GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED
LIMITED C

GATT/CP.3/SR.18
30 May, 1949

ORIGINAL:ENGLISH

Contracting Parties
Third Session

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at Hotel Verdun, Annecy,
on Monday, 30 May, 1949, at 2.30 p.m.

Chairman: Mr. L. D. WILGRESS (Canada)

Subjects discussed:

1. Request of Czechoslovakia for Decision under Article XXIII.
2. Interpretation of "entry into negotiations" for the purposes of Article XXXV.

1. Request of Czechoslovakia for Decision under Article XXIII.

Dr. AUGENTHALER (Czechoslovakia) made a statement issued as Document GATT/CP.3/33. He further said that he had been approached by the Press with regard to the statement he had just made and that he had refused to give any information whatsoever, in accordance with the established procedure. Nevertheless, he wished to request the Chairman to give a ruling in connection with press releases on the matter under discussion.

Mr. PHILIP (France), while reserving his position with regard to the statement made by the representative of Czechoslovakia, wished to correct a reference made to a member of the French National Assembly, M. Chambeiron, whom the representative of Czechoslovakia had mentioned as a Republican deputy; he was in fact a deputy for the Union Républicain Progressist de la Résistance. He also wished to draw

attention to the fact that the quoted statement made by M. Chambeiron on May 17, 1949, referring to remarks made by an official of the Quai d'Orsay on April 1st, used the conditional tense. He could say that no statement had been made by the French Government on April 1st, or any other day, that would resemble the quotation made by M. Chambeiron in the French National Assembly. He recalled that licensing was decreasing in France.

It was decided to defer the discussion of the subject brought up by the representative of Czechoslovakia so as to enable delegations to give it proper consideration. It was also decided that a full summary of the statement made by the representative of Czechoslovakia be embodied in a press release to be issued by the Chairman immediately after the meeting.

2. Interpretation of "entry into negotiations" for the purposes of Article XXXV (Document A/W/7)

Dr. MULLER (Chile) (Chairman, Tariff Negotiations Committee) introduced the recommendation of the Tariff Negotiations Committee and summed up the views expressed during the fourth meeting of the Committee on the interpretation of "entry into negotiations" for the purposes of Article XXXV. (GATT/TN.1/SR.4). The recommendation read as follows:

> "Delegations shall be deemed to have 'entered into negotiations' for the purpose of Article XXXV only when a formal exchange of offers takes place and is notified by both parties to the Secretariat."

The CHAIRMAN expressed his regret for having been unable to attend personally the fourth meeting of the Tariff Negotiations Committee. He recalled that at the meeting of the heads of delegations which had taken place at the beginning of the present Session he had given a ruling on the meaning of "entry into negotiations" for the purpose of Article XXXV, namely, that delegations should be deemed to have "entered into negotiations" when they had exchanged offers of

concessions. That had been in accordance with the usual procedure followed in bilateral negotiations. It was clear that a satisfactory result could be achieved only as a result of such negotiations. He recalled that exploratory talks were not meant to replace negotiations and were intended only to ascertain whether there was a basis for entering into negotiations. Article XXXV had been drafted for special circumstances, namely, to overcome certain legislative and political difficulties encountered by some of the contracting parties as a result of the introduction of the two-thirds majority rule in Article XXXIII; also at the Second Session, Article XXV:5(b) fashioned after Article 17 of the Havana Charter, had been adopted. It was necessary to be careful not to widen Article XXXV beyond the purposes for which it was intended. He had had that in mind when he gave the ruling at an early meeting, and the procedure to be followed had been set out very clearly, in accordance with the ruling he had given, in document GATT/TN.1/A/4 issued by the Tariff Negotiations Working Party. He thought that no more specific ruling could be given without running the risk of amending Article XXXV and interpreting it in a way in which it had never been intended. The document under discussion, A/W/7, gave the possibility of postponing indefinitely the commencement of negotiations and was in his view contrary to the letter and spirit of Article XXXV. Once offers were discussed, negotiations were entered into. In any Order of the Day there was a schedule of negotiations that were taking place and it would not be quite logicial if delegations could maintain that they had not entered into negotiations when a notice of the entering into negotiations appeared in the Order of the Day which was an official Conference document.

