

*British perspectives on the GATT Article XXIV negotiations following the first EC enlargement: 'Probably more important and more difficult than the consideration of the Treaty of Rome itself'*

Article

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# **British perspectives on the GATT Article XXIV negotiations following the first EC Enlargement: *‘probably more important and more difficult than the consideration of the Treaty of Rome itself’***

## **Abstract**

The accession of Denmark, Ireland and the United Kingdom (UK) to the European Communities (EC) in 1973 triggered negotiations in GATT (the General Agreement on Tariffs and Trade). GATT's contracting parties were entitled to ask whether the enlarged EC adequately fulfilled the criteria for a Customs Union (CU) that Article XXIV set; and countries whose market access to the acceding states was impaired because of changes to tariff bindings could seek redress. The formal negotiations, following on from President Richard Nixon's announcement of his New Economic Policy in August 1971, began in March 1972, and concluded in July 1974. The USA —the EC's main interlocuter— whilst supporting European integration from a political perspective, was highly critical of the Common Agricultural Policy (CAP), and the EC's web of preferential trade agreements. The UK, fearful that disagreement could trigger trade conflict, attempted to mediate between the two, trying to curb US expectations whilst nudging its EC partners to be more generous in their tariff concessions. But, as in the Dillon Round, the EC tenaciously rebuffed criticism whilst defending its right to expand its CU. The CAP emerged more-or-less unscathed.

**Keywords:** GATT, enlargement, CAP, European Communities, USA

## Introduction

On 31 May 1974 the White House issued the following statement from the President, Richard Nixon:

I am pleased to announce this morning that trade negotiators from the United States and the European Community, meeting in Brussels, have agreed on a formula for reducing Community import duties on a significant number and volume of American exports. These reductions are in compensation for changes which occurred when the European Community was enlarged to include Great Britain, Ireland and Denmark.

The resolution of this important issue, following long and arduous negotiations over a period of several months, represents a major step toward improved Atlantic relationships. It also helps to clear the way for prompt Senate action on the Trade Reform Act.<sup>1</sup>

What caused the European Community to undertake these negotiations, why were they long and arduous, and why was prompt Senate action required on the Trade Reform Act?

Whilst Article I of the General Agreement on Tariffs and Trade (GATT) enunciates GATT's fundamental most-favoured-nation (MFN) principle —*that with 'respect to customs duties and charges of any kind imposed on or in connection with importation ..., any advantage, favour, privilege or immunity granted by any contracting party to any product originating in ... any other country shall be accorded immediately and unconditionally to the like product originating in ... the territories of all other contracting parties'*— Article XXIV does allow a significant derogation from that rule.<sup>2</sup> In particular this allows for the formation of customs unions (CUs) and free trade areas (FTAs), provided certain criteria are met (as explained in the next Section), whilst attempting to preserve the rights of GATT's wider membership.

The European Economic Community (EEC), created by the Treaty of Rome signed in 1957, is at its core a customs union, and so the Article XXIV provisions were triggered on its formation, as they had been with the earlier creation of the European Coal and Steel Community (ECSC). They were invoked again when Denmark, Ireland and the United Kingdom (UK) joined the three European Communities (EC) —the ECSC, the EEC, and Euratom (the European Atomic Energy Community)— on 1 January 1973. The UK's adoption of the Common Agricultural Policy (CAP), especially the CAP's trade regime for cereals, was of particular concern. This article, based in part on British government papers in The National Archives (TNA) at Kew, and on GATT documents, focuses on the Article XXIV negotiations activated by the 1973 enlargement. The TNA files cited were compiled by the Foreign and Commonwealth Office (with the prefix FCO), the Board of Trade and successor bodies (i.e. Department of Trade [and Industry]) (BT), HM Treasury (T), the Cabinet Office (CAB), and the Prime Minister's Office (PREM). GATT documents can be accessed at the World Trade Organization's online archive:

[https://www.wto.org/english/docs\\_e/gattdocs\\_e.htm](https://www.wto.org/english/docs_e/gattdocs_e.htm)

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<sup>1</sup> Office of the White House Press Secretary, May 31, 1974, *Statement by the President*. A copy is in the United Kingdom's National Archives (TNA) in file FCO 30/2290.

<sup>2</sup> For GATT's early history, and a discussion of its provisions, see Douglas A Irwin, Petros C Mavroidis & Alan O Sykes, *The Genesis of the GATT* (Cambridge: Cambridge University Press, 2008).

The Article XXIV negotiations following the EEC's *formation* have been discussed in the literature, by for example Dam; Kock; and Josling, Tangermann & Warley.<sup>3</sup> These negotiations were the prelude to (or first component of) the Dillon Round of tariff negotiations. Those prompted by the EC's first *enlargement*, however, appear to be largely forgotten, although they too were an important prelude to another round of tariff negotiations (the Tokyo Round), which again took-up unresolved and contentious concerns left over from the Article XXIV deliberations. Sir Con O'Neill, in his *Report on the Negotiations for UK Entry into the European Community* —written in 1972— makes only passing reference to the XXIV tribulations which were to come. Even Sir Roy Denman, who gives a lively account of his role in Geneva in the earlier negotiations, fails to mention those triggered by EC enlargement although, as Deputy Secretary in the Department of Trade and Industry (the Department of Trade after the February 1974 General Election) —and a member of Sir Con O'Neill's accession Negotiating Team— he was directly involved.<sup>4</sup>

In a detailed discussion of Article XXIV and the proliferation of regional trade agreements McKenzie makes only passing reference to the EC's first enlargement. Hoda's book includes a short, factual report. Winham's *magnum opus*, which has an extensive introduction to the Tokyo Round, including a recap of the Kennedy Round negotiations, does not appear to acknowledge the EC-US skirmish over enlargement. Huber specifically excludes the EEC's formation and subsequent enlargements from its perusal. Publications with titles that suggest a possible overlap with the contents of this article, but do not mention Article XXIV, include Benvenuti, Coppolaro, and Seidel. Dryden discusses the US-EC compensation negotiations, without explicitly mentioning Article XXIV. Swinbank, drawing on Palliser's account (see below), characterises the negotiations as a failed attempt to reform the CAP.<sup>5</sup>

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<sup>3</sup> Kenneth W Dam, 'Regional Economic Arrangements and the GATT: The Legacy of a Misconception', *The University of Chicago Law Review*, 30 (1963): 615-65; Karin Kock, *International Trade Policy and the Gatt 1947-1967*, Stockholm Economic Studies New Series XI (Stockholm: Almqvist & Wiksell: 1969); Timothy E Josling, Stefan Tangermann & TK Warley, *Agriculture in the GATT* (Basingstoke: Macmillan, 1996), Chapter 3.

<sup>4</sup> David Hannay (editor), *Britain's Entry into the European Community. Report by Sir Con O'Neill on the Negotiations of 1970-1972*, (London: Whitehall History Publishing in association with Frank Cass, 2000). Roy Denman (2002), *The Mandarin's Tale* (London: Politico's Publishing, 2002).

<sup>5</sup> Francine McKenzie, *GATT and Global Order in the Postwar Era* (Cambridge: Cambridge University Press, 2020); Anwarul Hoda, *Tariff Negotiations and Renegotiations under the GATT and WTO. Procedures and Practices*, 2nd Edition (Cambridge: Cambridge University Press, 2018): 158-163; Gilbert R Winham, *International Trade and the Tokyo Round Negotiations* (Princeton: Princeton University Press, 1986); Jürgen Huber, 'The practice of GATT in examining regional arrangements under article XXIV', *Journal of Common Market Studies*, XIX (1981). 281-298; Andrea Benvenuti, 'Dealing With an Expanding European Community: Australia's Attitude Towards the EC'S 1st Enlargement', *Journal of European Integration History*, 11 (2005), 75-96; Lucia Coppolaro, 'In the Shadow of Globalization: The European Community and the United

There is, of course, the CEC's own account of the Article XXIV:6 renegotiations; and in the National Archives at Kew there is an extensive, if partisan, report from Sir Michael Palliser, the UK's Permanent Representative in Brussels, to the then Foreign Secretary, James Callaghan.<sup>6</sup> Palliser suggested British diplomacy had thwarted EC protectionism and incompetence; and played an important role in securing a successful outcome. In particular, in paragraph 11 Palliser wrote:

With all due modesty the United Kingdom can take substantial credit ... for helping to create the basis on which the negotiations were concluded. Admittedly this was easier for us than for some other Member States because we had few protectionist interests to consider. But when at vital moments the Commission followed the Duke of Plazatoro in leading from behind and when, particularly in the final phases, the German Presidency was totally ineffective, it was left to us to take the strain of pulling the Community towards its accommodation with the Americans. We had begun this task in June 1972 when we attacked the objectives and tactics which the Six adopted among themselves and declined to be bound by some of their decisions. We fought against the first offer (strictly non-offer) and succeeded in undermining its credibility. We debunked the idea that an increase in tariff would ever be regarded as a gain for the exporting country. We waded into the Commission's obsession with trade and custom statistics and its disregard of qualitative factors. We isolated ourselves from the other members of the Community by opposing and blocking agreement on the last proposals which the Commission actually put its name to. We gave the Americans copious advice on how to play their hand and they fully realised how much we were doing to help them from inside.

