

RESTRICTED

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ORIGINAL: ENGLISH

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

Held at the Capitolio, Havana, Cuba on 18 March 1948 at 10.30 a.m.

The CHAIRMAN announced that only two days were left to terminate consideration of the agenda of the First Session. It was, therefore, necessary to intensify the work and representatives should obtain instructions from their governments on points outstanding.

Mr. SHACKLE (United Kingdom) inquired when the Protocols would be signed.

Mr. LACARTE (Deputy Executive Secretary) replied that it was expected signature would take place at the same time as signature of the Final Act of the Trade Conference.

On the CHAIRMAN's invitation, Mr. LACARTE (Deputy Executive Secretary) referred to the Full Powers which had been received in respect of signature of the Protocols which were being drawn up at the First Session. Only a small number of delegates had Full Powers and the others were urged to make every endeavour to submit suitable authorization from their governments before next Wednesday.

Document GATT/1/33 - Resolution Concerning Paragraph 6 of Article XVIII

Dr. COOMBS (Australia) suggested the deletion of the words in the first paragraph after "intended to" and the insertion of the following: "permit an application to the contracting parties for a variation in the dates specified in paragraph 6 of Article XVIII".

Mr. LOPES-RODRIGUES (Brazil) agreed with this proposal. He suggested the insertion in the last paragraph, after the words "contracting parties", of the words "should examine in the light of the proposal presented in document GATT/1/29".

The second, third and fourth paragraphs were approved without change.

Dr. COOMBS (Australia) referred to Mr. LOPES-RODRIGUES's proposal and stated he felt it was undesirable to grant definitive exemption in respect of a specific case when its full implications were not known. He proposed that the recommendation should not be addressed to the Second Session and suggested that the last paragraph should read: "Recommends that sympathetic
/consideration

consideration be given under paragraph 5 of Article XXV to such cases of the type foreseen in the Brazilian amendment, as may be submitted."

Mr. GUTIERREZ (Cuba) pointed out, in his capacity as Chairman of the appropriate sub-committee of the Trade Conference, that it was thought in that sub-committee that the contracting parties would be at entire liberty to change the dates contained in paragraph 6 of Article XVIII.

Mr. LOPES-RODRIGUES (Brazil) saw no reason why the General Agreement should not be amended. At the last meeting, he had agreed not to amend the Agreement, but he could not support the last remark made by the Australian delegate. Brazil's case deserved support and the words "sympathetic consideration" had very little practical significance, in any case.

Mr. GUTIERREZ (Cuba) suggested an addition to the Australian text, to the effect that the contracting parties would take decisions on matters which were submitted to them.

Mr. LOPES-RODRIGUES (Brazil) saw no reason for not taking a decision on this matter at the meeting, particularly as the proposal could not harm any country.

The CHAIRMAN then read out the following redraft of the last paragraph, proposed by the Australian representative: "Resolves that decisions be given under paragraph 5 of Article XXV on such applications as are submitted to the contracting parties."

Mr. LOPES-RODRIGUES (Brazil) agreed with this text.

The CHAIRMAN then declared the Resolution agreed as amended.

Document GATT/1/21

The CHAIRMAN referred to the Resolution contained in paragraph 7 of page 2. As there was no comment, it was agreed that it would be submitted for formal approval to a subsequent meeting.

The CHAIRMAN then referred to paragraph 8 of the same document, concerning increases in bound rates of duty.

Mr. ROYER (France) stated he was waiting for instructions and hoped to submit a text in the course of the day.

Mr. EVANS (United States) suggested that an informal discussion should take place and that a text be approved, subject to later concurrence on the part of the French representative.

The CHAIRMAN suggested that the matter should be taken up later when the proposed texts had been distributed.

Documents GATT/1/27 and GATT/1/28. Special Protocol Modifying Article XIV of the General Agreement and Protocol Modifying Certain General Provisions of the General Agreement

Mr. SHACKLE (United Kingdom) announced he had now received instructions
/whereby

whereby he could agree to the general scheme of the Protocols as drawn up.

