RESTRICTED
LIMITED B

GATT/CP.2/SR.21
8 September, 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

Summary Record of the Twenty-first Meeting
Held at the Palais des Nations, Geneva,
at 3.00 p.m. on 8 September, 1948

CHAIRMAN: Mr. L.D. Wilgress (CANADA)

REPORT OF WORKING PARTY 3 ON THE REQUEST OF THE UNITED STATES FOR A WAIVER IN RESPECT OF PREFERENTIAL TREATMENT FOR THE TRUST TERRITORY OF THE PACIFIC (GATT/CP.2/36)

Mr. OFTEDAL (Norway) acting chairman of the Working Party, introduced the report on the United States request, and moved the adoption of the report of the Working Party.

Mr. VINCENT (United Kingdom) thought that the effort made by the United States Government in supplying the Contracting Parties with abundant statistics and detailed documentation was highly commendable. He would suggest that this should be taken as a precedent for future cases and any government contemplating making a similar request should be expected to furnish the Contracting Parties with so much information and documentation that the request would not be made lightly.

Mr. de VRIES (Netherlands) stated that he felt it regrettable that the United States Government should be unable to find other means than the institution of a new general preferential treatment. The Working Party had been aware of the serious matters of principle that were

involved. He hoped, therefore, that the United States Government, even after such a waiver had been granted, would not make an unwise use of this privilege and would decide to surrender the privilege at the first opportunity. It seemed, furthermore, that the waiver would not bind Members of the ITO not Contracting Parties; under Article 16 of the Charter such Members would, from the day the Charter came into force, have the right to ask to be accorded immediately and unconditionally the same preferential treatment to like products originating from their territories. In case any of such Members of the ITO should, through this provision, receive any privileges, favours or immunities which were withheld from the Contracting Parties by this waiver he would have to reserve the position of his government with regard to the injury involved. As to the opinion of the Working Party that preference with regard to the processing tax was unlikely to cause any substantial injury to the trade of any other Contracting Party, he could accept this only under the assumption that future production of copra in the trust territory would not exceed a yearly average of 10,000 tons, that copra remained under allocation by I.E.F.C. so that competition was restricted, and that the processing tax continued to be suspended. Should any of these factors change, the decision taken at this session would have to be reconsidered. On that understanding he would not oppose the waiver. On the question of procedure, he wondered whether a simple decision approved at a meeting would be adequate and whether it would not be necessary to sign a protocol as in the other cases. He also doubted whether it was legally correct to

replace the date referred to in sub-paragraph (a) and (b) of the final paragraph of Article 1, in the manner recommended by the Working Party in paragraph 10 of its report. Since a new obligation was involved it would seem that a separate protocol should be signed and accepted by the Contracting Parties.

Mr. LEDDY (United States), in reply to the representative of the Netherlands regarding the privileges that Members of the ITO not Contracting Parties would enjoy upon the coming into force of the Charter, stated that the United States Government would endeavour to seek the understanding of such members and accommodate the Contracting Parties when necessary, pending the final settlement envisaged in the last lines of paragraph 6 of the report. Safeguards for the Contracting Parties were not really necessary since the territory to which the waiver applied and the scope of the waiver itself were both limited. There was therefore no need for the Netherlands Government to reserve its position. As regards the economic factors enumerated by the representative of the Netherlands, they were not regarded by the Working Party as the decisive underlying factors. The main purpose of the request was to enable the administering authority to fulfil its obligations under the trusteeship agreement for the islands concerned. On the question of procedure, he pointed out that since it was not an amendment to the General Agreement but merely an action taken in accordance with the provisions of an article, namely Article XXV of the General Agreement, a decision approved by the Contracting Parties should be sufficient for the purpose.

The CHAIRMAN stated that an action taken in accordance with the terms of an article could be effected by a decision approved by the Contracting Parties and duly recorded.

Mr. GUTIERREZ (Cuba) said that he disagreed entirely with the report of the Working Party. In his opinion matters of principle and doctrine should not be taken so lightly and the principles and doctrines embodied in the Charter and the General Agreement should not be violated simply because the majority of the Contracting Parties had given their consent. When the question of new preferences for purposes of economic development and reconstruction was discussed at Havana, it was emphatically stated that the principle of eliminating preferences was not impaired and Article 15 was so drafted that it could only be invoked in very exceptional specific cases. The waiver was requested not so much for the advantage of the inhabitants of those islands who were said to be disappearing, as for the benefit of certain industries in the United States, the new preference could be detrimental to present sugar producers. The United States, being a country whose tariff laws were so tedious and inflexible, should not have seen fit to ask other countries to comply with a request of this nature. Above all, if the Contracting Parties to the General Agreement and the ITO were to gain respect and to secure the confidence of the people of the world, the fundamental principles embodied therein should by no means be tampered with simply in the name of a majority. For these reasons he would vote against the report.

