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CONTRACTING PARTIES
THIRD SESSION

WORKING PARTY I ON ACCESSION

REVISED DRAFT REPORT

1. Introduction

The Working Party first discussed whether it should proceed on the basis of the drafts presented by the Secretariat, namely GATT/CP.3/W.1 and GATT/CP.3/W.1/Add.1, which consisted of a draft decision by the Contracting Parties and a draft protocol embodying the terms of accession in the form of a collateral contract to the General Agreement on Tariffs and Trade. An alternative form suggested by the representative of the United States was a decision of the Contracting Parties and a protocol embodying the terms of accession including consequential modifications to the text of the General Agreement.

The Working Party also examined the statement by the United Kingdom delegation on the necessary steps for accession to the General Agreement as set out in GATT/CP.3/WP.1/4.

As the United States proposal raised doubts in the minds of some members of the Working Party on legal issues arising out of the relationship between Article XXX, concerning amendments to the Agreement, and Article XXXIII, relating to accession and, in particular as to the validity of the procedure of modifying the text of the General Agreement by means of terms of accession agreed by a two-thirds majority under Article XXXIII, it was decided, without prejudice to these legal issues, to proceed on the basis of the Secretariat drafts.

At the same time the Working Party expressed its indebtedness to the representative of the United States who, in the course of the presentation of his proposals, made a number of important suggestions which have been incorporated in the text submitted.

2. Explanatory Notes on the Draft Protocol Annexed to this Report which also constitutes the proposed decisions under Article XXXIII.

(a) Proposed Decisions

The Working Party has considerably modified the draft submitted by the Secretariat (GATT/CP.3/W.1/Add.1). It is now proposed that a separate Decision be taken in respect of each of the eleven acceding governments. Each decision would be taken after an interval designed to allow all Contracting parties to make a judgment whether to subscribe to the Decision as to the accession of each individual government in the light of the results of the tariff negotiations with that acceding government and in particular of the tariff concessions offered by it in consideration of those already incorporated in the General Agreement.

Instead of preparing eleven separate protocols, it is proposed to attach to a single protocol eleven sheets for signature. The decision in respect of each acceding government will be taken in accordance with Article XXXIII when signatures of two-thirds of the Contracting Parties have been affixed on the signature sheet relating to that acceding government. Paragraph 12 provides that upon such signature the Protocol shall constitute the Decision for that acceding government. It is also proposed that 31 October 1949 should be the latest date for reaching such Decisions.

(b) Draft Protocol of Terms of Accession.
Title.

The Working Party has recommended that the Protocol be known as the "Annecy Protocol of Terms of Accession to the General Agreement on Tariffs and Trade".

General

An important consideration in the present tariff negotiations is that adequate account should be taken of the 1947 concessions already incorporated in the GATT. It has been assumed, therefore, that the tariff concessions offered at Annecy by an acceding government will be made in a considerable measure in payment for the Geneva concessions.

The Protocol has been drafted with the object of enabling an acceding government to be in substantially the same position as a present Contracting Party. When the Decision applying to an acceding government has been taken, by signature by two-thirds of the present Contracting Parties and that acceding government has appended its own signature to the Protocol it will become a Contracting Party either on 1 December, 1949, or 30 days after it has itself signed, whichever is the later. It will enjoy all the benefits of the General Agreement. It will also be required at that time to apply the General Agreement provisionally on terms similar to those on which the present Contracting Parties are applying the Agreement under the Protocol of Provisional Application.

In the draft protocol submitted by the Secretariat there was a qualification in paragraph 2, that the benefit of concessions in the schedule of a present Contracting Party to the General Agreement need not be extended to an acceding government unless and until the Contracting Party concerned had signed the Protocol.

