

RESTRICTED

GATT/1/SR.5  
9 March 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE  
FIRST SESSION OF THE CONTRACTING PARTIES  
SUMMARY RECORD OF FIFTH MEETING

Held at the Capitolio, Havana, Cuba,  
on 8 March 1948 at 10.30 a.m.

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

DRAFT PROTOCOL OF SUPPRESSION AND AMENDMENTS

Mr. LEDDY (United States of America) said that there were two problems for the meeting to decide; the effective date of the entry into force of the Protocol as a whole and the date on which the provisions of certain specific articles would apply. In his opinion, the Protocol as a whole should, subject to the necessary ratifications, enter into force thirty days after the date of signature. The date of 1 January 1949 could be set for the application of the terms of specific articles.

Mr. SHACKLE (United Kingdom) suggested sixty days rather than thirty for the submission of ratifications.

Mr. HAKIM (Lebanon) agreed that the Protocol would have to be signed by all the signatories to GATT and did not see how it could enter into force before that happened.

Mr. ROYER (France) drew attention to the legal aspect of the question under discussion. If the meeting decided to amend the Geneva Agreement, in so doing it would be requiring the Contracting Parties to apply provisionally the amended agreement. On the other hand, the signatures of non-Contracting Parties would be subject to ratification.

The CHAIRMAN pointed out that the signatures of the Contracting Parties would be needed immediately so that the provisions of the Protocol would become effective.

Mr. LEDDY (United States of America) expressed the view that the Protocol should be signed at Havana by all signatories of the Geneva Final Act. If further ratification were needed a note could be added to the Protocol to  
/the effect

the effect that it should be forthcoming within sixty days.

Mr. SPREKEMBRIK (Netherlands) pointed out that countries had not bound themselves with respect to the Geneva Agreement. The same thing would take place at Havana, that is, they would bind themselves only to the extent of recommending the revised Agreement to their governments.

Mr. GUERRA (Cuba) expressed the view that for the Contracting Parties the signing of the Protocol would mean the obligation to put it into force. For non-Contracting Parties, it would only mean a recognition of the authenticity of the text.

Mr. HOLLOWAY (South Africa) said that for the Protocol to become valid, it would need to be signed by all the signatories of the Final Act. Once that had been done, however, any Contracting Party would be permitted to take provisional action.

Mr. ROYER (France) felt that a distinction had to be drawn between the credentials of the Contracting and non-Contracting Parties. The credentials of the former were important because their signatures would involve an obligation. The signatures of the latter would only serve to authenticate the text and, therefore, would not be subject to ratification.

Mr. MEAP TUN (Burma) asked if it would not be possible for the Contracting Parties to amend the Agreement while the non-Contracting Parties would only pass on the authenticity of the text.

Mr. HOLLOWAY (South Africa) pointed to the difficulties which would arise if the Contracting Parties definitely accepted the revised Agreement while the non-Contracting Parties merely endorsed the authenticity of the text. If the signatures of the latter were not confirmed by their governments, and at the same time the Contracting Parties took action in conformity with the text, disagreement would ensue between the signatories of the Final Act at Geneva.

Mr. LEDDY (United States of America) said that the provision of a sixty-day time-limit for acceptance of the revised Agreement should involve countries in a firmer commitment.

Mr. GUERRA (Cuba) expressed the view that if all the Contracting Parties accepted the Protocol, the non-Contracting Parties could simply be informed of their agreement concerning the revised text. If the sixty-day time limit for ratification was maintained, however, potential signatories of the revised Agreement would still remain in a position of ignorance concerning the final form of the Agreement.

/Mr. HOLLOWAY

Mr. HOLLOWAY (South Africa) said that it would be a physical impossibility to have the revised Agreement signed at Havana because action on the question would have to be taken by the various national parliaments.

Mr. GARCIA-OLDINI (Chile) felt that the question could be settled without difficulty if it was raised as a practical problem; the only real difficulty was the necessity on the part of the United Kingdom Government, to refer the matter to Parliament.

Mr. SPEEKENBRINK (Netherlands) said that Members which signed the Final Act of the Charter should not be hesitant about accepting the revised Agreement, because a country which accepted the one would also accept the other. He, himself, had been given full powers by his Government to accept the revised Agreement.

Mr. B. MAHADEVA (Ceylon) said that he had just received instructions from his Government to the effect that he was to sign only with respect to the authenticity of the revised Agreement.

Mr. SHACKLE (United Kingdom) said that the first point to be taken into consideration, was the provision of sixty days in which governments could raise objections to the revised Agreement. If that provision were accepted, it would mean that all the changes in the Agreement would be made when the Charter came into force. The second point to be decided was the proposal for the earlier replacement of Articles XIV and XXIV by Articles 23 and 42 of the Charter. It would be desirable to have two or possibly three separate protocols to cover these points. There would probably be no difficulty as regards the sixty day provision or Article 42, but the British Parliament might wish to pass on the question of Article 23.

The whole problem was so technical that it warranted the creation of a Working Party.

Mr. HAKIM (Lebanon) agreed with the suggestions put forward by the representative of the United Kingdom. He expressed the view, however, that the protocol concerning the substitution of Articles from the Charter should not enter into force until the revised Agreement as a whole entered into force.

