

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

ACCORD GENERAL SUR
LES TARIFS DOUANIERS
ET LE COMMERCE

RESTRICTED
LIMITED B

GATT/CP.3/SR.4
14 April 1949.

ORIGINAL: ENGLISH

Third Session of the Contracting Parties

SUMMARY RECORD OF THE FOURTH MEETING

Held at Hotel Verdun, Annecy, on
Thursday, 14 April 1949, at 10 a.m.

Chairman: Hon. L. D. WILGRESS (Canada)

Subjects discussed:

1. Non-discriminatory Measures Notified under Article XVIII.
2. Import Restrictions Imposed by the Union of South Africa.
1. Examination of the Statements Submitted in Support of the Non-discriminatory Measures Notified under Paragraph 11 of Article XVIII (GATT/CP.3/8 and CP.3/1/Add.5)

Mr. USMANI (Pakistan) said that the contracting parties were required to apply the provisions of Article XVIII only to the fullest extent not inconsistent with their existing legislation, and it should be understood that the procedures laid down at previous sessions should be applicable only to those contracting parties whose legislation permitted observance. He suggested that the procedure needed modification insofar as it related to measures which were covered by paragraph 7 (a) of Article XVIII.

The CHAIRMAN said he did not think that any government would be prevented by existing legislation from acting in accordance with the procedure which merely required a government applying such measures to notify the Contracting Parties. As for the proposed Working Party, he suggested it should be asked

to examine the statements submitted by contracting parties in support of the measures notified under paragraph 11 of Article XVIII, the objections lodged by contracting parties which consider their interests to be materially affected and the eligibility of these measures for treatment under the provisions, and also to consider the procedures for the examination of measures notified under paragraph 11 by new contracting parties and of new measures under other paragraphs of that same article.

Mr. EVANS (United States) asked whether under those proposed terms of reference questions on the adherence to the time schedule could be raised.

Mr. AUGENTHALER (Czechoslovakia) suggested the terms of reference would be made as broad as possible so as to cover all points raised at the plenary meeting. Mr. EVANS (United States) concurred in this suggestion.

Mr. REISMAN (Canada) thought that the terms of reference proposed by the Chairman did not fully cover the points raised by the representatives of India and Pakistan and should be broadened. The principle of broad terms of reference should henceforth be applied to all working parties.

The CHAIRMAN submitted a re-draft on the basis of the suggestions in which was included the phrase "in the light of the discussions at this session".

Mr. HEWITT (Australia) said that the Working Party should be understood to have power to recommend as to whether the interests of any contracting party were materially affected.

Mr. SHACKLE (United Kingdom) suggested the phrase "and to take into account the points mentioned during the discussions" for the words suggested by the Chairman.

The following terms of reference were approved :

- (a) To examine the statements submitted by contracting parties in support of measures notified under paragraph 11 of Article XVIII and the objections to these measures lodged by contracting parties which consider their interests to be affected.
- (b) To take account of the points raised in the discussions at this session.

Upon the approval of the terms of reference, the CHAIRMAN proposed the following contracting parties as members of the Working Party under the Chairmanship of Mr. HEWITT (Australia) :

Australia	India
Canada	Netherlands
Chile	Syria
Cuba	United Kingdom
France	United States

The composition of the Working Party was approved.

2. The Import Restrictions Imposed by the Union of South Africa.
(GATT/CP/3 and CP.3/3 Add. 1 with Annex 1.)

The CHAIRMAN reported that the representatives of Australia and the United States had been unable to reach agreement on the terms of reference for the proposed working party, and the Australian representative had submitted a draft, which was before the meeting for consideration.

Mr. HERRERA-ARANGO (Cuba) wished it to be clearly indicated in the terms of reference that the "possible effect" to be examined was that of the measures which were actually applied.

Mr. ROWE (Southern Rhodesia) maintained that it was unnecessary to examine the effect of the actual restrictions on other

contracting parties, since any contracting party which considered itself adversely affected by the measures could have recourse to the complaint procedure under Article XII or XXIII.

Mr. BRONZ (United States) thought that it was clear from the context that the term "possible effect" referred to both the trade restrictions actually proposed and any alternative measures which the contracting parties might suggest as preferable. The Australian draft, in his opinion, would unduly restrict the capacity of the working party; the latter part of the text would have the effect of excluding entirely any consideration of the procedure followed by the Union of South Africa.

