GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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Third Session of the Contracting Parties

SUMMARY RECORD OF THE EIGHTH MEETING

Held at Hotel Verdun, Annecy, on
Friday, 22 April, 1949, at 2.30 p.m.

Chairman: Mr. H. van BLANKENSTEIN (Netherlands)

Subjects discussed:

1. Report on Negotiations affecting the Schedules to the Agreement - Negotiations with the United Kingdom and the United States.

2. Interim Agreement for a Customs Union between South Africa and Southern Rhodesia.

1. Report on Negotiations affecting the Schedules to the Agreement: Brazil - Negotiations with the United Kingdom and the United States (GATT/CP1, page 29, GATT/CP/10, A/W/5)

The CHAIRMAN opened the discussion on document A/W/5 - Decision further Waiving certain Obligations of Brazil under Article II.

Mr. SHACKLE (United Kingdom) proposed the following amendments:

a) In the second paragraph of the preamble, to replace the words "to reach agreement at any time subsequent thereto" by "to reach agreement at any time up to the present date";

b) In the substantive part of the Decision, to replace the first line of paragraph 4 by "The waiver mentioned in paragraph 1 of this Decision shall cease to have force and effect on June 15, 1949, if, by then, negotiations have not been completed". His delegation considered that it was the waiver and not the other provisions of the Decision which should cease to have force and effect in the case of non-agreement within the time limit.

c) To delete the last sentence of paragraph 4. He thought it was not appropriate to lay down in the present resolution that the

provisions of the agreement were to become an integral part of the General Agreement; that question should be considered after the agreement had been reached and the final report communicated.

Mr. HOLLIS (United States) had interpreted the last paragraph of the Decision of 1948 as meaning that if agreement were reached, the matter would not be referred back to the CONTRACTING PARTIES for further action. As the amendment suggested by the United Kingdom delegate left open the question whether further action should be taken by the CONTRACTING PARTIES and, if so, what action, he would agree to it if it were satisfactory to the Brazilian delegate.

Mr. RODRIGUES (Brazil) failed to see the advantage of deleting the last sentence of paragraph 4 since a final report must be presented after agreement has been reached and paragraph 5 (a) of Article XXV of GATT, on which the Decision of September 1948 was based, called for approval by a two-thirds majority. Nevertheless, while stressing that such a procedure must be understood as subjecting the case of Brazil to the unanimity rule, he would not oppose the amendment.

Mr. de VRIES (Netherlands) agreed with the United States' interpretation. When the matter was discussed in Geneva, it was stated that several items in the Brazilian schedule were under the level of the duties imposed. It was decided that if an agreement were reached in connection with the three products in question, there would be no further action by the CONTRACTING PARTIES. It was not clear whether the approval mentioned in the last sentence of paragraph 4 was to be given by a two-thirds majority or unanimously.

Mr. SHACKLE (United Kingdom) said that an analagous question concerning the proper procedure for modifying bindings or items in tariff schedules was under consideration by the Working Party on the Protocol for Accession which had not yet reached a decision. His proposal to delete the last sentence of paragraph 4 would have the advantage of leaving the matter open until the Working Party had reached a decision.

Mr. HOLLIS (United States) doubted whether a decision taken by the Working Party concerning Article XXXIII could have retroactive effect on the CONTRACTING PARTIES' Decision of last September under Article XXV.

He proposed the following redraft of paragraph 4:

> "A final report on the negotiations provided for in paragraph 2 shall be communicated to the CONTRACTING PARTIES not later than June 1, 1949. The substantive provisions of the agreement reached as a result of such negotiations shall become integral parts of the General Agreement on Tariffs and Trade. If no agreement is reached by June 15, 1949, the waiver mentioned in paragraph 1 shall on that day cease to have force and effect".

Mr. HEWITT (Australia) was in favour of application of the unanimity rule in this case in order to conform with the procedure adopted in other cases. Moreover, if a decision were taken by two-thirds majority, the CONTRACTING PARTIES that were indirectly interested might have no opportunity to record objections.

Mr. RODRIGUES (Brazil) thought the point under discussion was rather in the nature of a legal technicality whereas the economic aspects were the real concern of the CONTRACTING PARTIES. He would not press for either voting rule; Brazil's case was so well justified that whatever majority was required, he felt convinced the vote would be favourable. He considered, however, that the experience of the last two or three years had shown that the unanimity rule was undesirable and would inevitably cause difficulties if applied in the case of countries having a large share in international trade. He did not agree with the Australian delegate that a two-thirds majority would prevent CONTRACTING PARTIES from formulating objections. With reference to the remarks of the Netherlands delegate, he pointed out that at the time of the Decision of 1948, Brazil was offering and was still offering substantial temporary reductions to all CONTRACTING PARTIES without any compensation. No new decision was called for. The point was that the time limit had been

exceeded; that was merely a legal matter and in any case Brazil was not responsible for the delay.

