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GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUMMARY RECORD OF THE EIGHTEENTH MEETING

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

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

REPORT OF WORKING PARTY ON MODIFICATIONS TO THE GENERAL AGREEMENT.

Amendment to Article XXIX

The CHAIRMAN drew attention to the Note by the Indian Delegation (GATT/CP.2/28) in which it was stated that the Indian delegation would be prepared to recommend to its Government the acceptance of the amendment restricting the reference in paragraph 1 of Article XXIX to Chapters I-VI and IX on the condition that the intention of the Contracting Parties in excluding reference to the other two Chapters was made clear by the insertion of an explanatory clause, indicating that it was done because the two Chapters "dealt generally with the organization, functions and procedures of the International Trade Organization."

Mr. NORVAL (Union of South Africa) expressed his willingness to accept the addition of this clause.

Mr. DJABBARA (Syria) wanted time to study the Indian proposal.

Mr. CAMPOS (Brazil) said that his delegation would accept the proposal in order to secure unanimity.

Mr. CASSIERS (Belgium) said that his delegation, having been consistently seeking compromise on all questions, would take the same attitude towards the

Sir Oliver GOONETILLEKE (Ceylon) said he needed time to study the proposal.

Mr. ADARKAR (India) requested that the clause be corrected to read".....because they generally deal with...,".

Mr. MOBARAK (Lebanon) expressed the desire to study the proposal, but in addition enquired as to how a principle should be treated if it was found in one of the two Chapters; that is, whether a contracting party would be allowed to apply a principle contained therein if it wanted to do so.

Mr. ADAKAR stated that his delegation had been assured by certain other delegations that the exclusion of Chapters VII and VIII was plausible and permissible since, by virtue of the Final Act signed at Havana, the contracting parties must regard themselves morally bound not to go back on the principles evolved at Havana. The principle of giving due regard to the economic circumstances mentioned in paragraph 2 of Article 72, as well as those in other Articles of the Havana Charter, could not be disregarded even though they were not explicitly included in paragraph 1 of Article XXIX.

The CHAIRMAN, in reply to the representative of Lebanon, stated that, if the new amendment were adopted a contracting party would be authorized to apply such a principle if it were not inconsistent with the provisions of the General Agreement.

Mr. LIEU (China) said that although the proposed additional clause and paragraph 1 or Article XXIX seemed to be inconsistent, he would be prepared to accept it is it were acceptable to the majority.

Mr. HASNIE (Pakistan) stated that he had certain doubts regarding the Chairman's interpretation of the added clause.

Mr. MOBARAK thought the Indian amendment implied that a contracting party should have the right to apply any principle which it found in the two Chapters.

The CHAIRMAN affirmed his view that such application should be conditioned by the principle's being consistent with the provisions of the Charter. He added that even the application of the principles contained in Chapters I-VI and XI would equally be conditional on the fulfilment of this requirement.

Mr. ADARKAR agreed to the suggestion from the Chair that the additional clause should be made an interpretative note included in Annex I to the Agreement.

Mr. MOBARAK thought the partial reference was insufficient and doubted whether his Government would be able to accept it.

Mr. ADARKA explained why he regarded the amendment with the interpretative note as sufficient: the exclusion of the two chapters dealing generally with the Organization was advisable as the executive authority of some contracting parties might not be in a position to assume any obligation relating to organizational matters. The interpretative noted was added for the sake of formal accuracy. Any difficulty which such countries as Lebanon, Syria or India might experience would find a solution in Article XXXV of the Agreement. The exclusion of the two chapters from the draft would therefore create no problem for any contracting party, and the added note

would serve to assure those who were not present at Geneva that no decidion had been taken here contrary to the spirit of the Havana Charter.

Mr. HASNIE asked whether the two conditions given in (a) and (b) of paragraph 1 of Article XXXV were meant to be mutually exclusive or interdependent.

The CHAIRMAN replied that according to the paragraph, if two countries, one of which was a contracting party and the other of which was acceding to the General Agreement, had not entered into negotiations, either of them, the contracting party or the acceding party, could decide that the Agreement or Article II should not apply as between them when the second party became a contracting party.

In announcing the approval of the Interpretative Note proposed by the Indian delegation, the CHAIRMAN reminded the representatives that the Note would be contained in the Protocol covering the amendments to Part I and Article XXIX which should be signed by all contracting parties.

