GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

RESTRICTED
LIMITED B

GATT/CP.3/SR.22
8 June 1949

ORIGINAL: ENGLISH

CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at Hotel Verdun, Annecy

on Wednesday, 8 June 1949, at 3.15 p.m.

CHAIRMAN: Hon. L.D. WILGRESS (Canada)

Subjects discussed:

1. Report on the negotiations affecting Schedule III between Brazil and United Kingdom and United States of America.
2. Report of Working Party 2 on date of decision on proposal of the Government of Ceylon.
3. Request of the Government of Czechoslovakia for a decision under Article XXIII.

Report on the negotiations affecting Schedule III between Brazil and United Kingdom and United States

Mr. RODRIGUES (Brazil), introducing the report, expressed his satisfaction with the agreement reached after negotiations lasting three months on the compensation to be offered for the withdrawal by Brazil of certain concessions. He took this opportunity to recall to the CONTRACTING PARTIES that the compensatory concessions offered to the United Kingdom and to the United States, and mentioned in the report before them, were not the only tariff reductions made by Brazil since 1947. In the previous year, the National Congress had authorized the Brazilian Executive to reduce provisionally, from 40% to 10% or 20% the adjustment on some items so as to provide a more favourable tariff treatment and conform more closely to the ultimate aims of the General

Agreement. This represented a substantial benefit for signatories of the Agreement since they would be receiving additional concessions covering a large part of the total imports of Brazil; it should be understood that these additional concessions were to be regarded as temporary, the Brazilian Government reserving its right at any time to increase the rates up to the amounts shown in Schedule III.

The CHAIRMAN submitted to the Committee the recommendation of the three governments that the CONTRACTING PARTIES approve the agreement reached as set forth in document GATT/CP.3/24; the terms of the Agreement would be incorporated in a protocol of modifications.

The CHAIRMAN's proposal was approved.

With respect to the other negotiations included in the same item of the Session Agenda, the CHAIRMAN informed the meeting that the reports would be heard as each negotiation was completed and the results of all would be incorporated in a protocol of modifications.

Mr. HASNIE (Pakistan) informed that his delegation had made considerable progress in its re-negotiations, but feared it could not submit its report for some time to come. He was concerned, however, about the possibility of obtaining the required unanimity for the approval of the modifications because he gathered some delegations were about to leave Annecy.

The CHAIRMAN said he was confident that all delegations would make arrangements for signature of the protocol.

Mr. HERRERA-ARANGO (Cuba) suggested for future cases where unanimity was required, the adoption of the United Nations principle that, in the absence of a negative vote, unanimity should be taken as achieved.

The CHAIRMAN pointed out that the general rule, according to paragraph 4 of Article XXV, was for decisions to be taken by a majority of the votes cast, while in some cases a two-thirds majority, and in other cases unanimity, was required. In the case in point, unanimity would be prescribed by the instrument itself.

Mr. HERRERA-ARANGO (Cuba), while expressing his agreement with the procedure followed in this case, wished to reserve his country's position with regard to the application of the unanimity rule for amendments of Part I of the Agreement.

Report of Working Party 2 on date of decision on proposal of the Government of Ceylon (GATT/CP.3/36)

Mr. HEWITT (Australia) (Chairman of Working Party 2) introduced the report. He stated that the Working Party had first considered the obligation in paragraph 10 of Article XVIII, that the Ceylon Government should be notified without delay of the date on which it would be released from the relevant obligation of the Agreement. Although the Head of the Ceylon Delegation had advised the Chairman of the CONTRACTING PARTIES that the answers to certain agreed questions would not be available until a later date than that contemplated, the recommendation made in the present report was not affected by this change. By the terms of paragraph 10, a decision under paragraph 7 must be given not later than 7 August. The Working Party, therefore, had recommended that the decision be given as early as possible and not later than the conclusion of the present session of the CONTRACTING PARTIES. Attention was drawn to the last paragraph of the report in which it was stated that the Working Party would report later on the problem raised by the representative of Pakistan regarding the interpretation of paragraph 10.

Mr. JOHNSEN (New Zealand) suggested to amend the last phrase of paragraph 3 of the report to read:

"... not later than the end of the present session, or 7 August 1949, whichever is the earlier."

Mr. HEWITT (Australia) agreed to this change and the report was adopted as amended.

Request of the Government of Czechoslovakia for a decision under Article XXIII as to whether or not the Government of the United States of America has failed to carry out its obligations under the Agreement through its administration of the issue of export licences. (cf. GATT/CP.3/23 and GATT/CP.3/38 and GATT/CP.3/39).

