

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

ACCORD GENERAL SUR
LES TARIFS DOUANIERS
ET LE COMMERCE

RESTRICTED
LIMITED B

GATT/CP.3/SR.27
17 June 1949

ORIGINAL: ENGLISH

CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE TWENTY-SEVENTH MEETING

Held at Hotel Verdun, Annecy,

on Friday, 17 June 1949, at 2:30 p.m.

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

Subjects discussed:

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

Mr. CASSIERS (Belgium) recalled the discussion at the preceding meeting at which the need had been recognized for a working group or committee to conduct consultations between sessions when urgent cases arose. Such a procedure would not involve any delegation of powers. To clear away any misunderstanding, he would propose adding the following sentence to the United States amendment:

"In such a case, however, the ad hoc Committee would not be authorized to take any decision in respect of the action to be taken by the CONTRACTING PARTIES as a consequence of the consultations initiated."

Mr. CASSIERS explained that this would help to define the status and functions of the Committee. If a decision indeed needed to be made before an ordinary session, the existence of such a Committee would provide the advantage that a special session would not be called until the preliminary stages of consultation and studies had been carried out and a stage had been reached where a full session of the Contracting Parties could take prompt decision. The Committee was not intended to take any decision on behalf of the CONTRACTING PARTIES, but would merely

serve to fill the gaps in the Agreement in cases of emergency.

Mr. OLDINI (Chile) felt that proposal of extending the scope of the procedure had not been supported by weighty arguments. A means for solving practical problems should not be sought outside the purview of the Agreement, and if there were any gaps in the Agreement, they should not be filled by arbitrary procedural provisions; the provision for anything which had not been foreseen in the Agreement would constitute an amendment to the Agreement. The strict observance of legality and sovereignty was of vital concern to the small nations, which had nothing apart from this for their protection, and which could not watch without concern their rights being infringed by excessive requirements. As for the exercise of a joint limited sovereignty referred to by the representative of France, it could not be carried out without safeguards in the interest of the smaller nations and should be in strict accordance with the provisions of the Agreement; there could be no legitimate joint action outside the scope of the Agreement contrary to the will of some contracting parties. The original proposal together with the additional sentence proposed by the representative of New Zealand, being both in need of further careful study, should be referred to a working party. With reference to the proceedings of the 25th meeting, Mr. OLDINI concluded that an incomplete solution might be reached by a majority decision, but the principle of balanced representations embodied in Article 78 of the Havana Charter would never be attained.

Mr. AUGENTHALER (Czechoslovakia) maintained that any gaps that might be found in the Agreement could not be filled by the provision for a procedure; for it would need an amendment to supplement what was wanting in an international treaty. It was a well established principle in international law that the interpretation of any intended agreement, if it involved obligation, must be done in the most restrictive way. The proposed committee, if established against the will of some contracting

parties, would have no right to compel the appearance before it of those who did not accept its establishment. Mr. AUGENTHALER concluded by commenting on the remarks by the representative of Canada and suggested that the bona fide intentions of a contracting party must be presumed unless proven otherwise.

Mr. SHACKLE (United Kingdom) thought that in cases like those arising under paragraphs 4 (a) and 4 (c) of Article XII where an individual contracting party should or might consult the CONTRACTING PARTIES when a certain action was contemplated, the procedure recommended by the Working Party would appropriately apply. But in cases where the CONTRACTING PARTIES were to take initiative in instituting consultations, such as cases covered by paragraphs 4 (b) and 5 of Article XII and paragraph 1 (h) of Article XIV, such a procedure would not seem to be appropriate. In such cases, the right of initiative of the CONTRACTING PARTIES should not be delegated and the CONTRACTING PARTIES ought to consider each case before referring it to a subsidiary body. Mr. SHACKLE felt that the proposal by the representative of New Zealand would cover the case and should be given careful consideration. For this purpose, he would support the representative of Chile in his proposal that the matter be referred to Working Party 3, subject to any changes in its composition as the Chairman might feel to be necessary, or a similar Working Party.

