised by the Czechoslovak representative concerning the Economic and Social Council was in the first place outside the terms of reference of this Working Party. Secondly, the Council was a general co-ordinating body and public forum which dealt with economic and social problems in very general terms, leaving the operation of specific instruments and performance of specific duties to specialized agencies, of which GATT, if not in name, was in fact one. Unless a new agency were to be set up GATT was clearly the appropriate body to administer an Agreement on Commodity Arrangements.

The representative of Brazil considered that the views expressed by the French representative warranted careful consideration. Whether there would be overlapping activities would seem to depend on the interpretation of the provisions of the OTC Agreement concerning its functions, which had so far been inadequately analyzed. He suggested that Article 3 of the OTC Agreement should be carefully studied with a view to determining whether the functions of OTC were identical to the proposed functions for SACA.

The representative of Canada suggested that a compromise solution might be found in establishing a separate institution with the closest link at the working level with the CONTRACTING PARTIES. It did seem inadvisable to place under GATT supervision an agreement intended to be open to participation by non-contracting parties, but to make no reference to GATT in the new Agreement would have other disadvantages. There should be some provision enabling recourse to OTC but exceptions might be allowed in appropriate circumstances.

The representative of Rhodesia and Nyasaland, agreeing with the Ceylon and Danish representative, considered that the relationship between SACA and GATT should be as close as possible and that the link must be real and effective.

The representative of the United Kingdom reaffirmed the position which his Government has consistently taken on this question. He agreed with the Belgian representative that the whole of SACA was but a special application of the broader objectives of GATT in the field of primary commodities. In answer to the point raised by Czechoslovakia, he pointed out that SACA would be open to participation by all nations and not only to contracting parties to GATT. The solution proposed by Canada would appear to be the right one, according to which a distinct and independent Agreement would be drawn up which would be linked with GATT in an appropriate manner.

The representative of Turkey thought that the existing GATT, being identical to Chapters III and IV and not containing the provisions of Chapter VI of the

Havana Charter, was evidently not concerned with commodity problems. The OTC Agreement, drawn up at the Ninth Session, however, had broadened the scope of GATT, and consequently the references to GATT in the draft SACA might be examined individually on their merit.

The representative of Australia generally endorsed the view of the United Kingdom representative, adding, however, that Australia would not be prepared simply because of its desire to have a set of rules governing commodity arrangements, to accept any set of rules without careful consideration. Secondly, account had to be taken of the position now taken by the United States Government. For these reasons his delegation found it necessary to defer giving its final views on this question until the Tenth Session.

The representative of India pointed out that the question of price instability arising from disparities between supply and demand was clearly one belonging to the field of international trade which was almost the exclusive responsibility of GATT. The competence of GATT should, therefore, be beyond question. The objectives of GATT were not limited to the trade matters or commercial policy in the narrow sense; not only in the preamble but in many substantive provisions questions of economic development, the economic utilization of resources, standards of living, etc., were dealt with. The most logical disposition, as had been noted by the Ceylon representative, would be to incorporate the commodity provisions in GATT itself. When realities compelled a compromise they should not go so far as to require that all links between the two institutions should be avoided. The essence of the matter had been summarized by the United Kingdom representative when he noted that SACA was but a special application of the broader objectives of GATT.

The representative of Chile believed that the competence of the CONTRACTING PARTIES in matters covered by SACA would be absolutely beyond question once it was realized that it derived from the provisions of paragraph (a) of Article 3 of the OTC Agreement in conjunction with Article I of the (revised) General Agreement. In this light SACA would be viewed as one means of giving effect to the objectives of GATT.

