RESTRICTED
LIMITED B

GATT/CP.2/SR.14
31 August 1948

Original: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE FOURTEENTH MEETING

Held at the Palais des Nations, Geneva,
on 30 August, 1948 at 3.00 p.m.

REPORT OF WORKING PARTY 2 ON TARIFF NEGOTIATIONS

Mr. ADARKAR (India), speaking in the capacity of Chairman of the Working Party, said that he was happy to be able to present a unanimous report and thanked the members of the Working Party as well as the observers for their cooperation. The procedures recommended were satisfactory not only to the members of the Working Party but also from the point of view of the observers, including those of Finland, Italy and Sweden, whose suggestions had resulted in certain modifications of the procedure. However, there was one point on which the Working Party had been unable to make definite recommendations; since it was impossible to foresee the circumstances and the requirements so far in advance, it had been considered to be premature to take a decision at this stage on the exact nature of the instruments to be signed at the end of the negotiations for the incorporation of their results in the General Agreement. The timetable was drawn up on the basis of certain unalterable dates; several delegates had expressed the view that the negotiations should commence as early as possible; the delegate of the United States had stated that his government would not be able, under laws at present in force, to give effect to the results of the negotiations if the commencement

were much delayed and it was essential that the negotiations should be concluded before the end of June 1949. Owing to these reasons, the Working Party had found itself unable to accommodate the request of the Australian delegate to make 31 December 1949 the ultimate date for the completion of the negotiations. He suggested for the consideration of the meeting certain drafting improvements in the text of the report.

The CHAIRMAN thanked Mr. ADARKAR and all who had participated in the work of the Working Party for the report and invited general comments thereon. The report was approved and the draft Memorandum on Tariff Negotiations which was contained in the Annex thereto was then examined section by section.

Section 1 - Purpose of Negotiations

Mr. de VRIES (Netherlands) proposed certain changes in paragraph 3. He explained that tariff negotiations should be regarded as a continuous task for the Contracting Parties. If it were decided that there should be no negotiations between the Contracting Parties themselves in 1949, it should be made clear that this decision related only to this particular occasion and should not be regarded as a rule. The results arrived at in 1947 were not intended to be maintained indefinitely.

Mr. ADARKAR said that the idea of a continuous process had never been present in the minds of the members of the Working Party. The obligation of the Contracting Parties to enter into re-negotiation was mentioned in Article XXVIII of the General Agreement and it was clear from that article that they would not be required even to consider re-negotiation before January 1, 1951, although there was nothing to prevent

any two Contracting Parties from engaging in negotiation by mutual and general agreement. The Indian Delegation would be unable to subscribe to the view of the delegate of the Netherlands.

Mr. de VRIES insisted on his interpretation that even though two years had intervened between two sets of negotiations, the negotiations should still be regarded as continuous from a long-term point of view.

The CHAIRMAN stated that since Article 17 of the Havana Charter had not come into force there was no obligation on the part of any Contracting Party to enter into negotiations upon request. It had been contemplated by the Contracting Parties that countries should be required to negotiate only as a condition for their accession to the General Agreement. The scope of the negotiations to take place in 1949 would be limited to: (1) negotiations with new acceding countries; (2) completion of negotiations which had been left unfinished at the Geneva meeting in 1947; and (3) certain adjustments found to be necessary in the existing Schedules. The procedure would be intolerably complicated if all countries were allowed to re-open negotiations. It would seem that the words "by mutual and general agreement" would meet the point raised by the delegate of the Netherlands.

Mr. AUGENTHALER (Czechoslovakia) thought that there would be no objection to any contracting party making a downward adjustment of duties with or without general agreement. No one should be prevented from putting forth new concessions in order to cope with changed situations, and it must be remembered that many things might happen between now and January 1951.

Mr. de VRIES agreed that it would be much too embarrassing to re-open negotiations embracing all Contracting Parties. In his opinion Article XXIX of the General Agreement would have the same effect as Article 17 of the Havana Charter; the fact that the principles of Article 17 were the backbone of the whole General Agreement was borne out by the provisions of Article XXIX.

In reply the CHAIRMAN agreed with the delegate of the Netherlands in the view that Article 17 should be regarded as embodying the spirit of the General Agreement, but it would still seem that the Contracting Parties should be regarded as having fulfilled the requirements once they had concluded negotiations in 1947. Subsequent negotiations could only be imposed on them when Article 17 came into force.