It was, however, the opinion of the Working Party that the circumstances in which a present Contracting Party would wish not to extend to an acceding government the benefits of the Geneva concessions had been discussed at the first session when the amendment to Article XXXIII of the Agreement was approved and that it had then been decided that such cases should be governed by the provisions of Article XXXV and paragraph 5 (b) of Article XXV. The Working Party considered, that, in the terms of Article XXXV, tariff negotiations would not have been entered into until there had been a formal exchange of offers, and that the submission of offers by a present Contracting Party which was not accompanied by the receipt of offers from an acceding government would not constitute entry into negotiations.

Provision is also made for the acceding government to enjoy (paragraph 3 of the Protocol) and to grant (paragraph 2 (a)) the concessions negotiated at Annecy and which are annexed to the Protocol.

Upon the entry into force of the General Agreement under Article XXVI an acceding government will be entitled to accede definitively to the Agreement in much the same way as a present Contracting Party can accept it definitively under that Article.

Entry into Force

It is proposed that the Protocol be opened for signature at Annecy and that subsequently, it should be open for signature at the Headquarters of the United Nations by the present Contracting Parties until 31st October, 1949.

It was recognised that after a Decision had been taken, it was in principle desirable that an acceding government should receive automatically, upon becoming a Contracting Party, thatis by its signature of the Annecy Protocol and the lapse of the period provided for in paragraph 11 of the Protocol, all the existing benefits under the General Agreement.

The entry into force of the concessions negotiated at Annecy by present Contracting Parties is provided for by paragraph 3 of the Protocol. It was recognised that legislative procedures in different countries may require a period of time before which the concessions could not be made effective, but that, before the expiration of this time it may be possible for present Contracting Parties, by signature of the Protocol, to agree to the accession of individual governments, and consequently to the extension to them of the existing concessions in the General Agreement. So that the taking of the decisions under Article XXXIII need not be unnecessarily delayed by the processes required in particular cases for implementing the Annecy concessions of present Contracting Parties it is provided that whilst signatures to the Protocol may be appended until 31st October, 1949, a notification may be given to the Secretary-General of the United Nations at any time up to 30 April, 1950 for the purpose of bringing into force those Annecy concessions.

When a Decision has been taken and the acceding government itself signs the Protocol it becomes obligated to apply the Agreement provisionally in a manner similar to that in which the present Contracting Parties apply it under the Protocol of Provisional Application, with an analagous exception relating to legislation existing at the date of the Protocol of Accession. It was considered that although there were arguments for applying the same limitation to the exception for existing legislation, namely, that existing at the date of the Protocol of Provisional Application, this might in fact be a considerable obstacle to accession. It might require an acceding government to amend legislation enacted prior to the formal completion of the negotiations; which had not been the case for the present Contracting Parties at Geneva.

The acceding government is also under an obligation to apply the concessions negotiated at Annecy, subject however, to the provisions contained in paragraph 4 for withholding or withdrawing concessions initially negotiated with a present Contracting Party or acceding government which has not given a notification of entry into force of the Annecy concessions or has not signed the Protocol. This withholding provision is similar to Article XXVII of the General Agreement except that provision is made for notification of the withholding or withdrawal within thirty days.

A present Contracting Party is also given rights of withholding or withdrawal under paragraph 4 of the Protocol. The reference to Article XXXV in the second proviso to that paragraph in no way affects the position of a present Contracting Party which hasnot accepted that Article.

In connection with paragraph 3, the representative of Cuba proposed an amendment to the last sentence of the paragraph, the effect of which would have been to make the Schedule contained in Annex B an integral part of Part I of the General Agreement, as provided in Article II, paragraph 7 for the Geneva Schedules. He explained that, in his opinion, under the provisions of Article XXVIII there could be no modification of any kind, even by way of reduction, of any rates included in the Schedules to the Agreement before January 1, 1951, except by amendment under Article XXX requiring the unanimous consent of all contracting parties.

The other members of the Working Party, however, considered that paragraph 3 of the Draft Protocol did not constitute such an amendment of the existing Schedules to the General Agreement and that, in any case, the Agreement could not be construed to prevent a reduction in duties below the levels fixed in the Schedules to the Agreement. In particular, the wording of Article II made it clear beyond doubt that the rates of duty contained in the Schedules were only maximum, and not also minimum, rates of duty.