Mr. LEDDY replied that the purpose of including Article XXV in the Agreement was to provide flexibility for the Contracting Parties and it would be frustrating the intent of that Article if a way were not sought under the provisions of that article in a case like this. He assured the representative of Cuba that the Working Party had been convinced that the sugar industry in those islands was not likely to revive and that the economic factors were equally unlikely to change as long as sugar was under control in the United States.

Mr. TONKIN (Australia) said that he understood that the Working Party had given most careful consideration to the request of the United States and also to the views of the representatives of other Contracting Parties who had a direct interest in the question by reason of the fact that their governments had similar responsibilities in respect of other areas, some of which produce the same commodities as those mentioned in the report. His Government would be prepared to accept the decision if it met with the approval of the majority of the Contracting Parties. He welcomed the comment made by the representative of the United Kingdom in regard to documentation to support any future request as his Government might wish at some future time to make an approach along similar lines in respect of products coming from trust territories for which it was at present responsible.

Mr. WUNSZ KING (China) felt that on the whole a case of exceptional circumstances as provided in Article XXV seemed to have been established. In regard to the question of procedure, he would have refrained from questioning the ruling of the Chairman owing to his belief that the Chairman

must have given careful consideration and consulted legal experts regarding the appropriate procedure to be followed, had it not been for his conviction that a decision involving a departure from the general provisions of the Agreement must necessitate a formal instrument to be signed and accepted by the Contracting Parties concerned. Another suggested solution might be to name the territory in question in Annex D to the General Agreement, although it might be claimed that these preferences could not be considered "preferences in force" in the terms of paragraph 2 (b) of Article 1. He also requested clarification in regard to the reference to Article XXV and wanted to be assured that it was paragraph 5 of the article that had been referred to.

The CHAIRMAN replied that the protocol regarding the request of Chile was needed because the accession of a government to the Agreement was to be decided in accordance with Article XXXIII, on terms to be agreed, whereas under paragraph 5 of Article XXV approval by a two-thirds majority was all that was needed. A protocol could be dispensed with because there were no terms to be agreed upon and to mention in the summary record the fact that it had been approved by a two-thirds majority would therefore suffice.

Mr. GUTIERREZ was also doubtful regarding the Chairman's interpretation.

Mr. NICOL (New Zealand) stated that he had been instructed to propose that the question be referred to the Third Session, but he would not press his proposal, which had not found support in the Working Party.

Mr. WUNSZ KING, in reply to the Chairman, said that the word "decision" also appeared in Article XXXIII as amended in Havana.

Mr. AUGENTHALER (Czechoslovakia) suggested referring the matter of procedure to the legal experts and pointed out that these territories could not be covered in Annex D as "dependent territories".

Mr. REISMAN (Canada) said that though deploring the extensive recourse to Article XXV at the Second Session, he would agree that a prima facie case had been established, and that the circumstances were exceptional and were not elsewhere provided for in the Agreement. He hoped that the United States Government could establish a fine precedent by seeing its way voluntarily to surrender the preferences before the Third Session. Since the waiver clause was not intended to be used lightly, he would entreat the Contracting Parties not to cite the present case as a precedent for a host of future applications.

Mr. de VRIES thought that, firstly, the signing of a protocol could be avoided. Secondly, since the United States Government was aware of the possible benefit that might accrue to the future members of the ITO not contracting parties, and of the related consequences, he would not insist on the reservation he had made on behalf of his Government. Thirdly, in regard to the remarks made by the representative of Australia, the Working Party had not intended that the procedures should be taken as a precedent, and one should not lose sight of the emphasized requirement that the special circumstances must be exceptional. Finally, attention should be given to the last paragraph of the Decision; any contracting party which should deem its trade to be substantially injured should be entitled to apply to the

CONTRACTING PARTIES for joint consideration as to whether the basic factors had changed. A favourable vote would be cast by the Netherlands on the understanding that the case would be re-opened whenever a contracting party should deem it necessary to protect its interests.

Mr. LEDDY said that his Delegation agreed to the understanding put forward by the representative of the Netherlands. He believed that the facts and statistics which the United States delegate had supplied to justify the request should enable the other representatives to defend the decision of the CONTRACTING PARTIES before their Governments.

