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 TENTH MEETING

Held at Hotel Verdun, Annecy

on Tuesday, 26 April, 1949, at 2.30 p.m.

Chairman: Dr. H. van Blankenstein (Netherlands)

Subjects discussed:

1. Examination in the light of Article III of the circumstances in which Brazil imposed certain internal taxes on certain products of foreign origin. (continuation)
2. Interim Report No. 1 of Working Party 1 on Accession regarding the publication of the results of the Annecy Tariff Negotiations.
3. Interim Report No. 2 of Working Party 1 on Accession on the period of duration of schedules embodying the results of the Annecy negotiations.
4. Interim Report No. 3 of Working Party 1 on Accession regarding procedure for joint consideration of questions relating to accession.

1. Brazil's Internal Taxes. (continuation)

Mr. LECUYER (France) said he had not been convinced by the arguments of the Brazilian delegate because the taxes in question were not ad valorem taxes but specific taxes and, moreover, calculations made on the basis of figures given by Mr. Rodrigues himself showed that the tax on spirits had been raised from 3 cruzeiros to 16 cruzeiros per litre. On account of the proximity between the date of signing the Geneva Protocol and the date of promulgation of the relevant Brazilian Law, he did not wish to stress the apparent conflict with the provisions of the General Agreement, but he accepted the Brazilian delegate's proposal to have the matter examined by a Working Party.

Mr. SHACKLE (United Kingdom) thought the terms of reference of the Working Party should be wide enough to cover the question of discrimination as it existed before the date of the Protocol. He suggested that it would greatly facilitate the work of the Working Party if the Brazilian delegation would furnish a written statement giving data concerning the taxes under discussion.

Mr. EVANS (United States), while supporting the suggestion that a Working Party should be set up, paid a tribute to the spirit of frankness and co-operation shown by the Brazilian delegate.

Professor RODRIGUES (Brazil) said his Government understood the words "existing legislation" in the General Agreement to mean legislation existing at the date of coming into force of the General Agreement. It had no intention of introducing discriminatory taxes after the General Agreement became effective, indeed, a message had been sent to the Brazilian Congress asking that further measures should be taken by the Finance Committee with a view to abolishing all discriminatory taxes even before the Havana Charter and the General Agreement became effective.

He could not agree with the distinction made by the delegate for France between ad valorem and specific taxes. Theoretically there was a difference, but in practice there was only a difference, for administrative reasons, in the manner of collecting the taxes. There was, in fact, only one consideration of real interest to governments, namely, the incidence of the taxes. He referred to the interpretative note to Article 17:2 (d) of the Havana Charter, which he considered confirmed his argument; he stressed this point because he felt other countries might at some future date have to avail themselves of the provisions of Article 17 of the Charter.

As he had explained at the last meeting, the taxes in question were originally imposed as a semi-protective measure; but the last revision was not made with any such intention and was purely for revenue

purposes and reflected the necessity of maintaining the relative level of taxation on domestic products compared with foreign products. In any case Brazil would have been within its rights under the Protocol of Provisional Application, in imposing the tax for protective purposes.

Professor Rodrigues agreed with Mr. Shackle in asking that the terms of reference of the Working party should be as broad as possible. He further undertook to furnish a statement giving all the relevant data as soon as possible.

It was decided to set up a Working Party.

The CHAIRMAN suggested the following terms of reference:

"To examine, in the light of the provisions of Article III and taking into account the remarks made during the discussion in the meeting of the CONTRACTING PARTIES, the discriminatory internal taxes imposed by the Government of Brazil on products of foreign origin".

Professor RODRIGUES (Brazil) suggested adding the words "and the Protocol of Provisional Application" after the words "Article III".

The terms of reference, as amended, were adopted.

The following Contracting Parties were selected as members of the Working Party:

Brazil	France
China	United Kingdom
Cuba	United States of America

As it appeared that Mr. Desai (India) would not have returned to Annecy in time to act as Chairman, the CHAIRMAN suggested and it was agreed that India should be added to the list of members and that the Working Party should elect its own chairman.

2. Interim Report No. 1 of Working Party 1 on Accession regarding the puplication of the results of the Annecy Tarifi Negotiations (Document GATT/CP.3/14).

The CHAIRMAN said the Working Party had unfortunately not been able to find a solution that would be acceptable to the Australian delegate and the other members had, therefore, presented an interim report

setting out three alternatives. He enquired whether any delegates wished to comment.