Palliser had headed the British Mission to the European Communities from Autumn 1971. Following the UK's accession on 1 January 1973 he became the UK's Permanent Representative, and the Mission was relabelled the Office of the United Kingdom's Permanent Representative to the European Communities (UKREP). His relationship with the new Foreign Secretary following the February 1974 General Election had a prickly start. Palliser, who was summoned to London by Callaghan, later recalled:

we had a really rather unpleasant interview ... . Callaghan ... said quite bluntly that he would have moved me elsewhere, because he thought I was too committed to the European policy

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States in the GATT Negotiations of the Tokyo Round (1973–1979)', *The International History Review*, 40 (2018), 752-773; Katja Seidel, 'Britain, the common agricultural policy and the challenges of membership in the European Community: a political balancing act', *Contemporary British History*, 34 (2020), 179-203; Katja Seidel, 'The Challenges of Enlargement and GATT Trade Negotiations: Explaining the Resilience of the European Community's Common Agricultural Policy in the 1970s', *The International History Review*, 42 (2020), 352-370; Steve Dryden, *Trade Warriors: USTR and the American Crusade for Free Trade*, (New York: Oxford University Press, 1995); Alan Swinbank, 'Something significant to show for our efforts? British perspectives on the Stocktaking of the Common Agricultural Policy', *Agricultural History Review*, 68 (2020), 63-85.

<sup>6</sup> Commission of the European Communities, *Report on the tariff negotiations which it conducted under Article XXIV(6) of the General Agreement on Tariffs and Trade (GATT)*, COM(74)1090, Brussels, 11 July 1974. 'Despatch from Sir Michael Palliser to The Right Honourable James Callaghan MP, 24 June 1974: The GATT Article XXIV Negotiations: 1972-1974'. This despatch can be found in several archive files. Together with a commentary by Roy Denman, it is in TNA CAB 134/3760.

and of course it was true, ... but interestingly, he said, the only reason I'm not doing that is because the Prime Minister has told me I ought to keep you there ... . But he said, I warn you that we are going to be difficult and you ought to do what I tell you to do. I said, well frankly, that's what I regard my job as being, if I find that you are asking me to do things which I profoundly believe to be wrong I will resign but unless that happens of course I'll do what you tell me to do. We parted on that, not particularly cordial, note.<sup>7</sup>

In addition to filling a gaping gap in the historical record, thus explaining Richard Nixon's May 1974 statement, further motivations for this project were the questions: What evidence is there to be found in the National Archives to support Palliser's conclusion that British diplomacy played such an important role in securing a successful outcome to the Article XXIV negotiations? Or was his claim simply bravado to impress the new Labour Government's Foreign Secretary? Whilst these questions cannot be answered definitively, some light is shed on the machinations of British diplomacy, and on the UK's ambivalent position betwixt "Europe" and the USA.

On the *formation* of the EEC the UK, of course, was just another GATT contracting party seeking to protect its interests; although, as a potential future member, these were somewhat conflicted. In the Article XXIV negotiations for the 1973 *enlargement* the UK pursued its interests from within the European grouping, whilst not quite certain whether they were best served by the EC's negotiating stance. It seemingly saw itself as an "honest broker" between two hegemonic powers, whilst seeking to advance its own interests, particularly in the sphere of agricultural policy. Whilst it supported the US quest to reform the EC's Common Agricultural Policy (CAP), it was unable to openly side with the US for fear of antagonising its European partners. But it was the *level of protection* proffered by the CAP, *not the mechanics of the CAP*, that the UK wanted to change. It after all had its own minimum import price regime for cereals and had declared that, whether or not it joined the EC, it too would develop its own farm policy mimicking the CAP despite American opposition.<sup>8</sup>

The article now proceeds as follows. First it provides some background information on: i) provisions of Article XXIV of relevance to the discussion; ii) the Europeans and their negotiating team; iii) Commonwealth preferences and the UK's minimum import price (mip) arrangements for cereals; and iv) the standstill agreements left over from the Dillon Round. Then, in largely chronological order, it discusses first President Richard Nixon's 1971 trade policy initiative, then the unfinished Article XXIV:5(a) examination, followed by the XXIV:6 renegotiation. Although the text largely focusses on the US-EC dialogue, the penultimate section discusses Canadian concerns. This is followed by some tentative conclusions.

### **Customs Unions and GATT's Article XXIV**

Article XXIV permits the formation of both customs unions (CUs) and Free Trade Areas (FTAs). A CU involves the removal of trade barriers (e.g. tariffs and quotas) on trade between its members. They adopt a common commercial policy (e.g. a common external

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<sup>7</sup> Interview with Sir Michael Palliser on 28 April 1999, by John Hutson, Churchill Archives Centre, Cambridge, p 31: <https://archives.chu.cam.ac.uk/wp-content/uploads/sites/2/2022/01/Palliser.pdf> accessed 21 March 2023.

<sup>8</sup> xxxx

tariff) and goods, once imported, can circulate freely within the CU. However, different regulatory standards (regarding food safety for example) mean that some controls at national borders within the customs union may still be required. In an FTA it is only goods that *originate* within the FTA that benefit from the removal of intra-FTA trade barriers, and countries retain their own commercial policies with respect to third countries.

The main provisions relating to CUs are to be found in paragraphs 4 to 10 of Article XXIV. Paragraph 4 recognizes 'that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.' Whether this is simply an expression of aspirations, or sets a requirement that CUs must fulfil, was at issue in 1957-62 in determining whether or not the requirements of paragraph 5 had been met, but it was not a topic seriously pursued in 1972-4.

Paragraph 5(a) states that 'the duties and other regulations of commerce imposed ... in respect of trade with contracting parties not parties to [*the agreement*] shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union ...' This led to considerable discussion, and near deadlock, in 1957-62 and 1972-74.

Paragraph 6 follows on from paragraph 5(a) and provides for the possibility of opening bilateral tariff negotiations should one of the parties to a CU need to break a tariff binding. These provisions were hotly debated in both 1957-62 and 1973-74 with the EEC/EC at odds with the wider GATT membership.

That there would have to be Article XXIV negotiations was never really in doubt. As British civil servants tried to identify the questions that they might face once the EC accession negotiations got underway, a briefing note circulated on 6 February 1970 pointed out: 'The Contracting Parties ... may be expected to ask for discussions in order to satisfy themselves that the provisions of Article XXIV(5)(a) are being honoured; and they are also likely to ask for Article XXVIII negotiations pursuant to Article XXIV(6). .... Such negotiations are likely to be long drawn out.'<sup>9</sup>

## **The Europeans**

The UK's first bid for EC membership had been rebuffed by French President Charles de Gaulle in 1963. The UK's second application remained on ice until de Gaulle's resignation from the presidency in April 1969. With George Pompidou in the Élysée Palace the political climate changed. The EC's Heads of State or Government meeting in The Hague on 1-2 December 1969, on Pompidou's initiative, 'indicated their agreement to the opening of negotiations between the Community on the one hand and the applicant States on the other.'<sup>10</sup> When negotiations opened on 30 June 1970, Edward

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<sup>9</sup> R. Goldsmith to Mr. Hughes, 'British Application to Join the E.E.C.: Commercial Policy Aspects', 6 Feb. 1970, TNA BT 241/1706.

<sup>10</sup> Paragraph 13 of the Final communiqué of the Conference, reprinted in *Bulletin of the European Communities*, 3(1), 1970: 16.



