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GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at the Palais des Nations, Geneva,

on 28 August, 1948, at 10 a.m.

CHAIRMAN: Hon L.D. WILGRESS (Canada)

RESERVATION OF CEYLON - REPORT OF WORKING PARTY 4 (GATT/CP.2/21)

Dr. AUGENTHALER (Czechoslovakia) presented the Report of Working Party 4 on the reservation of Ceylon to its signature of the Protocol of Provisional Application. He said that the Working Party had been of the opinion that there was no question of the validity of Ceylon's signature and had decided that the reservation should be considered in terms of Article XXIII rather than Article XXV. In view of the willingness of the Government of Ceylon to enter into new negotiations with the countries concerned, the Working Party had decided to recommend the adoption of the Resolution contained in the Report providing for re-negotiation not later than the new series of tariff negotiations which were expected to begin in April 1949.

Mr. LEDDY (United States) said that his Government planned to undertake re-negotiations with Ceylon as recommended in the Resolution and looked forward to a satisfactory conclusion. He noted that the Resolution was based on Article XXIII which envisaged that in most cases matters coming within the scope of the Article would first be the subject of bilateral discussions between interested contracting parties under paragraph 1 before they came before a Session of the

CONTRACTING PARTIES. However, Working Party 4 had considered it appropriate for the Session to take up the matter, notwithstanding the fact that there had not been time for bilateral exchanges of views under paragraph 1 of Article XXIII. The Delegation of the United States was in full accord with the proposed Resolution provided that their Delegation was correct in its interpretation that the action now being taken under paragraph 2 of Article XXIII would in no way prejudice the rights of any interested contracting party, following an opportunity for adequate study of the matter, to seek an adjustment under paragraph 1, and, if a satisfactory adjustment were not made, to bring the matter before the CONTRACTING PARTIES again with a view to obtaining a compensatory adjustment under paragraph 2.

Dr. GUTIERREZ (Cuba) said that he would accept the Resolution, but could not agree with the last paragraph of the Report which stated that the adoption of the Resolution should not serve as a precedent for other cases.

Dr. AUGENTHALER (Czechoslovakia), referring to the statement by Mr. Leddy, said that it was the intention of the Working Party that the Resolution should not prejudice the rights of any contracting party to seek adjustment under paragraph 1 and subsequently if desired to refer matters to the CONTRACTING PARTIES under paragraph 2. In replying to the Representative of Cuba, he stated that the Working Party did not want the compliance with the Ceylon request to serve as a precedent in other cases of a different kind.

Mr. DE VRIES (Netherlands) said that he agreed with the Resolution and hoped that there would be good results. He agreed with the Representative of Cuba on the question of setting a precedent but he wished to make a reservation on this point; it was probable that Indonesia would acquire some autonomous powers next year and in view of the great difficulties experienced by those territories, they might wish to make a request similar to that of Ceylon to the CONTRACTING PARTIES.

Mr. de Vries referred also to the re-negotiations with Ceylon. He said that in the case of those preferential margins which remained unchanged it should not be necessary to re-negotiate, and he suggested that Working Party 2 on Tariff Negotiations might examine the procedures to be followed covering this point.

Mr. ADARKAR (India) said that he could accept the Resolution but he would like to see adopted as the view of the CONTRACTING PARTIES that the procedure recommended in this case would not prejudice the rights of contracting parties to take up such matters in accordance with paragraph 1 of Article XXIII before referring them to the CONTRACTING PARTIES.

Mr. SHACKLE (United Kingdom) welcomed the Report of the Working Party. He referred to the suggestion of Mr. de Vries regarding preferential margins and said that if this proposal meant that where a preferential margin is not reduced below that fixed by the 1947 negotiations the preferential countries need not re-negotiate, he would require an opportunity for further consideration before he could agree.

Mr. LEDDY (United States of America) said that he regretted the statement of Mr. de Vries regarding Indonesia as he thought that if that interpretation were placed upon the recommendation of the Working Party it might encourage further signatures with reservations. So far as his Government was concerned, the fact that an accommodation had been found for the case of Ceylon did not mean that such requests in future would be dealt with similarly. Countries should not be encouraged to depart from the provisions of the Agreement or sign with reservations which other countries had not had an opportunity to examine fully.

