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GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at the Palais des Nations, Geneva
on Thursday, 2 September 1948 at 3 p.m.

REPORT OF WORKING PARTY 3 ON MODIFICATIONS (GATT/CP.2/22/Rev1)

(Discussion continued)

Mr. NORVAL (Union of South Africa) suggested that the amendments to Part I and those to Article XXIX should be separately covered by two protocols, instead of a single protocol as was suggested by the Working Party in paragraph 34 of the Report.

Mr. SHACKLE (United Kingdom) thought if there were delegations which could not accept two amendments, it would be preferable that they were contained in two protocols in order that a protocol would not be signed and accepted in part so as to create confusion.

Mr. LEDDY (United States) drew attention to the substance of these amendments and pointed out that the amendments to Part I could not be accepted without those to Article XXIX being accepted at the same time.

The CHAIRMAN invited the meeting to adopt the proposal in paragraph 34, the acceptance of which he thought would not be creating an undesirable precedent.

It was agreed that no change should be made in paragraph 34.

Mr. SHACKLE suggested that a later date should be fixed for the deposit of instruments of acceptance by

those contracting parties which were unable to sign the protocols without reservation at the end of the session; the date of October 15, 1948 suggested by the Working Party in paragraph 36 allowed too little time for the governments considering them.

Mr. NORVAL agreed with the representative of the United Kingdom and thought that it should be sometime in 1949.

Mr. LEDDY pointed out that the Working Party suggested this merely as a recommendation to be put forward by the Contracting Parties, and not as a resolution fixing a dead line.

Mr. LECUYER (France) pointed out that in the French text of the Article, the idea of its being a recommendation was not made clear. He felt it difficult to say whether the date was acceptable before knowing what the contents of the protocols exactly were.

Mr. TONKINS (Australia) again pointed out that the acceptance referred to in the protocols was not meant to be definitive. It would have the same legal effect as the acceptance of the Protocol of Provisional Application. However as it would at the same time change the text of the Agreement it should have the same legal effect as the Geneva Final Act authenticating the Agreement.

It was agreed that consideration of paragraph 36 in respect of the recommended date should be postponed until the text of the Protocols had been studied.

Mr. USMAN (Pakistan) stated that he was not entirely satisfied with the explanation given by the Working Party in paragraph 26 of the Report regarding the exclusion of the note ad Article 33 of the Charter.

Mr. SPEEKINBRINK (Netherlands) supplemented the reasons given in that paragraph by pointing out that the intention was to make as few entries in the Protocols as possible. For the reasons already given, it would be necessary to include all relevant Notes if this one were included.

Mr. LEDDY supported the view of the Chairman of the Working Party on the ground that the insertion of this Note to the exclusion of other interpretative notes would imply that the other notes had been invalidated.

Mr. ADARKAR (India) expressed his willingness to communicate to his government the understanding of the contracting parties that paragraph 1 of Article V was to be interpreted in the light of the interpretative Note, which had not been inserted in Annex I to the General Agreement for reason of convenience.

Mr. USMAN said that in view of the statement made by the representative of India, he would be satisfied with the disposition if this were placed on record.

The CHAIRMAN invited the meeting to consider the substance of Annex I to the Report, with a view to enabling the Secretariat to prepare a clean text of the Protocols covering these amendments.

Mr. AUGENTHALER (Czechoslovakia) proposed that the new paragraph 3 of Article I presented in paragraph I of Section A of Annex I, referring to the preferences between the countries formerly pertaining to the Ottoman Empire, should be covered by a separate Protocol so that its acceptance would not be dependent on that of the other amendments in Section A and those to Article XXIX.

Mr. LEDDY contended that paragraph 3 would not be

applicable until the new Article XXIX had come into force; therefore they should not be separated.

The proposal was not adopted.

Mr. CAMPOS (Brazil) proposed adding the clause "and shall accordingly be treated as a customs duty for the purpose of Article 17 of the Havana Charter" at the end of paragraph 6 of Article III.

The CHAIRMAN thought it would not be appropriate to make any reference to the procedure of negotiations in a trade agreement.

Mr. CAMPOS thought that there ought to be a reference to the treatment though Article 17 might be left unmentioned.

Mr. LEDDY supported the proposal. It was agreed to adopt the following addition to the paragraph:

"And should be treated as customs duties for the purpose of negotiations".

Mr. CAMPOS enquired as to the origin of the proposed paragraph 10 of Article III. Mr. ROYER (Secretariat) and Mr. LEDDY replied that the Working Party had felt that this addition was necessary in order to link Article IV with the new text of Article III.

In regard to the interpretative Note ad paragraph 1 of Article III, Mr. USMANI enquired whether internal taxation was subject to negotiations as internal qualitative regulations referred to in paragraph 6 of Article III.

The CHAIRMAN pointed out the Agreement was intended to cover only the results of negotiations and should contain no rules regarding negotiations, which were left for the Havana Charter.