Heath (leader of the Conservative Party) had just become the UK's Prime Minister, having ousted Harold Wilson from the premiership in a General Election. Three of the applicant States —Denmark, Ireland and the United Kingdom— that signed the Treaty of Accession on 22 January 1972 joined the EC on 1 January 1973. Norway, the fourth applicant, withdrew from the process after a referendum in September 1972.

Article 4 of the EEC Treaty had established four institutions: an Assembly (the European Parliament), a Council, a Commission, and a Court of Auditors; but the Merger Treaty of 1965 established a Single Council and a Single Commission of the European Communities. Each member state sent a minister to Council meetings, which were prepared by the Committee of Permanent Representatives (COREPER). The Commission of the European Communities (CEC), headed by a College of Commissioners nominated by the member states, was responsible for trade negotiations. In this it was aided by the Article 113 Committee. Article 113(3) of the EEC Treaty stated that 'Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task ...'

Thus, the CEC was tasked with the negotiations. Before accession, when Ralf Dahrendorf was the Commissioner in charge, the CEC negotiated on behalf of the *enlarged Communities* (the term used in GATT documents even before accession) even though the acceding states initially had little say determining the EC's stance. Once the Treaty of Accession had been signed (on 22 January 1972) a GATT *Working Party* was established, and Article XXIV negotiations began. Somewhat predictably, the Article XXIV:5(a) examination was not concluded before accession and overspilled into 1973. This first phase ended, in effect, in February 1973 when the bilateral Article XXIV:6 renegotiations began. This second phase extended to July 1974 when the EC stated that the Article XXIV:6 renegotiations were concluded.

From January 1973 the EC's negotiating team, under the overall direction of the newly installed Commissioner for External Relations (Sir Christopher Soames), and Edmund Wellenstein the Director-General for DGI (the Directorate-General for External Relations), was in practice led by Theo Hijzen (in Brussels) and Paul Luyten (in Geneva): veteran Eurocrats who had handled the EC's GATT negotiations for many years. David Hannay, Soames' *Chef de Cabinet*, was later to remark: 'that did lead sometimes to some friction because Hijzen and Luyten were absolute masters at all the detail, but they did tend to be a little mother-henish about it, and didn't want anyone else, like their Commissioner, having much of a role in it. Their view was that Commissioners were not really up to handling such very complex matters. Well that was not quite how Soames did things, though he certainly never meddled in detailed negotiation.'<sup>11</sup>

### **The UK's Excess Baggage: mips and Commonwealth Preferences**

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<sup>11</sup> David Hannay, *Entretien avec David Hannay par Piers Ludlow à Londres le 14 juillet 2011*, HISTCOM.2 Histoire interne de la Commission européenne 1973-1986, 45. [https://archives.eui.eu/en/oral\\_history/INT172](https://archives.eui.eu/en/oral_history/INT172) accessed 21 March 2023.

Enlargement also meant that the applicants (principally the UK) had other trade agreements to terminate. For the UK this meant withdrawing its tariff concessions on farm products that had been enjoyed by various (mainly Commonwealth) countries prior to the formation of the GATT in 1947 and to withdraw from the minimum import price (mip) provisions it had first negotiated with its principal cereal suppliers in 1964. On the former, a question that arose was whether these tariff concessions had any relevance for the Article XXIV:5 examination, with the CEC's original stance being that they did not.

Under the 1964 mip scheme, the governments of the Argentine Republic, Australia, Canada, and the USA, agreed not to invoke their GATT (and bilateral) rights should the UK impose an import levy to ensure respect of its mip. Subsequently, 'as part of the Kennedy round settlement, these arrangements ... were enshrined in the Five Party Agreement ... with the same suppliers who allowed the UK, for the duration of the International Grain Arrangement (3 years from 1 July 1968) to continue to operate its mip/levy arrangements for cereals'.<sup>12</sup>

Although the Five-Party Agreement was due to expire in July 1971, Edward Heath's government set out to extend its provisions until the date of accession and to *increase* the level of the mip. Had membership of the EC not been secured, the UK's intention was to have a CAP-style system of support for agriculture. When the US Secretary of Agriculture, Clifford Hardin, visited London in December 1970, British politicians explained that the plans 'had been Conservative policy for some time', and tried to convince him that shifting 'the burden of agriculture support ... from the tax payer to the consumer,' was 'not protectionist.' Hardin was not convinced. He 'was disappointed that HMG (*Her Majesty's Government*) had taken this line at a point in time when the US were becoming increasingly concerned by the policies of the EEC.' He claimed that 'Almost every single action of the Community constituted another attack against US agriculture' and warned of the 'protectionist lobby ... building up in the US.'<sup>13</sup> This was not an auspicious start for a government that sought to sustain US support for EC accession and a new round of multilateral trade negotiations, and to reassure the Americans that in an enlarged Community the UK would be a liberalising force vis-à-vis the CAP.

### **The Dillon Round's Unfinished Business**

When the USA and the EEC concluded their bilateral negotiations in the Dillon Round on 7 March 1962, final details of the CAP were still to be determined, and the EEC was unable —indeed unwilling— to enter into binding commitments with GATT's contracting parties that would limit its ability to apply the variable import levy schemes it had planned. Thus, with the US, it concluded two standstill agreements. One covered corn (i.e. maize), sorghum, ordinary wheat, rice and poultry; and the second, quality wheat. It is perhaps germane to note that Theo Hijzen signed on behalf of the EEC. Similarly, on 29 March 1962 the EEC signed two standstill agreements with Canada, one

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<sup>12</sup> Miss J Blow to Mr Gent, 21 July 1972, 'Cold storage of GATT rights', TNA FCO 69/332.

<sup>13</sup> 'Record of Meeting between the Chancellor of the Duchy of Lancaster and the US Secretary for Agriculture. Foreign and Commonwealth Office. 14 December, 1970 at 1600 hours', 16 Dec. 1970, TNA T 224/2499.

with respect to Quality Wheat, and the second concerning Ordinary Wheat, both of which were still troubling EU-Canadian relations in 1990.<sup>14</sup>

With the USA, the EEC and the Member States agreed that: 'Upon adoption of the agricultural policy for corn, sorghum, ordinary wheat, rice and poultry, the Community undertakes to enter into negotiations with the United States on the situation of exports of these products by the United States. The negotiations ... will take place on the basis of the negotiating rights which the United States held under the General Agreement for these products as of September 1, 1960.' A matter of weeks later, on 1 July 1962, the EEC began implementing its new trade regime for cereals and poultry, and the "Chicken War" began. The particular flashpoint concerned frozen chicken imports into Germany where the import tariff on chicken had been bound at 15%. Walker suggests that this was equivalent to about 4.5 US cents per pound, whereas the new import charge amounted to about 13.5 US cents per pound. According to Josling, Tangermann and Warley, 'the uncompromising stance the United States took on poultry was intended to show the Community (and domestic constituents) that it was going to take a hard line on agriculture in the multilateral negotiations [*i.e. the Kennedy Round*] that were about to open.'<sup>15</sup>

The US sought negotiations with the EEC, but the CAP was not negotiable and the EEC's attempts at conciliation were unsuccessful. The EEC did not contest the validity of the USA's complaint, only the extent of any retaliation. Eventually, under a GATT-brokered package, the US withdrew tariff concessions on brandy (designed to hit French exports of cognac), light trucks (targeted at Germany's Volkswagen), potato starch, and dextrin. The EEC supplied 94 percent of American imports of the affected products. The US declared that the tariff concessions could be 'reinstated at any time that there is an agreement ... to restore reasonable access for United States poultry.'<sup>16</sup>

No solution to the impasse having been found in the Kennedy Round, the USA's retaliatory measures remained in place, and there was little prospect that this long-standing dispute could be resolved in the new negotiations triggered by enlargement. At a meeting in Brussels on 13 January 1972, Hijzen —presumably prompted by Denman— 'agreed that at some appropriate stage in these negotiations ... the strategy

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<sup>14</sup> With the USA: Agreement with Respect to Corn, Sorghum, Ordinary Wheat, Rice and Poultry, 7 March 1962 (*Treaties and Other International Acts Series [TIAS] 5034*) and Agreement with Respect to Quality Wheat, 7 March 1962 (*TIAS 5035*) respectively. Both reprinted in Thomas B. Curtis & John Robert Vastine Jr., *The Kennedy Round and the Future of American Trade* (New York: Praeger, 1971). Those with Canada are reprinted in GATT, 'Canada/European Communities - Article XXVIII Rights. Recourse to Arbitration', 8 Aug. 1990, DS12/3.