It was also pointed out that the circumstances adduced by the representative of Cuba in support of his argument might provide the basis for a claim under Article XXIII on the ground that a concession or benefit had been nullified or impaired.

In order to enable the Chairman to take sense of the meeting, certain questions were drafted and put to the Working Party. The first question was as follows:

Question A - Does a reduction in a rate of duty set forth in Part I of any Schedule to the General Agreement constitute an amendment of Part I of the General Agreement?

The representative of Cuba voted "Yes" to this question. Upon statements being made by other delegates that the question could not

be answered "Yes" or "No", after some discussion two other texts were prepared and put to the Working Party, as follows:

Question B - Does the inclusion of a rate of duty in Part I of any schedule to the General Agreement legally prevent the reduction of that rate otherwise than by an amendment under Article XXX?

The representative of Cuba voted "Yes" to this question, with the qualification that unanimous assent could in practice be inferred from the absence of objection and need not be embodied in a formal instrument; the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No"; the representative of Pakistan abstained on the grounds that the question was not clear.

Question C - Does a reduction in the level of a duty on a product of a contracting party set forth in Part I of a Schedule to the General Agreement, or in the margin of preference thereon, negotiated in favour ofa country not a contracting party to the General Agreement call, in order that it may be made effective in favour of that country, for an amendment of Part I of the General Agreement?

The representatives of Cuba and Pakistan voted "Yes" to this question and the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No". These representativ were in agreement with the French delegate's interpretation, i.e. that nothing in the Havana Charter o the General Agreement would prevent any country from negotiating tariff reductions with a country not a party to the General Agreement, provided the benefits resulting therefrom were extended to contracting parties to the General Agreement under the most-favoured-nation clause.

The representatives of Australia and the United Kingdom commented that in their opinion Question C did not arise in the present circumstances.

The representative of Cuba submitted to the members of the

Working Party a detailed statement of his views and reserved the right to raise the matter again in the Contracting Parties.

Dates in the General Agreement applicable to acceding governments.

Paragraph 5 of the Protocol contains suggestions for dates applicable to acceding governments for the purpose of the General Agreement. In three cases, dates contained in the Havana Charter have been considered more appropriate than the dates in the General Agreement. In other cases new dates have been suggested with the object of placing acceding governments in a comparable position to that in which the present contracting parties were at Geneva, e.g., in Article II, paragraphs 1(b) and (c) and 6(a), and Article XVIII, paragraph 11.

Form of Agreement to be applied.

For the purposes of the application of the General Agreement by an acceding government in accordance with the Protocol, the form of the General Agreement is stated in paragraph 6 of the Protocol to be that contained in the text attached to the Final Act dated October 30, 1947, as subsequently rectified, amended or otherwise modified on the date of signature of the Annecy Protocol by that acceding government. To prevent the accession of new governments from delaying the entry into effect of amendments to the General Agreement, it is also proposed that the acceding government, at the time of its signature, should also accept any amendment or other modification which has been drawn up and formalized but which has not at that date become effective. Such acceptance would be considered, together with any other like acceptance in determining when such a modification would enter into force.

Withdrawal of Provisional Application.

Paragraph 7 of the Protocol provides for withdrawal of provisional application by an acceding government. It is in substance identical with the provision contained in paragraph 5 of the Protocol of Provisional Application.

Definitive Accession

Paragraph 8(a) of the Protocol provides for accession to the Agreement when it enters into force pursuant to Article XXVI or thereafter. By the deposit of an instrument of accession the acceding governments may accede, upon the terms of the Protocol, to the Agreemen in the form in which it enters into force pursuant to Article XXVI. This may or may not be identical with that provisionally applied by acceding governments under paragraph 1 of the Protocol.