Dr. AUGENTHALER (Czechoslovakia) said that, while he had no definite views about the problem, he thought it would be unwise, for political reasons, to allow any considerable lapse of time between publication and the putting into effect of schedules. He suggested the CONTRACTING PARTIES should be asked to state how soon they thought the new schedules could become effective. There might prove to be no considerable difference between the time required by Australia and by the other countries. If, on the contrary, there was a substantial difference, he thought measures should be taken to publish the Annecy schedules at an early date.

Dr. LAMSVELT (Netherlands), speaking on behalf of the Working Party said that it regretted it had been unable to find a solution. It had, however, been of opinion that it was desirable that the results of the negotiations should be made known throughout the world even if there must be a certain lapse of time before some countries could put them into effect.

Mr. EVANS (United States) supported the remarks of the Netherlands delegate. So far as his country was concerned, any concessions negotiated at Annecy by the United States delegation could be put into effect quite shortly, possibly within six weeks. But, even if that were not possible in the case of all Contracting Parties, it was still important that the results of the negotiations should be published as early as possible.

Mr. HEWITT (Australia) thought the problem was common to a number of acceding governments. His answer to the question as to the period of time required for implementation in Australia had been based on the consideration that elections would probably take place in September or later and that the new Parliament would not meet before February 1950. If the elections took place earlier, Parliament would, of course, meet earlier.

With regard to the first alternative solution proposed in the Working Party report, he wished to say that it had not been put forward by him or his delegation. He appreciated the consideration given by all delegations concerned to the difficulties of Australia in this matter. His delegation did, however, regret that it has not been possible to obtain more support for the viewpoint he had expressed relating to the delay of public disclosure of the results of the negotiations in so far as they affected concessions that might be made by Australia. The circumstances in which it had become necessary for his government to postpone the implementation of the concessions had equally made it necessary for it to seek to defer publication of the results until the Government itself had had an opportunity of informing Parliament of those results. At the present stage the only course he could follow was to report to his Government the results of the consideration of the problem by the CONTRACTING PARTIES in the light of the reasons that had been put forward by other Contracting Parties, particularly those relating to the political difficulties which would arise for them if part of the Annecy negotiations were kept secret for a period. He would ask the Government whether it would reconsider the matter and determine whether it would be possible for Australia to conclude tariff negotiations at Annecy on the basis proposed by the CONTRACTING PARTIES. He must, however, reserve the possibility of seeking again to raise the matter in the CONTRACTING PARTIES in the light of such further consideration of the problem by his Government.

The CHAIRMAN thanked the Australian delegate for offering to take the matter up with his Government and asked whether his delegation would be willing, pending a reply, to start negotiations with the acceding countries, on the understanding that Australia's rights in the matter were reserved.

Mr. HEWITT (Australia) said his delegation would agree to start

negotiations on that understanding if the CONTRACTING PARTIES considered that that was the most desirable procedure.

The CHAIRMAN and Mr. EVANS (United States) paid a tribute to the cooperative attitude of the Australian delegation.

It was agreed that Report No. 1 of Working Party 1 should be transmitted to the Tariff Negotiations Committee, together with a record of the discussions in the meeting of the CONTRACTING PARTIES for examination of the desirability of the Australian delegation commencing negotiations with acceding countries, pending instructions from the Australian Government, subject to reservation of their rights in connection with the question of publication of the schedules.

3. Interim Report No. 2 of Working Party 1 on Accession on the period of duration of schedules embodying the results of the Annecy negotiations. (Document GATT/CP.3/15: Item 3 of the Agenda)

Mr. SHACKLE (United Kingdom), presenting the report, said the Working Party had not found it possible to agree on a solution. He explained the different solutions suggested in the report and the objections which had been presented in each case. The Working Party felt the CONTRACTING PARTIES would no doubt wish to consult the acceding countries before taking a final decision.

Mr. CASSIERS (Belgium) strongly supported the view that there should be one date for all schedules. Extension of the duration of the schedules negotiated in 1947 would entail modification of the Agreement. The best solution, therefore, appeared to be to agree on the date of January 1, 1951, for the new schedules, subject to consultation with the acceding governments.