<sup>15</sup> Herman Walker, 'Dispute Settlement: The Chicken War', *The American Journal of International Law*, 58 (1964), 671-85, at p. 671; Josling, *Agriculture*, p. 58. See also Ross B Talbot, *The Chicken War: An International Trade Conflict between the United States and the European Economic Community, 1961-64* (Ames: Iowa State University Press, 1978).

<sup>16</sup> GATT, 'Schedule XX-United States. Suspension of Tariff Concessions', 16 Dec. 1963, L/2092/Rev. 1.

employed ... in 1961 might have to be repeated —of suggesting that a disagreement between the main parties (ie the US and the EEC) might be subsumed in a wider negotiation. But clearly the Americans would not contemplate a ploy of this kind from the outset.<sup>17</sup>

### Initial Tussles

The EC and the USA were at loggerheads over trade policy, with agriculture —in particular, the CAP's variable import levy mechanism and export refunds/restitutions— centre stage. Furthermore, the USA objected to the EC's policy of offering non-reciprocal trade preferences to its Mediterranean Associates harming, it was claimed, America's citrus exports. They were also opposed to the FTA arrangements that the EC was contemplating with the *EFTA neutrals*: those members of the European Free Trade Association that —unlike Denmark, Norway and the UK— had not applied for EC membership. Both sides nursed their grievances: the Europeans were particularly vexed that the Americans had failed to abolish the American Selling Price (ASP) system — 'which inflated the duties of certain categories of US imports' according to Destler— despite promises made in the Kennedy Round.<sup>18</sup>

Both the Europeans and the Japanese, the American's believed, were engaged in unfair exchange rate policies, at the expense of the USA's balance of payments and economic welfare. President Richard Nixon, in a surprise move on Sunday 15 August 1971, announced his New Economic Policy: a series of measures 'aimed at reducing the international value of the dollar'. As well as domestic policy measures to curb inflation, he 'suspended the US commitment to support its currency by selling gold reserves on demand', bringing in effect the end to the Bretton Woods system of fixed (but adjustable) exchange rate, and imposed a temporary 10 percent import surcharge.<sup>19</sup>

William Denman (Bill) Eberle became the Special Representative for Trade Negotiations (or STR) and was soon engaged in a frenzied round of *trade* diplomacy, with the pugnacious Treasury Secretary John Connally leading on monetary policy. Thus, the American team for the Article XXIV negotiations with the EC was led by Ambassador Eberle, assisted by Ambassador Harald Bernard Malmgren, one of his two deputies. Both would interact frequently with diplomats in the UK's Washington Embassy. Whilst Eberle had little experience of trade policy prior to his nomination, Malmgren had. With a doctorate in economics from the University of Oxford, Malmgren had held academic posts before serving in the STR's office during the Kennedy Round.<sup>20</sup> Although only appointed to his role as Deputy STR in May 1972, Malmgren had in fact been working for Eberle for some time. In October 1971, 'as principal adviser to Mr Eberle', he had been in London 'to talk about trade policy in the light of the Nixon measures'; with one

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<sup>17</sup> UKDEL Brussels Tel No Codel 116 of 14 Jan. 1972 to FCO, 'Future Trade Negotiations. Following for Sir Max Brown from Denman', TNA FCO 69/274.

<sup>18</sup> IM Destler, *American Trade Politics*, 4th edition (Washington DC: Institute for International Economics, 2005), 71.

<sup>19</sup> Destler, *American Trade*, 41-2.

<sup>20</sup> Dryden, *Trade*, 106-8.

Whitehall-based official dismissively commenting: 'What he had to say was notable for length rather than clarity.' Malmgren — '*who seemed very pleased with himself about the niche he has secured for himself as Eberle's (still unofficial) special assistant and general "devil" (if not as his evil genius)*' — was with Eberle at a lunch with British officials in Washington on 11 November 1971.<sup>21</sup>

It was not immediately apparent what trade concessions the Americans sought. Three trading partners — Canada, the EEC, and Japan — were potential targets. In early September the UK's Washington Embassy reported 'a possibility that the removal of the US import surcharge could be achieved by satisfactory adjustments on the monetary front only. ... it appears that quite a battle is now raging within the Administration on whether or not to make the removal of "unfair trade practises" by other countries, and/or the establishment of a fairer sharing of defence burdens, pre-conditions for getting rid of the surcharge.' By early November, however, it was clear the Americans wanted 'some immediate concessions which would have presentational value within the US'. When pressed what these concessions might comprise, Paul Volcker (Under-Secretary for International Monetary Affairs at the US Treasury) 'admitted that no list of demands had been tabled but ... the Commission at least could be in no doubt what the US were after. For example, they would like to see a freezing of CAP prices and a satisfactory agreement on the disposal of European agricultural surpluses.' But — no doubt to the relief of the British — he also 'volunteered that the UK were not in the firing line.'<sup>22</sup>

In November 1971 Eberle met with the UK's Minister for Trade before moving on to Geneva for the 'high level part' of GATT's Twenty-Seventh Session. In Geneva the Americans had initiated a debate on CUs and FTAs noting 'that some contracting parties were negotiating for the enlargement of one of the customs unions' and suggested the contracting parties needed to consider 'how to approach the necessary negotiations under Article XXIV:6.' (GATT documents refer interchangeably to *negotiations* and *renegotiations* with respect to Article XXIV:6.) Australia 'stressed the importance of considering the question of the consequences of the enlargement of the European Communities at an early date'.<sup>23</sup>

Paul Luyten (for the European Communities) 'understood the interest to which the negotiations for enlargement of the Community had given rise. Those negotiations had not yet been completed, however, and the modalities for aligning the customs regulations of acceding countries with those of the Community had not yet been fixed. That was why the Community considered that it would be premature at the present

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<sup>21</sup> HBC Keeble to Mr Bottomley, 'Dr Harold Malmgren', 27 Oct. 1971; BW Meynell (British Embassy, Washington) to SL Edwards (DTI), 'Visit to London of William Eberle', 12 Nov. 1971, TNA FCO 69/182.

<sup>22</sup> British Embassy Washington Tel No 2986 of 9 Sept. 1971 to FCO, 'U.S. Import Surcharge'; Washington Tel No 3677 of 4 Nov. 1971 to FCO, 'International Monetary Situation', TNA PREM 15/310.

<sup>23</sup> GATT, Twenty-Seventh Session, 'Summary Record of the Fifth Meeting Held ... on ... 19 November 1971', 26 Nov. 1971, SR.27/5.

juncture to establish a machinery such as the United States representative had proposed'.<sup>24</sup>

Finance Ministers and Central Bank Governors of the Group of Ten, and Raymond Barre the CEC Commissioner for Economic and Financial Affairs, then met in Rome on 30 November and 1 December 1971 to discuss the monetary crisis. At this meeting the Americans were strongly critical of the EC's trade policies, particularly its CAP. Volcker, claiming that 'Satisfactory bilateral conversations were going on with the Canadians and Japanese but progress with the E.E.C. was proving much more difficult', urged the Europeans to take advantage of the 'presence of Ambassador Eberle in Rome to carry on such discussions.' The EC did agree 'to give an undertaking to the Americans that the Council of Ministers would instruct the Commission immediately to re-open negotiations on all trade questions'; but Connally apparently wanted to go further. He 'wanted the E.E.C. ministers present to constitute themselves on the spot into a Brussels Council of Ministers and give Barre the necessary instructions for the Commission across the table'. Although this request rebuffed, it was agreed that discussions would resume in Washington on 17-18 December.<sup>25</sup> The British frequently portrayed themselves as an invaluable US-EC "go-between", but on this occasion they failed to impress. The UK's Ambassador in Washington was subsequently informed that 'the American delegation to the G-10 meeting in Rome came away with the impression that the U.K. were the most inflexible of the participants in their approach'.<sup>26</sup>

From Rome Eberle went to Brussels where on 8 December 1971 he met with the CEC's President, the Commissioner for External Relations Ralf Dahrendorf, and senior officials. Eberle's visits to Brussels had a number of outcomes. First, on 17 December 1971 the EC's Council of Ministers agreed that: '... the Community will notify GATT of the Accession Treaties and the agreements planned with the EFTA countries immediately these are signed. The negotiations under Article XXIV(6), will be begun *after* these instruments have been ratified' (my emphasis).<sup>27</sup>

More immediate trade negotiations with the Americans were also agreed. Consequently, on 21-22 December 1971 the CEC met with Eberle to discuss the US requests, which featured cereals, citrus and tobacco. Telegrams from the UK's Delegation in Brussels kept London informed: the CEC had given 'representatives of the Candidate countries an account of the ... talks'. The British were also briefed by Robert Schaetzel, the American

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<sup>24</sup> GATT, Twenty-Seventh Session, 'Summary Record of the Seventh Meeting Held ... on ... 23 November 1971', 26 Dec. 1971, SR.27/7.

