GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Ninth Session

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held at the Palais des Nations, Geneva,
on Saturday, 26 February 1955, at 10.30 a.m.

Chairman: H.E. Mr. L. Dana WILGRESS (Canada)

Subjects discussed: 1. Procedure for concluding Plenaries
2. Report of Review Working Party II

1. Procedure for concluding Plenaries (W.9/224)

The CHAIRMAN referred to the note by the Steering Group (W.9/224) on the procedure to be followed. The Working Party reports would be considered first and this would be followed by consideration of the amendments proposed to the General Agreement, collated in the form of draft Protocols. If the resolution proposed in document W.9/224 on the procedure for the inclusion of amendments in the protocols were approved, then the contents of the protocols would be decided by a two-thirds vote in respect of each amendment proposed. The authentication of the protocols and the organizational agreement would be done by signature of a Final Act.

Mr. GARCIA OLDINI (Chile), referring to the proposed resolution, said that his delegation had maintained from the beginning that it was neither practical nor legally correct to approve by a two-thirds majority the inclusion of amendments which would require acceptance by unanimity to enter into force. The report of the Legal and Drafting Committee (W.9/151) demonstrated the legal difficulties since the Committee itself was not in agreement on this matter, but the difficulties which concerned him particularly were the practical ones which would arise when the amendments came to be submitted for acceptance.

Mr. VARGAS GOMEZ (Cuba) referred to the report of the Legal and Drafting Committee on the procedure for submission of amendments to the CONTRACTING PARTIES (W.9/173) which in his view met the difficulty referred to by the Chilean delegate with respect to amendments requiring unanimity. The Legal and Drafting Committee concluded that it would not be legally possible to include as part of a single amendment any modification requiring acceptance by unanimity, and suggested that there would be an advantage in drawing up two or more protocols of amendment rather than drawing up a single protocol.

Mr. COREA (Ceylon) while agreeing with the objective of the proposed resolution considered that the wording of it appeared to ignore the legal position and establish a procedure simply as a matter of convenience. He thought it would be preferable if the whole of the paragraph referring to this matter from the Legal and Drafting Committee report were included (W.9/151 paragraph 6).

The EXECUTIVE SECRETARY pointed out that the note by the Steering Group drew a clear distinction between the question of the majority of votes required to insert amendments in a protocol for submission to the CONTRACTING PARTIES for acceptance on the one hand, and, on the other, the question as to whether all the amendments should be included in one protocol, or whether there should be two protocols - one including the amendments requiring a two-thirds majority to enter into force and the other including amendments requiring unanimity. The resolution now being discussed had been put forward precisely to avoid the legal difficulties raised by the delegations of Chile and Ceylon. This was a rule of procedure and not a decision in law. Two views on the legal position had been expressed in the Legal and Drafting Committee; the one that since the General Agreement did not specifically provide for this, it would be appropriate that the incorporation of amendments in the protocol should be subject to voting requirements analogous to the acceptance requirement laid down in Article XXX. The other view expressed in the Committee was that the Review was an activity of the CONTRACTING PARTIES within the terms of Article XXV and hence the majority required for any decision under the Review was a simple majority, as laid down in paragraph 4 of that Article, there being no specific provision elsewhere in the Agreement requiring a qualified majority for a decision to embody proposals for amendments to the Agreement in a protocol for submission to governments.

Mr. MACHADO (Brazil) agreed with the distinction drawn by the Executive Secretary and would accept the resolution as a rule of procedure.

Mr. GARCIA OLDINI (Chile), supported by the representative of Indonesia, raised the question as to whether under the procedure proposed, any contracting party who refused to accept an amendment which required unanimity and had been included in a protocol could be asked to withdraw from the Agreement, under the terms of Article XXX:2, if it failed to accept that amendment.