Mr. AUGENTHALER (Czechoslovakia) read a reply (GATT/CP.3/39) to the speech by the representative of the United States (GATT/CP.3/38), and in addition called attention to the possible effects on international trade if an unfavourable decision were given to the Czechoslovakian application. He said it was not only exports that might be unduly controlled on the pretext of national security; on the ground that security could be undermined by dependence on foreign supplies, a country might similarly restrict its imports, either discriminatorily or otherwise, by invoking the security clause of the Agreement. This would encourage the tendency towards autarky which the Agreement professed to eliminate.

Mr. EVANS (United States of America), referring to the last section of the 4th paragraph of Mr. Augenthaler's reply, said that if at any time it were thought that a decision had been based on false premises, the interested party could have recourse to the appeal board which was instituted for that purpose. In reply to the question asked by Mr. Augenthaler as to whether the regulations requiring export licences for the export of goods to certain countries but not to others, did not contravene the provisions of Article I, Mr. Evans remarked that the provisions of Article I would not require uniformity of formalities, as

applied to different countries, in respect of restrictions imposed for security reasons. In conclusion he said that since no new facts had been presented by the Czechoslovakian representative beyond what had already been given in the original statement, he would repeat his proposal that the CONTRACTING PARTIES dismiss the request on the ground that the charge was not supported by facts.

Mr. HERRERA-ARANGO (Cuba) supported the United States proposal. He said that his personal experience in dealing with the United States Government had convinced him that the difficulties referred to by the Czechoslovakian representative were due to the rigour of the officials and their stringent way of administrating the issue of licences. The officials might be tenacious in their quests for information and were often hard to convince, but this provided no ground for the accusation put forward by the Czechoslovakian representative. On the basis of his experience, it seemed that the appeal board would be an effective means of redressing any erroneous decisions. The question asked by the Czechoslovakian representative in relation to the provisions of Article I did not require an answer since the United States representative had justified his case under Article XXI whose provisions overrode those of Article I. His delegation therefore thought that the question should be decided at the present meeting and the request by the Czechoslovakian delegation should be dismissed because of the lack of factual basis for the charge.

Mr. AUGENTHALER (Czechoslovakia) replied that the appeal procedure referred to by the United States representative was available only to exporters of the United States, and it was often inoperative because in the event of a refusal of an export licence, an exporter, in order to avoid displeasure was likely to choose not to resort to that procedure. Article I stated clearly that the provisions of non-discriminati on

were to be observed with respect to all rules and formalities in connection with importation and exportation. If exports were to be controlled, the same formalities must be applied to all countries wishing to purchase from the country concerned. Article XXI referred to the traffic in arms, ammunition and implements of war and other goods and materials for the purpose of supplying a military establishment, but the United States Government had used and interpreted the expression "war material" so extensively that no one knew what it really covered. The filing of an application for an export licence was therefore no mere formality. As regards the Cuban proposal, Mr. Augenthaler maintained that abundant facts had been supplied to the CONTRACTING PARTIES in the successive documents submitted by the Czechoslovakian delegation and the request could not be refused on the ground of insufficient information.

Mr. HASNIE (Pakistan) said he was glad that the question had been narrowed down to the provisions of two Articles. As regards Article I, it was the opinion of his delegation that the United States Government, as a pioneer of the General Agreement, would not have seen fit to violate the provisions of such a fundamental Article and thus deliberately destroy the structure of the Agreement. Article XXI, embodying exceptions to all other provisions of the Agreement, should stand by itself notwithstanding the provisions of other Articles including Article I, and therefore the case called for examination only under the provisions of that Article. While admitting that the Czechoslovakian case deserved careful and sympathetic consideration, Mr. Hasnie was convinced that the action taken by the United States Government was in the interest of security and peace. He thought the matter should not be delegated to a Working Party because he did not believe that tangible results could be produced by deliberations in a sub-group and that no economy of time would be justified in dealing with a matter of such great

importance. He suggested that the information supplied was contradictory and too scanty to justify a sweeping decision by the CONTRACTING PARTIES. Since the United States had affirmed that its intention was merely to prevent the disruption of peace and order and had assured that it had no desire to interfere with ordinary trade, and since the Czechoslovakian Government had complained about restrictions being placed on goods which were not imported for war purposes, it appeared that the dispute had arisen from a misunderstanding of facts by one party or the other and should be resolved by detailed consultation between them. In his opinion, the CONTRACTING PARTIES should suggest that the two governments approach each other through diplomatic channels and seek a solution. Commenting on the complaint that the United States appeal procedure was only available to its exporters, he thought this was in accord with the general practice in jurisprudence and there would seem to be no way of providing complaint facilities for people other than residents of the country. If an exporter refused an order by an importer, it would seem to be the end of the matter except for negotiations to be carried out by the governments. In view of the importance of the question, the CONTRACTING PARTIES should not decide upon the request, but should try to bring about an understanding between the two parties which was not an objective achievable by deliberations in sub-committees.

