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 NINTH MEETING

Held at Hotel Verdun, Annecy,
on Monday 25 April 1949 at 2.30 p.m.

Chairman: Dr. H. van BLANKENSTEIN (the Netherlands)

Subjects discussed:

1. Interim Agreement for a Customs Union between South Africa and Southern Rhodesia (continuation)
2. Request of the Government of Brazil for Rectifications of Schedule III.
3. Request of the Government of Australia for the Replacement of Schedule I by a revised Schedule adjusted to a new value-for-duty basis.
4. Examination in the light of Article III of the circumstances in which Brazil imposed certain internal taxes on certain products of foreign origin.

1. Interim Agreement for a Customs Union between South Africa and Southern Rhodesia: (continuation) (Document GATT/CP.3/9)

M. LECUYER (France) recalled the interest which French delegations had shown in this question at previous sessions. He considered the present Agreement required very careful study because it was the first of its kind to come before the CONTRACTING PARTIES and the treatment accorded it would set a precedent to be applied when considering other customs unions.

He felt the Interim Agreement now before the CONTRACTING PARTIES

established a free-trade area rather than a customs union. The setting up of a common tariff was relegated to second place. The date when a single customs territory would be established was not fixed and a considerable length of time was considered necessary for its establishment. This was understandable in view of the very different economic structure of the two countries and of the fact that they were both in a stage of industrial and commercial evolution. But the interim Agreement constituted a sort of preference system between two countries within the framework of another preference system - that of the British Commonwealth of Nations.

There were several questions of detail which his delegation would raise when the interim Agreement was discussed by a Working Party, but he wished to draw attention to two points. First, Article 25 of this Agreement stated that:

"For the purpose of this Agreement the Territory of South West Africa shall be regarded as part of the Union".

This was a delicate matter involving international questions. Secondly, the representative of neither country had said whether the interim Agreement had already become effective. Was it the intention of the two governments to await the views which might be expressed by CONTRACTING PARTIES during the present meeting?

Dr. LAMSVELT (the Netherlands) welcomed the interim Agreement. His delegation would raise points of detail in the Working Party, but he wished to make the following general remarks. First, he assumed that the Working Party would study it in the light of the old text of Article XXIV which differed from the new text in that it did not mention a free-trade area. Secondly, the Netherlands delegation, while recognizing the difficulties, thought that the period of ten years foreseen for the establishment of the union was somewhat long. Finally, he enquired what would be the implications of the interim Agreement on the customs union which he understood existed between

Southern Rhodesia and Northern Rhodesia.

M. CASSIERS (Belgium) agreed with the views expressed by the delegate for France and suggested the CONTRACTING PARTIES should ask the two countries to submit a statement of progress at a relatively early date; examination of the question should not be postponed for five years.

Dr. NORVAL (South Africa) thought the two main points raised on which the two governments concerned had to satisfy the CONTRACTING PARTIES were 1) whether or not it was their intention to enter into a customs union, and 2) whether the interim Agreement was likely to result in such a customs union within a reasonable length of time. As regards the first point, he referred to his statement and that of the representative of Southern Rhodesia at the last meeting and stressed that it was the earnest intention of both governments to enter into a customs union. From the remarks of the United States delegate and others he had thought there was no doubt about that intention. As for the question of time, he repeated the information he had given concerning the various progress reports which would be submitted to the CONTRACTING PARTIES. The two governments did not insist on a minimum of ten years; it might be found that the rate of progress was much more rapid than they anticipated. He did not think it possible to give any further information to a Working Party at the present time.

Mr. ROWE (Southern Rhodesia), referring to the remarks of the delegate of France, thought that possibly the fact had been overlooked that this was not a customs union, but an interim Agreement, under the terms of paragraph 2(b) of Article XXIV, leading up to the establishment of a customs union. The delegates for France and the Netherlands had suggested that a zone of free-trade was to be set up. This was not the case. The intention was gradually to abolish duties between the two countries and to unify their customs tariffs so that, at the end of the

transitional period, they would have a complete customs union. He said the interim Agreement had entered into force on April 1 1949.