Mr. KING (China) referred to the legal point raised by the representative of Chile that there could be no basis under the provisions of paragraph 4 (a) of Article XII for the establishment of such ad hoc committees or for their inviting contracting parties to partake in consultation, and said that he felt the Chiloan representative had been labouring under a misapprehension. The false supposition was that a contracting party which was most directly affected might not be invited to partake in the work of the ad hoc Committee, which in his opinion was

inconceivable. Since the party was one of the hosts extending such invitations, the problems connected with the delegation of functions must be more apparent than real. The Chilean representative should therefore have no difficulty in accepting the proposal especially as it was intended to be merely an interim arrangement involving no decision to be taken by any but the CONTRACTING PARTIES themselves and providing for practical procedures to be resorted to only in exceptional and urgent cases. On the outstanding question of who was to decide upon the urgency and exceptionality of each case, Mr. King would be agreeable to either suggestion but supported the proposal that the whole of paragraph 14 and the proposed amendments be referred to Working Party 3 for further study.

Mr. LAMSVELT (Netherlands) said he would have no difficulty in accepting the United States proposal, but he would prefer to see the proposal referred to Working Party 3.

Mr. WILLOUGHBY (United States) pointed out that a practical procedural proposal was made by his delegation merely for the purpose of filling a lacuna. Since there was a divergence in opinion on its merits, it might be studied further by the Working Party. The Working Party, however, should be requested to complete the study as soon as possible.

Mr. LECUYER (France) indicated that his delegation was also in favour of the amendments being referred to the Working Party for further study. As regards the amendment of the Belgian delegation, though its substance was acceptable, some drafting changes were still called for.

Mr. REISMAN (Canada) in giving his support for the proposal to refer the question to the Working Party, expressed the hope that the study would be completed as promptly as possible and that the CONTRACTING PARTIES would dispose of the remaining part of the Report without awaiting the

outcome of the Working Party's deliberations on this point.

It was agreed that the whole question be referred to Working Party 3 for further study and recommendations. The CHAIRMAN introduced the following draft terms of reference:

"In the light of the discussion in the CONTRACTING PARTIES, to examine the extent to which the procedure proposed in GATT/CP.3/30 should also be used in appropriate cases arising under provisions of GATT other than Article XII (4) (a); and to make recommendations to the CONTRACTING PARTIES."

Mr. HEWITT (Australia) made certain general comments on the proposed terms of reference. In the first place, he felt that the CONTRACTING PARTIES should not be influenced in considering procedures between sessions in these cases by the recommendation regarding the application of the procedure under paragraph 4(a), which, he pointed out, had passed the Working Party by a very narrow margin of majority. That report of the Working Party should not prejudice consideration of the application of procedures under other provisions, which should be examined and discussed objectively. The proposed terms of reference which presupposed the applicability of the procedures adopted for Article XII 4 (a) and which would confine the examination to the degree of applicability of those procedures, was therefore inappropriately worded. He also stated that though ways and means should always be looked for at this stage of the session to expedite the work, yet if there was substantial disagreement on an important question of this nature there should be adequate time for its proper consideration and there should not be an attempt to dispose of it as if it were a matter of little importance. As the draft terms of reference now stood, it would be presumed that the question of procedure in between sessions under all provisions of the General Agreement other than Article XII (4) (a) was to be reviewed, among which not the least important would be those under Article XVIII of the Agreement.

Mr. WILLOUGHBY (United States) thought, however, that nothing was really at stake if the proposed terms of reference were adopted. The wording was quite unprejudicial; the Working Party would be perfectly free under these terms of reference to recommend that the procedure should not be used at all.

Mr. AUGENTHALER (Czechoslovakia) proposed the following amendment with a view to limiting explicitly the reference to certain Articles:

".... to examine if and to what extent procedures analogous to those proposed in GATT/CP.3/30 should also be used in appropriate cases arising under similar provisions...."

Mr. SHACKLE (United Kingdom) thought that different procedures should apply under the different groups of provisions in the Agreement. In the present case, consideration and reference should be limited to the group of Articles generally known as the balance-of-payments group. The terms of reference would be more definite if they referred either specifically to "Articles XII, XIV and XV" or alternatively to "those Articles referred to in paragraph 14 of the Report".

