

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Tenth Session

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SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 30 November 1955, at 11 a.m.

Chairman: Mr. L. Dana WILGROSS (Canada)

- Subjects discussed:
1. Procès verbal of Rectifications to the amendment of Protocols
 2. Budget Working Party Report
 3. Votes for Waivers
 4. Brazilian Taxes
 5. French Compensation Tax
 6. Italian Cotton Duties
 7. Article XVIII Working Party Report - Ceylon
 8. Transport Insurance Working Party Report
 9. Disclosure of Restricted Documents

1. Procès verbal of Rectifications to the amendment of Protocols. (W.10/19)

The CHAIRMAN announced that as no objection had been received to the draft procès verbal which had been circulated it would be open for signature on the closing day of the Session.

Mr. HOCKIN (Canada) said that he had been informed that his Government had some difficulties with the text and asked if it could be held over.

It was agreed to defer the opening of this instrument for signature; if the points raised by the Canadian Government were substantial and could not be settled with the Executive Secretary the matter would be deferred to the Intersessional Committee.

2. Budget Working Party Report (L/452/Add.1)

Mr. MACHADO (Brazil), Chairman of the Working Party, introduced the Report on the affiliation of the staff to the United Nations Joint Staff Pension Fund. He said this recommendation of the Working Party was important not only from the financial point of view, but from the fact of giving the staff some certainty

relating to their acquired rights both in the present situation of the secretariat and during the period of transition to the new organization.

The CONTRACTING PARTIES adopted the Working Party Report and agreed to the recommendations contained therein that the Executive Secretary resume discussions with the United Nations Pension Board with a view to an early admission of the staff to the Pension Fund, and that the governments of contracting parties should take whatever action they considered desirable in the United Nations in order to secure any amendments that might be necessary to the regulations of the United Nations Joint Staff Pension Fund.

2. Votes required for granting waivers (L/403)

The CHAIRMAN said that at the Ninth Session the Cuban representative had asked for a legal opinion as to whether the CONTRACTING PARTIES could grant, by the majority specified in paragraph 5(a) of Article XXV, a waiver of obligations which a contracting party had assumed under Part I of the Agreement. The Executive Secretary had prepared a memorandum which analysed the text of the relevant provisions in the Agreement and recounted the history of these provisions from the time of the first Session of the Preparatory Committee for the ITO. He found that the CONTRACTING PARTIES intentionally made a distinction between an amendment and a waiver granted in exceptional circumstances, and that they explicitly decided that the provisions of Article XXV:5(a) might be applied to any obligation under the Agreement. His memorandum also reviewed the history of the application of these provisions and showed that the CONTRACTING PARTIES had granted waivers of obligations by less than a unanimous vote on nine occasions.

Mr. VARGAS GOMEZ (Cuba) said that in submitting the problem of voting requirements under Article XXV:5(a) to the CONTRACTING PARTIES it was not the intention of his Government to disturb in any way the situation of the various waivers which had previously been granted, although they opposed exceptional measures as contributing to the weakening of the Agreement. While not rejecting the possibility that the provisions of Article XXV:5(a) could be applied to Part I of the Agreement, his Government felt that a more careful application was required. The CONTRACTING PARTIES were approving all waivers by a two-thirds majority without considering that in some cases the obligations waived were included in Part I and that the suspension of obligations could, in fact, constitute a modification of the provisions of that part. The voting system used was in these circumstances not correct. Criteria should be established to enable a clear distinction between a waiver of an obligation and a modification of the provisions of the Agreement, and whether or not in some cases a suspension of an obligation did not in fact imply a modification of the obligation. In the view of his Government the latter had been the case where the establishment of any new preferential system had been permitted, since clearly the creation of a new

preferential system had no transitory purpose and Article I limited the number of preferential systems permitted in the framework of the Agreement. A similar occurrence was the granting by a waiver of permission to increase certain bound rates. Rates of duty could be modified under the procedures of Article XXVIII and certain adjustments had been permitted otherwise in the past, but always subject to the consent of all contracting parties. It was in the view of his Government incorrect to disregard the fact that an increase in a bound rate, even of a temporary character, was a modification of the obligations of Article II, and subject to unanimity. From the wording of Article XXV itself it was clear that it was not necessary to grant all waivers by a two-thirds majority, but that the CONTRACTING PARTIES might "define certain categories of exceptional circumstances to which other voting requirements" would apply.