<sup>25</sup> 'Record of restricted sessions (i.e. finance ministers and governors only) of meetings of the Group of Ten and of E.E.C. ministers in Rome on 30th November 1971 and 1st December 1971', 2 Dec. 1971, TNA PREM 15/812.

<sup>26</sup> British Embassy Washington Tel. No. 4207 of 14 Dec. 1971 to the FCO, 'Please pass personal to Chancellor of the Exchequer', TNA PREM 15/812.

<sup>27</sup> *Bulletin of the European Communities*, 5(1), 1972, 15-8.

Ambassador to the EU.<sup>28</sup> After further rounds, on 11 February 1972 a mini trade deal was concluded in which the EC agreed to 'increase its normal carry-over stock of wheat ... by 1.5 millions tons' in the '1971/72 farming year'; exercise restraint in applying export refunds on cereals during the same period; reduce temporarily its customs duties on oranges and grapefruits; and ensure that the 'common market for manufactured tobacco' that it was about to create would not disrupt trade. The US, for its part, would 'aim ... to increase by 10% their stocks of cereals during the 1971/72 farming year', and increase its set-aside programme during the 1972/73 farming year.<sup>29</sup>

The two parties also undertook 'to begin and to give active support to the extremely wide-ranging multilateral negotiations that are to take place in 1973 within the framework of GATT'. But first the US Administration had to obtain authority to negotiate, which was eventually secured in the Trade Act 1974 'signed on January 3, 1975, after a difficult passage through the U.S. Congress'.<sup>30</sup>

In parallel with these movements on trade, a realignment of currency parities was agreed at the Smithsonian Institution in Washington on 16-17 December 1971, together with a lifting of the 10 percent temporary import surcharge.

Meanwhile, in January 1972 Olivier Long, GATT's Director-General, visited London to address a joint meeting of the Foreign Affairs Club and the Trade Policy Research Centre, and met with British ministers and civil servants. The theme of Long's lecture was the need for 'trading nations to work together toward a further enlargement of world markets and readjustment of the multilateral system of trade'. As he pointed out:

one round of trade negotiations is already inscribed on the 1972 calendar. This is the renegotiation, necessary under the rules of the General Agreement, of past tariff bindings under GATT which will have to be broken as a result of the application of the EEC's agricultural policy and common external tariff to the United Kingdom and to the other new members of the Community.

He went on: 'Although this will be no more than a curtain-raiser for later events on the scene of world trade negotiations, it should provide an excellent warming-up exercise for the major efforts which must begin from 1973 onwards.'<sup>31</sup>

#### **Article XXIV:5**

Although the Treaty of Accession was signed on 22 January 1972, it was some weeks before the legal instruments were received in Geneva. The GATT Council then established a *Working Party on Accession to the European Communities*. This first met on

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<sup>28</sup> UKDEL Brussels Tel No 532 of 22 Dec. 1971 to FCO, 'Your Tel No 245: US/EEC Trade Relations' & UKDEL Brussels Tel No 536 of 23 Dec. 1971 to FCO, 'My immediately preceding telegram: US/EEC Trade Negotiations', TNA FCO 69/183.

<sup>29</sup> *Bulletin of the European Communities*, 5(3), 1972, 53-8.

<sup>30</sup> *Bulletin*, 5(3) 1972, 57; Winham, *International*, 15.

<sup>31</sup> GATT, 'Toward Better Trade Relations in the 70's. Address Given by Mr. Olivier Long, Director General of GATT to the Foreign Affairs Club, London, on 24 January 1972', Press Release, 24 Jan. 1972, GATT/1102.

29 March 1972 and decided that there were 'two major issues' to be dealt with: an 'examination of the Treaty of Accession in relation to Article XXIV, and preparation of the necessary re-negotiations pursuant to Article XXIV:6.' A number of delegations expressed the hope 'that the examination of the Treaty would be completed before its entry into force on 1 January 1973.'<sup>32</sup> The message sent back to London was rather stronger: that the Chair had said that 'The examination under XXIV must be completed before the Treaty entered into force on 1 January.'<sup>33</sup> As it turned out, this deadline proved hopelessly optimistic.

This telegram also reported on a co-ordination meeting between the Six and the four Acceding States held the previous day. Paul Luyten, for the Six, had suggested that the Working Party's 'examination of the instruments of accession should be allowed to go ahead fairly rapidly, but that preparations for Article XXIV:6 negotiations would have to go more slowly'. Denmark and Norway, however, favoured the reverse, fearing that 'a contentious debate in the GATT on the merits of Enlargement' might 'prejudice their referenda'. The consequence was that the 'resulting co-ordinated position of the Ten was the lowest common multiple and it was regretfully found necessary to be ready to be obstructive.' The USA, Japan and Canada had stressed the need for GATT to 'demonstrate its competence to discharge this major responsibility —*which was probably more important and more difficult than the consideration of the Treaty of Rome itself*' (my emphasis).<sup>34</sup>

The second meeting of the GATT Working Party took place on 8/9 May 1972. The British had hoped that an *ad hoc* group of the Ten would be able to meet beforehand 'to concert a line.' However, it was not until 'the morning of the 8th May in Geneva immediately before the GATT Working Party' that this proved possible. It then emerged that the Six had met in Brussels on 5 May and had already agreed the approach the enlarged Communities should take. This was presented to the Four as a *fait accompli*: 'the French had blackballed all proposals to offer more, and ... what was being put forward represented the minimum position of the 5 and the maximum position of the French'. Later, at a meeting of the Ten, 'and in agreement with the other 3, the U.K. made a statement ... that we had found it somewhat embarrassing to listen to a line being put forward to the GATT Working Party as a firm position of the enlarged Community, which had only been put to the 4 shortly before the Working Party meeting'.<sup>35</sup>

At issue was how much data the enlarged Communities was willing to supply to enable the Working Party to examine the Treaty of Accession; with the CEC offering a bare minimum and other contracting parties demanding much more. Data associated with

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<sup>32</sup> GATT, Working Party on Accession to the European Communities, 'Note on Meetings of 29 March and 8-9 May 1972', 17 May 1972, Spec(72)31.

<sup>33</sup> UKMIS Geneva Tel No 142 to FCO, 30 March 1972, 'First meeting of GATT Working Party on EEC Enlargement, 29 March', TNA FCO 69/331.

<sup>34</sup> UKMIS Geneva Tel No 142 of 30 March 1972 to FCO, 'First meeting of GATT Working Party on EEC Enlargement, 29 March', TNA FCO 69/331.

<sup>35</sup> Miss KE Boyes to Mr Denman, 'GATT Working Party under Article XXIV', 11 May 1972, TNA FCO 69/331.



the CAP's variable import levies, and preferential imports from developing countries, were particular foci of concern. The GATT Secretariat reported that 'All speakers other than the spokesman for the enlarged Communities ... considered that the information offered would not permit a useful examination under Article XXIV:5(a) of the implementation of the common agricultural policy by the acceding countries.'<sup>36</sup> According to Miss Boyes, the US 'finished with a formal statement that they had found the whole meeting deeply disturbing; ... it seemed clear the Community was not prepared to cooperate.'<sup>37</sup>

The enlarged Communities' reluctance to supply more than minimal information continued to vex the GATT Working Party. At its fourth meeting 'it was pointed out that the enlarged Communities, by declining to furnish data on preferential rates and variable levies, were in fact prejudicing matters of fundamental importance.' The meeting was dominated by an exchange of questions and answers regarding the information the enlarged Communities was willing to supply. And the stalemate spilled into the July meeting, with the date of accession 'coming nearer without any substantial work having yet been carried out'.<sup>38</sup>

Some progress had been made by early October. The enlarged Communities had now supplied the GATT Secretariat with answers to the 113 questions tabled by the contracting parties. At their meeting on 30 October 1972, these responses would be considered. And 'one of the principal matters to be discussed ... would be the methodology of the examination of the Accession Treaty under Article XXIV:5(a)'.<sup>39</sup>

Discussion of the enlarged Communities' responses to the 113 questions returned to some unsettled queries in interpreting Article XXIV. For example, 'some members of the Working Party said that they did not agree ... that if a customs union fulfilled the criteria laid down in paragraphs 5-9 of Article XXIV, it automatically met the requirement of paragraph 4 that its purpose "should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories"'. The enlarged Communities' response to question 49 —that '*The variable levy is a measure sui generis which is comparable neither to a customs duty nor to other regulations of commerce*'— provoked extensive discussion on the CAP's border protection; but the spokesperson for the enlarged Communities would not be budged. One 'delegation could not understand why it was impossible to quantify levies, since date presumably existed on day-to-day charges levied, as well as overall imports for each

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<sup>36</sup> GATT, Spec(72)31.

