GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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16 June 1949

ORIGINAL: ENGLISH

CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Held at Hotel Verdun, Annecy,

on Thursday, 16 June 1949, at 2.30 p.m.

Chairman: Mr. G.N. PERRY (Canada)

Subjects discussed:

1. Withdrawal from the Agenda of Item 12 on the Most-Favoured-Nations Treatment for Occupied Areas.

2. Report of Working Party 3 on Consultation Procedure under Article XII (4)(a). (Continued discussion).

3. Announcements relating to Reports of Working Parties 4 and 6.

Withdrawal from the Agenda of Item 12 on the Most-Favoured-Nations Treatment for Occupied Areas (GATT/CP.3/41)

Mr. CLARK (Australia), commenting on the letter from the United States delegation withdrawing the Item, said that his delegation would have no concern over the withdrawal, had it not been for the positive views expressed in the letter. In taking note of this letter, it should therefore be clearly understood that these were the views of the United States delegation and not those of the CONTRACTING PARTIES.

Mr. SHACKLE (United Kingdom) was of the same opinion. He suggested that the CONTRACTING PARTIES take note of the withdrawal and make no comment on the substance of the letter so as to leave no room for inferences.

Mr KING (China), Mr. LAMSVELT (Netherlands) and later, Mr. MACFARLANE (Southern Rhodesia) indicated that they wished to associate themselves with the view expressed by the representatives of Australia and the United Kingdom.

Mr. WILLOUGHBY (United States) said that the document did not purport to represent the views of any but his own delegation. He inquired whether there was any objection to this restricted document being made available to the public.

Mr. CLARK (Australia) asked if this step could be deferred till a later date as he would wish to consult his Government on the question.

Mr. WILLOUGHBY (United States) explained that it had been suggested that a press release should be issued after the meeting and the request to release the document was made because it was thought advantageous to publish it at this time and because it was a restricted document. Since each delegation had the right to publish its own views whenever it liked, he could see no point in the request of the Australian representative. If the document was published, the views of other delegations could also be communicated to the public in a press release.

Mr. PHILIP (France) said he had no objection to the release of the document, but thought that, as there was a divergence of views on the substantive question, it would be better for the United States delegation to communicate the content of the letter to the public on its own authority since a release by the Secretariat would lend it an official air, in which case any opposite views would have to be equally published.

Mr. SHACKLE (United Kingdom) supported this suggestion and pointed out that it was perfectly within the right of the United States delegation to publish its own views. As for a release by the Secretariat relating the opinion of certain contracting parties, this might give the impression that the other contracting parties had no opinion on the matter.

Mr. REISMAN (Canada) said that although there could be no objection to the United States issuing to the public its own views, it might be an inopportune action when the item was still on the Agenda. The correct procedure would be for the Secretariat to announce to the public that the item had been withdrawn from the Agenda and thereafter all delegations, including that of the United States, would be free to voice whatever they might wish to address to the public on this question.

Mr. WILLOUGHBY (United States) expressed his satisfaction with the general procedure suggested by the representatives of France and the United Kingdom. As for the Canadian proposal, he would have no objection if it was understood that no substantial interval must elapse after the Secretariat announcement before his delegation could publish its views.

Mr. REISMAN (Canada) replied that the sole purpose of his suggestion was to avoid creating a precedent contrary to the principle that no delegation might express its opinion to the public while a case was still under consideration by the CONTRACTING PARTIES. He therefore would agree that although theoretically the Secretariat announcement must precede such releases, there would be no need for an interval intervening between them.

The meeting approved the withdrawal of the item from the Agenda and agreed that a short announcement be issued by the Secretariat to the press to that effect.

Report of Working Party 3 on Consultation Procedure under Article XII(4)(a) (GATT/CP.3/30) (Continued discussion).

Mr. PHILIP (France) introduced an amendment submitted by his delegation to the effect that the following two paragraphs be added to paragraph 9 of the Report:

> "The Chairman should simultaneously inform the contracting parties not invited to send representatives, of the composition, date and venue of the Committee meeting.
> On the request of any contracting party which is not a member of the Committee and which is probably seriously affected or on the request of the Committee itself, the Chairman should be authorized to send a subsequent invitation to that contracting party to join the Committee as an observer."