Mr. HASNIE proposed to insert at the end of Annex A to the General Agreement the following paragraph which appeared in the corresponding Annex to the Havana Charter:-

> "The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of April 10, 1947."

The proposal was approved.

THE FORM OF THE PROTOCOL TO CONTAIN THE MODIFICATIONS TO THE AGREEMENT.

The CHAIRMAN introduced the Report of the Legal Working Party (GATT/CP.2/27) and drew attention to the two different procedures of acceptance described in paragraphs 3 and 4 of the draft Protocols contained therein. The representatives were also reminded of the need of depositing appropriate credentials prior to the signature of these instruments at the end of the session.

Mr. RODRIGUEZ(Brazil) stated that for constitutional reasons the representative for Brazil would only be able to sign ad referendum.

Mr. LEDDY (United States) announced that his delegation had received full powers for signing the instruments without reservation.

Mr. SHACKLE (United Kingdom) enquired as to whether a delegation possessing full powers to sign without qualification could nevertheless sign one of the protocols ad referendum.

The CHAIRMAN answered in the affirmative.

Mr. WUNSZ KING (China) enquired as to the exact form in which an ad referendum signature should appear.

The CHAIRMAN replied that for this purpose either the words "ad referendum" or "subject to the acceptance by the _____ Government" could be added after the signature.

Referring to paragraph 36 of the Report of Working Party 3 on Negotiations (GATT/CP.2/22/Rev.1) in answer to a question, the CHAIRMAN emphasized that no time limit was set for the deposit of instruments of acceptance by

those governments which were unable to sign the protocols without qualification, but a recommendation was intended to be made by the CONTRACTING PARTIES regarding the date before which the contracting parties were advised to deposit such instruments.

It was agreed that November 30, 1948, should replace the date of October 31, 1948 mentioned in paragraph 34 of the Working Party Report. The French text of that paragraph was to be amended so as to indicate clearly that it was merely a recommendation to the contracting parties concerned.

Mr. OFTENDAL (Norway) thought that any delegate having powers to partake in the dicussions should be deemed to possess ipso facto powers to sign any instruments ad referendum, and proposed that this should be recognized as a rule.

Mr. ADARKA suggested that a resultion could be passed to the effect that all representativeswho fulfilled the requirements of the Rules of Procedure as such should be regarded as having full power to sign the instruments, ad referendum.

MAHARAJA OF ALIRAJPUR (India) stated that his delegation would not be able to sign the instruments without further instructions.

The CHAIRMAN replied that he believed that the representative of India had presented credentials empowering him to sign ad referendum.

Mr. MOBARAK (Lebanon) supported the proposal of the Norwegian representative. In his view, since a signature ad referendum had no binding force on a

government any representative accredited by his government to the meeting could sign the instruments in this way without further authorization.

Mr. LECUYER (France) supported the Norwegian proposal, but was not in agreement with the view of the representative of Lebanon that such signatures had no binding force whatsoever. He thought that the representative who put down his signature was at least morally bound to present the case of the Contracting Parties to his government.

Mr. RODRIGUEZ supported the views of the representative of France. In his opinion, however, a government, whose representative signed such an instrument would have the obligation to submit it to its legislature.

Mr. SHACKLE agreed with the views of the Norwegian representative, and he thought it was the obligation of every representative who signed the instrument to explain and present the case to his government.

Mr. TONKINS (Australia) stated that the Norwegian proposal was not acceptable to his delegation.

The CHAIRMAN thought that in a case like this each representative could decide for himself whether he would regard himself as authorized to sign in the absence of explicit instructions.

Mr. NICOL (New Zealand) asked whether the Protocol of Rectifications should be signed in the same way as the Protocols on Modifications.

Mr. LEDDY thought it was necessary to sign the Protocol of Rectifications without qualification.

Mr. MOBARAK said that he could not sign any of these instruments without qualification. He disagreed with the view of the representative of Brazil that governments were bound to promote legislation for any international instrument which their representatives had signed ad referendum.

Mr. MAHADIVA (Ceylon) wished that resolution should be taken in regard to this matter so that he could cable his Government for instructions.

The CHAIRMAN pointed out that all matters relating to the signing of the protocols, except the Norwegian proposal had been dealt with in the Secretariat Note (GATT/CP.2/24) approved by the Contracting Parties.

The Norwegian proposal was voted upon and approved. It was agreed that the Protocol of Rectification should be signed without qualification.