<sup>37</sup> Miss KE Boyes to Mr Denman.

<sup>38</sup> GATT, Working Party on Accessions to the European Communities, 'Note on Meeting of 29-30 June 1972', 12 July 1972, Spec(72)79; GATT, Working Party on Accessions to the European Communities, 'Note by the Chairman on Meeting of 20-21 July 1972', 11 Sept. 1972, Spec(72)85.

<sup>39</sup> GATT, Working Party on Accessions to the European Communities, 'Note by the Chairman on Meeting on 9-10 October 1972', 25 Oct. 1972, Spec(72)118.

item'.<sup>40</sup> Many years later the process of *tariffication* in the Uruguay Round did quantify the past incidence of variable import levies. Nor was the enlarged Communities willing to accept that the CAP's export refunds could be 'equated with export subsidies'; although later in the Uruguay Round they were.<sup>41</sup>

The meeting then turned to a consideration of how the Working Party could undertake the Article XXIV:5(a) test. In response the enlarged Communities emphasised the 'global character of the Article XXIV:5 exercise':

In the Community's view, the examination under Article XXXV:5 must be carried out from a global point of view, taking into consideration the globality of the conditions in which its trade as a whole is effected, in both the agricultural sector and the industrial sector. Furthermore, the concept of globality must likewise be applied vis-à-vis those contracting parties, as a whole, which are not parties to the customs union in question.<sup>42</sup>

Short shrift then for any contracting party heavily dependent upon the export of a limited range of products to Denmark, Ireland or the United Kingdom facing an increase in border protection, with no offsetting reductions elsewhere.

GATT's 28<sup>th</sup> Session took place from 1 to 14 November 1972. Denman subsequently reported to London: 'The general outcome of the session was extremely positive. It was agreed that the compensation negotiations under Article XXIV:6 should start officially in January and the detailed negotiations in March and that an effort be made to end these pre-negotiations by the Summer.' A Ministerial Meeting was envisaged for September 1973 to launch the next round of multilateral trade negotiations. He went on to write: 'The enlarged Community came out of this well. The danger had existed before of a row about the provision of information about agricultural trade for the XXIV:5(a) exercise. The Americans and others are pressing for a good deal more than the Nine feel it is tactically safe to provide.' He also wrote: 'several delegations, in particular Eberle, came up to us privately and expressed their appreciation of the role the UK had played ... in getting these decisions —particularly the target dates— agreed.'<sup>43</sup>

Despite this encouraging development, it was only at the Working Party's eighth meeting, on 7-8 December 1972 that a consideration of the enlarged Communities'

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<sup>40</sup> GATT, Working Party on Accessions to the European Communities, 'Note by the Chairman. Meeting on 30-31 October 1972', 29 Nov. 1972, Spec(72)126; GATT, 'Accessions to the European Communities. Questions and Replies', 26 Oct. 1972, L/3754.

<sup>41</sup> On tariffication, the Uruguay Round's Agreement on Agriculture and its treatment of export subsidies, see Carsten Daugbjerg & Alan Swinbank, *Ideas, Institutions, and Trade: The WTO and the Curious Role of EU Farm Policy in Trade Liberalization* (Oxford: Oxford University Press, 2009).

<sup>42</sup> GATT, Working Party on Accessions to the European Communities, 'Communication Setting Forth the Position of the European Communities with Respect to Article XXIV:5(a)', 29 Nov. 1972, Spec(72)127.

<sup>43</sup> UKMIS Geneva Tel No 635 of 15 Nov. 1972 to FCO, 'Next GATT negotiations. Following from Denman', TNA FCO 69/334.

proposals for the Article XXIV:5(a) evaluation could begin. This, however, afforded little more than another opportunity for both sides to restate their case. Thus, the discussion was pushed into February 1973, by which time the EC had tabled its XXIV:6 “offer”. The offer was very straightforward. The three acceding states would simply apply the pre-existing EC tariffs, with necessary adjustments to tariff rate quotas: bluntly stating that ‘the Communities consider that the concessions they are offering are greater than any compensation which might result for third countries from the provisions of Article XXIV:6.’<sup>44</sup>

Back in November 1972, a note prepared by the DTI had foreseen this. On XXIV:5 the position ‘being formulated a Neuf’ was likely to be that for the industrial sector the reduction in Irish and UK tariffs would likely ‘produce a “credit” for the enlarged Community’; and, for the agricultural sector, ‘changes in agricultural protection resulting from our adoption of the CAP ... will not have an adverse effect on total agricultural trade’. Taken together ‘the Community would go on to argue that enlargement satisfies the requirements of Article XXIV(5a), and that there is no case for changes in the CET (*common external tariff*) or the CAP in order to comply with this article.’<sup>45</sup>

The DTI went on to explain that under Article XXIV:6 there would be a ‘series of separate bilateral negotiations’ between the enlarged EC and ‘third countries with claims to compensation’. These claims could be triggered when one of the acceding states unbound its bound tariffs in order to adopt the CET. The negotiations would have to identify the volumes of trade affected, and ‘the extent to which these may be reduced by offsetting reductions in protection elsewhere and the form of compensation to be provided.’ (Although undertaken bilaterally, any tariff concessions agreed would apply to all contracting parties under GATT’s most-favoured-nation (MFN) clause.) Under GATT rules, the DTI explained, ‘a third party which has not been offered acceptable compensation’ can ‘compensate itself by withdrawal of bindings (ie increases in its bound tariffs)’. It seemed likely that ‘The Six —and in particular the French— will argue that compensation due on agriculture can be met through reductions in bound duties on industrial goods.’ This however was unlikely to satisfy the ‘major agricultural exporting countries’. ‘The United States in particular would wax eloquent on the political difficulties ... of persuading grain interests back at home that their interests were met by benefits to industrial exporters elsewhere in the United States.’ Not for the first, or the last, time officials warned of a tough negotiating stance over Article XXIV ending ‘either in the US in particular increasing tariffs on our exports (in return for failure to get concessions essentially from French agricultural interests) or in a complete rupture between the United States and the enlarged Community.’

When the GATT Working Party met on 6-7 February 1973, discussion on the methodology to be adopted for the Article XXIV:5(a) examination was just as polarised as before. The divergence of view between the EC and its critics over the CAP’s variable import levies remained profound. Nor was the Working Party able to agree on how to

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<sup>44</sup> GATT, ‘Article XXIV:6 Renegotiations. Communication from the Commission of the European Communities,’ 11 Jan. 1973, L/3807.

<sup>45</sup> ‘GATT Consideration of EEC Enlargement under Article XXIV’, Note by the Department of Trade and Industry, 6 Nov. 1972, TNA CAB 134/3509.

deal with the UK's preferential tariffs. The Working Party, nonetheless, did agree that the Article XXIV:6 renegotiations would begin on 12 March 1973. For the moment, there was no need to set up a negotiating committee to oversee the Article XXIV:6 renegotiations. Nor was a date for a subsequent meeting of the Working Party set.<sup>46</sup> It had held nine meetings but would not meet again. Thus, the consistency of the Treaty of Accession with the provisions of Article XXIV was never settled in the GATT.