Dr. AUGENTHALER (Czechoslovakia) agreed with the CHAIRMAN that it would be unfortunate if Article XXXV were given a meaning other than originally intended. He recalled that at the Geneva Session

bilateral negotiations had not implied any obligations whatsoever and it had been only after the appending of signatures that the results of negotiations had become valid. At Annecy, however, an acceding government could become a contracting party as a result of a two-thirds vote without satisfying one-third of the contracting parties, and at the same time such an acceding government would be able to enjoy all the concessions agreed to at Geneva and at Annecy. That was the reason why there was such hesitation with regard to entering into negotiations. He thought it would be best to provide an interpretation for Article XXXV which would enable the exploratory talks to be widened.

Mr. CASSIERS (Belgium) said that Article XXXV was an exception to the M.F.N. rule. It was a legal principle to interpret restrictively provisions adopted under exceptional circumstances. He agreed with the representative of Czechoslovakia that an acceding government could become a contracting party as a result of a two-thirds vote without giving adequate concessions for the Geneva and Annecy concessions which it would automatically enjoy once it became a contracting party. Referring to the CHAIRMAN's recommendations that Article XXV: 5(b) could be used as a safeguard, he said that he could not agree with that view because if applied, it would favour individual solutions. In his opinion, the CONTRACTING PARTIES should try to devise collective measures for the defense of their legitimate interests. It would be useful that a statement be made with regard to Article 17 of the Havana Charter, namely that concessions accruing to the acceding governments through the Geneva schedules should be compensated by corresponding concessions by the acceding governments; if that were accepted as a general rule, there would be no need for resort to Article XXXV or XXV:5(b).

Mr. SHACKLE (United Kingdom) supported the views expressed by the representatives of Czechoslovakia and Belgium. There were cases in the present negotiations where some contracting parties were called upon to negotiate with countries which were engaged in revising or had recently revised their tariffs and rates. He would not say generally that the increase of rates had taken place in order to improve the bargaining position of some acceding governments and in contradiction to the memorandum on Tariff Negotiations issued as document GATT/CP.2/26; nevertheless, the effect of increased tariffs was an improvement of the bargaining position. For that reason, exploratory talks were useful in order to ascertain whether the tariff rates were too high and whether a better basis could be found. With that reservation, he wished to support the recommendation under discussion.

Mr. WILLOUGHBY (United States of America) said that if the CONTRACTING PARTIES dealt with the problem as suggested by the representative of Czechoslovakia, the result would be to change the system from one in which Article XXV:5(b) would be employed, to one in which unilateral action would be taken under Article XXXV. If that system were to be widely used, multilateral agreements would contain many deficiencies. He could not agree that some contracting parties were in danger of giving all the Geneva and Annecy concessions to an acceding government as a result of a two-thirds vote without getting any benefits from such an acceding government; it would be the CONTRACTING PARTIES as a whole who would see that an acceding government, that had not given satisfactory concessions to contracting parties, would not enjoy all the benefits of GATT. He tended to agree more with the view of the representative of Belgium, which he thought was more in accordance with the principles underlying GATT, namely, that each country give up some of its advantages for the benefit of the CONTRACTING PARTIES as a whole.

Mr. COUILLARD (Canada) said that he supported the ruling given by the CHAIRMAN at the beginning of the present Session; that he opposed the use of Article XXXV for purposes other than that for which it was originally intended; and that he believed that in cases of disagreement, the principle of two-thirds majority combined with Article XXV:5(b) afforded adequate safeguard for contracting parties against acceding governments that were unwilling to recognize the benefits of the Geneva and Annecy schedules. For these reasons he was unable to support the recommendation of the Tariff Negotiations Committee.

The CHAIRMAN, replying to the suggestion made by the representative of Belgium, said that it would not be wise to say at present more than had been mentioned in the documents drawn up and approved as a basis for negotiations. He regarded the provisions of Article 17 of the Havana Charter, as developed in the Memorandum on Tariff Negotiations, as satisfactory. There was no mathematical formula that could measure the value of concessions, but the CONTRACTING PARTIES acting jointly would be able to judge the result of bilateral negotiations as recorded in Schedules attached to the protocol on accession. He also recalled the provisions of paragraph 2 of Article XXXV and, at the same time, advised the CONTRACTING PARTIES not to put acceding governments in a disadvantageous position.

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

The meeting rose at 5.45 p.m.