The EXECUTIVE SECRETARY referred to Article XXX paragraph 2 and pointed out that the only possibility of requiring a contracting party to withdraw from the Agreement was in respect of an amendment which had entered into force under that Article. An amendment requiring unanimity could not enter into force until it had been accepted by all contracting parties, and therefore this paragraph would not apply in such cases. This was clearly set out in paragraph 5 of the report of the Legal and Drafting Committee (W.9/173) which read as follows:

> "With regard to amendments requiring acceptance by all the contracting parties according to paragraph 1 of Article XXX, the position is entirely different. The procedure envisaged in paragraph 2 of Article XXX can only be applied to amendments which have entered into force and would, therefore, not be applicable to amendments which have to be accepted by all contracting parties before they enter into force. An application of that procedure to those amendments would have the effect of depriving any contracting party of the rights it acquired when it became party to the General Agreement and would be inconsistent with the spirit and the letter of it. Therefore, if modifications requiring unanimous acceptance were included along with others requiring only a two-thirds majority and treated as a single amendment for the purposes of acceptance and entry into force, there would

be no room left for the procedure under paragraph 2 of Article XXX even for those modifications which require acceptance by two-thirds of the contracting parties. Moreover, in that case any contracting party would have a right of veto regarding the entry into force of all modifications included in the amendment whether or not those modifications require unanimous acceptance."

The resolution proposed by the Steering Group as follows:

"The CONTRACTING PARTIES RESOLVE that, as a rule of procedure applicable to the discussion of Item 3 of the Ninth Session Agenda, amendments to be submitted to contracting parties for acceptance pursuant to Article XXX of the General Agreement shall be approved by a majority of two-thirds of the votes cast."

was approved by 31 votes in favour, none against.

The note on the procedure for concluding plenaries of the Steering Group was approved subject to the following comments. The reports of the Working Parties would be taken up in the order in which they appeared. It was noted that the number of protocols of amendments was left open for the time being, with the probability that there would be two protocols for amendments requiring a two-thirds vote. The decision as to whether the amendments collated in each protocol would be treated as a single amendment for purposes of acceptance would be deferred until the CONTRACTING PARTIES took up the various protocols. It was agreed that the communiqué to be issued after the Session would be issued on the 14th rather than the 10th day following the signature of the Final Act. It was noted that the organizational agreement would also have to be adopted by a two-thirds majority.

The EXECUTIVE SECRETARY informed delegations that the powers which they had to participate in the Session would be sufficient to cover the signature of the Final Act, since that would be a document which merely authenticated the texts.

Mr. CRAWFORD (Australia) referred to the possibility of the arrangements to be made by the CONTRACTING PARTIES at the Tenth Session to extend the date for acceptance, and emphasized that the position of countries such as his own, which might have been unable to complete the procedures necessary although being in no way unwilling to accept the protocols, should be taken account of.

At the suggestion of the Brazilian delegate, it was agreed to include the review by the CONTRACTING PARTIES of the situation as to signatures of the protocols emanating from the Review on the Agenda of the Tenth Session.

2. Report of Review Working Party II (L/329) and Australian proposed amendment (L/330).

Mr. SKIDENFADEN (Denmark), Chairman of Review Working Party II, introduced the report of the Working Party (L/329). The recommendations submitted by Working Party II for the amendment of the Agreement were contained in Annex I.

Statements by the Working Party in support of these amendments were recorded on pages 1 to 15, and the report also contained statements on the reasons for rejection by the Working Party of certain of the proposals referred to it.

A great deal of the time of Working Party II and one of its Sub-Groups had been devoted to consideration of the amendments proposed to Article XXVIII. Pages 20 and 25, respectively, gave a text and a set of Regulations which, for the most part, retained the provisions of the present Article, while adding to it provisions for the automatic extension of the assured life of the Schedules by periods of three years, or such other periods as the CONTRACTING PARTIES might specify, and for opportunities for re-negotiation of concessions towards the end of each period of firm validity and, in exceptional circumstances, during such periods. These three additions were based on the experience of the past seven years and on the arrangements made by the CONTRACTING PARTIES from time to time for re-negotiation of concessions.