Mr. HERRERA-ARANGO (Cuba) supported the view of the representative of the United States that the terms of reference should be as broad as possible. The consultation to be carried out under paragraph 4 (a) should cover all the matters on which consultation would have taken place if prior consultation had been possible.

Mr. HEWITT (Australia) thought the interpretation of paragraph 4 (a) given by the representative of Southern Rhodesia was a plausible one, for "such measures" clearly referred to the "alternative corrective measures" immediately preceding that clause. For consultation on the adverse effects of restrictions on another Contracting Party an entirely different procedure was provided in paragraph 4 (d), and the procedure in paragraph 4 (a) did not envisage the Contracting Parties taking joint action on their own initiative. The Australian proposal had been criticized as being unduly restrictive on the scope of the Working Party, but the Contracting Parties had no mandate to act beyond the terms of the General Agreement and the latter part of the Australian draft was certainly not more limiting than paragraph 4 (a) which was itself

limited in scope; to delete that part would enlarge the field of operations of the Contracting Parties beyond the provisions of the Agreement.

The Australian delegation, though it agreed in principle that objective consideration should be given to this procedural question, believed it to be important that free choice by a contracting party between prior or posterior consultation should in no case be prejudiced.

Mr. THOMPSON-MACAUSLAND (United Kingdom) thought that the interpretation of paragraph 4 (a) by the United States' representative would suggest that a contracting party applying a restriction would be required to consider possible alternative measures during prior consultation. The United Kingdom Government, however, had always attached great importance to the observance of the utmost secrecy provided for in paragraph 4 (e) of Article XII, which precluded any detailed study of prospective measures. Since no contracting party was required to indicate the timing, scope, etc of prospective measures when it deemed inadvisable to do so, paragraph 4 (a) had been so worded as to indicate that consultation in advance was desired only when it is not impracticable. This being the case, the terms of references would be too narrow if they excluded a review of the effect of measures already adopted.

Dr. de VRIES (Netherlands) thought that "alternative measures" should be taken to cover both existing or proposed and alternative measures. Consultation presupposed the possibility of modification or substitution of originally proposed measures, and consideration of suggested alternatives to the original measures should not be precluded merely because secrecy was to be observed. He favoured terms of reference as broad as possible in order to avoid difficulties in the Working Party's proceedings, and therefore

preferred the draft proposed by the Chairman.

M. LECUYER (France) said that he was also in favour of broad terms of reference to enable the Working Party to consider all points mentioned at the plenary meeting and all aspects of the question including commercial, economic and financial matters. He supported the representative of the Netherlands in advocating the first draft although the Australian draft did not seem to him to be over-respective.

Mr. BRONZ (United States) agreed with the interpretation of paragraph 4 (a) given by the representative of the Netherlands. As for the observance of secrecy, paragraph 4 (e) only meant to enjoin the contracting parties to make provision for secrecy in the conduct of consultations, and it should not be carried to the point of limiting the scope of consultations. If there were to be no discussions on the precise nature of prospective measures, which might be suggested by contracting parties as preferable alternatives, there would be no way of bringing the consultation to a useful conclusion. The Australian representative based his objection to reviewing the procedure on the ground that the practicability of prior consultation was not open to discussion, but in all judicial proceedings procedural matters were challengeable as well as matters of substance. The action of a contracting party would certainly be open to question if it deliberately avoided instituting consultations when there was every opportunity for it to do so. In the present case, the South African Government had communicated to the Chairman of the Contracting Parties, but the Contracting Parties had not taken any joint action on their own initiative and had instituted a consultation only after a request had been presented by the United States.

Mr. HERRERA-ARANGO (Cuba) agreed with the representatives of the Netherlands and the United States that the interpretation of the Australian representative was too restrictive.

Mr. PERRY (Canada) said that it would be preferable if the question of correct procedure could be dealt with without direct reference to the Union of South Africa. The Australian interpretation of paragraph 4 (a) was unacceptable to his delegation. There was no reason why the Contracting Parties should be precluded from reviewing under that paragraph any matter which might be regarded as inconsistent with any paragraph other than 4 (a) of the Article. The Contracting Parties should regard themselves as completely free to discuss frankly all relevant matters and therefore should consider under paragraph 4 (a) all the circumstances which prompted the restrictions. His delegation therefore would fully endorse the proposal made by the Chairman.

Mr. NORVAL (Union of South Africa) said that although he agreed that all relevant matters should be discussed by the Working Party, it did not necessarily follow that all points that had been raised during the discussion were relevant.

Discussion on this item to be continued at the next meeting.

The meeting adjourned at 12.45 p.m.