GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED
LIMITED B

GATT/CP.3/SR.6
22 April 1949

ORIGINAL : ENGLISH

Contracting Parties

Third Session.

SUMMARY RECORD OF THE SIXTH MEETING

Held at Hotel Verdun, Annecy,
on Tuesday, 19 April 1949, at 2.30 p.m.

Chairman: Mr. H. van BLANKENSTEIN (Netherlands)

Subjects discussed:

Questions arising from the Note on the Status of the Agreement and Protocols (GATT/CP.3/7)

(c) Special protocol relating to Article XXIV (continued discussion)

The CHAIRMAN introduced the draft decision prepared by the representative of the United States concerning the interpretation of Article XXX, as follows:

"The CONTRACTING PARTIES interpret the words 'each other Contracting Party' in paragraph 1 of Article XXX of the General Agreement to mean each other country which is already a contracting party at the time the amendment initially becomes effective, or which has then taken the last act toward becoming a contracting party, with the result that each country subsequently taking such a last act becomes a contracting party to the Agreement as modified by all amendments which are then effective for any contracting parties."

Mr. HEWITT (Australia) observed that although this decision would not affect the position of Australia, the proposed interpretation was not a satisfactory one insofar as it affected the position of some of the signatories of the Final Act of 1947, which were entitled to apply provisionally the General Agreement in the original form as attached to

the Final Act; the signatories should have the right by the terms of the Protocol of Provisional Application to elect whether or not to accept an amendment to the authenticated text annexed to the Final Act.

Mr. SHACKLE (United Kingdom) said that, on the legal aspect of this argument, an equally forceful case could be made for either side. As for the substance of the question, i.e. the effectiveness of Article XXIV, it would be an undesirable settlement to force any contracting party to accept the Protocol by means of an arbitrary interpretation. A satisfactory solution would lie in allowing the contracting parties concerned to choose between the new version and the original.

Mr. JOHNSEN (New Zealand) thought that the interpretation proposed by the United States would create an illogical and untenable situation in which the Protocol would be binding on New Zealand but would not be effective in respect of Australia, both of which were signatory to the Final Act.

Mr. HOLLIS (United States) proposed adoption of the decision, which would serve to clarify the meaning of Article XXX, so as to avoid the recurrence of the confused situation of last year. The decision should be adopted at least in respect of those countries which subsequently accede to the General Agreement.

Mr. SHACKLE (United Kingdom) thought the present was not a suitable moment to decide upon an interpretation of this nature if it was intended that only acceding governments should be bound by it.

Mr. HASNIE (Pakistan) said that he thought his Government had accepted this Protocol, but if it had not he was certain that it would do so. As for the interpretation, it would be tantamount to the deletion of the last four words of paragraph 1 of Article XXX, i.e., "upon acceptance by it". Interpretations like this, in direct conflict with the letter of the Agreement, if allowed, would result in a chaotic

situation which would be even more undesirable. Concerning the substance of the interpretation, he also expressed the opinion that it would be acceptable only to the extent that subsequent acceding countries should be precluded from choosing between divergent texts of the Agreement, but it should not affect the option enjoyed by the Final Act signatories under the Protocol of Provisional application.

Mr. HOLLIS (United States) wished to clarify the point raised by the representative of Pakistan and noted that the terms of neither the Final Act nor the Protocol had given any special right to the original Contracting Parties with regard to the effectiveness of Protocols adopted by the Contracting Parties.

Mr. AUGENTHALER (Czechoslovakia) thought that the question should be considered strictly along legalistic lines, and he would like to know more exactly the meaning of the phrase: "the last act towards becoming a contracting party". He considered the decision to be unnecessary insofar as requirement for acceding countries could be provided for in the instrument of accession.

Mr. HOLLIS (United States), in reply to the question on the meaning of the "last act" said that the general language was intended to cover the various forms which the act of accession might take, including the signing of a Protocol and the deposit of an instrument of acceptance. The purpose of the decision was to dispense with the formality required of Acceding Governments of depositing instruments of acceptance of Protocols already in force.