### **The Article XXIV:6 Renegotiations**

The seventeen countries listed in Table 1 sought compensation from the EC under the XXIV:6 provisions (there were 83 contracting parties at the time, including the nine members of the EC). The first bilateral meeting —with the USA as it happens— was scheduled for 15 March 1973. Negotiations did not proceed as rapidly as had been hoped, and dragged on for sixteen gruelling months before agreements could be concluded. The UK's Mission in Geneva reported 'the general opening position which Luyten ... has taken in the introductory meetings.' He had made this 'speech half a dozen times and ... sticks very closely to his notes.' Apparently, the statement had 'never been written down in full or discussed by the Nine.' There were 'some elements of this opening statement with which [*the UK was*] not in full agreement'; but Luyten had urged 'that representatives of members states should stick to the party line.'<sup>47</sup>

The EC's initial offer —'to apply the same tariff concessions in the enlarged Community as in the original Community' as noted above— had been tabled on 2 January 1973. 'Most of the third countries immediately pointed out that they did not consider the Community's offer to be adequate ...' Then, 'after four months of negotiations', the CEC had second thoughts, and in July suggested to the Council various improvements that could be made. It was not until December, however, that Member States could decide on a supplementary offer —which 'fell short of the Commission's proposals'. By the end of March 1974 several countries had indicated a willingness 'to conclude the negotiations' on the basis of the improved (December) offer, but the USA, Canada, Australia, Argentina and Poland thought it 'was still inadequate', and 'submitted additional applications for supplementary tariff concessions or other commitments (e.g., bacon for Poland; cereals for the United States, Australia and Canada; beef and veal for Argentina).' Consequently, at the beginning of April 'the Council reexamined the state of the negotiations' and 'invited the Commission to investigate together with the United States Delegation. how it would be possible to conclude the negotiations on a mutually satisfactory basis.'<sup>48</sup>

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<sup>46</sup> GATT, Working Party on Accessions to the European Communities, 'Note by the Chairman on Meeting of 6-7 February 1973', 5 April 1973, Spec(73)11.

<sup>47</sup> AC Buxton (UK Mission Geneva) to MP Lam (Department of Trade and Industry), 'Article XXIV:6 Negotiations', 11 April 1973, TNA FCO 30/1885.

<sup>48</sup> Commission, Report on the tariff negotiations.

**Table 1: Countries that Undertook Article XXIV:6 Renegotiations with the EEC, and Agreements Signed as of 31 July 1974<sup>49</sup>**

*Insert Table 1 about here*

The meeting of COREPER on 2 May 1974, seems to have been dominated by recriminations about “leaks”. The Danish delegate claimed that “The United States had been able to follow in great detail the Committee's discussions: “what has taken place, and also what has not taken place””. The CEC said it ‘had been gravely handicapped by leaks’, and ‘considered that without this continual indiscretion the whole negotiation would have been finished satisfactorily by now.’ Palliser closed his telegram with the comment: ‘it would be otiose to stress the need for circumspection in discussions with the Americans during the final crucial stage of these negotiations.’<sup>50</sup> The gist of the telegram was, nonetheless, shared with Malmgren, who:

immediately commented that they had a number of sources of information about what went on, in particular, of course, the Commission itself. However, almost all the member states provided some information from time to time. He stressed that the information we had passed to them had been useful as confirmation and in clearing up potential misunderstandings. They were very careful about the way in which they used such information in order not to embarrass us and others.<sup>51</sup>

As the negotiation with the USA floundered on, pressure was put on the French, Italians, and Mediterranean associates to concede more generous concessions on citrus, on Italy regarding tobacco, the Belgians on dumpers, and on Kraft paper – ‘an item which hurt the United Kingdom and hurt its long-standing free trade partners but where we were willing to make an additional effort.’<sup>52</sup>

When COREPER met on 30 May 1974 agreement was finally reached ‘on the declarations to be made to accompany the offer of concessions which is designed to conclude the negotiations with the Americans.’ COREPER, however, could not ‘reach final agreement on the concessions themselves, the French and Italians requiring further instructions and the Belgians saying that they would speak last.’ When reconvened the following morning, France and Italy were able to lift the reservations expressed the night before, and the Commission was duly authorised to present the revised offer to the Americans—which the US was primed to accept (as reflected in the opening paragraphs of this paper). Belgium however abstained, placing on record ‘their bitterness and disappointment’. Some details were still to be sorted, and other countries had to be brought on board, including the Mediterranean suppliers of tobacco and oranges, but in

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<sup>49</sup> DC Hartridge (UK Mission Geneva), to JH Clement (Department of Trade), ‘Article XXIV:6 Negotiations’, 17 Sep. 1974, TNA FCO 30/2312; Hoda, Tariff, 159; GATT, Council, ‘Minutes of meeting held ... on 11 July 1975’, 25 July 1975, C/M/107.

<sup>50</sup> UKREP Brussels Tel No 1976 of 2 May 1974 to FCO, ‘Committee of Permanent Representatives (Ambassadors): 2 May 1974’, TNA FCO 30/2310.

<sup>51</sup> British Embassy Washington Tel No 1575 of 2 May 1974 to FCO, ‘UKREP Brussels Telegram No 1976: Article XXIV(6) Negotiations’, TNA FCO 30/2310.

<sup>52</sup> UKREP Brussels Tel No 1882 of 25 April 1974 to FCO, ‘Meeting of Committee of Permanent Representatives (Ambassadors) 25 April’, TNA FCO 30/2309.

essence the agreement with the US meant that the Article XXIV(6) renegotiations were concluded.<sup>53</sup>

One outcome of the bilateral discussions was a partial, if temporary, cessation of the hostilities engendered by the Chicken War. On 14 June 1974 the British Embassy in Paris reported a conversation with a member of the US Embassy. Apparently a side deal between the US and France, not *formally* linked to the Article XXIV(6) negotiations, had resulted in the US agreeing to raise the trigger price, above which an additional duty became payable on cognac, from \$9 to \$17 per gallon. This would 'allow all three star brandy and some VSOP to escape its impact'. It was, however, only a partial settlement: 'The Germans apparently were not interested in a relaxation of the American Chicken War duties on Volkswagen vans since a relaxation would benefit the Japanese disproportionately.'<sup>54</sup>

The deal on brandy was only temporary. Implemented on 16 July 1974 by the Nixon Administration, 'action was taken for the purpose of providing a temporary adjustment for a period of time during which a satisfactory solution to the trade dispute could be found.' But: 'No solution having been reached ... regarding the removal of unreasonable import restrictions on poultry from the United States,' the Ford Administration reimposed restrictive duties on brandy.<sup>55</sup>

When the GATT Council met on 19 July 1974, in a choreographed performance at which the EC, the USA, and Australia, read carefully prepared statements into the minutes, the EC stated that it 'considered the renegotiations under Article XXIV:6 ... now to be terminated.' It had 'initialled agreements with the great majority of the contracting parties who had engaged in negotiations with them.' Consequently, its intention was 'that on 31 July at midnight the schedules of concessions of the Six and of Ireland, the United Kingdom and Denmark would be withdrawn and replaced by ... new schedules of concessions for the Community of Nine.' Canada was the main dissenter. Pointing out it had not reached agreement with the EC, it said it 'expected to continue the negotiations with a view to reaching satisfactory results.'<sup>56</sup> But the deed was done, and the enlarged Communities' new schedules entered into force on 1 August 1974. A few days later, Richard Nixon resigned the US presidency, leaving Gerald Ford's Administration to engage in battle with the EC in the Tokyo Round.

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<sup>53</sup> UKREP Brussels Tel No 2534 of 30 May 1974 to FCO, 'Meeting of the Committee of Permanent Representatives (Ambassadors) 30 May 1974' & UKREP Brussels Tel No 2543 of 31 May 1974 to FCO, 'Committee of Permanent Representatives (Ambassadors) 31 May', TNA FCO 30/2311

<sup>54</sup> HDAC Miers (British Embassy, Paris) to P Gent (Department of Trade), 14 June 1974, 'Article XXIV(6): US/French Deal on Cognac', TNA FCO 30/2311.

<sup>55</sup> Gerald R Ford, *Proclamation 4478 — Adjustment of duty on certain brandy*, 26 November 1976, reprinted on The American Presidency Project: <https://www.presidency.ucsb.edu/documents/proclamation-4478-adjustment-duty-certain-brand>y accessed 15 Feb. 2023.

<sup>56</sup> GATT, Council, 'Minutes of meeting held ... on 19 July 1974', 1 Aug. 1974, C/M/99.