Turning to the kind of waiver theoretically possible which suspended the obligations of Part I without modifying them, Mr. Vargas Gomez said that this distinction was clear in the Agreement by the existence and differentiation of Articles XXV and XXX. The Cuban Government was unable to accept the generalization that a two-thirds majority vote was applicable to all provisions of the Agreement, both because of the possibility in Article XXV itself of establishing other voting requirements and for practical reasons having to do with the special and fundamental character of the obligations contained in Part I. This was recognized in Article XXX with respect to amendments and it was illogical to conceive of the case being different in respect of suspensions of obligations.

Apart from the juridical point of view, it must clearly be understood that an alteration affecting the obligations of Part I, made not under Article XXX but created as a situation of special privilege by a decision under Article XXV:5(a), destroyed the equilibrium of the Agreement and created obligations more onerous for some contracting parties than for others, and this in relation to the basic obligations of the instrument. The application of Article XXV merited a much closer study by the CONTRACTING PARTIES than had ever been given to it. He was not raising these problems with the intention of obtaining a definite decision from the CONTRACTING PARTIES at this stage, but to ascertain whether the CONTRACTING PARTIES did regard this as meriting further consideration.

The full text of Mr. Vargas Gomez's statement is reproduced in L/459.

Mr. MACHADO (Brazil) remarked that many who had invoked the rule of unanimity during the Review against the amendment of Part I of the Agreement refused to consider that rule as possibly applicable to waivers from Part I. The idea of having things both ways must be rejected and this was a matter that required careful study. It affected action shortly to be taken on Rhodesia and Nyasaland.

Dr. BENEŠ (Czechoslovakia) thought that it must be remembered, in dealing with the question of votes required for granting waivers from obligations under Part I of the Agreement, that GATT was merely an agreement or treaty and not an organization. The established rule in international law

was that treaties and obligations assumed under them could be modified only with the consent of every party. No party to a bilateral treaty could change an obligation under it or withdraw unilaterally a concession granted by it without the consent of the other party and the same principle applied also to multilateral treaties. To facilitate the administration of multilateral treaties, however, exceptions were sometimes provided which permitted deviations from the unanimity rule that was otherwise generally applicable, and, in that they provided for a different majority for the modification of obligations assumed under such a treaty, they had to be regarded as exceptions and interpreted with caution, in particular so as not to widen their applicability. Article XXV:5(a) was clearly such an exception from the rule of unanimity which must otherwise prevail. As this provision permitted modification of obligations by a two-thirds majority instead of by a unanimous decision, they ought to be interpreted and applied with caution.

Mr. TURNLER (Haiti) agreed with the Cuban representative that the matter should be studied in detail.

Dr. NAUDE (South Africa) said he was impressed by the considerations raised by Cuba and supported by other speakers. The Brazilian representative had referred to the decision that would soon be before the CONTRACTING PARTIES regarding Rhodesia and Nyasaland. In his view, the analysis by the Executive Secretary was legally incontrovertible. Moreover, Article XXV:5(a) was included in the Agreement not only to deal with exceptional cases but also with those that could not possibly have been foreseen when the Agreement was drafted. The case of Rhodesia and Nyasaland was of the latter type. An entirely new situation existed which involved considerations of wide significance. He was sure that those delegations which opposed preferential arrangements would find, upon close study of the documents, that their fears were unfounded, and he hoped that, whatever their position in principle regarding either waivers or preferences, this particular case would be met by giving a unanimous decision in favour.

Mr. SWAMINATHAN (India) said that the essential point of the Cuban statement was whether a suspension of obligations involved a permanent amendment of the Agreement or was merely a suspension for a limited period. It seemed to him that the form of waivers with carefully set out conditions, periodic reviews, reporting, etc. safeguarded the interests of the GATT. It would be unwise to render the operation of the Agreement too inflexible by a requirement of unanimity. He felt, however, that this was a matter which did require careful and further study.