Mr. PHILIP explained that the amendment covered two questions. In the first place it was to make explicit what was intended in the original paragraph 9, that is to say, the principle of full information to all contracting parties as embodied in paragraph 7 (a) of the Report should apply also to matters concerning the ad hoc Committee. Secondly, it was designed to meet the situation in which the Committee, after its constitution, found another contracting party interested in the question or in which a contracting party not originally invited to the Committee, upon receipt of the notification from the Chairman, found itself interested in the matter for consultation. It was therefore proposed that the Chairman should be authorized in such circumstances to extend invitations as necessary.

Mr. WILLOUGHBY (United States) supported the proposal and suggested certain drafting changes in the English version, viz. the first paragraph to read:

> "...of the composition of the Committee, and the date and place of its meeting."

and the second paragraph to read:

> "... is likely to be seriously affected..."

Mr. LAMSVELT (Netherlands), while supporting the proposal and agreeing to drafting changes in general, suggested to substitute in the second paragraph the following words:

> "...consider itself to be seriously affected..."

Mr. SHACKLE (United Kingdom) supported the French proposal, but agreed that some drafting changes might be needed; he was not sure whether the suggestion of the Netherlands representative would change the substance of the sentence, but would subscribe to the United States suggestion.

Mr. JOHNSEN (New Zealand), while supporting the French proposal in principle, had misgivings as to the drafting of the last paragraph. He feared that it might be inferred from the language used that a contracting party professing itself to be affected, might be excluded from the Committee.

Mr. CASSIERS (Belgium) was in full agreement with the first paragraph of the amendment. As for the second paragraph, he felt that improvements could be made along the lines suggested by the representative of the Netherlands and New Zealand. The word "affected" could be substituted by the word "concerned", since it was difficult to imagine that any contracting party which was seriously affected would not be invited by the Chairman to be represented on the Committee.

Mr. SHACKLE (United Kingdom) agreed with the representative of Belgium in the use of such a word as "concerned" or "interested".

After further discussion on the text, in which Mr. LAMSVELT (Netherlands), Mr. MACFARLANE (Southern Rhodesia), Mr. CASSIERS (Belgium), Mr. REISMAN (Canada), Mr. PHILIP (France) and Mr. SHACKLE (United Kingdom) participated, the second paragraph of the proposed amendment was changed to read:

"... and which is seriously concerned..."

The first paragraph as redrafted and the second paragraph as reworded, of the French amendment to paragraph 9 of the Report, were unanimously adopted.

Mr. WILLOUGHBY (United States) proposed to add the following sentence to paragraph 14 of the Report:

> "The Chairman should accordingly be authorized, exceptionally and only if most urgent circumstances require it, to make use of the procedure outlined in this report in appropriate cases of consultation arising under provisions of Article XII other than paragraph 4(a), or under Article XIV or XV."

He explained that no new elements were introduced by this amendment, the purpose of which being merely to express more clearly what had already been said in paragraph 14. Owing to its limited terms of reference, the Working Party could not make a recommendation in such specific terms. The extended application of the procedure as proposed would go a long way to filling the serious gap in the General Agreement which, not like the ITO Charter, provided no machinery to meet emergency situations between sessions. However, application of the procedure under Article XII (4)(a) would be limited because most countries were at present applying restrictions for balance-of-payments reasons and the recourse to that procedure was not likely to be extensive. In contrast to this, paragraph 4(b) provided for consultation with contracting parties substantially intensifying such restrictions which must be a situation more frequently confronting the contracting party and calling for greater caution in the application of the procedure. He therefore agreed with the representative of the United Kingdom that the procedure proposed by the Working Party should be used only in exceptional and most urgent cases whilst ordinary cases should be considered by the CONTRACTING PARTIES themselves in session. The Committee would in any case be an ad hoc and interim instrument which would not be authorized to conclude consultations. Subject to this limitation and on this understanding, his delegation had proposed to extend the procedure to cover the cases which were likely to arise under the provisions of ArticlesXII, XIV and XV other than paragraph 4 (a) of Article XII.

Mr. PHILIP (France) said he was glad to support the proposal and suggested certain drafting improvements in the French text of the proposal.

