RESTRICTED

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8 March 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

FIRST SESSION OF CONTRACTING PARTIES

SUMMARY RECORD OF THE FOURTH MEETING

Held at the Capitol, Havana, Cuba, Saturday, 6 March 1948, 2.30 p.m.

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

1. RULE 9 OF DRAFT RULES OF PROCEDURE (GATT/1/1 Annexure 3)

Rule 9 was adopted with the understanding that the provisions would apply during the interval until the next Session, at which time permanent Rules of Procedure would be adopted

2. AMENDMENT TO PARAGRAPH 2 (a) OF ARTICLE XXIX (GATT/1/11 paragraph 5, page 3)

The CHAIRMAN stated that previous discussions indicated substantial agreement for the deletion of the provision that Contracting Parties had the right to lodge complaints against automatic supersession within 60 days of the closing of the Havana Conference; the representatives of Belgium and the Netherlands had made reservations and the representative of the United Kingdom had spoken in opposition to the proposal.

Mr. SHACKLE (United Kingdom) said that his previous statement continued in effect; he was awaiting instructions. His delegation fully understood the opposite point of view, particularly as expressed by the representatives of France and Cuba, but he did not want, by agreeing to a complete supersession, to place his government in the position of having to withdraw from the General Agreement.

Mr. HOLLOWAY (Union of South Africa) said that the difficulties of parliamentary procedure raised by those who wished to waive the 60 day rule were not substantial objections. The whole text with the alternatives would be placed before his parliament, but it was essential to have the 60 day rule so that the General Agreement would not have to be waived entirely.

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Those who spoke for the 60 day period were prepared to examine any individual points with which a delegation might have difficulty if the rule applied. It was simpler to ask for instructions on a specific point but too difficult to place the whole matter before a government at once, which also would fail of the main objective of the Session, i.e., to make only essential amendments.

Mr. LEDDY (United States of America) said the real problem was deciding when the provisions of the Charter would prevail. Article 17 required in effect that Members of the ITO become parties to GATT. Once the Final Act was signed, there was no possibility of re-opening the Charter, and it was therefore necessary to know beforehand the contents of the Charter. A way might be found to take care of parliamentary procedures, but some way should be found to get as firm commitment as possible regarding supersession.

Mr. ROYER((France) said that the fundamental point to France was Article 23. If some delegations not party to GATT found the matter of supersession difficult, it might be best to open a protocol for signature, according to which those in position would waiver their right to the 60 day period. If all Contracting Parties signed, the legal point would be clear, and the situation of non-Contracting Parties facing legal difficulties would be safeguarded since they would not have to commit themselves immediately. But all Contracting Parties should sign before the end of the Havana Conference.

Mr. NASH (New Zealand) said that after the Final Act was signed there would be three categories of countries: (1) signatories of the Protocol of Provisional Application of the General Agreement; (2) the balance of Geneva non-Contracting Parties who had the right up to 30 June to apply 2 (a) of Article XXIX provided they became Contracting Parties; and (3) other countries which participated in the Havana Conference. The 60 day procedure was a safeguard to be used only if the Havana Conference had digressed beyond Geneva intentions, but now all were to agree to the Final Act and all should be on the same footing; the Charter should be agreed to and the 60 day rule should be waived.

Mr. HAKIM (Lebanon) agreed fully with the representative of New Zealand and added that his delegation was prepared to renounce the right to object within 60 days.

Mr. BAYER (Czechoslovakia) stated that his delegation attended the meeting of Contracting Parties as participating observers without instructions

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on the main problems, which appeared to be: (1) supersession; (2) amendments to the General Agreement; (3) waiver of the 60 day period; (4) entry into force of the new texts. The problems should be dealt with as a whole and in order to achieve unanimity, a draft solution should be submitted which could serve as a basis of agreement.

Mr. DAO (China) agreed with the representative of New Zealand that there were three groups. Certain of the Contracting Parties thought Article XXIX should apply or that the waiver should be limited to certain Articles in Part II - either course would create difficulties to the second and third groups mentioned. One of the reasons China had not been able to sign the Protocol of Provisional Application was that the 60 day rule would mean delay in participation of those who had made reservations regarding Part II. He supported the proposal of the representative of France.