Mr. PHILLIPS (United Kingdom) observed that if, as the Cuban representative had suggested, the question of voting for waivers must be considered in the light of Articles XXV and XXX, it was logically necessary also to consider it in connexion with at least five other Articles. Articles XVIII, XIX, XXIII, XXIV and XXVIII all contained provisions where the obligations of the contracting parties under either Part I or Part II could be suspended by varying majorities. The inclusion of such provisions in such a variety of articles

confirmed the view which the CONTRACTING PARTIES had always held that there was a great difference between an amendment of Part I and a waiver from it. Mr. Phillips did not intend to enter into a substantive debate at this stage, but he questioned whether it was either appropriate or necessary for the CONTRACTING PARTIES to keep this matter under review as suggested, since this would entail research into the very foundations of the Agreement.

Sir Claude COREA (Ceylon) thought that the study given by the Cuban delegation to this problem was important and that it was one which deserved careful consideration by the CONTRACTING PARTIES. It seemed to him clear that the drafters of the Agreement had sharply distinguished between Articles XXV and XXX, the latter of which referred to amendments of a final character affecting the text. Decisions under Article XXV were intended to apply to something less definite and lasting, and whatever waivers might in some cases have involved, the intention was merely to suspend an obligation.

Mr. LEDDY (United States) wished to commend the thoroughness with which the Cuban delegation had gone into this problem with a view to strengthening the General Agreement. He could not say at the present time whether it was a matter which warranted further formal study, but thought it would be useful to circulate the full text of the statement and if, at the next Session, it appeared that the proposal was suitable for formal examination by legal experts, action could be taken at that time.

Baron BENTINCK (Kingdom of the Netherlands), supported by the representative of Norway and Denmark, associated himself with the views expressed by the United States representative. Although he could not agree with the statement that a waiver from Part I always involved an amendment of that Part, and felt that unnecessary rigidity in the application of the Agreement should be avoided, it would be useful to study the question further.

Mr. WARWICH SMITH (Australia) said that this was a difficult question of interpretation, and the points raised by the Cuban delegate required study. He supported the United States suggestion. There were a number of relevant points which had not yet been raised in the debate, but if this proposal were followed, he would not raise them now.

The CHAIRMAN said that the Cuban representative had raised a difficult question which affected the whole operation of the Agreement. This could not be considered thoroughly at the present time, and a number of delegations could not now commit themselves regarding Article XXV:5(a). There was general support for examination of the matter, and he suggested that the Intersessional Committee might be instructed to consider the question in the light of the Cuban statement, the relevant provisions of the Agreement and the Executive Secretary's analysis of the legal position, and to report to the Eleventh Session as to whether a sufficient foundation existed for the CONTRACTING PARTIES to go into the matter thoroughly at that time.

The Chairman's suggestion for the procedure to handle the matter was approved.

4. Brazilian Taxes (W.10/27)

The CHAIRMAN referred to the debate on this matter at the sixteenth meeting of the Session, when it was proposed that a resolution be adopted on this subject.

The CONTRACTING PARTIES approved the draft Resolution.

5. French Compensation Tax (W.10/33 and Corr.1)

The CHAIRMAN referred to the debate on this matter at the sixteenth meeting of the Session, when it was proposed that a resolution be adopted on this subject.

Dr. HERBATSCHKEK (Austria) hoped that, in accordance with the willingness expressed at that meeting by the French representative, the next report by the French Government would refer to measures undertaken to diminish the harmful effects of the tax in certain particular cases.

Mr. PHILIP (France) said that he had already received a list of matters the Austrian delegation wished to take up, and the report of his Government would cover the whole of the problem and certainly include the hardship cases as well.

The CONTRACTING PARTIES approved the draft Resolution.

6. Italian Import Duties on Greek Cotton (L/499)

The CHAIRMAN referred to the complaint by the Greek Government concerning the method of levying duties on imports of cotton from Greece.

Mr. NOTARANGELI (Italy) said that this question was being studied by the competent organs of the Italian administration, and he hoped that a satisfactory solution would be reached shortly.

Mr. POUMEFURAS (Greece) thanked the Italian representative, and thought it was unnecessary to pursue the discussion at the present Session. He asked that the matter be inscribed on the agenda of the Intersessional Committee in the event that a satisfactory solution had not been reached.

The CONTRACTING PARTIES agreed that this matter should be referred if necessary to the Intersessional Committee.