Mr. OLDINI (Chile) and Mr. REISMAN (Canada) both supported limiting the reference to the group of Articles, but the latter felt that Article XIII also belonged to the group and should be included.

Mr. CASSIERS (Belgium) was in agreement with this suggestion and thought that the terms of reference should simply read:

"... in appropriate cases arising under the provisions of Articles XII to XV..."

Mr. LAMSVELT (Netherlands) supported the suggestion.

Mr. HEWITT (Australia) said that though he was opposed to any mention of the Working Party report in the terms of reference which would impair objectivity, he would have no special objection to the proposal put forward by the representatives of Czechoslovakia and the

United Kingdom. Moreover, as the United States supported the broad reference of procedure between sessions under all other provisions of the Agreement, he wished to point out that he had not opposed it. His criticism was of the introduction of the reference to procedures under Article XII 4 (a) which would impair an objective consideration of the problem.

Mr. AUGENTHALER (Czechoslovakia) accepted Mr. SHACKLE's amendment to his proposal, but suggested that Article XVI might also be included with advantage.

Mr. JOHNSEN (New Zealand), in giving his support to the proposal of the United Kingdom representative, felt that a word like "could" or "might" would be less prejudicial than the word "should".

Mr. CASSIERS (Belgium) agreed with the representative of Canada that Article XIII could be included in the terms of reference and felt in common with the representative of Australia that paragraph 14 of the Report should not be referred to and the terms should therefore read:

"... the provisions of Articles XII to XV other than paragraph 4 (a) of Article XII..."

Mr. SHACKLE (United Kingdom) suggested the words "may also be utilized in..." to meet the point raised by the representative of New Zealand.

Mr. HEWITT (Australia) enquired whether the procedure which had been laid down at the last session between the CONTRACTING PARTIES and the Fund and embodied in an exchange of letters, would be open to reconsideration by the Working Party if Article XV was included in the terms of reference.

Mr. SAAD (Observer for the International Monetary Fund), at the invitation of the Chairman, advised the meeting that Article XV, which

provided for consultation between the CONTRACTING PARTIES and the Fund, should not be included for consideration by the Working Party, which was to deal with procedures for consultation between the CONTRACTING PARTIES and one or more of the contracting parties. The exchange of letters which provided for consultations of the former category had only taken place a few weeks ago, and it would not be advisable at this stage to reopen the question, since to do so would involve further consultation with the Board of Directors of the Fund. Furthermore, it was not envisaged in the Working Party Report that the relations between the CONTRACTING PARTIES and the Fund would be affected.

Mr. HEWITT (Australia) then asked whether the contracting parties were at present concerned only with the procedures of consultation between the CONTRACTING PARTIES and one or more contracting parties. If so, he wished to enquire which was the paragraph in Article XV which provided for such consultation. As a matter of information, he would also like to know the kind of consultation contemplated by those who proposed the inclusion of Article XV in the terms of reference.

Mr. WILLOUGHBY (United States) agreed both to the amendment to include Article XV and the points raised by the observer for the International Monetary Fund. To meet these points, he would suggest altering the terms of reference to read:

"... in appropriate cases of consultation between the CONTRACTING PARTIES and one or more contracting parties arising under the provisions of ..."

Mr. HEWITT (Australia) inquired again which provisions of Article XV covered consultation of this nature.

In reply, Mr. SHACKLE (United Kingdom) suggested that paragraph 5 and perhaps also paragraph 2 might involve such consultation.

Mr. JOHNSON (New Zealand) felt that there was no such consultation

envisaged in Article XV, which provided exclusively for consultation with the Fund.

Mr. REISMAN (Canada) supported the view of the representative of the United Kingdom that paragraph 5 of Article XV might under certain circumstances involve consultation between the CONTRACTING PARTIES and contracting parties.

