GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED

LIMITED B
GATT/CP.3/SR.7
23 April 1949

ORIGINAL: ENGLISH

Contracting Parties

THIRD SESSION

SUMMARY RECORD OF THE SEVENTH MEETING

Held at Hotel Verdun, Annecy,

on Wednesday, 20 April 1949, at 2.30 p.m.

Chairman: Mr. van BLANKENSTEIN (Netherlands)

Subjects Discussed:

1. Protocol Modifying Part I and Article XXIX.
2. Protocol Modifying Certain Provisions.
3. Protocol modifying Certain Provisions and special Protocol Modifying Article XIV,
4. Report on Negotiations affecting the Schedules to the Agreement: Brazil, Ceylon, Cuba and Pakistan.

1. Protocol Modifying Part I and Article XXIX (continued) (A/W/1, A/W/2)

The EXECUTIVE SECRETARY upon request of the Chairman, explained that the draft Declaration contained in A/W/1 was a recital of the situation as explained by the delegate of Southern Rhodesia and of the validity, in the light of that explanation, of the instrument of acceptance deposited by Southern Rhodesia. Passing to A/W/2, he said that the document before the Committee put forward a solution which was not strictly an interpretation of the Interpretative Note but a declaration that although the precise situation of Southern Rhodesia was not contemplated by the Note, it was covered by the principle involved

and an analogous rule should govern the application of that principle in such cases. Further, it was proposed in A/W/2 that this matter should be brought to the attention of the International Trade Organizations, when established, because of a similar note in Annex F to the Charter.

The CHAIRMAN asked the meeting for comments on document A/W/1.

Mr. JOHNSEN (New Zealand) said that, since the Government of Southern Rhodesia had not accepted the Protocol Modifying Article XXIV, it could accept this Protocol unreservedly without prejudicing its position in relation to Article XXIV as it could not be required to observe the provisions of the amended version of Article XXIV.

Mr. LECUYER (France) agreed with the draft Declaration, but, on a point of form, he thought that it should include the text of the statement to which it refers.

The CHAIRMAN suggested that a reference to document GATT/CP.3/7 in the records of the meeting might be sufficient.

Mr. SHACKLE (United Kingdom) thought that for the sake of completeness it was desirable to include in the Declaration a recital of the statement by Southern Rhodesia.

The draft declaration in document A/W/1 was adopted, and the CHAIRMAN stated that the Secretariat would consult with Mr. SHACKLE as to the point of drafting he had raised.

Referring to document A/W/2, Mr. HOLLIS (United States) said that the proposal before the Contracting Parties appeared to him too informal, and was not a satisfactory solution in a case where the language of the Agreement was so perfectly clear that only an amendment of the text could clear away the difficulty. He therefore proposed that the matter be covered in a protocol of rectification. It seemed to him

that the problem was similar to those treated in certain other protocols, that is, a need to re-write the language which had failed to bring out the full intent of the Contracting Parties.

Mr. SHACKLE (United Kingdom) thought that a formal amendment was unnecessary, and would be difficult because a protocol of rectifications would require unanimity; but if a re-wording of the Interpretative Note was desired he suggested that the following words be added: ".... latter member should collect a duty equal to the difference between the duty already paid and the duty which would have been payable in accordance with the provisions of the General Agreement if the product had been imported directly into the territory of that member".

Mr. HEWITT (Australia) expressed agreement in principle with Mr. HOLLIS. He thought Mr. SHACKLE's amendment satisfactory, and that the agreement of two-thirds of the Contracting Parties would be sufficient. He asked Mr. SHACKLE to clarify the case of a duty in force in the second country being lower than the duty already paid.

Mr. COUILLARD (Canada) agreed with Mr. HEWITT in that unanimity was not necessary and thought Mr. HEWITT's second point was also interesting because the rate in the second country might be lower. He asked Mr. SHACKLE what was meant by the words "in accordance with the General Agreement" if the rate was not scheduled.

Mr. SHACKLE (United Kingdom) replied that in the case where the duty was lower the provision would be inoperative and no difference in duty would have to be collected. Regarding the question of acceptance he thought unanimity had been required for protocols in the past, but perhaps one could provide for a two-thirds majority under Article XXX. With regard to Mr. COUILLARD's point, he had meant to cover any case whatever it might be: if the m-f-n rate was bound then the m-f-n rate

would be applicable, if the preferential rate was bound in the agreement then it would be the preferential rate.

