

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.5/SR.24
19 December 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fifth Session

SUMMARY RECORD OF THE TWENTY-FOURTH MEETING
Held at the Marine Spa, Torquay, England,
on Friday, 15 December 1950, at 3.00 p.m.

Chairman: L. TUOMINEN (Finland)

- Subjects discussed:
1. Report of Working Party "D" on the request of WHO concerning insecticides (GATT/CP.5/47) (Continued)
 2. Report of Working Party "B" on Tariff Schedules (GATT/CP.5/45)
 3. The position of Indo-China in relation to the General Agreement (GATT/CP.5/50)
 4. Documents to embody the results of the Torquay Tariff Negotiations (GATT/CP.5/46 & 48)
 5. The Scope of Articles XXV:5(b) and XXXV with reference to the Tariff Negotiations and the prolongation of the assured life of the existing schedules (GATT/CP.5/9)

In the absence of the permanent officers of the Contracting Parties Mr. TUOMINEN (Finland), upon the nomination of Mr. AHMAD (Pakistan), supported by M. LECUYER (France) and Mr. STILLEBROER (Netherlands), was unanimously elected Chairman for this meeting.

1. Report of Working Party "D" on the Request of WHO concerning Insecticides (GATT/CP.5/47) (Continued)

The discussion on the amendment to the Report of Working Party "D" was continued. The Contracting Parties agreed to amend Annex I to the Report (draft letter to the Director-General of the World Health Organization) by deleting paragraph 4 and amending the last paragraph to read as follows:

"The draft of the Agreement, as amended by the Working Party, in the light of the considerations mentioned above, is attached. It must, however, be pointed out that most of the representatives of the contracting parties who participated in the discussion considered that, inter alia, the nature of products concerned was such that they were not suitable for an agreement of this kind, and that the attempt to deal with the question by such an agreement had led to a document which was so full of exceptions and reservations that it was virtually without any binding force. These representatives, therefore, considered that the World Health Organization would have to seek some other way of achieving the purposes it has in view. It was, however, pointed out by other representatives that the Economic and Social Council and the World Health Assembly had adopted resolutions in an attempt to deal with this question, over the last two years, without any significant effect on the problem in hand. These representatives also felt that in any case a formal agreement would be more effective than a resolution, and, while preferring to see the scope of the agreement broadened, they nevertheless considered that the present draft agreement would be a useful and workable instrument to international trade which would assist the purposes of the World Health Organization".

The Report of Working Party "D" as a whole and the annexed letter were approved.

Dr. FORREST (World Health Organization) expressed the appreciation of his organization for the valuable assistance which the Contracting Parties had rendered them in the preparation of a draft agreement.

2. The Report of Working Party "B" on Tariff Schedules (GATT/CP. 5/45)

Mr. DUFOURG (France), Chairman of Working Party "B", presented and summarised the Report. Concerning the consolidation of schedules, which had been approved by the Contracting Parties in principle, the Working Party recommended a timetable for the preparation of the consolidated texts, according to which the consolidated schedules would be ready for approval by the Contracting Parties at their Sixth Session. Following the proposal of Cuba, the Working Party suggested that the names of the countries with which the concessions had originally been negotiated and the place of the negotiations should be included in the consolidated lists for consideration by governments, but, in view of the multilateral character of the Agreement, these would not appear in the lists to be published. With regard to the incorporation in Schedule IX (Cuba) of the results of the negotiations between Cuba and the United States, the Working Party, after having consulted with the Legal Working Party of the Tariff Negotiations Committee, recommended that the results of these negotiations be incorporated in the Cuban Schedule to be annexed to the Torquay Protocol. In considering the proposed rectifications to the schedules, the Working Party had kept in mind that only the changes due to typographical errors, and those necessitated by a change in tariff nomenclature or numbering, could properly be dealt with in a protocol of rectifications. The Fifth Protocol of Rectifications prepared by the Working Party, therefore, included only such rectifications. This being the case, the request of the Netherlands delegation for a modification in the Benelux Schedule was dealt with separately. As a result of the devaluation in 1949, in which the Netherlands guilder was devalued by 33% and the Belgian franc by 12½, a significant discrepancy had been introduced between the specific duties of the two member countries of the Benelux Customs Union. The rates of duty in guilders had to be brought into line with those expressed in Belgian francs in order to avoid any diversion of trade to the disadvantage of the country with the higher rates of duty. The Working Party, considering that the requests of the Netherlands delegation fulfilled the conditions of paragraph 6(a) of Article II of the Agreement, recommended that the Contracting Parties take a decision, a draft of which was annexed to the Report.