Mr. OLDINI (Chile) said that as he had already expressed on earlier occasions he could not agree to any delegation of authority by the CONTRACTING PARTIES to a subsidiary body. He also took exception to the CONTRACTING PARTIES interpreting paragraph 14 in this extraordinary manner and considering the question of extended application of the procedure on the basis of the Working Party report, which in his view contained no concrete proposal to that effect since it had no mandate to consider any provisions other than those of paragraph 4 (a) of Article XII. Although the Working Party had attempted to by-pass the limitation by a roundabout introduction in paragraph 14 of its Report, it had refrained from making a formal proposal but had been content with a tentative suggestion. In considering the proposed procedure under paragraph 4 (a) of Article XII, it had been reasoned that the right of a contracting party to consult the CONTRACTING PARTIES on the nature of its balance-of-payments difficulties etc.., with a view to introducing new restrictions, would be impaired if mechanism for such consultations were lacking when the CONTRACTING PARTIES were not in session. Clearly, no such right would be impaired by the lack of such a procedure under paragraph 4 (b), which prescribed the prerogative of the CONTRACTING PARTIES as a whole, and was different from paragraph 4 (a) altogether. Contracting parties which had given up a part of their sovereign rights upon the acceptance of the Agreement, on the assumption that this limitation of sovereignty was strictly defined by the terms of the Agreement, were now asked to undertake the additional obligation of having to appear before a committee the composition of which was not even known to them. The idea of providing a procedure for the implementation of the provisions of paragraph 4 (b)

between sessions, being an utterly new idea, would need to be studied by a new working party to be constituted for the purpose, rather than to be decided upon by the CONTRACTING PARTIES on the basis of the incidental remarks of a working party whose mandate was unrelated to this question.

Mr. SHACKLE (United Kingdom) felt that the significance of the proposal which was merely intended to fill the gaps in the provisions of Articles XII, XIV and XV in emergency circumstances, should not be magnified beyond its true proportions. The purpose of the amendment was no more than to enable the Chairman to appoint a committee when necessary, in order to avoid the necessity of calling a special session. He would assure those against the amendment that the powers of the Committee would be very limited, as indeed, it would not even be empowered to conclude consultations. As for any decision, this would in any case have to be made by the CONTRACTING PARTIES in session. If there had been any dangers in such delegation of functions, the French proposal considered earlier at the meeting would serve to mitigate them. As regards the question of the competence of Working Party 3 in recommending procedures under provisions other than those of paragraph 4 (a), he would agree with the representative of Chile in his contention, but the document being now before the CONTRACTING PARTIES, there was nothing that would preclude the latter from making any definite recommendations to themselves. In conclusion, Mr. SHACKLE said he would support the United States proposal because to restrict the application of such procedures to exceptional and urgent cases would save the contracting parties from being overburdened with frequent inter-session meetings.

Mr. PHILIP (France) said he was surprised to hear the representative of Chile refer repeatedly to national sovereignty in the discussion as if he believed that a country could do whatever it liked under the Agreement. The General Agreement required no contracting party to give up its sovereignty but had provided for the exercise by participating countries of a joint limited sovereignty. There was no question of sacrifice

on the part of the contracting parties, but each agreed to restrict its actions for the common weal and interests. The practical procedure proposed was merely to enable the continuing operation of the General Agreement and to help avoiding unnecessary loss of time. In studying the United States amendment, one should not lose sight of the French amendment which ensured the fullest knowledge and information for all contracting parties, and this should have adequately reassured the representative of Chile. There was therefore no reason why the procedure to be adopted under paragraph 4 (a) of Article XII should not be equally applied under other similar provisions of the Agreement. He hoped that the Chilean representative would be able to accept the amendment.

Mr. CLARK (Australia) pointed out that the proposed procedure under paragraph 4 (a) of Article XII had been very carefully considered which gave the precise circumstances in which an ad hoc Committee could be set up. The new proposal for the procedure to be applied under paragraph 4 (b) was not and could not be provided with specific conditions. To empower the Chairman to appoint a committee upon the receipt of a request without previous consideration of the matter by the CONTRACTING PARTIES would be tantamount to giving a blank authorization to the Committee in advance. In the belief that the CONTRACTING PARTIES should give consideration to a request before referring it to a subsidiary body, he would agree with the representative of Chile that the proposal was entirely unacceptable.

