GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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31 May, 1949

ORIGINAL:ENGLISH

Contracting Parties

Third Session

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at Hotel Verdun, Annecy,
on Tuesday, 31 May, 1949, at 2.30 p.m.

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

Subjects discussed:

1. CONTINUATION OF DISCUSSION ON INTERPRETATION OF "ENTRY INTO NEGOTIATIONS" FOR THE PURPOSES OF ARTICLE XXXV.

2. REQUEST OF THE GOVERNMENT OF PAKISTAN FOR A DECISION UNDER ARTICLE XXIII CONCERNING THE REBATE OF EXCISE DUTIES ON CERTAIN PRODUCTS EXPORTED FROM INDIA.

1. CONTINUATION OF DISCUSSION ON INTERPRETATION OF "ENTRY INTO NEGOTIATIONS" FOR THE PURPOSES OF ARTICLE XXXV (Document A/W/7)

The CHAIRMAN said that he had expressed the view at the previous meeting that it was better not to adopt the proposal of the Tariff Negotiations Committee. He had also recommended to maintain the definition of "entry into negotiations" as laid down in paragraph 2 of Document GATT/TN.1/A/4. Some contracting parties had agreed with the Chair and some others had emphasised that Article XXXV should be used only in the most exceptional circumstances and that a remedy could be found in Article XXV, 5 (b). He added that if the definition in Document GATT/TN.1/A/4 were acceptable, a procedure could be worked out that would apply to Article XXV, 5 (a) and (b), and which would afford relief to contracting parties which find themselves unable to extend m-f-n treatment to acceding governments with which negotiations prove unsatisfactory; that procedure might be available before an acceding government became a contracting party.

Mr. OLDINI (Chile) recalled that at the previous meeting some contracting parties had expressed the opinion that the definition submitted by the Tariff Negotiations Committee constituted an amendment to Article XXXV. The representative of Belgium had said rightly that Article XXXV was an exception to the m-f-n rule and that it should be used restrictively. He agreed with the premises of the argument expressed by some representatives, but he was unable to agree with their conclusions. The CONTRACTING PARTIES were requested to interpret restrictively not the text of an article but the intentions that had been in the mind of the drafters. If the drafters had wished to have it used restrictively, they should have inserted into the text their intentions and reasons for such a restrictive use. It was a general legal principle that if a text had to be used in a particular manner and did not have general application,

the historical background of the purpose should be inserted into the text of the legal document. That had not been done at Havana and the contracting parties were confronted, in the case of Article XXXV, with a general text. Having established that point, he said that in his opinion the text submitted by the Tariff Negotiations Committee did not constitute an amendment to Article XXXV. He compared paragraph 2 of Document GATT/TN.1/A/4 with the text submitted by the Committee and he came to the conclusion that the only difference between the two texts were the few words added at the end namely: "and is notified by both parties to the Secretariat". That addition, he thought, could not constitute an amendment to Article XXXV. The Chairman had said that it did, and he wished to reserve the position of his government should a formal resolution be passed. He thought that if the CONTRACTING PARTIES had to give up the use of Article XXXV and use Article XXV instead, they would have to know the exact procedure to be followed and he suggested that the Tariff Negotiations Committee be requested to work out and submit such a procedure.

Mr. HSUEH (China) agreed that Article XXXV had been drafted for special purposes. Nobody could deny, however, that the wording of that article was of a general nature. If some contracting parties had already benefited from the provisions of Article XXXV, it would not be fair to deny its application to other contracting parties. He recalled that when the use of Article XXXV as a safeguard had been mentioned in Working Party 1, there had been no opposition to it. If the CONTRACTING PARTIES decided to refrain from using Articles XXXV and XXV, 5 (b), they would be at a clear disadvantage with regard to the acceding governments. He therefore wished to support the recommendation submitted by the Committee.