The CHAIRMAN, speaking as the representative of Finland, referred to the reference to changes in the Finnish Schedule mentioned in Section 3 of the Report, and expressed appreciation to the eight contracting parties with whom agreement had been reached on proposed adjustments in 92 items in the Finnish Schedule. One item was still outstanding on which negotiations were yet to be concluded with another contracting party. The proposal of the Working Party that the alterations from specific to ad valorem duties in the Finnish Schedule should be given effect by inclusion in the Torquay Schedule after agreement had been reached through the machinery of Article XXVIII, was acceptable to his delegation.

Mr. LACAYE (Uruguay) stated that the rectifications requested by his delegation and contained in document T/55, Corr. 3 had been contained in the draft protocol originally circulated, together with several other changes in the Uruguayan list which had now been withdrawn. His delegation agreed to the exclusion of the proposed addition to Note IV of the Uruguayan Schedule, on the understanding that this note would be included in the Torquay Schedule. Finally, the question of Note II to the Uruguayan Schedule was under consideration by his delegation with other interested delegations.

The draft Decision concerning the adjustments relating to specific duties and charges included in Part I of Schedule II (Benelux) was unanimously approved, the Contracting Parties thus concurring, in accordance with the provisions of Article II:6(a), that the adjustments so specified did not impair the value of the concessions provided for in that Schedule.

Mr. STILLEBROEK (Netherlands) thanked the Contracting Parties for their favourable consideration.

The CHAIRMAN thanked the Working Party and its chairman. He stated that the Fifth Protocol of Rectifications would be open for signature on the following day.

M. CASSIERS (Belgium), on behalf of the Benelux delegations, proposed that Schedule II (Benelux) be further rectified by the deletion of Note 2 to Item ex 68 (wheat), in view of the fact that the matter was covered by the provisions of Article III and, in particular, by paragraphs 5 and 6 thereof. The Canadian delegation, with whom the item had been originally negotiated, had raised no objection to their proposed amendment.

The CHAIRMAN suggested that since there was no objection, the request of the Benelux delegations should be granted and the proposed change incorporated in the Fifth Protocol of Rectifications.

This was agreed.

3. The Position of Indo-China in Relation to the General Agreement
(GATT/CP.5/50)

M. LECUYER (France) said that he had fully explained the subject to the Tariff Negotiations Committee and would, therefore, only briefly relate the developments in the relationship between France and Indo-China. As a result of these developments, the government of France had undertaken to facilitate the accession of the Associated States of Indo-China to international trade agreements. It would be the responsibility of these states to decide, within the framework of the general economic policy of the French Union, what their position would be with regard to the General Agreement.

In answer to a question by the CHAIRMAN, M. LECUYER stated that customs administration in Indo-China would remain the responsibility of the French Government until the convention concluded between France and these States was ratified.

The Contracting Parties took note of the statement of the French representative.

4. Documents to Embody the Results of the Torquay Negotiations
(GATT/CP.5/46 and 48)

Mr. GISLE (Sweden), Vice-Chairman of the Tariff Negotiations Committee, introduced the report of the Committee's Legal Working Party (GATT/CP.5/46) which had been approved by that Committee for transmission (by the letter in GATT/CP.5/48) to the Contracting Parties. Mr. GISLE drew attention to three points in these documents which especially required further consideration. First, in the preamble to the Torquay Protocol there were listed the "present contracting parties". As a certain contracting party had objected to the omission of China from that list, it was proposed that the enumeration of contracting parties be dispensed with; the preamble could read "The governments which are contracting parties to the General Agreement on Tariffs and Trade on the date of this protocol, etc." Secondly, it had been requested that the Contracting Parties should declare that if the signature of the Torquay Protocol by Czechoslovakia were accompanied by a statement to the effect that such signature could not be interpreted as an explicit or implicit recognition by Czechoslovakia of the Governments of Western Germany or Southern Korea or of their legal capacity to accede to the General Agreement,

such statement would not be regarded as constituting a reservation to the acceptance of the Protocol by that government. The Contracting Parties should also bring to the notice of the Secretary-General of the United Nations that no objection was raised by any contracting party to that statement. Thirdly, the Working Party recommended that the Contracting Parties take a decision similar to that of 13 August 1949 at Lancy, to the effect that any contracting party which should **fail** to sign a decision of accession by the closing date for signature would be deemed to have cast a negative vote: the Secretariat had been asked to prepare a draft decision to be approved at a subsequent meeting.

