

GENERAL AGREEMENT  
ON TARIFFS AND  
TRADE

ACCORD GENERAL SUR  
LES TARIFS DOUANIERS  
ET LE COMMERCE

RESTRICTED  
LIMITED B  
GATT/CP.3/SR.40  
11 August 1949  
ORIGINAL: ENGLISH

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CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE FORTIETH MEETING

Held at the Hotel Verdun, Annecy,  
on Thursday, 11 August 1949 at 10 a.m.

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

- Subjects discussed:
1. Continuation of the Fourth Report of Working Party 2.  
Section H: Procedures Between Sessions for Existing and New Measures
  2. Report of Working Party 5 on Rectifications. (GATT/CP.3/66).
  3. Position of Section B (Newfoundland) of Schedule XIX. (GATT/CP.3/75).

1. Continuation of the Fourth Report of Working Party 2. (GATT/CP.3/60 and Corr.1). Section H: Procedures Between Sessions for Existing and New Measures.

Mr. HEWITT (Australia) pointed out that when Article XVIII had been drafted in Havana, it had been drafted for a permanent organization with a continuing administration. The Working Party had attempted to find some means of administering the Article under a situation of temporary arrangements and irregular sessions.

He explained the three main recommendations contained in paragraph 96 (i), (ii) and (vi).

The CHAIRMAN said that yesterday's meeting had shown the value of a thorough examination by the Working Party. He proposed taking up the summary contained in paragraph 96 point by point.

Sir Oliver GOONETILLEKE (Ceylon) paid tribute to the thoroughness of the Working Party in drawing up the information required from governments notifying measures and incorporating it in the questionnaire contained in Annex C. He also praised the thoroughness it had shown in its work in general and the patience of the Chairman and members of the Committee with his own country's problem in particular. He wondered if it would not be desirable for the proposed Inter-sessional Committee to examine also in detail the proposals contained in this report as there might be portions of it which could be improved. He thought the members of the Inter-sessional Committee should be nominated in such a way as to take advantage of the experience gained during the Working Party at this meeting. It would be unfortunate if an entirely new set of people took up this problem now. His delegation had originally envisaged a much wider scope for the committee. However, he now agreed that in the early stages they could only build up procedures and a volume of case law.

The CHAIRMAN said that he was glad to hear Sir Oliver Goonetilleke's remarks about the excellence of the Working Party's work, an opinion which he shared but which was the more valuable coming from Sir Oliver, who had had first hand contact with the Working Party.

He thought Sir Oliver's suggestion a very useful one; that the terms of reference of the committee be widened so as to include keeping the procedure recommended in the report, including the questionnaire, under review and making such recommendations for modifications of the procedure as appeared desirable in the light of this review to the next session of the Contracting Parties. The question of the terms of reference would be taken up under paragraph (vi).

Paragraph 96 (i), (ii), (iii), (iv) and (v) were approved.

Paragraph 96 (vi), together with the proposal by Ceylon for widening the terms of reference was approved.

Paragraph (vii) was approved.

The CHAIRMAN said that he had given much thought to the nomination of the committee and felt that the suggestion by Ceylon would be the most useful for the purpose of assuring continuity and experience. He therefore proposed as members of the Inter-sessional Committee, Australia, Canada, Chile, Cuba, France, India, Netherlands, Syria, United Kingdom and United States, the countries which had been members of Working Party 2 at the Third Session, with Mr. C.L. Hewitt (Australia) as Chairman.

Mr. RODRIGUEZ (Brazil) agreed with the composition but thought it possible that some of the countries nominated might not always be able to attend. He, therefore, suggested that substitutes be nominated, bearing in mind the need to retain the representative character of the committee.

Mr. EVANS (United States of America) supported this suggestion and proposed that the Chairman of the CONTRACTING PARTIES be authorized to make replacements for any countries unable to attend.

Mr. THOMMESSEN (Norway) considered that the chairman of the committee should also be authorized to invite representatives of additional countries to become members of the committee if it appeared desirable in order to make it more representative. He pointed out that, for instance, none of the northern countries were represented.

The CHAIRMAN formulated the Brazilian proposal, as supported by the United States, as follows:

"If any one or more of the countries nominated find it impossible to participate in any meeting of the committee, the Chairman of the CONTRACTING PARTIES shall be authorized to nominate another country or countries to take its or their place. In so doing, he shall bear in mind the need of preserving the representative character of the committee."

The Brazilian proposal, thus formulated, was approved.

With regard to the suggestion of Mr. Thommessen (Norway), the CHAIRMAN proposed that Norway be added to the members of the Working Party.

Mr. REISMAN (Canada) supported the Chairman's proposal regarding the addition of Norway. He wished to confirm, however, that this committee which represented only the contracting parties as at present composed, was appointed only until the next session. With the accession of new contracting parties it might be necessary to alter the membership.

The CHAIRMAN said that was correct.

The composition of the committee was approved.

The CHAIRMAN congratulated Mr. Hewitt and the other members of the Working Party for the confidence shown in them.

Section I: Procedures under Article XVIII with respect to Measures permitted by the Protocol of Provisional Application and the Annecy Protocol of Accession.

Mr. HEWITT (Australia) summarized this section.

Mr. SHACKLE (United Kingdom) said that the conclusions of this section were agreeable to his delegation but there was one lacuna at the end of paragraph 99, although not the fault of the Working Party. This was the sentence dealing with "existing" legislation. He considered it clear that this meant legislation existing at the date of the Protocol rather than the date of its signature by different governments. This was the intention of the drafters at Geneva and the corresponding provision of the Annecy Protocol of Accession made this construction clear in the case of acceding governments. He thought it was desirable to settle this problem at the present time.