Mr. HERRERA ARANGO (Cuba) said that his delegation had always had a keen interest in the discussions on Article XXXV. He had been the first to ask the Chair for the interpretation of the meaning of "entry into negotiations". The Chairman had answered him then that in cases where no exchange of offers took place, delegations would not be deemed to have entered into negotiations. His delegation had proceeded on that basis and he had pointed out to the acceding governments with which he had been negotiating that those negotiations were conducted on a preliminary basis and he had reserved the right of using Article XXXV if no basis for formal negotiations could be found. In his opinion, the interpretation suggested by the Tariff Negotiations Committee expressed the same sense as the ruling which the Chair had given earlier. Document A/W/7 was a good interpretation of the ruling previously given by the Chair and only ensured that no contracting party would be at a disadvantage with regard to acceding governments. He therefore wished to support the recommendation submitted by the Committee.

Mr. LECUYER (France) said that his delegation was considering the problem under discussion without any prejudice as it had already entered into negotiations with all of the acceding governments. He recalled that, in English law, interpretation of legal texts was based purely on the text as such, whereas in French law there was a general tendency to consider circumstances and intentions that lay behind any legal document. Article XXXV was drafted for specific aims and should be applied only to specific cases, but he understood the point made by the representative of Chile that the text of Article XXXV was of a general nature and did not convey the restrictive intentions of its drafters. Nevertheless, in existing circumstances, he thought that more stress should be laid on the practical side than on the legal side of the problem. The aim of the Tariff Negotiations Committee when presenting their

recommendation was to expedite bilateral negotiations. He suggested that, while reserving their legal attitude, the CONTRACTING PARTIES should take up the proposal put forward by the representative of Chile and instruct Working Party I to work out a practical procedure.

Professor de VRIES (Netherlands) agreed with the interpretation given by the Chairman with regard to Article XXXV. In his opinion it was contrary to the spirit of Article XXXV to give an interpretation which was not originally intended. He recalled that at the 1947 Session there were cases where countries had negotiated for several months without coming to any agreement. He had in mind especially, the negotiations that he had then conducted on behalf of the Benelux countries with the Delegation of Cuba and which had lasted for several months but which had not been successful; offers had been exchanged and, when viewed from the present time, it would seem to him that those negotiations could not be called just exploratory talks. He agreed with the representative of Belgium, namely, that the CONTRACTING PARTIES should await the end of negotiations and then consider jointly the results of negotiations and to take a vote with regard to acceding governments on the basis of the nature of the negotiations that had been conducted.

Mr. DESAI (India) supported the ruling given by the Chairman, and said that questions of procedure and of interpretation of the General Agreement should be dealt with on the basis of the wide and noble objectives underlying the Agreement and which were mentioned in its preamble.

Dr. AUGENTHALER (Czechoslovakia) said that he was aware of the special position of Article XXXV. It was an established rule, not only in Anglo-Saxon law but also in the law of other countries and of the International Court of Justice, that as long as a text was clear no

interpretation was necessary; historical intentions and background were considered only if the text did not appear to be clear. In his opinion the text of Article XXXV was very clear and therefore did not require interpretation. He recalled that if, as a result of a two-thirds majority vote, he was expected to extend m.f.n. treatment to a country with which he had been unable to conclude satisfactory negotiations, the Government and Parliament of his country would have to give it approval and he doubted whether, on such a basis, legislative approval would be given.

Mr. HEWITT (Australia) recalled that when the Chairman at the beginning of the present Session, had suggested the arrangements to be made with regard to the scheduling of negotiations, he had raised the question of the relation of such a procedure to cases where the possibilities for trade were small. He had thought that it should be open to delegations to meet and in the course of informal discussions to see whether an initial basis for negotiations existed. This position had been confirmed by the Chairman and re-affirmed by the Tariff Negotiations Working Party in GATT/TN.1/A/4. The recommendation of the Tariff Negotiations Committee that was under discussion was similar to the basis from which the Committee had started its work on 11 April 1949, with only one reservation, namely, the implication that a provision exchange of offers might be required by one party prior to the formal exchange of offers. Because of that, he thought that the ruling given by the Chairman and contained also in GATT/TN.1/A/4 on which the conference had proceeded since its commencement was preferable to the subsequent interpretation by the Tariff Negotiations Committee. He thought moreover that most points raised during the present discussion properly came within the sphere of the bilateral tariff discussions and should be settled in that context. However, it was the delay in some negotiations that had now drawn attention to Article XXXV and Article XXV 5 (b). It should be possible

at the present stage for parties to bilateral discussions to come to a conclusion whether a real basis fornegotiationexisted, thus to decide whether to enter into negotiations or not. But it was a problem that could only be settled in each set of bilateral discussions. If a specific problem later arose regarding the absence of negotiations in particular cases and it also affected the mechanics of Article XXXV, a safeguard existed, as the Chairman had pointed out, in paragraph 2 of that Article and the Contracting Parties could review the position. With regard to the Chairman's suggestion on the use of Article XXV he agreed that its possible operation could usefully be examined, but he was not sure that that Article could be applied in its entirety before an acceding government became a Contracting Party.

