

CONTRACTING PARTIES  
THIRD SESSION

SUMMARY RECORD OF THE FIFTH MEETING

Held at Hotel Verdun, Annecy  
on Monday 18 April 1949, at 2.30 p.m.

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

Subjects discussed:

1. Election of Vice-Chairman
2. Import Restrictions Imposed by the Union of South Africa
3. Status of the Agreement and Protocols.

1. Election of Vice-Chairman.

The CHAIRMAN invited nominations for the position of Vice-Chairman for the unexpired term of Mr. Speekenbrink who had been elected on 17 August 1948 and whose term would therefore expire on the same day this year.

Mr. WILLOUGHBY (United States) paid tribute to the part played by the Benelux countries in the furthering of the cause of the Contracting Parties and thereupon proposed Mr. van BLANKENSTEIN for Vice-Chairman.

Mr. KING (China) remarked commendatorily on the attributes of the candidate and seconded the motion.

Mr. van BLANKENSTEIN (Netherlands) was unanimously elected Vice-Chairman of the Contracting Parties.

Upon the proposal of Mr. BARADUC (France) the meeting unanimously agreed to send in the name of all delegations a message to

Mr. SPEEKENBRINK to convey their regret for his resignation.

Mr. van BLANKENSTEIN thanked the representatives for their kind thought and for his nomination.

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

The CHAIRMAN, resuming the item, said that, if necessary, the Legal Department of the United Nations could be consulted as to the correct interpretation of paragraph XII: 4 (a), and he suggested that the terms of reference should be broad enough to cover the full scope of the item on the adopted agenda; the draft he had presented included also a study of procedure which met the point raised by certain delegations wishing to examine the procedure for the conduct of future consultations.

Mr. HEWITT (Australia) said that he would regard the observation he had made on a previous occasion on the meaning of "such measures" in paragraph 4 (a) as having been disposed of by the remarks of the Netherlands representative. The proposal to ask the Working Party "to review the procedure for consultation provided in paragraph 4 (a)" was not acceptable, as this would amount to reviewing the paragraph itself. Also he could not accept the view that the terms of reference he had proposed were based on a particular interpretation of Article XII, since his proposal merely repeated the provisions of the Article.

Mr. JOHNSEN (New Zealand) thought it would be desirable to have the question of procedure clarified as it was important for the future of the Agreement, but since broad terms of reference would create difficulties in deciding on what matters were relevant, he would support the Australian proposal. He said the last part of the Chairman's draft was redundant, as consultation with the Fund was mandatory on the Contracting Parties by virtue of Article XV.

Mr. CASSIERS (Belgium) drew a distinction between legal and factual

questions. To consider any factual situation, the Working Party must have a mandate to consider all Articles.

Mr. OLDINI (Chile) pointed out that there was no logical consistency between the provisions in parentheses in paragraph 4 (a) and the rest of the paragraph. The review of procedure was a difficult task which might prove beyond the capacity of a working party and should therefore be left out. As regards the first half of the Chairman's draft, the language was open to various interpretations; to study all Articles would be inviting the danger of opening controversial questions. Weighing the two, he would rather accept the Australian draft, slightly extended.

The CHAIRMAN introduced the following revised draft incorporating a number of improvements based upon the discussions:

"(1) In order to facilitate the conclusion of consultations between the CONTRACTING PARTIES and the Union of South Africa in accordance with Article XII (4) (a), to examine, in the light of the provisions of that sub-paragraph, the import restrictions imposed by the Union of South Africa and modifications thereof, and to report thereon to the CONTRACTING PARTIES;

"(2) to make practical recommendations to the CONTRACTING PARTIES for the efficient working of the procedure for consultations contemplated under Article XII 4 (a); and on both these questions to consult with representatives of the International Monetary Fund."

Mr. ROWE (Southern Rhodesia) proposed to change "contemplated under" in paragraph (2) to read "provided for in".

Mr. BOHR (Luxembourg) indicated that he concurred with the views of the representatives of the Netherlands and Belgium; it was

important to clarify the procedure, and narrow terms of reference would handicap the Working Party.

The amendment proposed by Mr. ROWE was adopted, and the terms of reference proposed by the Chairman were approved as amended.

3. Questions arising from the Note on the Status of the Agreement (GATT/CP.3/7, CP/7 Add 4 and CP/13).

The CHAIRMAN introduced this item by observing that the contracting parties had found it confusing to operate with a number of instruments, and therefore an endeavour should be made at this session to bring the instruments into a more orderly arrangement. As for the General Agreement itself, all twenty-three signatories had become contracting parties, and only the application to a few overseas territories for which contracting parties had international responsibility remained to be effected. Among these notification was still awaited from the Government of Belgium in respect of the application of the Agreement to the Belgian Congo. All Protocols adopted at Havana and Geneva had come into force with the exception of the Protocol modifying Part I and Article XXIX. If those contracting parties which had not accepted this Protocol did not find it insurmountably difficult to accept it, it was highly desirable that they should do so without delay in order that a consolidated text could be presented to the acceding governments for their acceptance so as to minimise legal complications.

The CHAIRMAN then asked the contracting parties whether they could clarify the position of their governments with respect to the application of the General Agreement to their non-metropolitan territories.

