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GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE SEVENTH MEETING

Held at the Palais des Nations, Geneva

on August 20, 1948 at 10:00 a.m.

CHAIRMAN: Hon. L.D. WILGROSS (Canada)

REQUEST OF THE GOVERNMENT OF PAKISTAN FOR RENEGOTIATIONS

Mr. HASNIE (Pakistan) stated that his country was not in existence at the initiation of the tariff negotiations in 1947 and therefore was in a unique situation which had made it necessary for its government to request that certain items should be re-opened for negotiation. Although the schedule resulting from the Geneva negotiations relating to Pakistan was satisfactory on the whole, the concession given on some items was substantial and the concession it received in return was sometimes insignificant, in the light of later statistical findings. The unique case of Pakistan was generally recognized at Havana and there was general recognition that renegotiation should take place in due time. It had not then been possible for the Pakistan Delegation to submit a specific list of items. The six items mentioned in the letter to the Executive Secretary were the irreducible minimum number of items in respect of which Pakistan would like to renegotiate. Since Pakistan had been from the very beginning alive to the peculiar circumstances of the case and had lost no time in bringing it to the notice of the Contracting Parties it was clear that no one could object to the request on the ground that Pakistan had signed the Final Act at Geneva of

its own free will.

The CHAIRMAN, referring to the summary record of the eighth meeting of the First Session of the Contracting Parties, pointed out that there had been general recognition that Pakistan's case was of a special nature. It had been agreed to place the same item on the agenda of the Second Session and Pakistan had been requested to supply the necessary information previous to the present Session.

Mr. LEDDY (United States) thought that recognition should be given to the special case of Pakistan, but in view of the fact that detailed information on the items involved had only recently been received they did not think that renegotiation could take place during the present Session.

"Mr. PHILIP (France) agreed with the representative of the United States that recognition should be given to the special case of Pakistan. The French delegation, for its part, was prepared to undertake fresh negotiations with the Delegation of Pakistan. Preliminary conversations might begin at once."

Mr. WUNSZ KING (China) also appreciated the peculiar circumstances of the case of Pakistan, but he would remind the meeting that the negotiations had taken place at Geneva on a clear understanding that the Delegation of India represented Pakistan and had full legal authority. Although the Chinese Government was still considering the matter he could see no objection to reopening negotiations in due course on a mutually advantageous basis.

"Mr. AUGENTHALER (Czechoslovakia) said that his Government would be willing to re-open the negotiations in spite of the fact that some concessions to be renegotiated are of great importance to Czechoslovakia".

Mr. DJEBBARA (Syria) also supported the Pakistan case.

Mr. HASNIE expressed his appreciation of the sympathy shown by the representatives.

The CHAIRMAN, with the approval of the meeting, instructed Working Party 2 to study and report on the

question with particular reference to the time and procedures of the renegotiation requested by Pakistan.

THE STATUS OF THE AGREEMENT AND THE PROTOCOLS

Mr. NORVAL (South Africa), referring to document GATT/CP.2/10, made a statement in which he contended that the Agreement, as provisionally applied, could not, before 30 June 1948, and that the Agreement as it is to be finally applied, could not at any time before it has entered into force under Article XXVI, be amended in such a way as to derogate from the rights conferred on the signatories of the Final Act at Geneva, except by the unanimous decision of all the signatories. Having thus questioned the legal validity of the Protocol modifying certain provisions of the General Agreement, he stated that the attitude of his Government was that any action taken without regard to the rights and obligations embodied in Articles I, XI and XIII would be entirely incompatible with the whole spirit of the General Agreement since that would impair the fundamental and sacred principle of unconditional most-favoured-nation treatment. He therefore proposed a new text for Part IV of the Protocol which dealt with Article XXXV of the Agreement.

At the request of the representative of Czechoslovakia it was agreed that Mr. Norval's statement, together with the proposed text for Article XXXV, should be distributed as a document (see GATT/CP⁷/14):

Mr. PHILIPPE stated that he was not convinced by the statement of the South African representative either regarding the legal status of the Protocol or the proposed amendment to Article XXXV. The French representative had

indicated at Geneva that the General Agreement was accepted on the understanding that it would be reviewed at Havana. The Havana Charter and the General Agreement were not meant to be two separate documents; the signatories at Geneva and at Havana were engaged in the establishment of a permanent organization; and the provisions of the two instruments should be made as harmonious and compatible with each other as possible. There could be no argument against the validity of any amendment to the General Agreement made after 30 June, 1948, and even before that date the Contracting Parties could still propose amendments and they would be in order if all the Contracting Parties agreed. As for the new amendment proposed by the representative of South Africa, it could be considered by the Contracting Parties in accordance with the procedures laid down in Article XXX, and in the event that it should be rejected by the Contracting Parties South Africa should be entitled either to withdraw from this Agreement or to remain a Contracting Party with the consent of the Contracting Parties, in accordance with the provisions of paragraph 2 of Article XXX.

Mr. LEDDY (United States) said that he also was not convinced by Mr. Norval's arguments. He explained the necessity of introducing Article XXXV at Havana. Article 17 of the Charter required that all members of the ITO should become contracting parties in due time and, it was agreed at Havana to change the provisions regarding the accession of new countries to the Agreement so that a two-thirds majority, instead of unanimous consent, would be required for any country to become a Contracting Party.

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The question of the legality of such a modifying protocol had been given careful study. In view of the fact that a country could accede to the Agreement by a two-thirds vote, it was necessary to introduce Article XXXV so that a Contracting Party would not be required to make the Agreement and schedules effective in respect of a country with which it had not concluded negotiations.

Mr. ADARKAR (India) held that the validity of the Protocols of Havana was beyond question. The Protocols had been signed by 21 out of the 23 signatories to the Geneva Final Act and only 2 countries, namely, India and Pakistan, had taken advantage of the right conferred by the article in question. If the Agreement was to be a dynamic instrument capable of meeting changing circumstances, amendments were inevitable. It would be an extremely anomalous position if any country which had signed the Final Act but which had no intention of becoming a Contracting Party could veto an amendment which affected the interests of the Contracting Parties. By signing the Final Act a country incurred no obligation whatsoever regarding its eventual participation, and to confer the right of veto on it would amount to conferring a right without an obligation. Under Article XXV, paragraph 1, it had been agreed that the Contracting Parties should meet from time to time for the purpose of giving effect to those provisions of the Agreement which involved joint action and to facilitate the operation and further the objectives of this Agreement, and there was no reason to believe that Article XXX, dealing with amendments, should be regarded as beyond the competence of the Contracting Parties which were

authorized to take joint action on any subject within the sphere of the General Agreement. It was the inherent right of the parties to an agreement to amend it in any way they pleased by unanimous consent, and if the Protocol containing a new Article XXXV was null and void all the amendments should by implication be also invalid, and that would create an impossible situation since the parties would have to abide by the original Geneva text of Article XXXIII regarding the admission of a new member.

Mr. Adarkar's speech was subsequently put in writing and distributed as document GATT/CP.2/16.

The meeting rose at 1.15 p.m.