In answer to the question put by the Danish representative at the fourth meeting, Mr. Evans stated that although Article 3 of the OTC Agreement provided for a wide range of functions for the Organization in all matters of international trade, the use of the word "recommendation" specifically precluded the imposition of any new obligations on its members which were not already undertaken under the General Agreement. Furthermore the report of Working Party IV of the Ninth Session made it clear that the OTC would not have the power even to interpret the obligations of an agreement arising from negotiations it had sponsored. Consequently, the Organization would have no power to "supervise" any agreements which it might have sponsored; the "competence" of the Organization could therefore not take the form of supervision. On the other hand, the CONTRACTING PARTIES certainly did contemplate that the GATT should be concerned with commodity agreements, as was made clear by the language of Article XX(h) of the revised Agreement.

The representative of Italy declared that his delegation was in favour of the view that GATT was wholly competent in the field of commodity trade and that there must be a close link between GATT and SACA.

The representative of Turkey considered that to provide for GATT supervision of SACA would be either superfluous or invalid, depending on whether one considered GATT to be competent in the commodity field. The fact that Chapter provisions were not included in GATT suggested that it would be inadvisable for the CONTRACTING PARTIES to concentrate on this subject. The discussion had revealed too much divergence of views for the question to be resolved at this juncture; it should be left for consideration at a higher level, namely by the CONTRACTING PARTIES themselves. Secondly, to subordinate SACA to GATT would make it less acceptable to countries not parties to the latter, thus impeding its aspiration to universality. A number of international bodies were in one way or another interested in commodity problems, and the question of coordination of activities between SACA and other organizations would be rendered more difficult if the former were subordinate to another body.

Mr. Evans, replying to a question, explained that under the OTC Agreement the Organization, while having no power to impose new obligations on its members or to supervise the operation of another agreement, would be perfectly free to enter into working relationships with other organizations. Such working relationships might involve the provision of services, the making of arrangements for consultation, etc.

The United Kingdom representative said he could not agree with the contention that because GATT did not contain the Chapter VI provisions the CONTRACTING PARTIES would be going beyond their competence if they took up commodity trade matters; the objectives of GATT clearly covered all trade matters including those concerning primary commodities, and the Working Party's task was to assist the CONTRACTING PARTIES more fully to achieve those objectives by creating a special agreement to cover that neglected field. As had been explained by Mr. Evans, one of the functions of OTC would be to sponsor such agreements, which would seem to provide the first link between GATT and SACA. The competence of OTC in SACA was partly based on this link and partly founded on the provisions of Article XX:I(h), which taken as a whole were by no means so negative as had been suggested, but were an enabling clause permitting the use of commodity agreements. On the other hand, the idea of a link at the administrative level had been envisaged by the United Kingdom representative at the Ninth Session (see SR.9/38). However, this would appear to be a matter which concerned not only the contracting parties but also the signatories to SACA, and consequently would have to be deferred to a later stage when the views of the latter could be ascertained.

The representative of the Dominican Republic was also of the view that the task confronting the present meeting being merely to devise a set of basic rules governing commodity arrangements, the question of how close the link should be between GATT and SACA need not to be settled at this stage; it would suffice to agree that there should be enough flexibility not to inhibit participation in SACA by non-GATT members. It might be expected that a solution would be found at the Tenth Session.

The representative of Chile reviewed the developments leading to the submission of the United Kingdom proposal at the Ninth Session; the solution

proposed by the United Kingdom was an invaluable contribution, even though the draft submitted was far from satisfactory. The competence of OTC in SACA derived from the provisions of Article 3(a) of the OTC Agreement and Article I of the GATT, and OTC would be only acting to achieve one of its objectives when it accepted responsibility in matters connected with SACA. It should be noted however that the close link advocated by several previous speakers did not mean the subordination of SACA to GATT and there was no reason why such a close link should make it more difficult for non-contracting parties to participate in SACA.

Mr. Evans replied to a question by the Canadian representative that, while not empowered to impose supervision, the OTC would be permitted to receive and examine reports from SACA, a relationship which had been envisaged explicitly in paragraph 9(a) of the report of Review Working Party IV of the Ninth Session.

The representative of Brazil reaffirmed his conviction that a closer examination should be made of the provisions of the new OTC Agreement; after listening to the many-sided arguments he felt that no clear notion about the OTC's competence had emerged.