Mr. BYSTRICKY (Czechoslovakia) agreed to the modification of the preamble to the Torquay Protocol, but he thought that a footnote might be added in this document, and on other occasions in the future when the contracting parties are listed, stating that the Central People's Government of China had not defined its position with respect to the General Agreement.

The EXECUTIVE SECRETARY, at the request of the CHAIRMAN, expressed the opinion that the question under consideration related only to the formal designation to appear in the Torquay Protocol. Taking account of the nature of the Protocol, it would seem that a note of that nature would be neither necessary nor appropriate; nor was it particularly relevant, in such a document, to **draw** attention to the position of a particular government.

The amendment of the preamble as proposed by Mr. GISLE was approved.

On the second point, Mr. BYSTRICKY (Czechoslovakia) stated that the Czechoslovak Government, in order to clarify its position as regards the Torquay Protocol, had instructed him to state that, if and when it signed the Torquay Protocol, its representative would accompany his signature by a statement to the effect that such signature could not be interpreted as an explicit or implicit recognition by the Government of Czechoslovakia of the Governments of Western Germany or Southern Korea, or of their legal capacity to accede to the General Agreement. In the opinion of the Czechoslovak Government such a statement would not constitute a reservation as to the acceptance of the terms of the Torquay Protocol by that Government. The Czechoslovak Government expected that the Contracting Parties, and the Torquay acceding Governments and Uruguay, would agree with the Czechoslovak Government as to the legal effect of the proposed statement. If that were the case, it should be duly noted in the record of the meeting that no objection was raised to the above statement and the Secretary-General of the United Nations should be informed of that fact in order to enable the Czechoslovak Government to sign the Torquay Protocol.

The EXECUTIVE SECRETARY informed the meeting that when the question arose in the Tariff Negotiations Committee he had approached the United Nations for advice on the legal aspects of the question. The Assistant Secretary-General in charge of the Legal Department of the United Nations had advised by telegram as follows:

1. "We confirm that signature of the Protocol by a contracting party would not imply political recognition of an acceding government and that a statement to that effect, therefore, would not constitute a reservation.
2. "A written declaration formally accompanying a signature and stating that a government had no legal capacity to accede under GATT article ~~XXXIII~~ would constitute a reservation if designed to eliminate obligations which the contracting party would otherwise be required to meet under the terms of the GATT and the Torquay Protocol or if designed to deny rights which the acceding government would otherwise enjoy.
3. "Thus an explanation by a contracting party of non-recognition as a reason for withholding signature in respect of an unrecognised Government would not constitute a reservation, but a formal refusal to grant a required concession might constitute a reservation."

The view was therefore confirmed that a statement attached to the signature of the Torquay Protocol by Czechoslovakia would not constitute a reservation to the Protocol as such and the matter could be settled by transmitting the summary record of this meeting to the Secretary-General of the United Nations.

It was agreed to record that no objection was raised to the proposed statement by the Government of Czechoslovakia.

The Contracting Parties then gave consideration to paragraph 2 in the letter of transmission from the Tariff Negotiations Committee (GATT/CP.5/48) in which the Committee suggested that it should be given authority by the Contracting Parties to make appropriate amendments in the Torquay Protocol if this should be deemed necessary after reviewing from time to time the progress made in Article XXVIII negotiations.

The Contracting Parties agreed to authorise the Tariff Negotiations Committee to make such amendments if and when it deemed necessary.

The CHAIRMAN then drew attention to paragraph 6 of the draft Torquay Protocol with reference to paragraph 1 of the transmitting letter (GATT/CP.5/48) concerning the amendment of Article XXVIII of the General Agreement. In this connection, the Committee had suggested that it might be given authority by the Contracting Parties to remove paragraph 6 from the Torquay Protocol should it be found preferable for the amendment of Article XXVIII to be incorporated in a separate protocol, and to prepare for signature the Protocol to amend Article XXVIII which had been drawn up at the Fourth Session.