Dr. NORVAL, (South Africa) pointed out that the countries which negotiated the Geneva schedules accounted for well over two-thirds of world trade, whereas the share of the countries likely to accede to the Agreement at Annecy would probably not be more than one-quarter. In these circumstances, concessions granted in the Geneva schedules

would naturally be the determining factor for the Annecy schedules and similarly any material withdrawal of concessions at the time of renegotiation of the Geneva schedules would have a very important bearing on the Annecy schedules and would necessitate their renegotiation simultaneously or very shortly after.

So far as South Africa was concerned, there were very serious objections to having two separate dates. In the first place, from an administrative point of view it was undesirable to have two schedules in use concurrently. Secondly, when the Geneva schedules had been submitted to Parliament for approval, an assurance had been given to industrialists that the Geneva schedules would be binding for only three years.

Dr. LAMSVELT (Netherlands), supporting the remarks of the Belgian delegate, was strongly in favour of a common date. His delegation had no strong preference for any particular date; on the contrary, it was prepared to ask the Netherlands Government for powers to prolong the period beyond January 1, 1951, if after hearing the representatives of the acceding governments, that solution appeared to be the most favoured.

Mr. EVANS (United States) had advocated in the Working Party the proposal of having two separate dates, but he agreed with the Netherlands delegate that the acceding countries ought to be consulted before a final decision was taken. Referring to the remarks of Dr. Norval, he thought there was a slight difference of concept regarding the date January 1, 1951; his Government did not regard it as the date when the Geneva schedules would be completely renegotiated; it believed the Agreement, both as far as the general provisions and the schedules were concerned, would continue more or less indefinitely and that modifications would be the exception rather than the rule.

Mr. Evans said he had some difficulty in following Dr. Norval's argument that there would be two separate agreements, which would indeed be an untenable situation. His delegation was thinking in terms of one agreement, including the 20 schedules negotiated at Geneva, to which would be added 11 schedules resulting from negotiations with acceding governments at Annecy. It seemed to him feasible that these two series of schedules should be current up to different dates. He thought there was an argument in favour of concessions of a longer duration for the new schedules. The United States Government had taken the necessary measures to enable its delegation to agree to new concessions at Annecy and he wondered whether the countries concerned would feel that they were obtaining sufficient benefit from United States concessions which were only current for a few months instead of for the same length of time as the Geneva concessions.

Dr. NORVAL (South Africa) referring to the remark of the Netherlands delegate, said his Government attached great importance to simultaneous renegotiation of the Geneva and Annecy schedules. Postponement of the date for a few months was not likely to cause great difficulty; but his Government would have the strongest objection to making the Annecy schedules binding for three years beyond 1950. He entirely agreed with the United States delegate that it was not intended that the schedules should lapse altogether at the end of the three year period; but South African industrialists had been given the assurance that the situation could be reviewed at that date.

He could not agree with the United States delegate that the new schedules would not constitute a separate agreement. The basis of the Annecy negotiations was that certain concessions had been granted in the Geneva schedules and that those concessions would apply to acceding countries. The Geneva schedules had been negotiated on the basis of a quid pro quo and the new concessions would also be granted on that basis.

If that quid pro quo was not to run for the period of the Geneva concessions, the new schedules should be valid for three years and then the Geneva schedules should be made binding for a further three years, but that was impossible from the point of view of South Africa.

Professor RODRIGUES (Brazil) agreed with the United States interpretation of Article XXVIII. His Government also attached great importance to the date January 1, 1951, since it was confronted with the same problem as the South African Government concerning assurances made to industrialists. The approval of the Government and Parliament would have to be obtained before a protocol extending the period of the Geneva schedules could be signed. As regards the date for acceding countries, he thought those countries should be consulted; but if it were not possible to adopt January 1, 1951, in their case also, he saw no other solution than to have two different dates, though he felt the Working Party's report was perhaps unduly pessimistic concerning the early entry into force of the new schedules. To have one date for all schedules would be preferable as it would avoid the necessity of sending large delegations abroad on different occasions.

Mr. LECUYER (France) agreed with the delegates who had spoken against the second solution. He thought the South African delegate had made a good point in saying that the Annecy negotiations were of secondary importance compared with the Geneva negotiations. Like the United States delegate he hoped that January 1, 1951, would not be the occasion for wholesale modifications of the schedules, but any CONTRACTING PARTY confronted with serious difficulties could then request revision. What would be the situation of acceding countries? He felt it would be advisable to adhere to one date, and would prefer January 1, 1951, which had been agreed upon after long discussions and had been adopted by governments. If a substantial majority of the CONTRACTING PARTIES was in favour of a different date, however, he would not insist, but would have to consult his Government.