Mr. BARADUC (France) stated that steps had been taken by his Government for the application of the Agreement in respect of all territories for which France had international responsibility, with the exception of Morocco with which his Government was still seeking agreement. His Government would soon be able to notify the application of

the General Agreement to all territories of the French Union except Morocco.

Mr. SHACKLE (United Kingdom) drew attention to the fact that his Government had made effective the provisional application of the Agreement in respect of all territories for which it assumed international responsibility with the exception of Jamaica. The Government of the latter territory was still considering the question.

Mr. CASSIERS (Belgium) confirmed that the Agreement had been made effective in respect of the Belgian Congo, and he thought that notification had been sent to the United Nations. He would investigate and take steps to see that the Secretary-General of the United Nations was duly notified.

Mr. HEWITT (Australia) said that the Agreement had not been made effective in respect of the territories of New Guinea and Papua as his Government believed it was not required to apply the Agreement to such territories under the terms of the Protocol of Provisional Application; his Government was not required to do so until it accepted the Agreement in accordance with Article XXVI.

Mr. HOLLIS (United States) said that his Government had given a different interpretation to the Protocol of Provisional Application; the Protocol, in his view, required the contracting parties to make effective the provisional application of the Agreement in respect of all territories except the contracting parties for which there was special mention of their metropolitan territories.

Mr. HEWITT (Australia) referred to paragraph 2 of the Protocol and pointed out that his Government, being one of the "foregoing governments" referred to therein, was entitled to effect the application only when notice had been given.

(a) Protocol Modifying Certain Provisions

Mr. HOLLIS (United States) recalled the proceedings at the Second

Session which had resulted in the understanding referred to in the Note (GATT/CP.3/7) regarding the signing of the Protocol by the Union of South Africa with a reservation on Article XXXV. To register the concurrence of the Contracting Parties in this reservation, he proposed that the Contracting Parties adopt a declaration to be addressed to the Secretary-General of the United Nations. He submitted a draft of his proposed declaration.

Mr. HASNIE (Pakistan) stated that the acceptance of the reservation should not in any way affect the status of Article XXXV as an integral part of the General Agreement among all contracting parties except for the contracting party which had thus signified its non-acceptance. His Government would accept the reservation on the understanding that it did not affect the provisions of the Article which permitted his Government to withhold application of the Agreement with respect to the Union of South Africa.

Mr. DESAI (India) said his Government was prepared to accept the reservation on the same understanding as put forward by the representative of Pakistan by which he understood that the reservation would not give any contracting party the right to raise questions on any restrictions which India might impose on her trade with South Africa.

The CHAIRMAN remarked that since there was general accord in principle to accept the reservation, he would propose that the United States draft should be distributed and considered at the next meeting.

Mr. ROWE (Southern Rhodesia) announced that his Government had authorized signature of this Protocol.

(b) Protocol Modifying Article XIV

The CHAIRMAN introduced this section in the Note and requested the meeting to indicate its wish as to whether a waiver should be given to Southern Rhodesia for it to sign the Protocol under the conditions suggested. If the Contracting Parties were agreeable to accepting the

signature in the circumstances, it would be necessary to consider the formal steps to be taken for giving legal effect to the signature.

Mr. ROWE (Southern Rhodesia) indicated that signature of this Protocol had also been authorized by his Government.

Dr. AUGENTHALER (Czechoslovakia) suggested that a decision could be taken under Article XXV by following the procedure laid down in paragraph 5 (a) thereof.

The CHAIRMAN, however, thought that it might be preferable to adopt a declaration so that the decision of the Contracting Parties could be clearly conveyed to the Secretary-General of the United Nations. The declaration would be to the effect that the Contracting Parties were prepared to accept Southern Rhodesia's signature with the proviso that notwithstanding the provisions of paragraph 1 (d) of Article XIV as amended, Southern Rhodesia should be allowed to elect to be governed by the provisions of Annex J of the Agreement. This was agreed by the Contracting Parties in principle and the Executive Secretary was asked to prepare a draft of the required document for consideration at a subsequent meeting.

(c) Protocol Modifying Article XXIV

Mr. RODRIGUES (Brazil) stated that this Protocol had been accepted by his Government and he would enquire why the instrument of acceptance had not been sent to the United Nations.

Mr. U MYA SEIN (Burma) regretted that his Government had not been able to go through the formalities of acceptance, owing to its heavy occupation in matters of grave importance and urgency, but wished to assure the contracting parties that acceptance of the Protocol would be effected in due course.

Mr. HOLLIS (United States) observed that the assertion in the Note inferred that countries which became contracting parties after an amendment had become effective would nevertheless remain subject to the

provisions of the unamended version until they had gone through a form of acceptance of the instrument embodying the amendment. This interpretation, he felt, would give rise to undesirable complexity by increasing the divergences in the text of the Agreement. This undesirable situation, however, could be avoided by interpreting the words "each other contracting party" in paragraph 1 of Article XXX in a manner other than was implied by the Note. He proposed that the words should be taken to mean each other country which was a contracting party at the time the amendment became effective. This would have the result that in the first place a new acceding government would henceforth, upon accession, become a party to the Agreement in its modified version incorporating all amendments which had become effective prior to the accession, and secondly, protocols such as the one modifying Article XXIV would become effective retroactively in respect of those countries which became contracting parties subsequent to the Protocol coming into force.

Mr. Hollis was requested to present his proposal in writing at the next meeting, when discussion would be resumed.

The meeting rose at 5.40 p.m.