Special provision was made in Section A of Article XVIII for a contracting party, covered by the definition in paragraph 4(a) of that Article, to modify items in its Schedule in order to promote the establishment of an industry and to raise the standard of living of its population.

In addition to examining the proposed amendments to the Agreement, the Working Party was asked to take up the Status of Schedules after 30 June of the current year. In view of the general desire that the firm validity of the Schedules should be extended for another period, the Working Party proposed that a declaration should be opened for signature whereby the signatories would undertake not to invoke the provisions of Article XXVIII prior to 1 January 1958. The amendments proposed by the Working Party and the proposal on the assured life of the Schedules were the outcome of a carefully worked out and delicately balanced compromise on closely related and complex questions, and it hoped the CONTRACTING PARTIES would feel able to deal with them as a whole. The report also recommended that the provisions whereby the CONTRACTING PARTIES might grant authority for re-negotiation be brought into operation forthwith. Finally, the Working Party recommended that the Consolidated Schedules be kept up to date by annual corrigenda, and that the republication of those Schedules be undertaken at an appropriate time.

The CHAIRMAN thanked Mr. Seidenfaden, as Chairman, and the members of Working Party II for their careful and exhaustive examination of the complicated issues at stake.

In reply to a question of the Chilean delegate, the CHAIRMAN emphasized that delegates would be free at the time of considering the amendments, to vote in any manner on each amendment, regardless of whether they had specifically indicated their position during the discussion of the report. The Chairman also observed that all the amendments were being considered by the Legal and Drafting Committee both from a drafting point of view and to establish agreement between the English and French texts.

The report was then approved paragraph by paragraph. Specific comments on individual paragraphs are noted below.

Mr. CRAWFORD (Australia) referred to paragraph 6(b) and the Australian proposal for an amendment to Article I (L/330).

He expressed appreciation of the attention which other delegates had given to his delegation's proposals in respect of preferences at all stages of the review session. He accepted the Working Party's conclusion that Article I was the proper place for an amendment of the type proposed by Australia but emphasized the importance which his Government placed on obtaining an expression of views on this question by the CONTRACTING PARTIES. He had therefore requested a vote on the amendment proposed to Article I.

The Australian position as outlined in W.9/55, was that there was a serious inconsistency in the Agreement in the rigidity with which Article I was drawn in contrast to the greater flexibility which existed for other matters where strict principles were stated. On the one hand the Agreement permitted tariffs, apart from those which were bound for a specified period, to be freely adjusted and permitted, moreover, bound tariffs to be adjusted under procedures laid down in the rules. On the other hand, the Agreement froze preferences, which formed an existing integral part of some tariff systems, for an indefinite period, indeed for the life of GATT, permitting their adjustment only in the direction of elimination. So rigid a principle disregarded the importance of the trade built up through existing preferential systems prior to 1947, as well as the undeniable fact that industries which were nurtured under a preferential system and which, in important cases, were vital to the development of the semi-arid inland of Australia, might be dependent on an adjustment of preferences to present-day conditions.

The Australian delegation had on several occasions drawn attention to the fact that the freezing of the maximum level of preferences, and the consequential denial of continued assistance to industries developed under preferential arrangements, had not been matched by any reasonable compensation. The anticipated development of conditions which would make preferences unnecessary had not taken place. Australia felt that this was a defect in the GATT which should be remedied.

The Working Party report noted that adjustments in preferences could be made by virtue of waivers under Article XXV:5. Mr. Crawford did not disagree with this conclusion as a statement of the legal position but emphasized that there were inferences in the waiver approach which were of considerable concern to the Australian Government. A waiver carried with it an inference of wrongdoing on the part of the contracting party to which it was granted, was in fact a dispensation from the agreed code of conduct. Because of this it seemed an inappropriate method of permitting action which was in no way worthy of censure. The original Australian proposal, involving as it did negotiation and full protection for the interests of all contracting parties, was, in their view, reasonable and the type of action which it would have permitted would not have been blameworthy. The proposal was only that GATT should recognise clearly that increases in preferences made with due regard to the interests of all contracting parties and under their joint control would not be contrary to the agreed code of international trade rules.