7. Article XVIII Working Party Report - Ceylon (L/461)

Mr. WARWICH SMITH (Australia), Chairman of the Working Party, introduced the Report. The application for a release in respect of ceramic ware was considered under paragraphs 6 and 7 of Article XVIII; the Working Party considered that the matter came within the provisions of paragraph 7(a)(iii) and

recommended a release. In the case of petroleum products the Working Party recommended a release under paragraph 7(a)(iv) of Article XVIII. The Ceylon representative had explained that they hoped that, in the latter case, restrictions would not be necessary, and were merely requesting authority to apply them in the event that abnormal competition was encountered. They had also assured the Working Party that prices in Ceylon for petroleum products would not exceed world prices.

The CONTRACTING PARTIES approved the two decisions contained in the Working Party Report granting releases to Ceylon regarding certain items of ceramic ware and petroleum products.

8. Transport Insurance Working Party Report (L/462)

Mr. de SAINT-LEGIER (France), Chairman of the Working Party, introduced the Report. He called attention to the view of the Working Party that the proposed recommendation would be of value at the present time when the increasing tendency to apply restrictions in the field of transport insurance might encourage retaliatory action, and to the Working Party's note on the limited scope of the recommendation, in particular the fact that it was not concerned with governmental policies with regard to national insurance as such. He emphasized that, as was stated in the first paragraph of the Report, some members of the Working Party proposed that a final decision on the recommendation be deferred to the Eleventh Session.

Mr. MACHADO (Brazil) said that his delegation would abstain if the Report were submitted for approval. The CONTRACTING PARTIES had no authority to investigate facts outside the scope of the General Agreement, and the separation which the Working Party made between international trade aspects of restrictive measures in the field of transport insurance and government policy respecting insurance as such was artificial.

Sir Claude CORREA (Ceylon) suggested that the CONTRACTING PARTIES take note of the Report and defer both the Report and the recommendation to the Eleventh Session. There were matters of substance involving the distinctions to be drawn between action to encourage the development of local insurance companies and action to protect the interests of the insureds into which he would not enter if the whole matter were deferred to the next Session.

Mr. ABE (Japan) said that his Government was interested in the question of discrimination in transport insurance and commercial interests in his country had drawn attention to practices which had given rise to difficulties. He favoured the adoption of the Working Party Report, which was a moderate document meeting the different views expressed, and thought that in view of the importance of the problem a more detailed study should be made by the Intersessional Committee.

The representatives of Australia, Cuba and Indonesia suggested that the adoption of both the Report and the recommendation be deferred.

The CONTRACTING PARTIES noted the Working Party Report and deferred consideration of the recommendation to the Eleventh Session.

9. Disclosure of Restricted Documents

The EXECUTIVE SECRETARY raised the question of the treatment by governments of restricted documents of the CONTRACTING PARTIES. The secretariat had been embarrassed in the past by finding that restricted documents had been made available outside government circles although such classification presumably excluded that possibility. The Commodity Working Party Report had been requested by the International Chamber of Commerce, one of whose national committees had obtained a copy from some other source. Under the rules of procedure the Executive Secretary had been obliged to refuse, which placed both him and the International Chamber in an embarrassing position. He emphasized that the International Chamber had loyally adhered to their understanding with the CONTRACTING PARTIES and refrained from publishing a document which had come to them unofficially. He requested specific instructions from the CONTRACTING PARTIES on this matter. This document would not fall under the rules for automatic derestriction, as it was still pending before the CONTRACTING PARTIES. On the general question he thought the need to maintain the secrecy of the CONTRACTING PARTIES' documents could only be reiterated to all contracting parties, to governments of observers, and to international organizations which received such documents.

Mr. MACHADO (Brazil) said that this raised a wider question in that the subjects of debate of the CONTRACTING PARTIES were known, and when delegates returned to their countries it was difficult for them to know how to reply to questions that were asked. He thought the Intersessional Committee should study the whole matter of press releases and publicity.

Mr. PHILLIPS (United Kingdom) said that if the International Chamber of Commerce had seen a copy of the Commodity Agreement it was regrettable. It would, however, be unwise to accept a precedent whereby the CONTRACTING PARTIES would have their hands forced by unauthorized disclosure of a restricted document. The rule of restriction should be adhered to and the CONTRACTING PARTIES should not authorize the release of this particular document.

The representatives of Australia and Ceylon concurred in this view.

The CHAIRMAN said the general view seemed against derestricting this particular document; this could be noted however as an instance of the kind of problem that arose when there was unauthorized publication of a document from any quarter.

The meeting adjourned at 12.50 p.m.