

Third Session of the Contracting Parties

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at Hotel Verdun, Annecy on
Thursday, 19 May 1949 at 2.30 p.m.

Chairman: Mr. Van BLANKENSTEIN (Netherlands)

Subjects discussed:

1. Adoption of Emergency Measures to Resolve the Crisis of the Cuban Textile Industry (GATT/CP.3/23)
 2. Working Days for Whitsun.
 3. Remarks of the Delegate of France on Document GATT/CP.3/SR.11/Corr.1.
 4. Non-Discriminatory Measures notified by the Government of Ceylon under Article XVIII (GATT/CP.3/20)
 5. Report of Working Party No. 6 on the Australian Schedule (GATT/CP.3/25)
 6. Consideration of the Report of Working Party No.1 on Accession (GATT/CP.3/26) in connection with the Report of Working Party No. 2 on the Notification by Acceding Governments of Measures under paragraph 11 of Article XVIII (GATT/CP.3/21)
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1. Adoption of Emergency Measures to resolve the crisis of the Cuban Textile Industry (GATT/CP.3/23) (Continued)

Upon the proposal of the Chairman, the Contracting Parties agreed to the following composition of the Working Party which it was decided to set up at the last meeting:

Brazil
Canada
Ceylon
Cuba
United Kingdom
United States

with Mr. André Philip (France) as

Chairman.

2. Working Days over Whitsun Week-end

Upon a suggestion of Mr. Shackle (U.K.) a discussion followed resulting in a decision that no meetings of Contracting Parties or of important Working Parties would be held on Saturday, June 4th, and that Monday, June 6th, would be a holiday.

3. Remarks of the Delegate of France on Document GATT/CP.3/SR.11/Corr.1.

Mr. LECUYER (France) referring to a rectification contained in the document quoted above wished to place on record his position in the following terms:

- (i) It was never the intention of the French Delegation to give approval to the terms of the Note issued by the Secretariat on the position of Palestine in relation to the General Agreement. Moreover, the French Delegation notes that the part of the Note dealing with transmission to a successor state of obligations contracted by the original state was not considered in the course of the discussion.
- (ii) As regards the position of Great Britain, it is certain that during the validity of its mandate, the United Kingdom was competent to contract international obligations on behalf of Palestine. But it is equally certain that termination of its mandate deprived Great Britain of this power and that Great Britain has retained no obligation as a Contracting Party in respect of the territory of Palestine.
- (iii) As regards Israel, the French Government considers that this State is bound to respect the obligations contracted on its behalf by the Government of the United Kingdom. Undoubtedly, Israel is entitled to

show that any of these obligations has consequences harmful to its interest and may request a release from such obligations. But in this case, an entirely different point of international law is involved, for the application of which in the particular case of the General Agreement the presence of a qualified representative of the State concerned would be required.

The CHAIRMAN thought it was not for the Contracting Parties to settle the legal point at this moment but only to take note of Mr. Lecuyer's statement.

4. Non-Discriminatory Measures notified by the Government of Ceylon under Article XVIII. (GATT/CP.3/20)

Mr. SHACKLE (United Kingdom) proposed referring the examination of the measures notified by the Government of Ceylon to Working Party 2 on Article XVIII as the measures clearly fell under this Article.

Mr. USHINI (Pakistan) stated that the document before the Contracting Parties was the first of its kind to be submitted in the sense that the protective measures in question were those provided for under paragraphs 6 and 7 of Article XVIII which require automatic concurrence by the Contracting Parties. His delegation attached great importance to the procedure that would be followed. He suggested the establishment of a new Working Party rather than the submission of the measures to the existing Working Party whose terms of references appeared not exactly to cover the question on hand.

Mr. SHACKLE (United Kingdom) contended that in view of its extensive mandate, Working Party 2 was suitable for the purpose.

The CHAIRMAN informed the Contracting Parties that unless there were some very special reason it would be most useful if the measures were referred to Working Party 2, which had gone ahead very

quickly with its work; moreover the present Session had shown a tendency to set up a large number of working parties, and delegations were finding it difficult to appoint representatives.