Mr. ROWE (Southern Rhodesia) also maintained that signatories of the Final Act should not be bound by any Protocol modifying an original version unless it was expressly accepted.

Mr. HEWITT (Australia) said he could see no reason why the interpretation should be adopted when on the one hand it would not bind the original contracting parties and on the other it was not needed for

regulating relations with the subsequent acceding countries.

Mr. SHACKLE (United Kingdom) affirmed the view that signatories of the Final Act should not be bound by the new version of Article XXIV if they did not wish to be so.

Mr. KING (China) agreed with the representative of the United Kingdom that the interpretation should be left in abeyance for the time being. Contracting parties which had not formally accepted the new version of Article XXIV should not be deprived of their liberty of free choice. Although he appreciated the anxiety entertained by the representative of the United States in regard to the future operation of the General Agreement he could not help regarding it as illogical that an interpretation should be applicable to one group of countries while not to others; it would be unfair to the acceding countries if more restrictive or onerous obligations were placed on them. The proposed interpretation in fact was, and therefore should take the form of, an amendment to Article XXX.

The CHAIRMAN, summing up, said that the general feeling of the meeting suggested the rejection of the United States proposal on the understanding that protocols of accession in future should contain clear provisions with regard to the effectiveness of any protocols which might be in force at the time of the accession.

Mr. HOLLIS (United States) said he was prepared to withdraw his proposal provided the consensus of opinion of this meeting was duly recorded to the effect that, notwithstanding the provisions of Article XXX which required explicit acceptance of each protocol by each contracting party, a provision in the appropriate instrument of accession would suffice to make any protocols or amendments binding in respect of an acceding country.

Mr. AUGENTHALER (Czechoslovakia) suggested that this point should be referred to the Working Party on Accession for attention. He also pointed

out the difficulties which might arise if modifications were introduced into the General Agreement during the time when steps were being taken by countries to become contracting parties.

Mr. RODRIGUES (Brazil) raised the same point with regard to the legislative procedure required to put an instrument of accession into force.

Mr. TRABOULSI (Syria) notified that his Government was prepared to accept the Protocol relating to Article XXIV.

Mr. AUGENTHALER (Czechoslovakia) said that paragraph 4 of the Protocol of Provisional Application clearly indicated that the signatories of the Final Act were entitled, until 30th June 1948, to apply the original Agreement and therefore they should be free to decide whether to accept amendments. It would be indeed unfortunate if divergent texts should continue to exist, but he could see no legal interpretation which would enable the Contracting Parties to resolve the dilemma. As for the countries which become contracting parties hereafter he was inclined to think that it would be sufficient that explicit provisions be made in the appropriate instruments of accession to cause protocols to be effective with respect to such acceding governments.

The CHAIRMAN concluded that a compromise solution had emerged from the discussion: that no decision be taken on the interpretation of Article XXX while the Working Party on accession is preparing the provisions for the conditions of accession of the eleven countries negotiating at Annecy. The CHAIRMAN then proceeded to request the representative of each contracting party which had not accepted the Protocol to indicate the position of his government.

Mr. SCHOEYEN (Norway) replied that he was unable to supply the information at present, but his delegation would notify the Chairman at a later meeting.

Mr. NORVAL (South Africa) stated that the position of his delegation was clearly indicated in the statement he had made at the Second Session on the status of the protocols (GATT/CP2/14). In his view the operation of Article XXX had been suspended by the terms of the Protocol of Provisional Application until 30th June 1948; the procedure regarding amendments could not be applied before that date, except with the consent of all signatories to the Final Act, in such a way as to violate the right of a signatory to become a party to the Agreement in the form authenticated by the Final Act. As for the acceptance of the Protocol relating to Article XXIV, his Government would consider the amendment and it was possible that it would be accepted.

Mr. HEWITT (Australia) said that his Government would be prepared to accept the amended version of the article in the context of the Havana Charter, but he could not say whether it would be acceptable in the limited context of the General Agreement.