Mr. HELMI (Indonesia) said that although he was sympathetic to the difficulties of the Australian delegation on this matter, the proposed amendment concerned a basic provision of the Agreement and he was unable to support it. He regretted that at each Session there should be some extension of the area of preferences.

Mr. COHEN (United Kingdom) said that his delegation had been willing to leave the matter as it was stated in the Working Party report. Nevertheless, they were alive to the practical limitations of negotiations which were entered into with a view to a waiver being sought under Article XXV (as described in paragraph 6(b)), in view of the doctrinal attitude of the CONTRACTING PARTIES on this matter. They sympathized, therefore, with the proposal of the Australian delegation and hoped that the CONTRACTING PARTIES would consider it with understanding, noting particularly the fact that it was limited to freely negotiated arrangements, agreed to by all interested contracting parties and approved by the CONTRACTING PARTIES.

Mr. MACHADO (Brazil) said that his delegation had proposed the Review of the General Agreement precisely in order to make possible the elimination of preferential arrangements. It was time to remove this privileged element from the Agreement. If any modification were made to the provisions regarding preferences in the Agreement, it should only be to remove preferences and his delegation would oppose any other form of amendment.

Mr. VARGAS GOMEZ (Cuba) agreed with the Australian delegation that the granting of waivers was generally an undesirable solution, but could not agree that in order to eliminate this particular evil, the CONTRACTING PARTIES should enter into the greater evil of increasing margins of preference. He associated himself with the views of the delegates of Indonesia and Brazil.

The Australian proposal to add a new paragraph to Article I was defeated by 5 votes in favour, 20 against.

Mr. CRAWFORD (Australia) said that his delegation would accept the decision of the CONTRACTING PARTIES. Had they not disliked the waiver approach they would not have proposed this solution. He would point out that in order to progress in reducing the general area of preferences, some flexibility was required. His delegation would accept paragraph 6(b) as it stood in the Working Party report.

Dr. NAUDE (Union of South Africa) said that he had been unable to consult his Government on the Australian amendment and had, therefore, abstained.

Mr. ENDERL (Austria), referring to Article II (paragraphs 7 and 8 of the report) and the notes from the Working Party on amendments rejected (W.9/217 and corr.1), expressed the opinion that special attention should be devoted to problems raised by the conversion of consolidated specific duties into ad valorem duties, which might become necessary as the result of the general adoption of the ad valorem system. In his opinion, conversions not designed to increase customs incidence but to maintain it at a level established in accordance with a given criterion should be the object of sympathetic study within the context of the negotiations. In this study, all the results of the application of the criterion proposed by the government requesting conversion should be taken into account.

The representatives of Chile and Indonesia, joined by Uruguay, referred to the statement of their views contained in paragraph 7 of the Working Party report and maintained their positions.

In reply to a question by the Chilean delegate with respect to paragraph 8, which was referred to him by the CHAIRMAN, Mr. ANDERSON (International Monetary Fund) said that the words "at the par value accepted or at the rate of exchange recognized by the Fund" were proposed by the Secretariat as a result of the situation that had been found to exist when the CONTRACTING PARTIES had examined the Greek case at the Eighth Session. It had then been found that the language presently contained in Article II:6(a) caused some difficulty but that the Fund had been able to confirm the change as a change in the rate recognized by the Fund. The language proposed for the Article appeared to the Fund representatives as an improvement and seemed not likely to create difficulties.

The delegates of Brazil, Chile, Cuba, Uruguay and Turkey reserved the position of their Governments with respect to paragraph 12 since the proposed amendment made the Article compulsory and their Governments were not in a position to undertake such an obligation at this stage.