The CHAIRMAN, speaking as Chairman of Working Party 3, explained that consultations between the CONTRACTING PARTIES and a contracting party under a special exchange agreement was under the purview of Article XV. However, the Special Exchange Committee had decided to postpone the consideration of the procedural arrangements relating to these consultations.

Mr. HEWITT (Australia) drew attention to the course of the discussion at the present meeting and particularly to the starting point, that consideration would be confined to exceptional and most urgent cases for consultation. All had agreed that Article XV did not refer to any consultation between the CONTRACTING PARTIES and a contracting party with the possible exception of its paragraph 5. The representative of the Fund had expressed his disagreement with the final sentence of paragraph 14 of the Report. In consequence, the meeting had been on the verge of agreeing to including Article XV in the terms of reference in the belief that in doing so no other provisions than those of paragraph 5 were involved. At this point, it had now been revealed that certain representatives intended to cover under the terms of reference the discussions under special exchange agreements, documents which were certainly referred to in the Article, but which had previously not been regarded as being in the terms of reference. He would therefore wish to have a clarification as to what was really being considered and to be referred to the Working Party.

Mr. JOHNSEN (New Zealand) said that consultations under special exchange agreements being of an entirely different nature from consultations envisaged in the present discussion, should be separately discussed in an appropriate report and should not be confused with consultations referred to in Articles XII and XIV.

Mr. OLDINI (Chile) agreed that it would be logical to leave out Article XV. The CONTRACTING PARTIES could consider what steps ought to be taken when the report on special exchange agreements was available. He therefore proposed the deletion of Article XV from the terms of reference on the ground that the article did not provide for consultations between the CONTRACTING PARTIES and contracting parties.

Mr. REISMAN (Canada) asked the representatives of Australia and Czechoslovakia whether they also considered that paragraph 5 of Article XV did not provide for consultations which might be needed by the CONTRACTING PARTIES in formulating their report to the Fund.

Mr. OLDINI (Chile) replied that whether consultations would need to take place would depend on the circumstances. The present terms of reference were intended to provide for defined cases and not hypothetical cases.

Mr. HEWITT (Australia) thought that confused terms of reference which were not clearly understood by this meeting would only serve to burden the Working Party with the impossible task of interpretation. It was clear that the last sentence in paragraph 14 of the Report was not acceptable to the meeting in so far as it referred to consultation with the Fund. He saw no great purpose in including paragraph 5 of Article XV in the terms of reference but if it should be examined in greater detail he would not object to that being specified in the terms of reference.

Mr. SAAD (observer for the International Monetary Fund) pointed out that the amendment proposed by the representative of the United States had definitely ruled out the inclusion of Article XV because even in paragraph 5 there was no explicit reference to consultations to be taking place between the CONTRACTING PARTIES and contracting parties before a report could be submitted to the Fund. The other case of consultation under Article XV would come appropriately under special exchange agreements. As for discussion on the exchange agreements, this had been postponed till next year and he would have to refer to Washington if any change in the procedure were contemplated.

Mr. SHACKLE (United Kingdom) agreed that Article XV should be omitted on the ground that even under paragraph 5 of that Article the question would not arise until the CONTRACTING PARTIES had considered that certain conditions obtained; it was therefore implied that the initiative rested with the CONTRACTING PARTIES.

Mr. REISMAN (Canada) said that since no matters of urgency would arise under paragraph 5 of Article XV, he would not insist on his opposition to the deletion.

The following terms of reference were unanimously approved:

"In the light of the discussion in the CONTRACTING PARTIES, to examine if and to what extent a procedure analogous to that proposed in GATT/CP.3/30 may also be utilised in appropriate cases arising under the provisions of Articles XII to XIV, inclusive, other than Article XII (4) (a); and to make a report to the CONTRACTING PARTIES."

Mr. AUGENTHALER (Czechoslovakia) drew attention to the fact that the non-discriminatory administration of export restrictions was referred to in Article XIII, an Article covered by the terms of reference of the Working Party.

The meeting also agreed that the question discussed at the meeting should be referred to Working Party 3.

The meeting rose at 5.45 p.m.