Mr. JOHNSEN (New Zealand) said that he hoped to conclude negotiations with all those acceding governments where there was a real basis for negotiations. He was not concerned therefore with the application of Article XXXV. Exploratory talks had been necessary in certain cases, especially where there had been a lack of information with regard to the necessary statistics. He considered the exchange of offers as the criterion for "entering into negotiations". He wished to draw attention to the distinction that existed between cases where a basis for negotiations was lacking and where there was no scope. In the latter case the provisions of Article XXXV could not be invoked. It was nevertheless desirable to remove doubts with regard to the former case. He had found himself in a position last week with regard to an acceding government where he had found that there was very little trade involved and therefore no scope for negotiations but, nevertheless, his Government would grant m-f-n treatment. He thought that the position with regard to Article XXXV could be clarified if it were decided that in similar cases the Secretariat should be notified that there was no scope for negotiations but that m-f-n

treatment had been mutually granted and that the Tariff Negotiations Committee should decide in cases where one party maintained that there was scope for negotiations but where the other party denied the scope for any negotiations.

The CHAIRMAN said that it appeared to be generally agreed that negotiations started when two negotiating teams exchanged lists of offers. He therefore proposed that the question under consideration be left as framed in Document GATT/TN.1/A/4, and that Working Party I be asked to work out the procedure to be applied under Article XXV by those contracting parties that were not satisfied with their negotiations with acceding governments; it being understood that further consideration might be given to the matter if further clarification was necessary after Working Party I had presented its report. It was so agreed.

2. REQUEST OF THE GOVERNMENT OF PAKISTAN FOR DECISION UNDER ARTICLE XXIII CONCERNING REBATE OF EXCISE DUTIES ON CERTAIN PRODUCTS EXPORTED FROM INDIA (GATT/CP.3/6)

At the invitation of the Chairman, Mr. HASNIE (Pakistan) introduced the document under consideration. He said he had been instructed to state that the circumstances had changed since the day when he had requested the CHAIRMAN of the CONTRACTING PARTIES to put the subject on the Agenda of the present Session. He recalled the history of the case and said that in the meantime the Governments of India and Pakistan had concluded an agreement whose first article read as follows:

> "1. The following decision has been reached as a result of recent discussions between India and Pakistan with effect from 1st June 1949. Each Dominion will grant full rebate of excise on excisable commodities exported to the other Dominion if such rebates are given on export of the commodities to any other country. Further, for a period of one year from the same date, the two Governments agree t

'give such rebate on all commodities that are at present excisable or may, during the period, be made subject to excise duties irrespective of whether such rebates are given on export to other countries or not."

It gave him personally, and his Government, great pleasure to bring to the attention of the CONTRACTING PARTIES the second paragraph of the agreement, which read as follows:

"2. In view of clause 1 above, Pakistan Government will withdraw their complaint before the Contracting Parties regarding rebate of excise duties."

He therefore begged leave to withdraw the item from the Agenda. He wished to thank the Chairman for the assistance given by him to the Governments of Pakistan and India, and he also thanked the Indian delegation and the Indian Government for settling the issue in a very amicable manner.

Mr. DESAI (India) expressed his thanks to the representative of Pakistan for his kind words and to the CHAIRMAN of the CONTRACTING PARTIES for his kindness and consideration. He was happy that a solution had been found to satisfy both his own Government and the Government of Pakistan.

The CHAIRMAN thanked on behalf of all the CONTRACTING PARTIES the representative for Pakistan for his encouraging announcement and he congratulated the Governments of India and Pakistan on the agreement they had reached.

The meeting rose at 5 p.m.