The procedure for such definitive accession is similar to the procedure for acceptance contained in Article XXVI which, by the wording of paragraph 1 of that Article, applies only to present contracting parties. It envisages that the deposit of an instrument of accession may take place either prior to or following the entry into force of the Agreement, but that such accession would not take effect until the definitive entry into force of the Agreement.

As in Article XXIII of the General Agreement, provision has been made in paragraph 8(b) of the Protocol to allow the then contracting parties which have accepted or acceded definitively, after the Agreement has entered into force, to decide that an acceding government which has not deposited an instrument of accession shall cease to be a contracting party.

Territorial Application

The Working Party had some difficulty in deciding upon a formula for territorial application. It was considered unreasonable to ask acceding governments to accept a formula for territorial application during provisional application more rigid than that contained in the Protocol of Provisional Application. This would have been the effect if Article XXVI of the Agreement had been applied both to provisional application and to definitive accession. The Working Party considered that the discussion of territorial application in Havana had resulted

in the more satisfactory formula embodied in Article 104 of the Havana Charter which approximates closely to that in the Protocol of Provisional Application. They have therefore recommended that an adaptation of Article 104 should be inserted in the Protocol to govern both provisional application and accession. The Working Party considered that if this solution is approved by the Contracting Parties there would be a strong case for an amendment of Article XXVI of the General Agreement on these lines. As was pointed out in the discussion, the present form of Article XXVI might frustrate the entry into force of the Agreement. It might in practice enable a territory, which is a separate customs territory not possessing full autonomy in the conduct of its external commercial relations, to delay indefinitely by withholding its consent, an acceptance by the country which has international responsibility for it.

A provision has been included analogous to the second proviso in Article XXVI, paragraph 4, regarding dependent customs territories which become autonomous in their external commercial relations.

Signature

The Working Party considered the period during which the Protocol should remain open for signature.

It was considered that it should be signed by the present Contracting Parties not later that 31st October, 1949, which would provide sufficient time for governments to consider the results of the Annecy negotiations and thus enable them to take the necessary Decisions under Article XXXIII.

For the Application of Annecy concessions by present Contracting Parties it was recognised that it may be necessary for afurther extension of time, and, moreover some acceding governments have indicated that they might not be in a position to sign the protocol for some time to come.

In view of the fact that the date of 1st January, 1951, in

Article XXVIII, will be applied to the Annecy concessions it was considered that the insertion of a date as late as the middle of 1950 as a date until which the Protocol would remain open for signature by acceding governments, might be undesirable as a matter of presentation. The date of 30 April, 1950 has therefore been selected with the understanding that, in case of necessity, it might subsequently be extended by the CONTRACTING PARTIES.

Authentication of Text.

It is suggested that the text of the Protocol should be authenticated at the conclusion of the Annecy negotiations by the signature of the Chairman of the CONTRACTING PARTIES.

Members of the Working Party stressed the necessity of early notification by the Secretary-General of the United Nations to Governments of signatures to the Protocol and of any notifications given to the Secretary-General pursuant to the Protocol. It was thought that this information should be forwarded by the Secretary-General as soon as possible after the action had been taken.

Annexes A and B to the Protocol

It is proposed that the concessions negotiated at Annecy should be scheduled in the same manner as was done at Geneva in 1947 and that these schedules should be contained in Annexes A and B to the Protocol. Annex A would contain concessions made by the acceding governments and Annex B concessions made by the present contracting parties.

Preferences

In connection with the existing annexes to the General Agreement referred to in Article I and relating to existing preferential arrangements, it was noted that the Havana Charter included in Annexes H and I lists of territories covered by preferential arrangements in which certain acceding governments were included.

The Working Party did not know whether these governments wished to have these annexes also apply as exceptions to the General Agreement, but considered that provision should be made for their inclusion in the Protocol in the event of request for that being made by those governments.

If these governments seek toselect dates earlier than 10 April 1947, for the establishment of maximum margins of preferences referred to in paragraph 3 of Article I, it may also be necessary to consider making appropriate provision in the Annecy Protocol.