Mr. AUGENTHALER (Czechoslovakia) felt that such a procedure was necessary under paragraph 4 (a) of Article XII because prior consultation was required under that paragtaph. There was no such provision in Article XIV, except perhaps for paragraph 1 (g) and in that case, consultation would not need to occur until March 1952. Nor was such consultation provided for in Article XV, unless it were in paragraph 5,

and in such a case, no question of prior or post approval was involved. Therefore he could see no reason why such a procedure should be provided at the present stage. Any consultation which might be necessary in exceptional circumstances could be carried out through diplomatic channels, and the institution of a committee for which there was no provision in the Agreement must be regarded as an extension of the obligations of the contracting parties to which the Czechoslovakian Government could not but strongly object.

Mr. JOHNSEN (New Zealand) was glad to note that the proposal put forward by the United States representative and supported by the United Kingdom representative emphasized that the procedure would be applied only in exceptional and urgent cases. This was desirable because the contracting parties appointed to such a committee would have to send experts to the meeting and these would not be easily available while there were such a multitude of international conferences as there were to-day. The Committee, in order to be a representative sample of the contracting parties, would have to draw its members from countries in different geographic areas and this would give rise to considerable difficulties in arranging transport for experts supplied at short notice. However, it would be too extensive a responsibility to be put on the Chairman if he were required to decide which cases arising under paragraph 4 (b) were exceptional and urgent and called for emergency action. The decision should more appropriately be made by the CONTRACTING PARTIES themselves. He would therefore suggest that the following should be added to the paragraph proposed by the representative of the United States:

> "Except where the request for consultation in accordance with the provisions of the Agreement is made by a contracting party applying the restrictions, no consultation shall be initiated by the Chairman unless he has first communicated with the contracting parties and has obtained their agreement to such consultation."

Mr. REISMAN (Canada) felt there had been a consensus of opinions that there might be gaps in the provisions of the Agreement

which should be filled by a procedure providing for joint action, the question being only one of choice between the different ways of fulfilling this requirement. Certain representatives were opposed to the procedure suggested, but had presented no alternatives. This would give the wrong impression that these contracting parties were not anxious to provide for the machinery which might be necessary to implement these provisions. In the absence of such a procedure, the Chairman would have to call a special session for consultation unless it could be postponed till the following regular session. The latter method was impracticable in dealing with urgent matters and the former would be uneconomical. As for the contention of the representative of Australia that the Chairman would thus be given a blank authority, he would point out that the Committee would be entrusted with very limited functions and would not even be empowered to conclude consultations. As regards questions arising under Articles XIV and XV which could not be acted upon until the CONTRACTING PARTIES had decided to take action, these were clearly not matters appropriate for consultation in any case. In conclusion, Mr. REISMAN stressed the view that the proposed procedure had no other purpose than to make the Agreement workable between sessions as well as during sessions.

Mr. CLARK (Australia), referring to the remarks of the representative of Canada, said that he saw no point in appointing a committee to deal with hypothetic cases.

It was agreed to adjourn discussion on this item until the next meeting.

Announcements relating to Reports of Working Parties 4 and 6.

The following announcements were made by the Chairman:

(a) At the 13th meeting of the present session on 18th May, the CONTRACTING PARTIES adopted the report of Working Party 4 on the South Africa - Southern Rhodesia Customs Union. During the discussion, the

representative of India stated that he had not had sufficient time for consultation with his Government and that he might wish to state the view of his Government at a later meeting. The leader of the Indian delegation has now advised that his delegation withdraws its reservation to the Working Party.

(b) At the 14th meeting of the present session on 19th May, the CONTRACTING PARTIES approved the report of Working Party 6 on the revision of the Schedule of Australia. During the discussion, the representative of India stated that he was awaiting definite instructions from his Government and that he might wish to revert to this question at a later meeting. The leader of the Indian delegation has now advised that his delegation withdraws its reservation to the Working Party's report.

Mr. COELHO (India) confirmed the statements and thanked the CONTRACTING PARTIES for their attention.

The meeting rose at 6 p.m.