The Contracting Parties agreed to authorise the Tariff Negotiations Committee as suggested.

Mr. TONKIN (Australia) said that the proposal to re-bind formally the Geneva and Annecy schedules of concessions until 1 January 1954 by means of altering the date in paragraph 1 of Article XXVIII was based on the assumption that before the conclusion of the Torquay Conference every contracting party would be in a position to name and specify all the adjustments that it might wish to effect prior to that date. The Australian Delegation had informed the Contracting Parties that so far as the great bulk of the items in its existing schedules were concerned, the Australian Government was prepared to accept that proposal. However, the Australian delegation had also drawn attention to problems which the method proposed for the revalidation of the schedules would create for countries with a rapidly developing economy, and in particular for countries such as Australia, where it is the policy and standard practice of the Government to rely on the advice of an independent tariff tribunal to determine, after enquiries held in public, what measure of tariff protection, if any, might appropriately be afforded to production of any particular product. The Australian delegation had indicated that it did not at this stage seek release from any of the obligations which it assumed under Article II of the Agreement with respect to any item in existing schedules and would propose that all items should continue to remain bound. The difficulty lay in the fact that many of the tariff concessions had been granted at Geneva on the generally accepted understanding that it would be possible to negotiate modification at any time after the beginning of 1951. The present difficulty was that the Australian Government had no definite proposal for increasing any tariff rate and these remarks applied equally to the 52 notified items. In fact, it was not known whether Australia would desire to modify the present tariff or its current contractual obligations on any of the notified items; this would depend to a large extent on the information given in the course of the investigations of the tariff tribunal and its recommendations. What the Australian Government desired now was freedom from the proposed new

obligation if a modification of the concessions granted at Geneva on any of the 32 notified items should be deemed desirable. Whilst it was thought not improbable that the tariff tribunal would form the view that an alteration in the present tariff commitments should not be sought on the majority of the notified items, the Australian delegation felt that Australia could not sign the proposed Final Act of Torquay and the associated instruments without making a reservation against the blanket proposal to extend the date for negotiating modifications in past sessions to 1954. To sign the Final Act and the associated instruments with a reservation seemed to be the only means of indicating to the Contracting Parties its position with respect to these items.

Mr. EVANS (United States) said that the United States delegation would have difficulty in accepting the Australian proposal. In view of the statement that Australia had no present intention of taking action with respect to any of the 32 items, he wondered whether it would not be possible for Australia to sign the instruments without reservation if it were duly noted in the record of this meeting that, if and when Australia should propose any modification of any of the 32 items concerned before the beginning of 1954, the Contracting Parties would give sympathetic consideration to a request for an opportunity to renegotiate.

Mr. TONKIN (Australia) replied that his delegation could accept that proposal if it were agreeable to the Contracting Parties.

Mr. AHMAD (Pakistan), in reply to a question by the Chairman, said that Pakistan was in an identical position with Australia with respect to the items which it had notified and that his delegation would follow the example of Australia by accepting the proposal of the United States representative.

The Contracting Parties, consequently, took note of the position of Australia and Pakistan and agreed that should the two governments wish to make an application to the Contracting Parties with respect to the items listed in GATT/TN.2/A/10 and 9 respectively, the Contracting Parties would give sympathetic consideration to such applications.

Mr. TONKIN (Australia) and Mr. AHMAD (Pakistan) expressed gratitude to the Contracting Parties for the understanding they had expressed in regard to the position of their Governments. In return, Mr. EVANS (United States) expressed appreciation to the two representatives for the accommodating attitude they had shown in accepting his proposal.

In discussing the proposed timetable set out in Section 6 of the Report, (page 8, of GATT/CP.5/46), Mr. SOLBERG (Norway) said that owing to constitutional reasons it might not be possible for his Government to take a decision before 31 August 1951, but his delegation was unable to make any definite proposal at present. He suggested that if an extension of the time limit should be necessary, a decision might be sought from the Contracting Parties by means of a postal ballot.

The CHAIRMAN, speaking for the Finnish Delegation, said that his Government was in the same position.

At the suggestion of the CHAIRMAN, the Contracting Parties agreed that the two statements by the representatives of Norway and Finland be duly noted in the Summary Record.