Mr. USLANI (Pakistan) pointed out that the terms of reference of Working Party 2 referred to the examination of statements submitted by contracting parties in support of measures notified under paragraph 11 of Article XVIII and that there was a mention in the agenda of the review of procedures for new measures in relation to the provisions of Article XVIII, but this review, to his understanding would be confined to measures provided for under other paragraphs of Article XVIII than paragraph 7, which requires no review but automatic concurrence by the Contracting Parties. In the present case paragraph 7 of Article XVIII applied and the contracting parties were required by the provisions of paragraph 10 to take a decision regarding the advice to be given to the applicant Contracting Party within 15 days of the receipt of an application. As experience of working parties had shown that a decision would not be reached within 15 days and that the provisions of paragraph 7 were to be held to be practically automatic in their operation, he suggested that a small working party be established which would ascertain which measures related to consolidated items and which did not.

Mr. REISMAN (Canada) maintained that Working Party 2 was the appropriate body and that paragraph 10 made it perfectly clear that the 15 days referred to the time limit within which the CONTRACTING PARTIES were expected to advise the applicant of the date by which it would be notified whether or not it was to be released from the relevant obligation. If any contracting parties had any worries about the composition of the working party, he thought that the established practice should reassure them that any interested party would be allowed to attend meetings and make statements.

The CHAIRMAN re-affirmed this right of Contracting Parties.

Mr. JAYASURIYA (Ceylon) said his delegation had relied so much on the automatic nature of paragraph 7 of Article XVIII that they had not given much thought to the choice or composition of the Working Party.

Mr. USMANI (Pakistan) stated that according to his understanding of paragraph 10, urgency of action by the Contracting Parties was required only in respect of protective measures under paragraphs 7 and 8 of that article. Under paragraph 8, the measures referred to might violate obligations relating to bound items under Article II but under paragraph 7, the measures would be only those which were not in conflict with Article II but with provisions of Part II of the Gatt. In as much as the present Contracting Parties are not applying the provisions of Part II fully, it followed that in the first sentence of paragraph 10 the words "released from the relevant obligation" would refer to obligations under paragraph 8 and not paragraph 7 as, under the latter, there were no "obligations" so long as Part II of the Gatt was not enforced. He stated that, in the case of the measures to be taken by Ceylon, there might be some measures which affect the bound items in the Gatt schedule of Ceylon. In such a case the special Working Party he wanted to see formed would examine the measures and decide whether to release Ceylon or not.

In the view of the CHAIRMAN it would not be appropriate to discuss at this point Mr. Usmani's interpretation and suggested referring it to Working Party 2 with a request for an interpretation of paragraph 10 of Article XVIII.

Mr. USMANI (Pakistan) asked whether there would be an addition to the agenda of the Working Party and, if so, what would be the terms.

The CHAIRMAN said the terms of reference would be to study the proposal submitted by the delegation of Ceylon and to report to the contracting parties as soon as possible in the light of the points raised in the discussion at the present meeting.

Dr. BENES (Czechoslovakia), who said his country was not a member of the working party, was re-assured of his right to appear before it and submit any questions and statements.

5. Report of Working Party No.6 on the Schedule of Australia
(Gatt/CP.3/25)

Mr. JOHNSON (New Zealand) introduced the report, by pointing out briefly its salient points, and recommended its acceptance by the CONTRACTING PARTIES.

Mr. BANERJI (India) wished it to be recorded that he had held discussions with the Australian Delegation and that agreement at delegation level had been reached subject, however, to definite instructions which he was expecting from his Government. He did not want to hold up the work of the CONTRACTING PARTIES but he had to reserve his position in order to be able to revert to the matter, should it be necessary.

Mr. WILLOUGHBY (United States) proposed that the report be approved, and he referred to the Working Party on Rectifications in order that the technical side of the question might be considered.

Mr. JOHNSEN wished to add that it was the assumption of the Working Party that the report would be so referred.

The proposal to refer the report to the Working Party on Rectifications with the special request to consider the form in which the modifications to the Australian schedules will be incorporated in the General Agreement was approved by the CONTRACTING PARTIES.