Mr. SEACKLE (United Kingdom) felt that fourteen out of the twenty-three countries could accept the revised Agreement at once if they were satisfied with the final text of the Charter. There would be more difficulty with respect to some of the nine countries, to the extent that having ratified the Geneva Agreement, it would now have to be sent back to their Parliaments for further consideration.

/Mr. GUERRA (Cuba)

Mr. GUERRA (Cuba) did not consider that there should be any difficulty in having provisions of the Geneva Agreement superseded by those of the Havana Charter. For this reason, he felt that the nine countries which had started to put the Agreement into effect should be allowed to amend it.

Mr. HOLLOWAY (South Africa) said that the legal reality was that GATT was not in force but had been put into force provisionally by nine countries. The nine, however, would not wish to do anything which would prejudice the rights of the fourteen. The issue which had to be faced was the length of time which the various constitutional procedures would take before the revised Agreement could be accepted by certain countries.

Mr. LOPES RODRIGUES (Brazil) supported the suggestion for the establishment of a working party and said that it would be useful if the Legal Adviser could be present at its meetings.

Mr. FORTHOUME (Belgium) felt that it would be desirable to waive the sixty-day provision as countries were interested to know what form the final text of the revised Agreement would take. He was reasonably confident of being able to persuade his Government on this point. As regards the substitution on Article 42, he thought that his Government would also accept it, but for mechanical reasons it might take two or three weeks time.

Mr. LEDDY (United States of America) suggested that the working party might consider whether a resolution urging countries not to avail themselves of the proviso contained in 2 (a) of Article XXIX might not be the best way to deal with the question of supersession.

Mr. ROYER (France) drew the Belgian representative's attention to the fact that he had made no mention of Article 23. To the French Government the substitution of that Article was of equally crucial importance as the substitution of Article 42.

Mr. FORTHOUME (Belgium) said that he had not as yet received instructions concerning Article 23.

Mr. DAO (China) said that he had not as yet received instructions from his Government concerning the draft Protocol of Supersession and Amendments. In connection with the Chinese amendments, he requested that they be placed on the agenda for the next session.

On the suggestion of the CHAIRMAN, the meeting agreed to the following terms of reference for the working party: "To submit concrete proposals by Friday, 12 March, on the implementation of items 8 and 9 of the Agenda in the light of the discussions which had taken place to date."

/The CHAIRMAN

The CHAIRMAN stated that the terms of reference would also include a recommendation concerning the date of entry into force of the Protocol and the suggestions of the United Kingdom and the United States representatives.

It was agreed that the working party should be composed of the representatives of Cuba, France, Lebanon, Netherlands, Norway, the United Kingdom and the United States.

**SIGNATURE OF PROTOCOL INCORPORATING TYPOGRAPHICAL CORRECTIONS TO THE GENERAL AGREEMENT**

The CHAIRMAN suggested that a time-limit be set for the submission of corrections and that a Sub-Committee be appointed to deal with this item after the meeting had given it preliminary consideration.

Mr. SHACKLE (United Kingdom) suggested that the fuller description of the Final Act included in the preamble of the Draft Protocol put forward by the United States delegation (document GATT/1/6), be adopted. In the third paragraph of the preamble he suggested the deletion of the words after "authentic texts", as the only authentic texts would be those in the original language.

Mr. ROYER (France) felt that the third paragraph of the preamble was not sufficient. In his opinion, corrections could be made first to the authentic text and then to the translation of it.

Mr. PHELPS (United States of America) felt that there was no need to mention translations in the Protocol, although he had no objection to their being brought into harmony with the authentic texts.

Mr. FORTHOMME (Belgium) preferred to include corrections in both languages in one single document.

After a short discussion concerning the time-limit for the submission of corrections, the meeting agreed on the date of 13 March. The representatives of France and Cuba pointed out that certain corrections which had been already submitted, represented changes in concessions which had been made at Geneva.

The CHAIRMAN announced that the Sub-Committee would separate the typographical corrections from any others which might have been put forward. It would also consider the form of the Protocol. It was agreed that the representatives of Australia, Brazil, China, Luxembourg, Syria and the United States should compose the Sub-Committee.

/Mr. SHACKLE (United Kingdom)

Mr. SHACKLE (United Kingdom) suggested the representatives sending in corrections should indicate, where possible, with what country each particular concession had been negotiated. The CHAIRMAN also asked representatives who wished to make comments to submit them to the Sub-Committee.

ACCESSION TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The CHAIRMAN asked if the meeting wished to defer this question to its second session or not.

Mr. SPEEKENBRINK (Netherlands) felt it would be desirable if the meeting could at least conclude that it would be useful for a new set of negotiations to take place. Everything should be done to increase the circle of countries which were applying the Agreement.

Mr. LEDDY (United States) said that although he had not yet received instructions from his Government, he could say with reasonable certainty that it could not enter into formal negotiations during the first half of this year and with respect to the second half of the year, he could only say that it might be possible to undertake exploratory discussions.

Mr. ROYER (France) said that without the participation of the United States, there would be far fewer candidates for negotiations, but that it might be interesting to know which countries would be prepared to contemplate such a step during the second half of this year, the United States reserving its position in this connection.

In reply to the representative of China, Mr. LEDDY (United States), said that his statement applied both with respect to parties to GATT and to other countries.

The CHAIRMAN announced that consideration of this item would be postponed for later on. In reply to the suggestion of the French representative, he stated that this information should be gleaned from informal discussions.

The meeting rose at 12.45 p.m.

-----