Mr. ADARKAR thought it would be detrimental to tariff stability to allow Contracting Parties to re-open negotiations on products on which negotiations had been concluded last year; and in regard to unbound products, renegotiation should not be obligatory before 1951.

Mr. de VRIES pointed out that a number of agreements were concluded last year on a very limited basis and it might be that some Contracting Parties would like to widen the scope of its commitments and re-open negotiations on items not bound in 1947.

Mr. REISMAN (Canada) reminded the meeting of the terms of reference within which the memorandum had been prepared and proposed that the discussion should be limited within those terms.

M. LECUYER (France) said that it should be clear that the purpose of the renegotiations was to secure the accession of new countries. The Contracting Parties would be at liberty to take advantage of the facilities to complete

necessary, but the word "complete" should be understood in a broad sense to cover not only those negotiations left unfinished last year but also those negotiations which had completely failed last year.

Mr. NICOL (New Zealand) supported the Canadian view and thought that in the interest of stability of tariffs old issues should not be re-opened.

Mr. de VRIES was not in disagreement with the view of the Canadian representative, but objected to the idea of finality being connected with the results of last year's negotiations; renegotiations might be imperative owing to changed conditions during the four long years between 1947 and 1951.

The CHAIRMAN thought that there had been general agreement at the meeting that the purpose of the negotiations would be to secure new accessions, but Contracting Parties would not be precluded from taking the opportunity to complete unfinished negotiations or to make necessary adjustments. This being the case, he proposed the retention of the paragraph in its original form.

It was agreed that no change should be made in paragraph 3.

Mr. DJEBBARA (Syria) questioned the meaning of the sentence in the second paragraph stating that the acceding governments are in most cases enjoying the benefit of the tariff reductions in the Schedules to the General Agreement.

In reply the CHAIRMAN stated that this referred to those cases in which concessions were enjoyed by countries outside the orbit of the General Agreement by contractual rights, as a result of commercial treaties between Contracting Parties and other countries containing a most-favoured-nation clause.

Mr. USMANI (Pakistan) put forth a hypothetical situation in which there might be only 15 Contracting Parties prepared to participate in the negotiations in 1949, to exemplify the argument that a single Contracting Party might have the power of veto against the accession of a would-be Contracting Party.

The CHAIRMAN pointed out that even though the Contracting Parties were not compelled to participate in the negotiations, both their moral sense and the material advantage to be gained would be more than enough to induce them to take part.

Section 1 was approved.

Section 2 - Scope of the Negotiations

Approved.

Section 3 - Methods of Negotiation

Mr. DJEBBARA thought the sentence in sub-paragraph c(i) was too short to express the full meaning of the agreement arrived at at Geneva.

Mr. ADARKAR replied that the intention of the Working Party had been to adopt the substance of Article 17 insofar as applicable.

In answer to a question asked by Mr. TUOMINEN, the Observer for Finland, referring to paragraph (e), the CHAIRMAN gave his opinion that a country whose obligations under prior international arrangements were not modified or terminated would find itself at a disadvantage because its power of bargaining would be reduced.

Mr. SHACKLE (United Kingdom) said that in matters like this the Contracting Parties should abide by the principle of mutual advantage.

Mr. de VRIES proposed to substitute the following words at the beginning of the last paragraph on page 5: "It would be inconsistent with the principles of negotiation if participating governments were to effect prior to the negotiations new tariff measures which would tend to prejudice the success....," to take the place of "It is important that members do not effect new tariff measures prior to the negotiations which would tend to prejudice the success....".

Mr. RODRIGUES (Brazil) wanted it placed on record that he had unsuccessfully proposed in the Working Party to substitute the words "real burden of the duties" for "incidence of the duties".

In answer to a question by the delegate of Cuba as to whether the general revision of tariffs referred to in the first paragraph on page 6 might cover all unbound items, Mr. ADARKAR said that the whole paragraph referred to a few exceptional cases, in which the domestic circumstances of certain countries rendered a general revision necessary prior to the negotiations. These provisions were not meant to be applicable to the Contracting Parties themselves.

The CHAIRMAN ruled that this paragraph should not apply to modifications of the tariffs of a Contracting Party.