With regard to the customs agreement with Northern Rhodesia, Mr. ROWE said that South Africa had an identical agreement with that country so that no problem arose in connection with the interim Agreement. The Belgian delegate referring to Article 21 of the Agreement, had seemed to fear that reference to the proportion of fifty per cent combined content of the territory of either party and the British Commonwealth might lead to an extension of preference. The previous agreement with South Africa had contained the same provision but only to the extent of 25 per cent. The fact that it had been increased to 50 per cent reduced rather than increased the element of preference.

Mr. REISMAN (Canada) said that apart from the question whether the present interim Agreement required examination by a Working Party, his delegation considered that a Working Party should be set up to study the whole question. Certain procedures were envisaged under the old and the new Article XXIV, requiring CONTRACTING PARTIES to take certain action and make certain recommendations, whenever a customs union was established, and a careful study should therefore be made of both texts.

The CHAIRMAN suggested the following terms of reference for the Working Party:

> "To examine the Agreement for the re-establishment of a Customs Union between South Africa and Southern Rhodesia in the light of the provisions of Article XXIV of the General Agreement as included in the Final Act of 30 October, 1947, taking account of the remarks made during the discussions and of the statements by the representatives of South Africa and Southern Rhodesia, and to submit recommendation to the CONTRACTING PARTIES "

Mr. ROWE (Southern Rhodesia) wondered whether in view of the remarks the Canadian delegate had made the terms of reference need be restricted to examination in the light of Article XXIV of October 1947.

Mr. REISMAN (Canada) replied that although, in the present case the old text was in force, the provisions concerning procedures and functions were so similar in both texts that any procedures now laid down would have a definite bearing on customs unions concluded under the new Article XXIV.

The CHAIRMAN suggested deleting the words "included in the Final Act of 30 October 1947".

Dr. NORVAL (South Africa) felt it would be difficult for delegations of countries that are bound by the old text to recommend to their governments adoption of the new text and at the same time inform them that they were already considering a question in the light of that new text.

The CHAIRMAN pointed out that although the old text alone was binding at present, the new text might become effective before the customs union was established. He therefore suggested, and Dr. NORVAL (South Africa) agreed, that, provided the interest of South Africa were not prejudiced by an extension of the discussions, the South African delegate would limit himself to stressing in the Working Party that the parties were bound only by the old text.

Mr. HEWITT (Australia), referring to the proposed Franco-Italian customs union, wondered whether it might not be advisable for the Working Party to study the question of procedures in case customs unions were established between sessions of the CONTRACTING PARTIES.

Dr. AUGENTHALER (Czechoslovakia) thought the terms of reference of the Working Party should be limited to the question of how far the interim Agreement now before the CONTRACTING PARTIES was or was not in accordance with Article XXIV. To attempt to lay down procedures for future cases did not seem practicable - no two cases were alike.

Moreover it was unlikely that customs union would be established between sessions. Negotiations for a union would probably be undertaken in secret and when completed, the countries concerned would submit their proposals to the CONTRACTING PARTIES for consideration.

The CHAIRMAN suggested that any general conclusion arrived at by the Working Party, during its discussions on the immediate questions might usefully be brought to the attention of the CONTRACTING PARTIES.

Mr. WILLOUGHBY (United States of America) suggested adding the words "a report and" between "submit" and "recommendations", in order to follow more closely the text of paragraph 3(a) of Article XXIV.

It was decided to set up a Working Party with the following terms of reference:

"To examine the Agreement for the re-establishment of a Customs Union between South Africa and Southern Rhodesia in the light of the provisions of Article XXIV taking account of the remarks made during the discussions and of the statements by the representative of South Africa and Southern Rhodesia, and to submit a report and recommendations to the CONTRACTING PARTIES"

The following Contracting Parties were selected as members:

One Benelux country

France

South Africa

Southern Rhodesia

United States

Dr. Augenthaler (Czechoslovakia) not being in a position to accept the Chairmanship, it was agreed that M. COUILLARD (Canada) should be asked to act as Chairman.