The CHAIRMAN stated that if the amendment to paragraph 2 (a) of Article XXIX were adopted, the right to object within 60 days would be waived. The principle was now under discussion; the form would be taken up later. The representatives of the United Kingdom, the Union of South Africa and Czechoslovakia had stated they were awaiting instructions and could not commit their governments to the removal of that right.

Mr. FORTHOMME (Belgium), supported by the representatives of Luxembourg and the Netherlands, stated that he hoped to receive instructions soon but he would have to delay signature until they were received. He was not in a position to commit his government on any point of the paper although he could take part in the discussion and preparation of the text.

Mr. SAWWAF (Syria) said that although he agreed in principle to the waiver of the 60 day rule, he, too was not in a position to act for his government.

Mr. ADARKAR (India) said his position was similar to that of the last four speakers and suggested that the proposal of the representative of France was practical.

The position of the representatives of Ceylon, Australia and Pakistan was similar to that of the representative of Belgium.

The CHAIRMAN agreed with the remark of Mr. LEDDY (United States) that although most delegations were awaiting instructions, they might be prepared to recommend the waiver, and urged that instructions be obtained as soon as possible. The consensus was that the protocol should be signed before the signature of the Final Act and before the termination of the Havana Conference.

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There was substantial agreement in favour of removal of the right to lodge complaint within 60 days, although a number of delegations were seeking instructions. On that basis discussion would be resumed when the form of protocol was established.

Another point in the amendment was the phrase "On the day on which the Charter of the International Trade Organization enters into force." Without prejudice to later discussions regarding certain Articles of the ITO Charter, there seemed to be agreement that supersession should take place on the date the Charter entered into force. There also seemed to be no objection to the phrase "...and for such time as the Charter remains in force....", which meant that if the ITO ceased to function, the General Agreement would again go into effect. There was provision in the General Agreement for a meeting of contracting parties if such a situation occurred.

Mr. ROYER (France) thought the phrase should be deleted. If the ITO Charter ceased to function, paragraph 4 of Article XXIX would come into force.

Mr. SHACKLE (United Kingdom) asked whether all of the provisions of the Chapter on General Commercial Policy would replace Part II of the General Agreement even though there were no corresponding provisions in Part II.

The CHAIRMAN replied that in his opinion the day the Charter entered into force Part II was suspended; to make it quite clear the phrase "and for such time as the Charter remains in force" had been aded. Paragraph 3 made provision for Contracting Parties which were non-Members of the ITO.

Mr. FORTHOMME (Belgium) supported the full text. The present provisions of the General Agreement would not necessarily be revived but the phrase would provide a point of departure should the ITO Charter go out of existence.

Mr. HAKIM (Lebanon) said that the fact that there was a provision in the General Agreement covering Contracting Parties which were non-Members of the ITO indicated the necessity for provisions governing their obligations. There should be no difference between the Charter and the General Agreement; the phrase should be deleted and the substitution should be automatic.

Mr. SPEEKENBRINK (Netherlands) asked whether amendments to the Charter would automatically be incorporated in the General Agreement.

The CHAIRMAN replied that was one reason for using the word "suspended".

Mr. LEDDY (United States) felt it would be a mistake to say the Charter was incorporated into the General Agreement. The real fact was when the Charter entered into force, Part II of GATT would be suspended and Members

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would be governed by those Articles which superseded Part II. It was wise to provide for the end of ITO; there would no provision governing Contracting Parties not Members of ITO and paragraph 3 should be amended to the effect that pending amendments to the General Agreement, such Contracting Parties would be governed by Part II in the interim period. The detailed provisions of the Charter would have to be examined before a final decision; for example, the dates mentioned in Article 14 were different from those in the General Agreement.

The amendment to paragraph 2 (a) was acceptable with the deletion of the phrase "superseded by the corresponding provisions of the Charter".

Mr. GUERRA (Cuba) thought the real question was not whether the Charter would remain in force, but whether the provisions of the Havana Charter were satisfactory from the point of view of adopting them for the functioning of the General Agreement. If they were satisfactory, there was no need to worry about the future of the ITO. There would be no problem if all the draft were retained.

Mr. ADARKAR (India) thought the phrase "and for such time... remains in force" should be deleted; legislation would have been changed to accommodate the entry into force of the Charter and General Agreement, and if the words were included, an awkward situation might present itself in the future.