Mr. DJEBBARA, reverting to the last paragraph on page 5, said that he would never have thought that the term "members" or "participating governments" had meant to include the Contracting Parties as well as the acceding countries. That would impose a new obligation on the Contracting Parties in addition to those they had accepted in 1947.

Mr. ADARKAR explained that the obligation was neither new nor unlimited. It was implied in Article 17 of the Havana Charter and it was qualified by the significant words at the end of the sentence "in preparation for the negotiations".

Mr. DJEBBARA stated that since the signing of the Final Act at Geneva, Syria had done its best to meet the requirements of the General Agreement by effecting many adjustments in its internal economy, some affecting the interest of non-contracting parties. He had to view the introduction of this new obligation, hitherto unthought of either in the Charter or in the General Agreement, with grave concern. He could only hope to be able to accept this new obligation after referring to his Government.

Mr. ADARKAR pointed out that sub-paragraph (a) of this section made it clear that any contracting party wishing to effect tariff measures for reasons other than the strengthening of its bargaining position in preparation for the negotiations would be at liberty to do so.

Mr. CASSIERS (Belgium) thought the spirit which had been found first in London and then at Geneva should be the guidance for the Contracting Parties.

Mr. DJEBBARA said that he would wait until the end of the discussion before referring to his Government. His main concern was that this undertaking should not prejudice a country's right to afford protection to new industries by tariff measures.

The CHAIRMAN pointed out that according to sub-paragraph (a) account would be taken of the needs of individual countries and individual industries, and, in the paragraph under examination, the crucial qualification of the measures was made explicit in the words "to improve their bargaining position .... in preparation for the negotiations".

Mr. AUGENTHALER thought a country should be bound by what it had signed, and on the basis that the requirement constituted a new obligation not imposed on the Contracting Parties by the Final Act or by the General Agreement itself, he would support the representative of Syria.

The CHAIRMAN reaffirmed his conviction that the Memorandum imposed no new obligation, but merely elucidated an accepted principle.

Mr. SPEEKENBRINK (Netherlands) thought that it would be unfair that the Contracting Parties should be allowed to improve their bargaining position while the acceding countries were deprived of the right to bolster their tariffs prior to the negotiations.

Mr. USMANI (Pakistan) suggested that the issue would be clarified if a distinction were made in the minds of the representatives between measures for developmental purposes and those for bargaining purposes.

Mr. ADARKAR stated that some of the acceding countries were contemplating a general revision of their tariffs for various legitimate reasons, and it was necessary to furnish an indication as to how far they should be allowed to go before the negotiations. The "reasonable" basis, which it had been the task of the Working Party to establish, could hardly be formulated in rules, and the Memorandum merely enunciated the principles in this regard for the guidance of all participating countries.

Mr. DJEBBARA doubted that the principles enunciated in London would be capable of such interpretation as to preclude the raising of tariffs on unbound items.

Mr. USMANI proposed the insertion of the following words: "in respect of products on which they intend to negotiate".

Mr. SHACKLE thought that the idea of the intention or motive should be emphasized so that measures would not be precluded because they might have the incidental effect of prejudicing the negotiations. He proposed the inclusion of "designed" or "calculated" to replace "tend".

Mr. DJEBBARA was not satisfied with these suggestions since the freedom of a country to adjust tariffs on unbound products was not in any way enhanced or made more unmistakably clear.

M. LECUYER (France) was of the opinion that the question of protection had no connection with the present paragraph which related only to measures taken to improve bargaining.

Mr. ADARKAR proposed, in view of the emphasis on intention rather than effect, to delete the words "Article 17 of", so that reference would be made to the objectives of the Charter as a whole.

Mr. LIEU (China) pointed out that it would be difficult to ascertain the intention of a government.

Mr. AUGENTHALER stated that even though his Government had no intention of raising tariffs prior to the negotiations, he had no authority to accept any restriction on its freedom to do so.

The CHAIRMAN, adjourning the discussion, stated that since it was generally recognized that it would be unfair to allow the Contracting Parties to increase their tariffs with a view to improving their bargaining position, the difficulty was merely one of drafting. He therefore instructed the Secretariat to supply, in the light of the discussions, an improved text for the paragraph in question.

The meeting adjourned at 7.45 p.m.