Mr. de VRIES (Netherlands) said that he had mentioned the case of Indonesia as it appeared to him to be in all respects similar to that of Ceylon. He thought that all countries should be treated on the same footing and if their cases were the same, the precedent should be followed but it should not be treated as an invitation to make reservations.

Mr. TONKIN (Australia) said that he was in agreement with the Resolution and hoped for a satisfactory outcome for Ceylon and Australia and also for the other countries concerned. Referring to the date of April, 1949, which was mentioned in the Resolution in connection with the new series of tariff negotiations, he said that this was presumably to be regarded as tentative pending the discussion of the Report of Working Party 2. He understood the difficulties in connection with the word "precedent" but he did not think it necessary to refer the question back to the Working Party.

Mr. OFTEDAL (Norway) said that he had been a member of the Working Party and accepted the Report. On the question of precedent, however, he said that he had no authority to commit Norwegian delegations attending future meetings.

The Resolution recommended by the Working Party was adopted.

Sir OLIVER GOONETILLEKE (Ceylon) expressed his appreciation of the decision of the CONTRACTING PARTIES and stressed the desire of his Government to abide by the principles of the Havana Charter and of the General Agreement.

The Report of the Working Party was then unanimously approved.

REQUEST OF CHILE RE SIGNATURE OF PROTOCOL OF PROVISIONAL APPLICATION - REPORT OF LEGAL WORKING PARTY (GATT/CP.2/20)

The CHAIRMAN drew attention to the Report of the Legal Working Party recommending signature of a protocol as being the simplest method of meeting the request of the Government of Chile for an extension of time in which to sign the Protocol of Provisional Application. He drew attention to the proviso in the draft protocol, contained in the Report, which rendered the accession of Chile conditional upon the acceptance by the Government of Chile of all the amendments to the provisions of the Agreement contained in the Protocol of Modifications to be signed at this Session, and he gave as his view that if the Government of Chile adhered to the Protocol of Provisional Application, it would be committing itself to apply the Agreement provisionally as it then stood and there was, therefore, no need for the proviso referring to the acceptance of amendments.

Dr. AUGENTHALER (Czechoslovakia) said that the Protocol of Provisional Application had been published as a law in

Czechoslovakia and it would be difficult for him to accept an instrument which involved an amendment which was to enter immediately into force. He suggested that action should be taken instead under Article XXXIII.

Mr. LEDDY (United States) suggested that possibly the Representative of Czechoslovakia could sign the protocol with a reservation which would enable the Czech Government to take the necessary action at a later date. Referring to the opinion expressed by the Chairman on the proviso contained in the draft protocol, he said that he would have no objection to its deletion provided it was placed clearly on record that his interpretation referred to all amendments of the Agreement.

Dr. AUGENTHALER (Czechoslovakia) enquired why a complex procedure such as the adoption of a new protocol was recommended when the desired result could be obtained more easily by action under Article XXXIII.

The CHAIRMAN draw attention to the fact that Article XXXIII provides for the accession of governments "not party to this Agreement" and said that Chile, having been named in the Preamble to the Agreement, would be regarded as "a party" in this sense and therefore could not qualify for accession under this Article. The Legal Working Party had stated in its Report that its recommendations had been put forward on the assumption that each of the contracting parties would be in a position to sign the new protocol and thus bring it into force at the conclusion of this Session; since it now appeared that the Representative of Czechoslovakia would not be able to sign the protocol, it would be best to refer the Report back to the Working Party for further examination of the legal complexities and for the submission of a new

Dr. AUGENTHALER (Czechoslovakia) suggested that Article XXXIII might be easily amended so that the words "a government not party to this Agreement" should be taken to mean governments that had not adhered to the Agreement by a certain time.

Mr. LEDDY (United States) supported the Chairman's proposal to refer the Report back to the Legal Working Party and suggested that it should be instructed to consult with the Representative of Czechoslovakia.

It was agreed that the Report should be referred back to the Legal Working Party.

The meeting closed at 11.30 a.m.