Mr. HOLLIS (United States) agreed with Mr. SHACKLE, and wished to state his reasons for proposing a protocol of rectification. Protocols were of three kinds: 1) protocols of accession under Article XXXIII; 2) protocols of amendment under Article XXX which in some cases require the unanimous deposit of acceptance; and 3) protocols of rectification which have been accepted as non-controversial. The protocols of rectification had required the signature of the Contracting Parties and had entered into force immediately; this type of protocol would be more appropriate than a protocol of amendment.

Mr. ROWE (Southern Rhodesia) appreciated the strength of Mr. HOLLIS' case although he would have accepted the solution proposed in the Secretariat draft. He suggested however that the simplest solution would be to add at the end of the Interpretative Note:

"the term "m-f-n rate" means preferential rate where that is applicable".

Mr. SHACKLE had misgivings about Mr. ROWE's proposal because special care had been taken in drafting the Agreement to allow no confusion between the terms "m-f-n rate" and "preferential rate".

Mr. AUGENTHALER (Czechoslovakia) agreed and supported the United States' proposal with the wording submitted by Mr. SHACKLE.

Mr. HEWITT (Australia) amplified Mr. COUILLARD's question, and in reply Mr. SHACKLE suggested as an alternative to the words "in accordance with the Agreement" which might be misleading, the words "consistently with..."

Mr. HEWITT would have preferred a wording of the last line which would bring out the difference between the duty paid and what would

have been paid if the article had been imported directly into the territory. He suggested the following:

"the latter member should collect a duty equal to the difference between the duty already paid and the duty that would be payable if the product were being imported directly into its territory".

The CHAIRMAN asked the Secretariat to draft a paper containing this clause to which no objection had been raised in the meeting. The delegates of Luxembourg and Lebanon would be consulted upon their arrival.

2. Protocol Modifying Certain Provisions: South African reservation of non-Acceptance of Article XXXV.

The CHAIRMAN referred to the draft declaration before the meeting and said that if it were accepted it would be submitted to the delegates of Luxembourg and Lebanon as soon as possible.

After two formal amendments proposed by Mr. SHACKLE had been agreed the draft was unanimously accepted.

Mr. NORVAL (South Africa) thanked the Contracting Parties for the invitation extended to his Government and for the sympathetic consideration revealed by the adoption of the reservation. He expressed pleasure in noticing what appeared to be a certain convergence towards the South African point of view on the question which he thought was of fundamental importance not only to South Africa but to the attainment of the object of the Contracting Parties.

3. 5 (b) Special Protocol Modifying Article XIV: The position of Southern Rhodesia (document A/W/3).

The CHAIRMAN said there were two documents referring to Items 5 (a) and 5 (b) concerning the signature of Southern Rhodesia of two of the Havana protocols. The first bearing no number was a draft resolution

embodying the result of the discussion at a previous meeting; document A/W/3 had been submitted by the United States Delegation.

Mr. HOLLIS (United States) said it had been the understanding of the authors of the Protocol Modifying Certain Provisions and of the Special Protocol relating to Article XIV that subsequent accession to the Agreement would imply the acceptance of these two Protocols. South Africa had been unable to accept, but Southern Rhodesia had accepted that interpretation and considered that its signature of the Protocol of Provisional Application did bind Southern Rhodesia to the Agreement as modified by the two Protocols, and there would therefore seem to be no reason for Southern Rhodesia to sign either of them. However, there was one point to which the Contracting Parties must address themselves and find a formal solution: Southern Rhodesia had elected to be governed by Annex K of the Charter which in substance constituted the same type of decision and was within the same time limit as that prescribed in Article XIV in respect of Annex J of the General Agreement.

Mr. ROWE (Southern Rhodesia) denied having said that his Government considered itself bound by these Protocols. Their position was similar to that of South Africa. His Government had been invited to sign for the sake of uniformity and were prepared to comply, provided it was understood that they did not accept Mr. HOLLIS' interpretation of the significance of adherence to the Provisional Protocol.

Mr. AUGENTHALER (Czechoslovakia) thought that A/W/3 could be accepted if the first paragraph were amended by leaving out the phrase beginning: "and of technical difficulties" and adding that, in view of the fact that all Contracting Parties are members of I.C.I.T.O., the Contracting Parties are prepared to accept the decision of Southern Rhodesia as made known directly to them.