Mr. SHACKLE (United Kingdom) felt that a question of principle was involved. It was not proper that in a case where all CONTRACTING PARTIES had rights, as they had in the schedules, a two-thirds majority should be able to modify the rights of the minority. If, however, the CONTRACTING PARTIES were unanimous in approving such a situation, he would withdraw his proposal, although he still considered it would be preferable to await the decision of the Working Party.

Mr. HOLLIS (United States) drew attention to the first clause of Article XXX, which set out the procedure in the case of amendments. In certain other Articles provision was made for modification of the schedules by the contracting parties concerned without specification as to the number of votes required for acceptance. In each of those Articles a special set of circumstances was described, limiting the action of the contracting parties. In Article XXV the circumstances were not so definite as in others; but the CONTRACTING PARTIES had decided last September that exceptional circumstances did exist in the case under discussion and the action then taken was, therefore, appropriate. Brazil was not responsible for the failure to reach agreement by the date set and, as representative of one of the negotiating governments, he found it embarrassing, when that country was requesting an extension of time, to change the procedure for putting into effect the results of the negotiations. For these reasons he considered the text he had proposed was preferable both from the legal and the practical point of view. The wording of the last sentence of document A/W/5 was unfortunate since it implied that the agreement must be submitted to the CONTRACTING PARTIES for approval and did not define the procedure.

The CHAIRMAN, summing up, said the issue before the meeting was to determine whether the Decision of September 1948, which had been

challenged by the United Kingdom delegate, had been an appropriate decision. If so, it must be assumed that Brazil had already been authorised to modify her schedule and when she had complied with the other obligations laid down in the Decision, the provisions of the agreement reached could be embodied in the General Agreement. The issue was complicated by the fact that the Brazilian delegate spoke of approval of the agreement by the CONTRACTING PARTIES, which was not mentioned in last year's Decision.

Mr. RODRIGUES (Brazil) said the text of document A/W/5 had been drafted by him and the United States delegate in consultation with the United Kingdom delegate. The provisions were the same as those in last year's Decision and only verbal changes had been made. He was prepared to accept either the United States or the United Kingdom amendments, though he preferred the former as adhering more closely to the previous text.

Mr. SHACKLE (United Kingdom) explained that it had not been his intention to challenge the whole basis of last year's decision. He was anxious that a distinction should be made, on the one hand, between granting a waiver to permit a country to enter into new negotiations concerning its schedule, and, on the other, authorising the incorporation of the results of such negotiations into the schedule. It was important that unanimity should be required for the latter authorisation.

Mr. AUGENTHALER (Czechoslovakia) agreed with the United Kingdom point of view. While not wishing to place any obstacle in the way of approval of the agreement reached by Brazil with the United Kingdom and the United States of America, he felt that it was desirable to maintain uniformity of procedure. He, therefore, suggested deleting the last sentence and modifying the second sentence to read "A final report on the negotiations provided for in paragraph 2 shall be communicated not later

than June 1, 1949, to the CONTRACTING PARTIES which will decide on the measures to be adopted".

Mr. RODRIGUES (Brazil) explained that the difference in wording of paragraph 4, compared with the original Decision of September 1948, was due to the fact that at the time communication of the agreement through the Chairman would have been the only means of allowing the CONTRACTING PARTIES to formulate objections before the provisions became an integral part of the General Agreement. Now, however, a full meeting of the CONTRACTING PARTIES was in progress during which they could make known their views.

Mr. de VRIES (Netherlands) pointed out that one of the CONTRACTING PARTIES was not yet represented at the meeting, and expressed a preference for the United States proposal.

Mr. HOLLIS (United States) had understood that the reason for communication of the agreement was to inform the CONTRACTING PARTIES of new provisions which had been incorporated into the General Agreement.

Mr. REISMAN (Canada) said that although he had not been present at the previous discussions, it had been his understanding that there was every intention of maintaining the unanimity rule where modification of schedules was concerned.

Mr. SHACKLE (United Kingdom) was prepared as a compromise to agree to the last sentence of paragraph 4 since the CONTRACTING PARTIES would still be in session when the agreement was reached and could then take a decision in full knowledge of the facts.

Mr. RODRIGUES (Brazil) felt it would be unwise to consider the Decision of September 1948 as a final decision, since it would create a precedent enabling two or three countries to decide upon matters affecting the interests of other countries. The Decision of 1948 had been taken to allow Brazil to withdraw from certain obligations in order to come

to a new agreement with two other countries. Other countries might, however, be interested in the agreement reached and should be given an opportunity to present objections. That did not mean that the final decision must be unanimous and he was of the opinion that a two-thirds majority should suffice.