Mr. ROYER (France), referring to Item VII in document GATT/1/28, stated he wished to withdraw his amendment to the original United States proposal, i.e., that the introduction to the proposed new Article XXXV should read: "...and any other contracting party if:". If needed, a special provision could be drafted to meet the special case of Southern Rhodesia.

Mr. BEYLEVELD (South Africa) pointed out that the amendment would put South Africa in the same position as Southern Rhodesia and would make it very difficult for the South African Parliament to approve the General Agreement.

Mr. LEDDY (United States) felt that the underlying reason for the discussion of this provision, i.e., the problem of the adherence of India and South Africa, should be discussed frankly. At Geneva, it had been suggested that the two Governments should effect an exchange of notes whereby they would undertake not to apply the General Agreement in respect of each other. This formula had not proven practicable. The solution now proposed was the one that would best meet the situation, and he felt it deserved the most careful consideration.

Mr. ADARKAR (India) favoured the French amendment and would feel very happy if South Africa and Southern Rhodesia would consider whether, from the point of view of all concerned, this was not the best formula. It was urgent that the matter be settled at the First Session, due to the possibility that the United States might not be able to give application after 12 June to concessions negotiated at Geneva which were not yet operating, due to the non-renewal of the Reciprocal Trade Agreements Act. The difficulties mentioned by the delegate of Southern Rhodesia were more theoretical than practical. It did not follow from the proposed draft that action harmful to countries such as Southern Rhodesia would be taken. One should not lose sight of the realities of the situation. If any difficulties were to materialize for a country in Southern Rhodesia's position, it would be possible at a later stage to sign a Protocol correcting the situation.

Mr. ROWE (Southern Rhodesia) wished it put on the record of the meeting that the provisions of Article XXXV would not be used against Southern Rhodesia.

Mr. ROYER (France) suggested that a Resolution be adopted whereby Article XXXV could not be invoked by one signatory of the Final Act at Geneva against another such signatory, once the two parties had agreed that there was no basis for negotiation, after they had been willing to negotiate.

Mr. GUTIERREZ (Cuba) inquired whether Article XXXV was applicable when a contracting party had negotiated with another signatory of the Final Act at Geneva which had not granted proper compensation.

/Mr. LEDDY

Mr. LEDDY (United States) pointed out that Article XXIV did not apply to countries which were contracting parties. Sub-paragraph (a) therefore referred only to cases where negotiations had not been entered into. Article XXV would apply when a non-signatory of the Final Act at Geneva became a contracting party.

The text which had been proposed by the French representative was read out as follows: "The provisions of Article XXIV cannot be invoked by a signatory of the Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment against another such signatory when, after the two parties had been willing to enter into negotiations, they agreed that there was no basis for negotiation between them".

Mr. ADARKAR (India) agreed with this proposal.

The CHAIRMAN announced the proposal would be considered at a later stage.

Mr. LEDDY (United States) stated his Government's view that only Article II should be made inoperative. He proposed that the words "or alternatively Article II" should be inserted after "this Agreement" in the introduction to the proposed new Article XXIV.

Mr. ROYER (France) saw advantage in this formula, which was approved.

Dr. COOMBS (Australia) suggested that sub-paragraph (a) of the proposed new Article XXIV should be deleted.

Mr. ROYER (France) supported the text as proposed by the United States.

Dr. GUTIERREZ (Cuba) preferred the deletion of sub-paragraph (a).

Mr. LEDDY (United States) pointed out that sub-paragraph (a) was a useful qualification.

Mr. SHACKLE (United Kingdom) pointed out that if sub-paragraph (a) were deleted, the proviso became irrelevant because one contracting party could still refuse to apply the General Agreement to another.

Dr. COOMBS (Australia) felt that the deletion of sub-paragraph (a) did not affect the two provisos.

