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ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE 8TH MEETING

Held at the Palais des Nations, Geneva,
on August 21st 1948, at ~~3 p.m.~~
21st 10 30^{am}

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

Mr. NORVAL (South Africa) read a statement in which he said he did not think his Government would object to the view that the Protocol modifying certain Provisions of the Agreement would remain binding upon those who had accepted it, between themselves, and that the unamended agreement would bind all those who had accepted it as against those who had not accepted the amendment. This was not a question of legal niceties, but a matter of importance. The argument that embarrassment would be caused by declaring the amendment not valid did not change the substance of the case.*

Mr. ADARKAR (India) said that the statement read by the South African representative gave rise to two questions: (1) was the Protocol valid or not, and (2) if it was valid, then how could it be applied as between acceptors and non-acceptors? He considered that if it was not valid between South Africa and India then it was not valid between India and any other acceptor. The Agreement was in his opinion valid. On the second question he said the CONTRACTING PARTIES could not give general interpretations, but could

* Note: The full text of Mr. Norval's statement appears in document GATT/CP.2/15.

only examine specific issues, for instance the issue between South Africa and India. In any case, his view that the Protocol was valid authorized the contracting parties to have recourse to Article XXXV.

Mr. LECUYER (France) said it was useless to continue a juridical discussion. The French delegation was not convinced by the arguments of Mr. NORVAL. He was prepared to admit that South Africa should not be bound by a document which it had not accepted, but the legal ground should be abandoned, particularly since Mr. NORVAL himself had stepped out of the field by proposing an amendment to an agreement which he, at the same time, repudiated as void. He was prepared to consider the revision of Article XXXV in the hope of arriving at an agreed text.

Dr. AUGENTHALER (Czechoslovakia) said that from a purely juridical point of view, there were now in existence two separate agreements: one, to which all parties, including South Africa, were bound; and another, which bound all Contracting Parties excepting South Africa. The question was how to bring these two agreements together. He suggested three possible ways:

(1) in accordance with Article XXX:2, the Contracting Parties might decide that the amendment was of such a nature that South Africa could remain a contracting party with the consent of the Contracting Parties without accepting it; or

(2) South Africa might accept the amendment or withdraw from the Agreement; or

(3) a formula might be elaborated to bring together the two separate agreements which were now in existence.

Mr. NORVAL said that as far as South Africa was concerned, Article XXXV did not exist at all. If other Contracting Parties should want to consider it binding as among themselves, he thought, without entering into any commitment on this point, that his Government would probably be prepared to consider it a matter of concern only to the other Contracting Parties, provided however it was clearly understood that all the Contracting Parties would remain bound towards South Africa by the unamended agreement.

In reply to Mr. LECUYER, he denied having proposed an amendment; he had suggested that "the Protocol be re-submitted for signature with Article XXXV redrafted, etc. . . ." (GATT/CP.2/14, page 8).

On the proposal of the CHAIRMAN, the meeting agreed, in view of the complexity of the question, to adjourn the debate to a later stage of the Session in order that the Chair and the Contracting Parties might have time for reflection.

THE RESERVATION OF CEYLON (GATT/CP.2/4)

The CHAIRMAN said that he had considered the reservation made by the Government of Ceylon in signing the Protocol of Provisional Application and had come to the conclusion that it might be considered as a request for a waiver of obligations under Article XXV:5.

Mr. OLIVER GOONETILLEKE (Ceylon) drew a picture of the very difficult situation in which his country had found itself following a sharp reversal of its foreign trade and budgetary position. The difficulties as outlined were so great that, to prevent mass starvation, steps had to be taken to correct the adverse balance of trade and to balance the internal budget. Ceylon was prepared to accept any

directives or proposals for negotiations which the Contracting Parties might propose, and he appealed to the meeting for a benevolent consideration of his country's position.

The representatives of the United Kingdom and the Netherlands supported the request of the representative of Ceylon.

Mr. STINEBOWER (United States of America) expressed his sympathy with the situation in Ceylon. He did not oppose the request, but wished to raise the point that it was difficult, from a juridical point of view, to ask for a waiver in the application of obligations which had not been observed. There were other articles such as Articles XII and XIV, on quantitative restrictions and on balance of payments which might have served Ceylon's purpose. In any case the question should be given a thorough examination. He did not want a precedent to be created which might at a later date cause embarrassment to the Contracting Parties.

Mr. REISMAN (Canada) also wished to express his sympathy and felt that some solution would have to be found; but he also agreed with Mr. STINEBOWER that doubts could be raised about the validity of the reservation of the Government of Ceylon. As to the waiver clause in Article XXV, he felt this should only be resorted to when no other provisions existed to meet the case. The waiver should not be used lightly or the effectiveness of the Agreement might be impaired.

Mr. WUNSZ KING (China) expressed his sympathy but could not state the attitude of his Government because the proposal was still under consideration.

Mr. RODRIGUES (Brazil) said that in view of the difficulties involved he favoured the examination of the question by the Working Party.

Mr. CASSIERS (Belgium), speaking as a member of the Working Party 2 on Tariff Negotiations, did not think this was a matter for discussion by that group, but rather that the meeting was confronted with a new and separate problem which might require the setting up of another Working Party. Should the meeting decide to entrust this question to that over-burdened group, he suggested the terms of reference be worded with great precision and that the countries with which Ceylon had originally negotiated be specified. It was necessary to know whether those countries were prepared to renegotiate.

The CHAIRMAN said it appeared from the discussion that the meeting thought there were means of reaching a solution without resorting to Article XXV and that it would be necessary that the delegation of Ceylon submit a list of the items for negotiation and of the countries with which it had negotiated.

Sir OLIVER GOONETILLEKE, in reply to points made in the course of the discussion, said the Government of Ceylon rejected the alternatives of prohibitions on imports, quantitative restrictions, and internal taxation of imported products. The countries with which Ceylon had had negotiations were: United States, Australia, Belgium, China, Czechoslovakia, France, Netherlands, India, Pakistan, South Africa, Canada, Norway and New Zealand.

Mr. SMITH (Australia) said he had not yet received the views of his Government, but he doubted the wisdom of taking

up the Ceylon request under Article XXV.

The CHAIRMAN pointed out that whereas Part II of the Agreement is to be applied to an extent not inconsistent with existing legislation, for Parts I and III no reservations could be made. The Tariff Schedules were an integral part of Part I and could not be changed before 1951 without the consent of the Contracting Parties.

A Working Party composed of the following representatives was then appointed:

Australia, Belgium, Canada, China, Ceylon, Czechoslovakia, Norway, United States and the United Kingdom, under the Chairmanship of Mr. AUGENTHALER;
with the following terms of reference:

to examine the reservation of the Government of Ceylon to its signature to the Protocol of Provisional Application, and to consider the possibilities of a solution in accordance with the terms or in accordance with the provisions of Article XXIII or Article XXV or of other relevant provisions of the General Agreement.

The meeting rose at 1.10 p.m.

