

RESTRICTED  
LIMITED B

GATT/CP.2/38/Add.1  
10 September 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

SUPPLEMENTARY REPORT OF WORKING PARTY

5 ON ARTICLE XVIII

- (1) It was agreed after consultation between the Chairman of the Working Party and the Chairman of the CONTRACTING PARTIES that the Working Party should make recommendations concerning the procedure to be applied to new measures submitted under Article XVIII (as contained in GATT/CP.2/34) between the Second and Third Sessions of the CONTRACTING PARTIES. The Working Party considered and approved this Supplementary Report at its eighth and ninth meetings.
- (2) The Working Party agreed that it was necessary to provide for the practical application of the provisions of Article XVIII relating to new protective measures, since the terms of the Article prescribed obligations which could not be carried out, especially between regular sessions, without suitable machinery.
- (3) It was recognized that it was premature at this stage to attempt to lay down a permanent procedure, since this would have to be evolved in the light of experience. It was however agreed to recommend, experimentally and without prejudice to future practice, certain procedures to be used between the Second and Third Sessions of the CONTRACTING PARTIES.
- (4) It was considered unnecessary to provide other machinery in the interim before the version of Article XVIII contained in the draft protocol (GATT/CP.2/34) came into effect, beyond recommending that any contracting party which wished to apply a new protective measure during that period should inform the Chairman, who would notify particulars to the other contracting parties and, at his discretion, call a meeting of the CONTRACTING PARTIES if it was urgently needed.
- (5) The main practical difficulties arise from the fact that Article XVIII, as contained in the draft protocol (GATT/CP.2/34) is derived from Articles 13 and 14 of the Havana Charter and that these Articles designed for the use of the ITO they presuppose a body, in more or less permanent session, capable of taking substantive decisions.

(6) The Working Party considered the possibility of establishing a standing committee to administer a provisions of Article XVIII but rejected this proposal principally on the grounds that the number of applications between the second and third sessions was unpredictable. The Working Party considers that substantive decisions under this Article must be taken by the CONTRACTING PARTIES in session and, where it is not possible to defer a decision until the Third Session, it will be necessary for the Chairman to call a special session. The Working Party wished to draw attention to the fact that under the provisions of paragraph 10 a decision must be given within ninety days of the receipt of an application under paragraphs 7 or 8.

(7) Finally, the Working Party recognized that in practice these procedures, which are necessarily complicated, may not be invoked between the Second and Third Sessions, but nevertheless considered it desirable to provide for the various contingencies envisaged in Article XVIII.

ANNEX

Procedure Recommended by the Working Party

Note - The following procedure is suggested in relation to each of the appropriate paragraphs of Article XVIII (as set out in GATT/CP.2/34) and should be read in conjunction with them.

A.

Para 3 (a) Direct negotiations with all the contracting parties may take place at any time convenient for all parties. In practice, however, it will probably be convenient in most cases to hold the negotiations at the Third Session when general tariff negotiations are due to take place. In cases where the contracting party concerned wishes such negotiations to take place at the Third Session it should give notice of its intention, through the Chairman, by 31 January 1949. In the case of items materially affecting the trade of the United States it is pointed out that because of legislative requirements, unless such notice were given by 31 October 1948, there could be no assurance that the United States could negotiate on such items at the Third Session.

Para 3 (b) The Contracting party concerned will notify the Chairman. In turn the Chairman will notify the other contracting parties, and at the same time

- (i) indicate which, in his view, are the materially affected contracting parties with whom negotiations should take place;
- (ii) suggest a time schedule. (NB. In cases where negotiations are contemplated in the course of the Third Session, a precise time schedule will be unnecessary.)

If no objection is raised by any of the contracting parties to the Chairman's suggestion under (i) or (ii) above, the negotiations will proceed between the applicant contracting party and the contracting parties which the Chairman has nominated in accordance with the time schedule proposed by the Chairman.

If any objection is raised, the matter will be referred for decision by the CONTRACTING PARTIES at their Third Session. In cases of special urgency, however, and at the discretion of the Chairman a special session of the CONTRACTING PARTIES may be called.

In either case a decision to release an applicant contracting party from its obligations must be taken by the CONTRACTING PARTIES in session.

- Para 4 (a) The applicant contracting party will notify the Chairman, who will in turn notify the other contracting parties.
- Para 4 (b) Decision will be by the CONTRACTING PARTIES in session. The Chairman will call a special session at the earliest possible date.
- Para 4 (c) Consultation under this paragraph will take place when the CONTRACTING PARTIES are in session.

B.  
Para 5 as under paragraphs 3 (b) and 4.

C.  
Para 6 Notification and written statement in support of the adoption of the measure for a specified period will be sent to the Chairman and through him to the other contracting parties.

Para 7 Application<sup>2/</sup> will be made to the Chairman simultaneously with the notification under paragraph 6. The decision will be given by the CONTRACTING PARTIES in session.

Para 8 (a) The contracting party concerned will enter into direct negotiation with the other contracting parties it considers to be materially affected, and at the same time inform the Chairman. The Chairman will inform all the other contracting parties, and take note of any comments they may have about the choice of the materially affected parties.

When substantial agreement has been reached, as the result of negotiation, the contracting party directly concerned will apply<sup>1/</sup> to the Chairman who will inform the other contracting parties of the application and the conditions on which it is proposed that release from obligations shall be given. If no objection has been received to the choice of the materially affected contracting parties or to the proposed conditions,

1/ For the timetable see under paragraph 10

the Chairman will invite the concurrence of the contracting parties to release the applicant contracting party from its obligations.

If any objection has been received, however, the matter will be decided by the CONTRACTING PARTIES in session.

Para 8 (b) It is assumed for practical purposes that any application between the Second and Third Sessions will be an initial application and not one made after the procedure of 8 (a) has proved unsuccessful. Therefore application<sup>1/</sup> to the CONTRACTING PARTIES under 8 (b) will be simultaneous with the notification referred to in para 6. Where an application under 8 (b) is intended, however, the applicant should make this known at the time the statement is submitted.

In communicating the statement to the contracting parties, the Chairman will suggest which of them, in his view, are materially affected and invite comment.

At the same time he will invite those contracting parties which he considers materially affected to inform him by a specified date whether or not there is any objection to the proposed measure.

If no objection is received by the Chairman, in respect of his choice of materially affected contracting parties, the procedures of (i) and (ii) below will be followed. If there is objection to the choice however, the matter must be discussed by the CONTRACTING PARTIES in session.

If none of the materially affected contracting parties has notified any objection to the measure by the date prescribed by the Chairman, the CONTRACTING PARTIES, in session, will release the applicant contracting party from its obligations.

If any objection to the measure is received by the Chairman, the CONTRACTING PARTIES will take a decision under para 8 (b) (ii) in session.

---

<sup>1/</sup> For the timetable see under paragraph 10

Para 9           The applicant contracting party, may, in the circumstances described in the paragraph, take emergency action after informing the Chairman who will in turn notify all the other contracting parties. In informing the Chairman the applicant contracting party should furnish detailed information showing that the provisions of paragraph 9 apply to the measures adopted including in particular the representative period, which is being used as a basis for determining the level of imports.

Para 10          The Chairman, within 15 days of receipt of an application under paras 7 or 8 will inform the applicant contracting party of the date by which a decision may be expected. In the circumstances it will usually be impracticable for the Chairman to specify a period shorter than the full 90 days referred to in the paragraph.

                  Having regard to the provision that, except in particular circumstances, decisions shall be given within 90 days of receipt of the application, the Chairman will determine whether decisions by the CONTRACTING PARTIES in session require a special session.