2. Request of the Government of Brazil for Rectifications in Schedule III (Document GATT/CP.3/4)

Professor RODRIGUES (Brazil) presenting the request of the Brazilian

Government, suggested the setting up of a Working Party to examine and report on the rectifications proposed in GATT/CP.3/4 and also the new list of rectifications of errors and of the numbering of tariff items which his delegation was preparing.

Mr. WILLOUGHBY (United States) suggested that it was desirable to have only one protocol of rectifications and that the Working Party might be asked to consider not only the Brazilian, but any other rectifications that might be suggested during the course of the session.

It was decided to set up a Working Party to consider rectifications of errors.

On the proposal of the CHAIRMAN, the following Contracting Parties were selected as members of the Working Party:

One Benelux country

Brazil

France

United Kingdom

United States

the Chairman to be elected by the Working Party itself.

3. Requested of the Government of Australia for the replacement of Schedule I by a revised schedule adjusted to a new value-for-duty basis (Document GATT/CP.3/13)

Mr. FLETCHER (Australia), introducing the Australian proposal, drew attention to document GATT/CP.3/13 which gave details concerning the new schedule. He thought the matter could best be discussed in a Working Party.

Mr. HOLLIS (United States) expressed satisfaction at the simplification of the calculation of Australian duties and agreed with the proposal to set up a Working Party.

Dr. AUGENTHALER (Czechoslovakia), while also expressing satisfaction that the method of calculation was simplified, thought that possibly the new basis for the calculations of value was not altogether in conformity

with the provisions of Article VII of the General Agreement. When a country changed its tariff laws, it should take the opportunity of bringing them into closer harmony with those provisions. He enquired at what date the revised Customs Law had come into force.

Mr. LECUYER (France) supported the remarks of the delegate for Czechoslovakia and pointed out that the addition of the cost of delivery to the f.o.b. cost appeared to be not within the meaning of paragraph 2(a) of Article VII of the General Agreement.

Mr. FLETCHER (Australia) replied that the Customs Law had been in force since November 14 1947. The importance change in the value basis was to transfer the impost from a c.i.f. to an f.o.b. basis, and he did not think that this was incompatible with the General Agreement. The question ofvaluation was dealt with in Part II of the Agreement, but the CONTRACTING PARTIES were not bound to observe the provisions of Part II so long as the Agreement was not definitively in force.

Mr. JOHNSEN (New Zealand) said he had been a member of the Committee which discussed this question very fully at Geneva, and, as the Summary Records would show, it had been felt that the basis for calculation adopted by Australia was fully in accord with the General Agreement.

Mr. HOLLIS (United States) considered that the point raised by the representative of Czechoslovakia should be referred to a Working Party. The Australian delegate appeared to believe that there was no obligation to apply Part II of the Havana Charter; but it had always been the understanding of the United States Government that it should be applied to the fullest extent, subject to existing legislation, i.e. legislation existing at the date of the Protocol of Provisional Application.

Mr. FLETCHER (Australia), replying to an enquiry by Mr. HSUEH (China) as to what tariff rates had been applied since the revised Customs Law came into force, replied that at no time had rates provided in the General Agreement been collected in Australia. The Australian Government had

endeavoured to ensure that, in spite of the change to an f.o.b. basis, the actual amounts collected would remain the same. Since that would have lead to fractional rates, the rates had been adjusted to the nearest 2 1/2%. The actual duties in money were substantially the same as those in the GATT schedule although the method of calculation had been changed.

Dr. AUGENTHALER (Czechoslovakia) drew attention to the fact that the changes in the Australian tariff had come into force after the CONTRACTING PARTIES had terminated their work on the General Agreement on October 30, 1947. While realizing the difficulty of influencing legislators, he felt it would have been more consistent with the work and aims of the CONTRACTING PARTIES if the revised Customs Law had followed more closely the provisions of Article VII.

It was decided to set up a Working Party to consider the Australian proposal for revision of Schedule I.

On the proposal of the CHAIRMAN, the following CONTRACTING PARTIES were selected to be represented on the Working Party:

Australia	New Zealand
One Benelux country	United Kingdom
Czechoslovakia	United States of America
France	

the Chairman to be elected by the Working Party itself.