Mr. ROYER (France) said that if the incorporation of Article 23 were accepted, the question would not be so important; but it would be difficult to secure agreement from his government for the present provisions. It was legally correct to state that Part II should be replaced by corresponding provisions of the Charter, which would be binding also on Contracting Parties not Members of ITO. He suggested the provisions should be listed.

Mr. LEDDY (United States) replied that, assuming the case of Contracting Parties non-Members of ITO was accounted for, some provisions should be made should the Charter go out of force. If the last phrase "supersession by corresponding Articles of the Charter" remained, Articles should be specified.

Mr. HAKIM (Lebanon) agreed that the Articles should be specified, but not that it was necessary to make provision for the Charter going out of force. The obligations should continue even if the Charter went out of force.

Mr. GUERRA (Cuba) said the whole of the Chapter on General Commercial Policy should replace Part II.

Mr. LEDDY (United States) had no objection to having the corresponding provisions of the Charter apply to GATT in the event the Charter should go out

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of force; the present text of the General Agreement probably would not be reverted to. Provision was not needed for members and Contracting Parties as long as the Charter was in force, but the problems were: (1) the situation of a Contracting Party not a Member of ITO; and (2) what corresponding provisions should go into the General Agreement if the Charter went out of force.

Mr. NASH (New Zealand) stated that only by becoming members of GATT could Members of ITO receive the full benefits of the Charter. It did not matter whether "remains in force...." was retained, but it would be unwise to delete "corresponding provisions of the Charter".

Mr. GUERRA (Cuba) reiterated that if all the amendment were maintained, all Contracting Parties would be governed by the provisions, whether or not they were Members of ITO. He suggested the phrase ".....remains in force..." should be changed to "whether or not the Charter is in force."

The CHAIRMAN thought there was no great matter of substance involved and suggested postponement of discussion until the representatives of the United States and France had submitted written proposals concerning paragraphs 2 (a) and 3.

The suggestion of the Representative of the Netherlands concerning a possible conflict in paragraph 1 of Article XXX would be considered during the discussion on other amendments to the Article.

The CHAIRMAN then asked for comments on the phrase "Paragraphs 1 and 2 of Article I" contained in the amendment of paragraph 2 (a). He had previously explained the desirability of omitting paragraph 3 of Article I from supersession.

Mr. ROYER (France) said that if his suggestion concerning Part II were accepted, Article I should remain in force.

Mr. LEDDY (United States) said provision should be included in the General Agreement that nothing should prevent the operation of ITO.

It was agreed to delete reference to Article I in the amendment to paragraph 2 (a) of Article XXIX and that the representatives of the United States and France should submit an amendment to Article I to conform.

Replying to a remark by the representative of the Union of South Africa, as to the large number of amendments, Mr. ROYER (France) said that in Geneva it was recognized that the Draft Charter was provisional and that it would be necessary to revise some provisions of the General Agreement to coincide with

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the final text of the Charter.

ARTICLE XXXIII (Paragraph 6, GATT/1/11).

Discussion was postponed until the United States delegation had submitted its proposal that decisions should be taken by a simple majority.

ARTICLE XXIV (Paragraph 2, GATT/1/11).

Mr. SHACKLE (United Kingdom) was in favour of amending Article XXIV by inserting Article 42, subject to the final text of Article 42.

Mr. DAO (China) said that his delegation would propose that Article III be replaced by Article 18 and Article XVIII by Article 13.

Mr. LEDDY (United States) agreed to the insertion of Article 42 but suggested that the proposal of China and any further amendments should be placed on the agenda of the next meeting of Contracting Parties.

Mr. SPEEKENBRINK (Netherlands) agreed to the insertion of Article 42, subject to confirmation in the light of its final text. Contracting Parties who had signed the Protocol of Provisional Application were committing their governments by accepting amendments to the Havana Charter with no certainty that it would come into force. He would object strongly to too many amendments to the General Agreement which would commit his government immediately to apply them, but would not object to their being placed on the agenda of the next Session of Contracting Parties.

Mr. HOLLOWAY (Union of South Africa) would agree to a protocol regarding the acceptance of Article 42 as a replacement to Article XXIV, subject to the final wording.

The representative of Belgium supported the representative of the Netherlands. The representatives of Syria, Cuba, Lebanon and Chile supported the proposal to insert the text of Article 42 in place of Article XXIV.