Mr. ROWE (Southern Rhodesia) indicated that his Government would have to consider acceptance of the Protocol.

Mr. HOLLIS (United States) stated that when he mentioned future acceding governments he had intended to refer to all governments which might accede to the Agreement at any time in the future and not only to the governments which were seeking accession at Annecy.

Mr. HERRERA-ARANGO (Cuba) pointed out that unexpected changes in the Agreement which might occur during the time when accession was considered might give rise to difficulties to acceding governments. It would be beyond the competence of the present Working Party on Accession to make provision for all cases in future.

Mr. HOLLIS (United States) thought that the difficulty would have been solved by the adoption of the Decision he had proposed.

(d) Protocol Modifying Part II and Article XXVI.

Mr. RODRIGUES (Brazil) explained that this Protocol had been presented to the Brazilian Congress at a time too late for action at its last session, but he hoped that his Government would be able to signify its acceptance before the end of the present Session of the Contracting Parties.

(e) Protocol Modifying Part I and Article XXIX.

Mr. RODRIGUES (Brazil) said that the situation regarding this Protocol was exactly the same as regarding the Protocol Modifying Part II and Article XXVI. He would endeavour to see the procedure of acceptance expedited.

Mr. GARCIA OLDINI (Chile) said that his Government had approved the Protocol in principle; the delay in depositing its acceptance was due to procedural and technical difficulties, but he hoped this would be done before the close of the Session of the Contracting Parties.

The CHAIRMAN stressed the importance of bringing the Protocol into force at as early a date as possible.

Mr. HEWITT (Australia) suggested that in view of the importance of the Protocol, and in particular the provisions of Article XXIX, the Contracting Parties should revert to this question and review the situation at the end of the session.

Mr. ROWE (Southern Rhodesia) with regard to the statement which his Government had made upon acceptance of the Protocol, said that this had never been intended as a reservation; the Southern Rhodesian Government accepted the Protocol unconditionally, and it was regrettable that the statement should have been taken in a wrong sense by the Legal Department.

As regards the subject matter of the statement, the difficulty lay in the Interpretative Note to Article XXIV. In that Note, it had not been envisaged that the importing country might be one which granted the

same preferential treatment to the country of origin of the product, as the re-exporting country, and in that case the difference payable should be that between the duty already paid and the preferential rate. His Government would have no difficulty in accepting the Protocol in question if the Contracting Parties could indicate that the Interpretative Note could be so interpreted.

Mr. SHACKLE (United Kingdom) thought it might suffice to put on record that the Interpretative Note should be understood in the sense required by Southern Rhodesia since the lack of circumspection was due to oversight in drafting when the Charter was drawn up at Havana.

Both the CHAIRMAN and Mr. NORVAL (South Africa) agreed that that would be a sensible way to take the meaning of the Interpretative Note.

Mr. HOLLIS (United States) however, felt that it might not be sufficient to record the interpretation merely in the proceedings of the meeting in view of the clear and precise language used in the Interpretative Note.

Mr. HASNIE (Pakistan) suggested to meet the situation by inserting a few words in the Interpretative Note to elaborate its provision.

Mr. AUGENTHALER (Czechoslovakia) pointed out that it would be beyond the competence of the Contracting Parties to make changes in the Charter. To record such an interpretation in an informal way would be more appropriate, even though it would still be prejudicial to the operation of the Charter.

The EXECUTIVE SECRETARY was requested to prepare a text of an interpretative record for consideration at a subsequent meeting.

Mr. KING (China) raised the point of order that it was not necessary to go into the contents of the Interpretative Note while the meeting was merely considering the nature of the statement made by Southern Rhodesia in connection with the status of the Protocol.

The CHAIRMAN replied that the question as to the statement being a reservation or not had been settled in the negative, and the Contracting Parties were merely taking an opportunity of the present meeting to give consideration to a question arising therefrom.

The meeting adjourned at 5.45 p.m.