Mr. PANDO (Cuba) agreed to the maintenance of the last sentence of paragraph 4 on an assurance from the CHAIRMAN that the question of the number of votes required was left open.

It was unanimously decided to maintain the last sentence of paragraph 4 of Document A/W/5.

The United Kingdom amendment of the first line of paragraph 4 was adopted.

The United Kingdom amendment of the second paragraph of the preamble was adopted.

Document A/W/5, as amended, was adopted.

2. Interim Agreement for a Customs Union between the Union of South Africa and Southern Rhodesia (Document GATT/CP.3/9)

Mr. NORVAL (Union of South Africa) explained the history of the customs relations between the Union of South Africa and Southern Rhodesia and the background of the Interim Agreement reached between the two countries. The Agreement was for an initial period of five years and was renewable. He drew attention to paragraph 2 of the preamble and Articles 3 and 8 which showed the sincere intention of the two governments to remove all customs and other trade barriers between the two countries and to re-establish the full and complete Customs Union which had existed for 25 years up to 1930 and to extend that Customs Union to neighbouring States and Territories. The Customs Union Council provided for in Article 2 had already been set up to study the existing tariff systems in order to harmonise the tariffs of the two countries and pave the way towards a complete customs union. Only a very limited number of goods imported from Southern Rhodesia into the Union of South Africa were subject to duty. Article 7 empowered the Government of Southern Rhodesia to raise

the duties on certain products imported from South Africa on certain conditions and within certain limits. As these provisions might give rise to question, Mr. Norval wished to explain that they had been made purely for protective purposes. In Southern Rhodesia, mainly a mining and agricultural country, industry was in its infancy, whereas South Africa was in a more advanced stage of industrial development. The Customs Union Council would be in permanent session and one of its functions was to watch the situation and to recommend reduction or suppression of duties whenever practicable.

The schedule of divergencies in the most-favoured-nation tariff rates required under Article 13 had already been submitted to the Customs Union Council.

A point which might give rise to question was that no mention was made in the Interim Agreement of the length of the transitional period between the date of that Agreement and the re-establishment of a Customs Union. It was felt that a somewhat lengthy period would be necessary because of the differences in the economic structure and development of the two countries. Representatives of the two Governments had discussed the question recently and had suggested a period of ten years.

The representative for South Africa proposed that:

a) Ten years should be allowed for the transitional period;

b) The annual reports which were to be tabled in Parliament by the Customs Union Council, should be submitted to the Secretariat for the information of the CONTRACTING PARTIES;

c) A progress report should be made to the CONTRACTING PARTIES at the end of three years;

d) At the end of five years, a definite plan for the remaining five years should be submitted.

Mr. ROWE (Southern Rhodesia) supporting the proposals of the South African representative gave figures to illustrate the rapid development

of Southern Rhodesia in the last fifty years. In such a young country it was impossible to foretell what pattern development would take in industry and trade and, therefore, difficult to draw up a definite plan and schedule of the steps to be taken to establish a Customs Union. The South African Government understood the position of Southern Rhodesia and had agreed that it would be dangerous for her new industries to establish a customs union immediately. The Interim Agreement gave Southern Rhodesia a certain amount of protection for a limited number of products over a limited period.

Mr. WILLOUGHBY (United States) joined the CHAIRMAN in thanking Mr. Norval and Mr. Rowe for their clear presentation of the problems and the solutions envisaged. The question under discussion was one of considerable importance to all countries and constituted an important precedent. The relevant provisions in the General Agreement had been drawn up with very great care in order to facilitate the formation of customs unions, while introducing safeguards against their possible distortion to the detriment of international trade. The General Agreement, therefore, provided that, in a customs union, duties should not be higher than those previously existing in the component parts of the union and, further, that a definite plan and schedule of steps to be taken to establish a customs union should be drawn up. As pointed out by Mr. Norval, on both these points the Interim Agreement between South Africa and Southern Rhodesia might be criticized. Although he would have preferred to have a more definite plan for the gradual removal of duties, he understood the difficulties and would not raise objection. Approval in this case should not, however, be taken as a precedent.

Mr. Willoughby did not understand the significance of the proposal that the CONTRACTING PARTIES should agree to a transitional period of

ten years. He assumed that the CONTRACTING PARTIES would be free throughout that period to review progress and to make recommendations if they felt doubtful that a customs union would be consummated by the date set.

It was agreed to continue the discussion at the next meeting.

The meeting adjourned at 5.30 p.m.