With reference to the last paragraphs in Section 3 of the Report concerning the application of the Agreement to dependent territories and to paragraph 3 of the letter in GATT/CP.5/48, the CHAIRMAN noted that since discussion on the position of Indo-China had taken place under another item, these had now become redundant.

In taking up Section 4 of the Report concerning the Declaration to continue the application of the present Schedules, Mr. DI NOLA (Italy) stated that the Italian delegation, recalling the declaration he had made at the meeting of the Tariff Negotiations Committee on 7 December 1950, wished to inform the Contracting Parties that as soon as the contents of the report of the Legal Working Party became known it had drawn the attention of its Government to its Section 4 and the Declaration which suggested a solution for those countries which, for constitutional reasons, would not be able to sign the Declaration, but would be prepared to assume the proposed undertaking subject to ratification by its parliament. In view of the brevity of time at its disposal the Italian Government had not been able to give the necessary instructions. The Italian delegation would therefore reserve the position of its Government on the question of the adoption of the proposed Declaration.

The CHAIRMAN, speaking for the Finnish delegation, and Mr. SOLBERG (Norway), said that Finland and Norway were in a similar position.

Mr. HERRERA ARANGO (Cuba) inquired whether Italy, Finland and Norway could not give the undertaking on behalf of their Governments, which, unlike the Declaration itself, would be only to the effect that they would not invoke the provisions of Article XXVIII, paragraph 1, subject to the examination of the position by their parliaments.

The CHAIRMAN, as a representative of Finland, and Mr. SOLBERG (Norway) replied that their delegations would be able to give such an undertaking.

Mr. DI NOLA (Italy) stated that his Government was prepared to give the undertaking, but the suggestion made in the Report gave rise to another problem: inasmuch as the other contracting parties signatories to the declaration did not accept the obligation to consolidate their existing concessions with respect to a country which would not accept the Declaration until a decision was taken in parliament, there was no complete reciprocity in the matter. This was precisely the difficulty which he had referred to earlier at the time he submitted the question to his Government for examination.

At the suggestion of the CHAIRMAN, the Contracting Parties took note of the statement by the Italian representative and expressed the hope that the difficulty would no longer exist by the time the Torquay Tariff Negotiations came to an end.

Having discussed the abovementioned points and examined the other parts without discussion, the Contracting Parties approved, as a whole, the Report of the Legal Working Party as transmitted by the Tariff Negotiations Committee.

5. The Scope of Articles XXV:5(b) and XXXV with reference to the Tariff Negotiations and the Prolongation of the Assured Life of the Existing Schedules (GATT/CP.5/9)

Mr. GUERRA (Cuba) introduced the statement of his delegation in GATT/CP.5/9 and further elucidated the main points in the proposal. He explained that the purpose of the proposal was, on the grounds of principle, to make the General Agreement a better and more effective instrument. Article XXXV had been introduced in the Agreement at Havana to meet the situation of certain contracting parties, but nevertheless it was applicable

in respect of any new contracting party, the only requisite condition being that there had been no negotiations between the countries concerned. This being so, the distinction between Article XXXV and the present text of Article XXV:5(b) was a purely formal one. For the reasons given in the Cuban statement the provisions of Article XXV:5(b) should be amended so as to bring it into line with those of Article XXXV. As to the possible objection that the Cuban proposal would have the effect of weakening the effect of the General Agreement, the reply was that on the contrary, the amendment, whilst it would not broaden the applicability of Article XXXV beyond its present scope, would in fact strengthen the Agreement in regard to the numerous countries which might become contracting parties hereafter. The undertaking by a country in regard to the elimination of quantitative restrictions etc., was no less important a concession than the reduction in its tariff rates. The modification of Article XXV:5(b) so as to make it similar to Article XXXV in this regard would no doubt make the General Agreement a more effective instrument. In view of the short time left at the disposal of the Contracting Parties at this session, the Cuban delegation would not press for a discussion on the subject but would request that contracting parties give further reflection to these subjects in preparation for a full examination of the proposal at the next session.

The CHAIRMAN suggested that the Contracting Parties take note of the statement by the Cuban representative and place the item on the Agenda of the Sixth Session. This was agreed.

The Meeting rose at 6 p.m.