Mr. SHACKLE (United Kingdom) thought that since the interpretation of the United States delegate was not accepted, it would seem best for Southern Rhodesia to sign the Protocols.

Mr. HOLLIS (United States) said there was no question of an interpretation of Article XXX in connection with these two Protocols; if Southern Rhodesia did not feel bound by them he was not suggesting the withdrawal of the invitation that Southern Rhodesia should sign.

Mr. HEWITT (Australia) thought the invitation of the Contracting Parties was intended to obtain the signature of the two Protocols by Southern Rhodesia and that the Secretary General should be requested to extend the time limit; accordingly, he supported the Secretariat draft.

Mr. NORVAL (Union of South Africa) supported the views put forward by the delegates of the United Kingdom and Australia.

Mr. HOLLIS (United States) withdrew his proposal and supported the Secretariat draft. He wished however to call the attention of the Contracting Parties to the fact that the invitation to Southern Rhodesia to sign the Protocols was made without prejudice to the future legal effectiveness of these protocols with respect to those countries which would subsequently become contracting parties.

After a few drafting changes were made the draft resolution contained in the Secretariat paper was adopted subject to the understanding proposed by Mr. HOLLIS.

4. Report on Negotiations affecting the Schedules to the Agreement:

Brazil - Negotiations with the United Kingdom and the United States (GATT/CP/1, page 29, and GATT/CO/10).

Mr. RODRIGUEZ (Brazil) said that unfortunately agreement on the withdrawal of the concessions in Schedule III had not been reached within

the time set. He believed however that it would be possible to report success to the Contracting Parties before long and a draft resolution was being presented concerning an extension of the time limit.

Both Mr. SHACKLE (United Kingdom) and Mr. WILLOUGHBY (United States) supported the proposal for an extension of time, and the CHAIRMAN proposed to revert to the question when the draft resolution would be before them.

Ceylon - Negotiations with several Contracting Parties.
(GATT/CP/1, page 35)

Mr. JAYASURIYA (Ceylon) illustrating the position concerning the re-negotiations of his country with Australia, Benelux, China, Czechoslovakia, France, New Zealand, Norway and the United States, said that negotiations with the United States had been completed, negotiations with France were expected to reach a conclusion at the next meeting, and meetings had been arranged with the other delegations except New Zealand and China, which would be taken up in the very near future.

Mr. WUNZ KING (China) said negotiations could begin upon the arrival of experts from China who were expected at any time.

Mr. AUGENTHALER (Czechoslovakia) said he foresaw no difficulties, and in this, as in the case of Brazil, he urged that negotiations be concluded before the end of the present session.

Mr. JAYASURIYA (Ceylon) said he hoped to complete the re-negotiations by the middle of May.

Cuba - Negotiations with the United States. (GATT/CP.2/43)

Mr. HERRERA ARANGO (Cuba) informed the meeting that negotiations with the United States were proceeding in Havana and he hoped to be able to report to the Contracting Parties a successful conclusion.

Pakistan - Negotiations with four Contracting Parties. (GATT/CP.2/25, GATT/CP.2/39 & Add.1, and GATT/CP/5 & Add. 1 & 2)

The CHAIRMAN read the report of the Delegation of Pakistan contained in GATT/CP/5 Add. 3 and informed the Contracting Parties that if no objection were lodged against the withdrawal of the concessions made to France the withdrawal would become effective on the 23 April 1949.

Mr. LECUYER (France) said that the negotiations held at Karachi had been completed but he could give no official information.

Mr. HASNIE (Pakistan) replied that the information contained in GATT/CP/5 Add. 3 had been supplied to him by his Foreign Office.

The CHAIRMAN urged Mr. LECUYER to ask for information but the Contracting Parties would in any case have had a month in which to lodge objections.

Mr. WUNZ KING (China) wished to have it on record that the delays encountered in the re-negotiations were due to technical difficulties which had arisen on account of insufficient statistical information being available for a study of the question. He would welcome talks with the Pakistan Delegation as soon as his experts arrived and expressed confidence in a favourable solution.

The CHAIRMAN asked the delegates of China and Pakistan to arrange to meet at the earliest possible opportunity, and he asked Mr. Hasnie to report on their discussions with the Netherlands.

Mr. HASNIE (Pakistan) agreed to discuss the matter with China and informed the meeting that discussions with the Netherlands had made considerable progress. He had hopes of reporting a favourable conclusion before long.

The meeting adjourned at 5.50 p.m.