6. Consideration of the Report of Working Party 1 on Accession (Document GATT/CP.3/26) in connection with the Report of Working Party No. 2 on the notification by Acceding Governments of measures under paragraph 11 of Article XVIII (Document GATT/CP.3/21)

The CHAIRMAN, in proposing that the report on the notification of measures be taken first, referred to a phrase in paragraph 3 of the Report which might induce a reader to think that the duration of the present session beyond 15 June was envisaged. He wished to make it clear that there was no reason to think that the present session would continue beyond the date fixed.

Mr. HEWITT (Australia) as Chairman of Working Party 2 outlined briefly the contents of the Report which proposed 15 June as the date by which measures were to be notified under paragraph 11 of Article XVIII and that the date of the 15th of May 1949 be taken as the one on which any non-discriminatory measures should be in force to be eligible for the purposes of paragraph 11. The Working Party in proposing these dates had borne in mind the need to give Acceding Governments sufficient time in which to compile lists of the measures in force and also the need to avoid the risk of an Acceding Government having to abrogate existing legislation if a date were set too far in the past.

The report was adopted unanimously by the CONTRACTING PARTIES for communication to the joint Working Party on Accession and also to all Acceding Governments.

The CHAIRMAN proposed to take up at this point the Report of Working Party No. 1 which, if adopted, would also be transmitted to the Joint Working Party on Accession and then to the Tariff Negotiations Committee.

Mr. SHACKLE (United Kingdom) as Chairman of the Working Party on Accession, pointed out that the CONTRACTING PARTIES had before them a long and complicated document which, rather than read in extenso, he would briefly summarize.

The Working Party had begun with a draft submitted by the Secretariat which consisted of a draft decision by the CONTRACTING PARTIES and a draft Protocol embodying the terms of accession in the form of a collateral contract to the General Agreement; it had been found to be the most practical solution and two such documents were annexed to the Report.

Special emphasis was laid by Mr. SHACKLE upon one variant in the Working Party's draft Protocol with respect to the Secretariat draft; the Working Party proposed that upon the entry into force of the Protocol for an Accessing Government, that Government would be required to apply the General Agreement provisionally and would thus become a Contracting Party enjoying the benefits of the Agreement.

He also wished to call the attention of the meeting to the attitude taken by the representative of Cuba in connection with the phrase contained in paragraph 3 of the draft Protocol: "and upon the entry into force of those concessions that schedule shall be regarded as a schedule to the General Agreement relating to that Contracting Party". Mr. Shackle wished to emphasize that the words "to be regarded as a schedule" were not to be taken as a modification of the Geneva Schedules but as an incorporation of the new in the old. Cuba had presented an amendment to the effect that the Schedules contained in Annex B should become an integral part of Part I of the General Agreement as provided in Article II, paragraph 7, for the Geneva Schedules. In the view of the Cuban Delegation, no modifications, not even rectifications, could be made in the Geneva Schedules before January 1 1951, except by

unanimous agreement of all Contracting Parties. The Cuban Delegation had therefore reserved its rights upon this point.

The CHAIRMAN proposed to read the Report and submit it to the meeting, section by section, after which the draft decision and draft Protocol would be examined paragraph by paragraph.

Mr. HERRERA-ARANGO (Cuba) pointed out that Cuba took a very serious view of the matter and that he had made their view clear from the beginning. They certainly had no desire to hinder accession but did not wish thereby to do violence to the terms of the Agreement. A statement to the CONTRACTING PARTIES had been prepared by his delegation, but in view of the far-reaching effects of the decisions to be taken, they had thought it desirable to submit it to their Government. He consequently asked the Chairman if he could be given time to present his case after receiving a reply from Havana.

The CHAIRMAN pointed out that the Report would have to be discussed with Acceding Governments and that urgent submission to them was desirable. He therefore proposed that the meeting proceed with the examination without prejudice to the rights of the Cuban Delegation or of other delegations to present observations if they thought necessary.

With reference to section 2, Mr. BANERJI (India) asked for clarification of the statement that a single decision was proposed to cover all eleven Acceding Governments without prejudice to the possibility of having more than one decision if desirable. He asked how could a later decision be taken. He wished to take this opportunity to inform the meeting that his Delegation was also awaiting instructions from their Government on the whole matter and reserved the right to revert to it accordingly.

The meeting adjourned at 5 p.m.