Mr. GUTIERREZ stated that in his opinion Article XXV had been invoked so often and so lightly that the exception seemed to have become the rule and the rule the exception. It was both doubtful whether the circumstances were not elsewhere provided for (though the Charter was not in force, measures could perhaps be taken along the lines of its Article 15), and whether there really were any exceptional circumstances. To call a precedent not a precedent would prevent no one from using it as such, and the majority rule on a question of a constitutional nature was against the best legal traditions of the world. He would, therefore, be unable to agree to this new preference, when the basic objective of the Agreement and the Charter was for the elimination of preferences. He requested the vote to be taken by a roll call.

Mr. LEDDY thought that the antagonists of the request had overlooked the fact that the preferential relations that existed between these islands and Japan would be eliminated with the inauguration of the United States administration, and the likelihood of any injury being inflicted on the

contracting parties was slight.

Mr. RODRIGUES (Brazil) stated that although his Government has traditionally opposed all preferences, he would vote in favour of compliance with this request on the ground that the commercial interests involved were negligible and that the political responsibilities of the trusteeship administration should be taken into consideration. It was hoped that this would not be taken as a precedent.

Mr. AUGENTHALER said that he would vote against the request on the ground that a vital principle should not be undermined for the purpose of securing so little benefit for such a small number of people. Moreover, he was not satisfied that the benefit would really go to the inhabitants of those islands, and it was more likely that the oil refineries in the United States would be the real beneficiaries.

Mr. CASSIERS (Belgium) stated that he would have decided to vote against the United States request because of the dangerous precedent that would be created, the infringement on the principle of binding the margin of preferences, and the insufficient evidence that had been put forward in support of the contention that no provisions were made elsewhere in the Agreement for such exceptional circumstances, had it not been for the respect that his Government had for the motive that lay behind the United States request. He would therefore abstain from voting.

Mr. TRABOULSI (Syria) stated that his Government had always been in favour of preferences and, since the request was justified, he would vote in favour of compliance with the request.

M. LECUYER (France) stated that he would vote in favour of the request because he, in following the work of the Working Party, had been convinced that to apply the provisions of paragraph 5 of Article XXV in such an exceptional case would not create any undesirable precedent.

Mr. MOBARAK (Lebanon) was in favour of the request being complied with because he thought it was a good precedent for those countries contemplating preferential arrangements, e.g. the countries formerly members of the Ottoman Empire.

Mr. WUNSZ KING (China) stated that his Government was not in favour of preferences but would like to see that all exceptional cases and difficulties should be given sympathetic consideration because the General Agreement was a new experiment.

The CHAIRMAN explained the procedure of voting and ruled that the representative of Cuba had the right to demand a roll call, which was, at any rate, desirable in a controversial case like this.

The vote was taken by roll call and the decision to comply with the request of the United States Government was approved by 16 votes to 2, while 12 votes were required for its approval according to paragraph 5 of Article XXV.

For (16)		Against (2)
Australia	Lebanon	Cuba
Brazil	Netherlands	Czechoslovakia
Burma	Norway	
Canada	Pakistan	
Ceylon	Syria	
China	South Africa	
France	United Kingdom	
India	United States	

THE REQUEST OF THE GOVERNMENT OF PAKISTAN (c.f. GATT/CP.2/25)

Mr. AUGENTHALER announced that his Government agreed to comply with the request of Pakistan that concession could be withdrawn without compensation in respect of Item 60 (3) in Schedule XV.

He also brought to the attention of the meeting the incident in which the United Press had dispatched certain incorrect news about the proceedings of the meeting on Monday, which had not been extracted from the Press Release.

Mr. ISMAIL (Pakistan) thanked the representative of Czechoslovakia for his commendable gesture of acceding to the requests without asking for any compensatory concession.

The CHAIRMAN stated that the release granted by the Czechoslovakian Government should be deemed to have been reported to the Chairman and to have been communicated to the Contracting Parties represented here in accordance with the procedure given in paragraph 8 of GATT/CP.2/25, approved by the CONTRACTING PARTIES. Therefore, if no objection were received by the Chairman within thirty days, the two contracting parties concerned should be free to put the release into effect. In regard to the news leakage, he hoped that no similar incident would occur in the future.

It was agreed that in view of its complexity, the Report of Working Party 3 on the United States request should be released to the press.

The meeting rose at 7.30 p.m.