Dr. GUTIERREZ (Cuba) suggested that sub-paragraph (a) be amended to read "the two contracting parties have agreed there is no basis for tariff negotiations with each other". Alternatively, he suggested the deletion of (a).

Mr. SHACKLE (United Kingdom) stated that as his Government had now agreed the present text of the Protocol, it would be difficult for him to obtain in time authorization to sign another text.

Mr. ROYER (France) supported this view.

Dr. COOMBS (Australia) reserved his right to consider the matter further.

Dr. GUTIERREZ (Cuba) followed suit.

The CHAIRMAN stated that sub-paragraph (a) of Article XXIV would be left as it was. Consideration had still to be given to whether the French amendment
/to the introduction

to the introduction should be adopted.

Dr. GUTIERREZ (Cuba) had a legal doubt as regards Section VIII of document GATT/1/28. He did not see how the entry into force could apply from the date of signature, as the General Agreement was being applied by the action of Governments and even of Parliaments.

Mr. LEDDY (United States) felt the formula in the Protocol was intended to meet the position as it stood at Havana.

Dr. GUTIERREZ (Cuba) was not sure whether the text of Section VIII was legal according to the Cuban Constitution.

Mr. LEDDY (United States) said that if not all countries could sign the Protocol, an entirely different formula would have to be adopted. New contracting parties, in any case, would not be able to accept anything but the amended text.

Mr. ROYER (France) stressed the fact that the contracting parties were ready to give up concrete rather than theoretical rights.

Mr. LEDDY (United States) inquired if it would help Cuba and Southern Rhodesia to delete the words in Section VIII: "effective, as among contracting parties to the Agreement" and to replace them by "an integral part of the Agreement".

Mr. HAKIM (Lebanon) suggested the deletion of the words "Notwithstanding the provisions of Article XXI of the General Agreement on Tariffs and Trade".

Dr. MOOMBS (Australia) said that signature of the Protocols by contracting parties meant agreement to apply the General Agreement on Tariffs and Trade in its revised form from the date of signature. He felt he might have difficulty in persuading his Government to sign the two Protocols. In any case, there could be no finality over the decisions taken in connection with the Protocols, and the signatories of the Final Act of the Havana Trade Conference would have no assurance as to what the final text of the General Agreement on Tariffs and Trade would be. He suggested that the text of the Protocols be merely authenticated.

Dr. AUGENTHALER (Czechoslovakia) shared Dr. Gutierrez' legal doubt.

Mr. FORTHOUME (Belgium) supported the Australian representative.

Mr. LEDDY (United States) pointed out that once the Final Act of the Trade Conference was signed, the text of the Charter would be thereby established. The Charter committed Governments to become parties to the General Agreement on Tariffs and Trade but it should not commit governments to adhere to a substantially changed General Agreement on Tariffs and Trade. The subject matter of the Protocols had been kept to a bare minimum. If Parliamentary approval were required by a contracting party to accept the Protocols, some formula should be found, but the contracting parties should

/endeavour

endeavour to take concrete action at Havana in the interests of the Trade Conference.

Dr. COOMBS (Australia) felt consideration should be given to the action that could be taken if some Governments were unable to sign the Protocols at the First Session of the Contracting Parties.

Mr. ROYER (France) considered that the difficulties of the matter had been exaggerated and that the cases of the Czechoslovak and Cuban representatives could be met. Signature of the Final Act of the Havana Trade Conference would take place the following Wednesday and it stood to reason that Governments had been kept advised of developments as regards the Charter and had taken their decisions in connection therewith. With goodwill, it should be possible to sign these various documents on Wednesday.

Mr. LEDDY (United States) agreed with Dr. Coombs that alternatives would have to be found if not all contracting parties could sign the documents under discussion. He inquired whether it would not be best to establish a deadline.

The CHAIRMAN thought that the question of a deadline could be taken up at the meeting the following day. He requested the Secretariat to prepare a clean text of Article XXXV for later consideration.

The meeting then adjourned.