Mr. SHACKLE (United Kingdom) thought that since the question clearly concerned Article XXI, the United States action would seem to be justified because every country must have the last resort on questions relating to its own security. On the other hand, the CONTRACTING PARTIES should be cautious not to take any step which might have the effect of undermining the General Agreement. The nature of the question seemed to suggest that it should be examined in detail by the two governments concerned, and that no purpose would be served by a general decision given

by the CONTRACTING PARTIES. Therefore, so far as the CONTRACTING PARTIES were concerned, the request by the Czechoslovakian delegation for a decision should be dismissed.

Mr. HERRERA-ARANGO (Cuba) agreed with the representative of Pakistan that the importance of the case called for a full investigation, but he would not think that practical results could be produced.

Mr. AUGENTHALER (Czechoslovakia) reaffirmed that the provisions of Article XXI were misapplied because the narrow reference in the text to war materials had been construed by the United States Government to cover a wide range of goods which could never be so regarded.

Mr. EVANS (United States of America) replied that this was a distortion of facts; the United States Government had never denied export licences to Czechoslovakia on any item on the positive list. Out of 3,000 group items under the export classification, only 200 were affected by export control. Therefore there were no grounds for the accusation that the provisions of Article XXI were extended to cover everything; for the commodities thus controlled constituted an extremely small proportion of the exports of the country.

The CHAIRMAN, in summing up, concluded that if a decision must be made under paragraph 2 of Article XXIII, it should be understood that the consultation referred to in paragraph 1 of the Article had already taken place. Under paragraph 2, the CONTRACTING PARTIES should promptly investigate, and should either make an appropriate recommendation to the contracting parties concerned or give a ruling on the matter as appropriate. The complaint made by Czechoslovakia was based on Articles I and XXI and the United States justified any discrimination which might have occurred on the basis of Articles XX and XXI and particularly on the ground of security covered by the latter. The proposal for a Working

Party to be set up to examine the issue had not found support during the discussions, and the representatives of Cuba and Pakistan had spoken against this suggestion. The CONTRACTING PARTIES, therefore, should give a decision in accordance with paragraph 2 of Article XXIII at the present meeting. The Czechoslovakian representative had posed the question of whether or not such regulations conform to the provisions of Article I. The Chairman, however, was of the opinion that the question was not appropriately put because the United States Government had defended its actions under Articles XX and XXI which embodied exceptions to the general rule contained in Article I. The question should be put as expressed in the Agenda item, i.e. whether the Government of the United States had failed to carry out its obligations under the Agreement through its administration of the issue of export licences.

A vote was put by roll-call, as requested by the representative of Czechoslovakia, with the following results:

1 affirmative:	17 Negatives:	3 Abstentions:	2 Absent:
Czechoslovakia	Australia	India	Burma
	Belgium	Lebanon	Luxembourg
	Brazil	Syria	
	Canada		
	Ceylon		
	Chile		
	China		
	Cuba		
	France		
	Netherlands		
	New Zealand		
	Norway		
	Pakistan		
	S. Rhodesia		
	South Africa		
	United Kingdom		
	United States		

Mr. HASNIE (Pakistan) explained his vote by saying that it was necessary for him to vote against the charge because this was not proved by factual evidence, and according to the principles of common law innocence would have to be presumed unless it was proved otherwise.

Mr. AUGENTHALER (Czechoslovakia) stated on behalf of his Government that it could not consider that the CONTRACTING PARTIES had made a legally valid decision or correct interpretation of the General Agreement. In consequence, his Government would regard itself free to take any steps necessary to protect its national interests. He enquired whether the decision could not be communicated to all members of the Interim Commission for the International Trade Organization, so that they would be informed of the interpretation given by the CONTRACTING PARTIES of the provisions of the Havana Charter.

Mr. EVANS (United States of America) thanked the majority of the representatives on behalf of his delegation and expressed his understanding of the position of those representatives who abstained. He requested that the proceedings of this meeting be released to the press.

The CHAIRMAN said, in reply to the Czechoslovakian representative, that the summary record of this meeting would be sent, according to the usual practice, to all signatories of the Havana Final Act and to other members of the United Nations. The meeting agreed that a press release should be issued at the authorization of the Chairman.

The meeting rose at 6 p.m.