## The Canadians

Canada believed it had been shabbily treated by the Europeans, and its interests brushed aside. In part there was a timing issue. Canada had a federal election on 8 July 1974, which rather tied officials' hands. Sir Christopher Soames met with the Canadian Ambassador in Brussels on 27 June who explained that 'Canadian officials had received such strict instructions from Ministers some time ago that the Community's cereals formula was unacceptable, that they did not feel able to enter into any discussion on the basis of that formula without going back to Ministers. On the other hand they felt that to go back to Ministers now in the last few days before the General Election would be utterly counter-productive.'<sup>57</sup> The report of this meeting prompted a rather horrified British civil servant to comment: 'Sir C Soames is doing his best to bully the Canadians into settling this question on the Community's terms by the end of the month. This is not exactly helpful.' Rather tellingly he went on to write: 'I think that asking Sir M Palliser to speak to Sir C Soames would be counter productive. He has vociferously resented British interference on this sort of point in relation to the Article XXIV:6 negotiations in the past.'<sup>58</sup>

A letter from the British High Commission in Ottawa recounted Canadian grievances. Canada was insistent that the compensation on offer for cereals was inadequate. They 'suspected that they had been caught in a Community squeeze play, in which the Community had taken a political decision that there was no debt owing to the United States and that, in order to make this contention stick, had been obliged to take a similar line with Canada. This probably accounted for the lack of precision and detail, as well as the general unwillingness of the Community to respond meaningfully to Canadian representations.' Some days later Maddocks added: 'These feelings are not diminished by the perennial irritant of appearing to be treated as an appendix of the USA'.<sup>59</sup>

When the UK mission in Geneva tried to intercede on Canada's behalf, Luytens' 'reaction seemed as much emotional as rational'. He claimed that in 'the Dillon and Kennedy Rounds ... the Canadians had "cheated" the Community.' He added that 'the Canadians had always been tough and cynical negotiators and that they could expect little sympathy from those in the Commission, like Hijzen and Wellenstein, who had previously suffered these tactics'.<sup>60</sup>

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<sup>57</sup> Commission of the European Communities, Office of Sir Christopher Soames, 'Note for the record. Meeting between the Canadian Ambassador and Sir Christopher Soames Thursday 27 July (*sic*) 1974 at 1200 hours', 27 June 1974, TNA FCO 30/2311.

<sup>58</sup> DJ Hall to Mr O'Mahony, 4 July 1974, 'Canada: GATT Article XXIV:6', TNA FCO 30/2311.

<sup>59</sup> AF Maddocks (British High Commission Ottawa) to Mrs EC Jones, (Department of Trade), 25 June 1974, 'GATT Article XXIV:6 Negotiations'; & AF Maddocks (British High Commission Ottawa) to P Gent (Department of Trade) 11 July 1974, 'GATT Article XXIV: Canada', TNA FCO 30/2311.

<sup>60</sup> DC Hartridge (United Kingdom Mission Geneva) to P Gent (Department of Trade) 5 July 1974, 'Article XXIV:6 – Canada', TNA FCO 30/2311.

Denman and other British officials met with their Canadian counterparts in Geneva on 16 July 1974. The Canadians were still of the view that the negotiations had been inadequate and 'that they were simply being asked to accept what the Americans had negotiated for themselves'. The British 'urged acceptance of the Community offer', having

pointed out gently that there seemed to have been some failure of communication between the Commission and the Canadians. Like all organisations under pressure the Community tended to deal with those who shouted the loudest. And the deafening silence from Ottawa when the Community was engaged in difficult internal argument earlier this year about improving its offer had led all in the Nine to assume that the Canadians were coming out of the deal well. But as far as the Community was concerned the XXIV:6 negotiations were now over.

Apparently 'the Canadians accepted rather ruefully that their tactics had not been best planned'. The Telegram concludes in rather moralistic terms: 'The plain fact is that while the Commission have not been as communicative as they might have been the Canadians have mishandled their negotiations. But they were appreciative of the full account we gave them of the situation as seen from the Community side.'<sup>61</sup>

But the Canadians did not accept the advice, and the dispute rumbled on. Finally, in February 1975, an agreement of sorts was reached. In a Joint Declaration Canada and the EC reported that they had concluded their Article XXIV:6 negotiations, except for cereals with respect to the previous schedules of Denmark and the UK. Discussions would be continued 'with a view to finding through international negotiations agreed solutions to problems of international trade in cereals.' In a reference back to the unsettled business of the Dillon Round, the EC also agreed to 'insert in their new Schedules ... the initial negotiating rights of Canada on those items for which Canada had such rights in the schedules of the Community of Six.'<sup>62</sup>

### **Tentative Conclusions**

How consequential was the role the UK played in these Article XXIV negotiations? Civil servants no doubt over emphasised the UK's significance, keen to stress the importance of their interventions. They regularly noted American approbation. A note dated 30 April 1974, for example, from the British Embassy in Washington, records that a US official:

volunteered that the British behaviour over Article XXIV(6) was officially regarded in Washington as being extremely helpful. He said the State Department had recently sent round pretty strongly worded instructions to the capitals of the European Community, urging the political necessity of some movement over Article XXIV(6), but London had been specifically and solely exempted from the need to make such representations.<sup>63</sup>

It can be claimed that the UK's negotiating objectives were largely achieved: EC enlargement had occurred without triggering an US-EC trade war that might have impacted British industrial exports; the Article XXIV:6 settlement involved relatively few concessions reducing tariff protection for British industry; and the Tokyo Round of trade

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<sup>61</sup> UKMIS Geneva Tel. No. 662 of 17 July 1974 to FCO, 'GATT Article XXIV:6 Negotiations', TNA FCO 30/2311.

<sup>62</sup> GATT, Council, 'Minutes of meeting held ... on 24 March 1975', 8 April 1975, C/M/105.

<sup>63</sup> JO Wright, 30 April 1974, 'Article XXIV(6)', TNA FCO 30/2310.



negotiations went ahead. However, the CAP emerged relatively unscathed, as EC stonewalling meant that US (and Canadian) complaints about its variable import levy mechanisms were once again deflected. As in the Dillon Round, the EC proved to be a formidable adversary and the US found itself offering sweeteners to induce EC Member States to support a deal: France secured a temporary concession on cognac for example.

Was the negotiation 'more important and more difficult than the consideration of the Treaty of Rome itself'? A tentative response to this question is 'No', in that it was largely a repeat of the 1957-62 experience. As before, GATT was unable to determine whether the Article XXIV:5 criteria had been met; and, although an Article XXIV:6 settlement was concluded, this once again involved deferment of compensation for the CAP's variable import levy mechanism to a later date. The US and the EC were evenly matched, and stalemate ensued. GATT, as an institution, nonetheless, survived this impasse, with its contracting parties entering upon the Tokyo Round.

Table 1

Country	Date	DC Hartridge's comments <i>(except those in italics):</i>
Sri Lanka	12 June 1974	'Signed taking note of the existence of the Community's GSP <i>(Generalized System of Preferences)</i> Scheme'
South Africa	12 July 1974	
Japan	16 July 1974	'With an exchange of letters recording respective positions on Ireland's invocation of Article XXXV against Japan'
Poland	17 July 1974	'With a Polish letter concerning her loss of bacon exports to the UK'
Brazil	18 July 1974	'With a Brazilian letter concerning exports of soluble coffee and cocoa powder'
New Zealand	18 July 1974	
USA	18 July 1974	'With the USA letter noting their failure to obtain INRs <i>(initial negotiating rights)</i> on all the items in the Community's "May offer" to which they felt entitled and which they felt the Commission had promised. The letter indicates that in any future negotiations these items would be regarded as bound to the US.'
Australia	19 July 1974	
Yugoslavia	29 July 1974	'With an oral statement of Yugoslavia's desire to continue in another framework discussions on her tinned meat exports'
Argentina	31 July 1974	'With an Argentine letter mainly concerning cereals and beef'
Uruguay	31 July 1974	'ditto, but without mention of cereals'
Pakistan	31 July 1974	
Romania	31 July 1974	Signed on 31 August but backdated to 31 July. 'It was accompanied by an oral statement referring to Romania's position as a developing country and her hopes of the Community's GSP scheme.'
Chile	—	'The position of Chile is a mystery; since Allende's fall there has been no effective negotiation with Chile ...'
India	—	'Both India and Malaysia have expressed misgivings about the offer and in the GATT Council meeting of 19 July India insisted, despite the Commission's announcement that the negotiations would cease on the 31 <sup>st</sup> , that for her part they were still in progress.'  <i>India signed on 31 January 1975 according to Hoda. In July 1975 Malaysia said its negotiations with the EC had not been concluded.</i>
Malaysia	—	
Canada	—	<i>Canada eventually settled on 28 February 1975: see later text.</i>