The delegates of Brazil, Dominican Republic, Chile, Cuba and Uruguay reserved their positions with respect to paragraph 20 for the same reason.

Mr. VARGAS GOMEZ (Cuba), referring to paragraph 25, maintained the reservation of his Government.

New Article-Tariff Negotiations

Mr. BELFRAGE (Sweden), speaking on behalf of the delegations of Denmark and Norway as well as his own, emphasized that the reduction of tariffs and the existing differences in tariff barriers between contracting parties was one of the most important objectives of the General Agreement, an objective as important to work for as the elimination of quota restrictions. A one-sided elimination of quantitative restrictions was useless if it did not result in improved conditions for the expansion of trade. To replace such restrictions with high tariffs or other obstacles was meaningless. It was difficult for his delegation to accept a development that did not create a reasonable balance between the two objectives of eliminating quantitative restrictions and reducing tariff barriers.

The discussions during the Review Session led them to conclude, unfortunately, that it had not been possible to obtain the support of contracting parties to undertake obligations for concrete action on the reduction of tariffs. The Scandinavian proposals to introduce stricter rules for negotiations had not found general approval. The texts that had been worked out did not meet their wishes. The absence of concrete results in this field must influence their position with respect to the final acceptance of the new rules. His delegation was aware that the proposals contained in the Working Party report probably represented a maximum of what could be obtained at the present stage and appreciated the efforts of several delegations to try and meet their position within the limited frame of their respective instructions. His delegation hoped that governments, particularly those of the large trading nations, would reconsider their position in respect of tariff reductions. It would be a matter of regret to his delegation if the procedure contained in the report by the Working Party (G/89) for further work in the field of tariffs

remained a dead letter, and they hoped that the most important trading nations would be ready to take an active and leading part in this work, with a view to its success and to bringing about a more equitable balance between the tariffs of contracting parties than existed at the present time. He reserved the right of his delegation to revert to this matter when the total results of the Review Session were being considered.

Mr. MACHADO (Brazil), referring to paragraph 40, enquired what action was to be taken by the CONTRACTING PARTIES on proposals which had been rejected by the Working Party, notes on which were contained in document W.9/217 and Corr.1. For example, the statement in paragraph 40 of the position of the delegation of Brazil should be linked to the proposal referred to in paragraph 3 of that document.

Mr. SEIDENFADEN (Chairman of the Working Party) said that the Working Party had decided that its report would cover only those proposals on which recommendations were being submitted and those concerning which the delegation concerned had specifically asked that its views should be recorded in the report.

Mr. BERTRAM (Federation of Rhodesia and Nyasaland) referred to paragraph 38, to which his delegation attached great importance since they had just introduced a new tariff and would need some experience of its working before they would be able to consider participating in further negotiations.

Baron BENTINCK (Netherlands) associated himself with the views expressed by the Swedish delegation. The Benelux countries had also hoped that more progress would be made in this field. The proposals submitted by Benelux had not been ambitious but they had nonetheless, been forced to retreat from their original position. Paragraph 42 of the report referred to the question of the relationship between an increase in tariffs and the elimination of quantitative restrictions. His delegation had felt that the principle they asked to be recognized was a modest one, but even this had been opposed by the majority of the Working Party. His delegation was anxious to have a clear notion of the views of the CONTRACTING PARTIES on this subject and he requested a vote by the CONTRACTING PARTIES on paragraph 42.

Mr. BROWN (United States of America) said that he sympathized with the objectives expressed by the Swedish and Netherlands delegates. His own Government was making efforts to place itself in a position to co-operate with those countries.

Mr. MACHADO (Brazil) referring to the request by the Netherlands delegate, emphasized the fact that the new Article would impose no obligation on contracting parties. This was clearly stated in paragraph 38. Although many delegations might agree with the aims of the low tariff countries, the situation of many countries was such as not to permit them to undertake an obligation to enter into negotiations.

The meeting adjourned at 1 p.m.