Mr. LEDDY said that when the General Agreement came

to be applied definitively, by virtue of paragraph 2 of Article III as amended the contracting parties would not be permitted to maintain any protective internal taxation. No provisions for negotiation were needed in respect of revenue taxes which were a subject not touched either by the Charter or the Agreement.

Mr. LIEU (China) wanted it placed on record that though he would not insist on proposing an amendment to the interpretative note, ad paragraph 2 of the Article III, so as to revive the old controversy on the question of "directly competitive or substitutable products" versus "like products", it should not be understood that his Government had undertaken not to raise the question when the time came again for a revision of the Charter.

Mr. NOVAL proposed substituting "the general principles of Chapters I to VI of the Havana Charter" for "the general principles of the Havana Charter" in paragraph 1 of Article XXIX, as proposed by the Working Party.

Mr. LEDDY suggested an amendment to the proposal: to add the words "and Chapter IX".

Mr. USMANI said that his delegation would not be able to subscribe to either of these proposals.

Mr. SHACKLE supported the proposal as amended.

Mr. ADARKAR questioned whether it was thought that no principles were embodied in either of the two Chapters left out, i.e. Chapters VII and XIII or whether the principles contained in these two Chapters were to be disregarded. He gave the example of paragraph 2 of Article 72 as one embodying a principle of great importance to under-developed countries. A complicated legal document consisting of interdependent clauses must be taken as an

indivisible whole, a great risk would be run by those who committed themselves to a portion of its principles.

Mr. LEDDY stated that in view of the fact that the idea of the Contracting Parties' being an organization was particularly disliked by certain Governments, it would be wise to omit referring to the chapters of the Charter dealing with procedural matters.

Mr. ADARKAR quoted Article 86, paragraph 4, as another instance of the relevance of Chapters VII and VIII.

Mr. LEDDY pointed out that this was covered by paragraph (c) of Article XXI of the Agreement.

Mr. ADARKAR then mentioned various other Articles, in the two Chapters in question, the provisions of which he believed were worthy of observance by the Contracting parties in their executive capacity.

Mr. SPEEKENBRINK thought that in so far as Chapter I to VI dealt with trade and commodities, subjects which the General Agreement covered, particular attention should be given to these Chapters.

Mr. REISMAN (Canada) was for limiting the reference to Chapters I to VI and IX, but stated that his delegation would not take up a strong stand on this question.

Mr. NORVAL said he had no objection to the inclusion of Chapter IX, but he reserved his position regarding the validity of the principles embodied in Article 86 in respect of the Contracting Parties, as was mentioned by the representative of India.

Mr. USMANI thought the Contracting Parties should follow the spirit of the Havana Charter in regard to matters provided in its Article 86. He gave full support to the text proposed by the Working Party.

Mr. ADAKAR believed that no line of demarcation could be drawn in a document so as to separate those parts embodying principles from those dealing with procedural matters. In reply to the representative of the Netherlands, he pointed out that as the paragraph proposed by the Working Party stood the principles of this Charter would be required to be observed only in so far as they concerned trade and commodity matters, and every country could apply the principles according to its own vision. It would be better to delete the whole paragraph 1 than to accept this delimitation.

Mr. LEDDY said that in view of the settlement that had been reached on the question of Article XXXV, it would seem that the Indian Delegation should have little difficulty in accepting this amendment. He would therefore entreat the representative of India to review the situation.

Mr. ADARKAR replied that though he was fully satisfied with the statement the Chairman had made on an earlier occasion in connection with Article XXXV, he had nevertheless to keep in mind the situation of his Government. It would be equally difficult to reconcile any government which was not represented here to the view that there were no principles embodied in the two Chapters worthy of observance.

Mr. DJABBARA (Syria) thought the amendment proposed by the representative of South Africa was the opposite of the original text; instead of declaring the acceptance of the principles it provided for the disregard of certain principles of the charter. It was outside the terms of reference on replacement and was therefore not in order.

The CHAIRMAN reminded the meeting of the fact that Article XXIX was one which could not be amended except by unanimous consent of the contracting parties. The alternative to unanimity was the retention of the original Geneva text. He hoped that the impasse could be overcome by allowing some time for reflection.

Mr. ADARKAR enquired, for the information of his Government and delegation, whether the total deletion of the paragraph would present any difficulties to the other contracting parties.

Mr. SPEEKENBRINK thought this would be undesirable for technical reasons.

Mr. AUGENTHALER announced that his delegation would find no difficulty in accepting the proposal of the Working Party or the text as amended by the South Africa proposal.

Mr. CAMPOS emphasized that he would not like to see the whole paragraph deleted.

Mr. LIEU supported the views of the representative of India.

The CHAIRMAN summarized the situation by pointing out that since there was one delegation insisting on the exclusion of Chapters VII and VIII from the reference, it was up to those contracting parties who opposed the amendment to decide whether they would prefer the retention of the original Geneva text to accepting the amendment, the Article in question being one which could only be amended when all contracting parties agreed to do so. He advised the representatives to reflect on the issue, and adjourned the meeting at 7.40.