Mr. HSUEH (China) agreed in general with the remarks of the Belgian and South African delegates. He was of opinion that the acceding countries should be asked to agree to January 1, 1951 in view of the fact that still another set of negotiations might take place before that date and a different date for each of the three sets of schedules would lead to all kinds of complications. Then, when the Geneva schedules had been modified in January 1951, in accordance with Article XXVIII, both sets would run concurrently for whatever period the CONTRACTING PARTIES considered appropriate.

Mr. COUILLARD (Canada) said his delegation favoured the adoption of a single date, subject to the views of the acceding governments. He considered that from an administrative as well as from a purely legal point of view, it would be a simplification if the new schedules ran to the same date as the Geneva schedules.

He attached importance to the point made by the South African delegate which he thought had not been fully understood by the United States delegate. To maintain January 1, 1951, as the date for all schedules would allow CONTRACTING PARTIES represented at the present meeting to extend to acceding countries concessions up to January 1, 1951, which was a measure they might not be able to undertake if the concessions had to be extended up to, say, 1952. The objection had been made that it might not be practicable for all of the governments to negotiate. He thought the best reply was that given by the United States delegate and supported by several other delegates, when he explained what was the spirit of Article XXVIII.

Mr. ROWE (Southern Rhodesia) supported the views expressed by the delegate of South Africa.

Mr. CASSIERS (Belgium) noted that Article XXVIII did not mention January 1, 1951, as the date of termination of the schedules but of their possible revision. He would have no objection to the adoption of a new date, but thought the argument in the Working Party's report had been in

favour of a single date since that would allow any revisions to be carried out in one operation. He enquired what would be the situation after January 1, 1951: there was nothing in Article XXVIII which would necessitate that revisions should be carried out by means of multilateral negotiations. Under that Article any contracting party could open negotiations at any time after that date. But it must not be overlooked that agreements should not be contracted as between one contracting party and another without taking into account the interests of other contracting parties.

Dr. AUGENTHALER (Czechoslovakia) said he understood that after January 1, 1951, the schedules might be reviewed in bilateral negotiations and modifications put into effect with the consent of the CONTRACTING PARTIES. As regards the duration of the new schedules, he thought it could be assumed that there would be a meeting of the original and the new CONTRACTING PARTIES in the Spring of 1951, which meant that the new schedules would remain in force for at least a year and, by October at the latest, it should be possible to have one and the same arrangement for all parties.

Mr. EVANS (United States) pointed out that Article XXVIII did not specify that new negotiations had to take place on a certain date; it reserved the right of the CONTRACTING PARTIES to request modifications at any time after that date. It would be a simplification to have one date if all CONTRACTING PARTIES were ready to negotiate on that basis.

Mr. JOHNSEN (New Zealand) supported the remarks of the Canadian delegate. The New Zealand legislation was such that schedules resulting from the present negotiations would be regarded as a modification of the Geneva agreement and they could not be put into operation without new legislation. It would, therefore, be more practical to fix the same date for both series of schedules.

The CHAIRMAN, summing up, said the discussions had shown, that there was a large majority in favour of the new schedules having the same period of currency as the Geneva schedules and a unanimous opinion that the matter should be discussed with the representatives of the acceding governments before a final decision was taken.

He, therefore, moved, and it was agreed that Interim Report No. 2 of Working Party 1 should be referred to the Tariff Negotiations Committee for discussion with the representatives of the acceding countries and that, at the same time, both the Tariff Negotiations Committee and the representatives of the acceding countries should be informed of the views expressed in the present meeting of the CONTRACTING PARTIES.

As the Secretariat thought the Summary Records could not be ready in time, the Chairman requested Mr. Shackle to act as rapporteur and give the Tariff Negotiations Committee a résumé of the discussions.

4. Interim Report No. 3 of Working Party 1 on Accession - Procedure for joint consideration of questions relating to accession. (Document GATT/CP.3/16: Item 3 of the Agenda)

Mr. SHACKLE (United Kingdom), presenting the report, said it had been assumed by the Working Party that the proposed Joint Working Party would be composed of representatives of the CONTRACTING PARTIES and acceding countries in the same proportions as the Tariff Negotiations Committee.

It was agreed, on the suggestion of Mr. SHACKLE, supported by the CHAIRMAN, to refer the report to the Tariff Negotiations Committee before final decision.

The meeting was adjourned at 5.40 p.m.