The CHAIRMAN stated that the committee was agreed in principle to the proposal.

ARTICLE XIV (Paragraph 1, GATT/1/11).

The CHAIRMAN stated that it had been suggested that this proposal as well as those of the Chinese delegation await the Second Session.

Mr. ROYER (France) said that if the Charter entered into force in the near future, the proposed amendment to insert the text of Article 23 in place of Article XIV would not be so urgent. But if the ratification were prolonged beyond 1 January 1949 the French Parliament would be asked to ratify commitments it was not prepared to assume. As soon as the Havana Conference

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ended, his government would ask for ratification of the General Agreement but it could not be obtained if the present provisions were retained. The matter might wait for the Second Session if some means could be found to overcome this difficulty.

Mr. LEDDY (United States) felt that since provision was made for the full year the matter might await the Second Session at which time Article 23 would be governing.

Mr. ROYER (France) replied that if the United States could assure the entry into force of the Charter by 1 January 1949 he would have no objection to waiting for the June Session. His instructions were to ask for the automatic replacement of Article XIV by Article 23, but he had asked his government to consider whether the date of entry into force could be 1 January 1949 in the event the Charter did not enter into force before that date.

Mr. SHACKLE (United Kingdom) felt it would be necessary to make the substitution by 1 January 1949.

Mr. HOLLOWAY (Union of South Africa) said he was prepared to recommend that the change be made.

Mr. LEDDY (United States) thought that in any event France would not act definitely on the Charter this year.

Mr. FORTHOMME (Belgium) saw no objection to the amendment but stated that his government needed time to accomplish this.

Mr. BAYER (Czechoslovakia) was in favour of replacing Article XIV by Article 23 immediately. If the main purpose of this Session was to make the General Agreement conform to the Charter, there should be no prolongation of the task.

Mr. LEDDY (United States) replied that he was not opposed to the change in principle; his only reason for suggesting postponement until the Second Session was to lighten the work of this Session.

Mr. HAKIM (Lebanon) and Mr. SAWWAF (Syria) supported the representative of France for immediate replacement of Article XIV by Article 23.

Mr. SPEEKENBRINK (Netherlands) said that since the proposed change was of an emergency nature, he was prepared to submit it to his government, provided he had more than a day or two to decide on the text of Article 23.

Mr. GUERRA (Cuba) also would agree to the amendment, but supported the representative of the United States that other amendments, including those proposed by the representative of China, not of an emergency character, should be held over until the next Session.

Mr. DAO (China) stated that since all Contracting Parties were applying the provisions according to the protocols, there should be no difficulty

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in the replacements he had mentioned. The majority of governments would accept the Charter and the Agreement at the same time, and consideration should be given to facilitating acceptance.

Mr. PERRY (Canada) said that Article XIV should continue in force until automatically superseded by the Charter, but this position would be reconsidered when the final text of Article 23 was available. As a Contracting Party, Canada considered the matter should be deferred until the next Session.

After discussion concerning emergency and non-emergency measures, the CHAIRMAN stated that there was agreement (1) that only amendments of an emergency character should be considered at this session and (2) that favourable consideration should be given to replacing Article XIV by Article 23, subject to certain reservations regarding the exact text of Article 23.

Credentials

Mr. LACARTE (Deputy Executive Secretary) drew attention to a memorandum from the Legal Adviser to the Conference concerning credentials for the first meeting of the Contracting Parties.

The representatives of Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, Pakistan, Syria, United Kingdom and United States had submitted credentials which when taking into account the fact that the Contracting Parties were meeting during the Trade Conference to which those representatives were accredited, might be regarded as adequate.

The representatives of Belgium, Burma, Chile, Czechoslovakia, China, India and Lebanon had, in addition, been empowered to sign the Protocol correcting the General Agreement.

Should the Contracting Parties decide to establish a Protocol of a more substantive character for signature at Havana, none of the credentials submitted to date could be regarded as adequate for they were based on telegrams from the foreign offices of the governments concerned and for that purpose letters signed by foreign ministers would be necessary.

In reply to the representative of Belgium, Mr. Lacarte said that telegrams originating from foreign offices, indicating that the appropriate letters followed, would be sufficient for signature.

The meeting rose at 5.15 p.m.