The CHAIRMAN explained that the list comprised the names of countries whose delegations were known to include experts on tariff questions. He would welcome suggestions from other delegations which considered they were in a position to assist in the study of this question.

4. Examination, in the light of Article III, of the circumstances in which Brazil has imposed certain internal taxes on certain products of foreign origin.

The CHAIRMAN called upon the French delegate to present this question to the meeting.

Mr. LECUYER (France) said that discriminatory taxes had been imposed in Brazil on certain articles, such as armagnac, cognac and brandy and products of the watch-making industry. This was in direct opposition to the provisions of paragraphs 1 and 2 of Article III of the General Agreement, which were applicable in this case. He had felt obliged to draw the attention of the CONTRACTING PARTIES to the situation which was no doubt due to an error of interpretation by the Brazilian administration.

Mr. SHACKLE (United Kingdom) agreed with the opinion of the French delegate, and suggested that the matter required examination.

Professor RODRIGUES (Brazil) explained that Brazil, like other contracting parties, had the right to apply discriminatory measures during the interim arrangement. The internal taxes, or so-called consumption taxes, in Brazil had always been part of a consolidated piece of legislation; there was no separate law for each article and a modification in the group, especially if it was only a modification of rates, did not alter the structure of the law. The collection of consumption taxes in Brazil was a complicated matter, because, although they were in most cases collected from the purchaser, in the case of some raw materials and special products, they had to be collected from other sources and, in the case of foreign products from the importers. Customs duties were equally consumption taxes and it was, he admitted, a wrong principle that there should be different rates for customs duties and consumption taxes; that had, however, been the case in Brazil for more than 50 years.

He thought the only case on which a question really arose was that of the watch-making industry and then only concerning alarm clocks. The ad valorem duties on gold watches had been raised because they were so low as to be almost negligible. The negotiations on these articles had had to be undertaken at the end of the Geneva session

when the Brazilian delegation was much reduced and they had had to be undertaken with France which was not to any extent an exporter of watches to Brazil. The increase for the purpose of remedying the situation had been made before the signing of the Geneva agreement and was for purely revenue and not for protective purposes. He did not think any of the CONTRACTING PARTIES were greatly interested as none were large exporters of watches to Brazil.

So far as the general question raised by the delegate for France was concerned, Profressor Rodrigues did not feel that there was any conflict with the General Agreement. The relative level of discrimination on spirits was the same now as before the increases. The rise was not aimed against imported products but was an increase of tax on domestic consumption.

He felt that this was a very difficult matter which could best be studied by a Working Party.

Mr. SHACKLE (United Kingdom) agreed that the matter should be referred to a Working Party. He believed there had been increases of discriminatory rates on other goods, e.g. beer and cigarettes. All these increases had been made in November 1948 and he thought it important to interpret the meaning of the words "existing legislation". He believed the interpretation intended had been legislation existing at the date of the Protocol of Provisional Application.

He also felt it necessary to examine the meaning of the word "legislation". There were two kinds of legislation - substantive or mandatory legislation and legislation of a general nature which made it possible to raise or lower any tax. If the first kind of legislation had been intended, the Brazilian delegate's explanation might be taken into consideration. But if it were the second kind, where there were no mandatory obligations, it should be possible by administrative action to vary the rates in such a way as to abolish discrimination, and

the continuation of discrimination in Brazil would not be justified.

Professor RODRIGUES (Brazil) said that when he had suggested that there might be some cause for doubt in the case of alarm clocks, he had been the first to recognize that "existing legislation" should mean legislation which existed at the date of the Protocol of Provisional Application. This was a personal opinion which he might be led to change as a result of further discussions. The question of alarm clocks was the only one which he felt might be submitted to the CONTRACTING PARTIES. The case of cigarettes was so complex, that, if raised, it would be advisable to refer it to a Working Party. He had only mentioned a few items; there was a new tax on automobiles which was also, he said, a purely internal tax for the purpose of increasing the revenue; cars were not manufactured in Brazil. He repeated that the present discrimination on spirits in no sense differed from the discrimination previously existing in Brazil.

The meeting adjourned at 5.30 p.m.