For the special case of Pakistan, a special solution might be found but the general principle should be settled now.

The CHAIRMAN said that there had been a full discussion of this question at the previous meeting and that it was no fault of the Working Party that this problem had not been decided then. He, as Chairman, had not given a ruling at that time because he thought it unlikely that the question would ever arise and that if it should arise, it could be then considered. However, as it had again been raised by the United Kingdom and was obviously important to them that

some decision should be made, he would, therefore, make a ruling. "Existing legislation" referred to the date of October 30th, 1947. This ruling was based on the arguments presented by the United Kingdom delegate and also on the text of the Protocol of Provisional Application itself which stated:

Paragraph 1 (b)

"Part II of that Agreement to the fullest extent not inconsistent with existing legislation."

and in the last paragraph states:

"Done at Geneva, in a single copy, in the English and French languages, both texts authentic, this thirtieth day of October, one thousand nine hundred and forty-seven."

The CHAIRMAN was confident that this interpretation would be approved by the majority of the contracting parties. He felt, however, that particular attention should be given to the special and exceptional circumstances of Pakistan, i.e. those attendant upon the coming into existence of a new state. Pakistan became a state on August 14th, 1947 and when the Protocol was opened for signature, there was no Pakistan legislation as such. The Pakistan Parliament did not meet until 1948 at which time it proceeded to enact legislation to replace the legislation previously applicable to the whole continent of India. This in some cases differed from the previous existing legislation. He felt that if any case ever arose out of these circumstances, the contracting parties should give special attention and sympathetic consideration to such a case.

Mr. BURR (Chile) said that his delegation had already stated its opinion that existing legislation referred to that existing on the date of signature by a particular country. He maintained this point of view.

Mr. AZIZ AHMAD (Pakistan) said that the Chairman's ruling with its provision for sympathetic consideration for any case affecting Pakistan was acceptable to his delegation.

The CHAIRMAN stated that the ruling would be recorded in the record of the meeting, together with the reservation of Chile to that ruling.

Mr. EVANS (United States of America) suggested the addition of the words "without departing from the intent of a measure embodied in the legislation" at the end of the second sentence. He thought this would cover the case of legislation which was mandatory in intent but couched in permissive terms.

Mr. RODRIGUEZ (Brazil) inquired whether the proposed United States wording would cover the case of specific measures taken by the executive power in pursuance of a general authorization of the legislature.

The CHAIRMAN felt that this interpretation would be contrary to the conclusion reached by the Working Party as the sentence states: "imposes on the executive authority requirements which cannot be modified by executive action". He inquired whether the United States position could be met by the insertion of the following words in the eighth line of the paragraph: "by its terms or by expressed intent"; the sentence would therefore read: "The Working Party agreed that a measure is so permitted provided that the legislation on which it is based is, by its terms or by expressed intent, of a mandatory character, that is, it imposes on the executive authority requirements which cannot be modified by executive action."

Mr. EVANS (United States of America) agreed to the Chairman's wording and withdrew his own suggestion.

Mr. RODRIGUEZ (Brazil) wished to explain his position. He was not against the principle limiting the ruling to mandatory legislation but he thought the ruling should also provide for the type of case which might arise in some countries where the legislation instead of specifying the detailed measures to be carried out by the executive in certain circumstances, gave general instructions which the executive was to elaborate. He wished a ruling that such regulations drawn up by the executive under those circumstances would also be regarded as mandatory legislation.

The CHAIRMAN thought the position was quite clear and that no further interpretation was necessary at this stage. The proposed amendment by the United States only broadened the concept of mandatory legislation to include legislation which was mandatory by its expressed intent. Any further interpretation would depend on the particular cases.

The CHAIRMAN's wording was agreed.

Paragraph 102-(1), (2), (3) was approved.

Mr. RODRIGUEZ (Brazil) said that the examination of measures notified under Article XVIII had been the first opportunity of examining specific measures in relation to the provisions of the Agreement. There were, however, other measures introduced by individual contracting parties from time to time to which other provisions of the General Agreement were relevant. There had hitherto been no opportunity to examine or evaluate these in the light of the General Agreement. He suggested that the Secretariat be asked to collect information on such measures and circulate this information with such commentary as might be appropriate.

The CHAIRMAN thought this was a very useful suggestion and that the Secretariat should be asked to do as much as possible within its resources.

The report was approved as a whole with the amendments to paragraphs 96 and 99.

2. Report of Working Party 5 on Rectifications. (GATT/CP.3/66).

Mr. JARDINE (United Kingdom) introduced the report.

The CHAIRMAN expressed the gratitude of the Contracting Parties to Mr. Jardine and the members of the Working Party. He stated that the Protocol of Rectifications as well as the Protocol replacing Schedule 1 would be open for signature on the following day and that it was important that it should be signed at the earliest possible time.

The report of the Working Party was approved.

3. Position of Section B (Newfoundland) of Schedule XIX.  
(GATT/CP.3/75).

The CHAIRMAN pointed out that the declaration on page 2 stating that Section B would no longer form a part of Schedule XIX required approval.

Mr. HOLLIS (United States of America) was in favour of adopting this declaration. He added that only a few months had elapsed since the change in the status of Newfoundland and it had not yet been possible to evaluate the full effects of this change. If any question of adjustment should later arise, they would expect to take it up with the appropriate government.

The declaration was adopted unanimously.

The meeting adjourned at 12.50 a.m.