

RESTRICTED

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4 March 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE
FIRST SESSION OF THE CONTRACTING PARTIES
SUMMARY RECORD OF SECOND MEETING

Held at the Capitolio, Havana, Cuba on 2 March 1948

Chairman: Mr. I. D. WILGRESS (Canada)

In opening the meeting the Chairman suggested that examination of the Rules of Procedure should be left for a later occasion and that this meeting should examine in a preliminary manner Item 8 in the Provisional Agenda (Annexure 2, GATT/1/1), and the new Item 9 as recorded on page 3 of the Summary Record of the First Meeting. He said that these Items were of greater urgency than the other items on the Agenda and also were of great interest to the participating observers; some of the representatives present had been given authority to sign a protocol correcting the Schedules of the Agreement but not a protocol of supersession or amendments and, therefore, it was desirable to clarify as soon as possible the form of the documents which were likely to require signature at the end of this first session.

This programme was approved.

1. Item 8: Relation of the General Agreement to the Charter (Article XXIX)

The Chairman read parts of paragraph 2 of Article XXIX dealing with the relation of the General Agreement to the Charter for an I.T.O. which provided that Article I and Part II of the Agreement should be suspended and superseded by the corresponding provisions of the Charter on the day that the Charter enters into force; within 60 days of the closing of the Havana Conference any contracting party might lodge an objection to any provision of the Agreement being thus suspended and superseded. During discussion of Article 17, however, several delegates which had not been members of the Preparatory Committee had insisted that they would require to know what changes were going to be made in the General Agreement before they could sign the Final Act of the Havana Conference; therefore, the relations between the Agreement and the Charter required the consideration of the contracting parties.

Mr. J. ROYER (France) said that the French Delegation at Geneva had accepted the General Agreement on condition that Part II would subsequently

* This replaces the document of the same symbol issued on 3 March on blue paper, all copies of which should be destroyed.

be replaced as the Agreement and the Charter could not have divergent conditions. To meet the case of those who did not wish to sign the Final Act of the Conference without knowing the contents of the General Agreement, he suggested that the contracting parties should decide now to waive their right under paragraph 2 of Article XXIX to wait 60 days before recording their objections to the suspension and supersession of certain provisions of the Agreement.

Mr. J. A. GUERRA (Cuba) supported the proposal of Mr. Royer, but Mr. P. A. FORTHOMME (Belgium) thought that the privilege of lodging objection within 60 days should be maintained. Mr. R. J. SHACKLE (United Kingdom) said that although he had not received instructions from his Government on this point he believed that he could support the views of Messrs. ROYER and GUERRA nevertheless, it was a difficult question to decide since the final text of some important Articles of the Charter was not yet known and it might not be possible to settle the question of supersession at Havana, that might be done at the time of the first meeting of the Interim Commission of the I.T.O.

Mr. A. B. SPEEKENBRINK (Netherlands) said that he appreciated the difficulties which had been mentioned but nevertheless he would support the views of Mr. FORTHOMME regarding the retention of the 60-day period.

Mr. J. W. EVANS (United States) said that in the absence of definite instructions he could only express the opinion that the proposal to waive the 60-day period might be acceptable; so far as the amendment to the Agreement was concerned, he could take up this question with his Government in relation to particular Articles.

Mr. H. C. COOMBS (Australia) emphasized the point that since the Charter requires members to accept the General Agreement the delegations at Havana were entitled to know what the Agreement will contain before they are called upon to submit the Charter to their governments. He thought the contracting parties might agree now to the supersession of certain Articles and waive the right to object to further supersession.

Mr. ROYER (France) again stressed the importance to his Government of the supersession of Article XIV by the new Article 23 of the Charter and the replacement of parts of Article XXIV by the new Article 42 of the Charter. He said it was essential that the present Article XIV should be superseded by 1 January 1948 and that Article XXIV should be amended now so that France and other countries can proceed with the establishment of customs unions and free-trade areas. In this latter proposal Mr. ROYER was unanimously supported by Mr. G. HAKIM (Lebanon) and Mr. H. SAWAF (Syria).

Dr. J. E. HOLLOWAY (South Africa) said that he had authority to discuss questions of supersession but if it were proposed to amend the Agreement he had no authority from his Government to participate in the discussions.

/Several

Several representatives then participated in the discussion of the right of the 9 contracting parties to take decisions on supersession or amendment without the agreement of the other 14 signatories of the Final Act at Geneva. Various views and proposals were put forward including: it might be that the 9 contracting parties could not alter a document which had been signed by 23 countries, but those 9 could meanwhile change their own obligations under the Protocol of Provisional Application and if the other 14 signatories were prepared to accept these alterations a second protocol could be signed by all 23; if some of the other 14 signatories did not agree to the changes introduced by the 9 contracting parties they would be virtually precluded from accepting the Agreement and therefore all changes should obtain the approval of all 23 signatories.

Mr. ROYER (France) said that if no practical solution were found for this problem he would have to reserve his right to revert to the question of the legal rights of the contracting parties.

Mr. EVANS (United States), in amplification of his earlier remarks, stated that he thought his Government would not agree to the general supersession at any date earlier than the entry into force of the Charter in terms of Article XXIX but if it was proposed that a particular Article in Part II or even elsewhere in the Agreement should be replaced forthwith, he would submit the matter to his Government and it might be approved.

The Chairman summing up the discussion on Item 8 said that there seemed to be general agreement that all questions of supersession and amendment would have to be agreed by all 23 signatories and that a new protocol waiving the 60-day period should be signed at Havana and that, consequently, the representatives of the 23 signatories should request instructions and credentials. He asked the Executive Secretary to prepare a draft protocol as the basis for further discussion.

2. Item 9: Amendments and Proposals relating to Articles of the Agreement not covered by Article XXIX

In opening the discussion on Item 9 the Chairman mentioned that the Co-ordinating Committee of the Conference, in its report to be discussed on the following day by the Heads of Delegations (E/CONF.2/45), was recommending that the clause requiring unanimity for the admission of a country as a contracting party should be replaced by a two-thirds vote and that paragraph 5 of Article XXV should be amended in the light of the proposed amendments to Article 17. Mr. GUERRA (Cuba) said that this second recommendation of the Co-ordinating Committee covered paragraph (b) of Item 8 of the Agenda. The Chairman, therefore, mentioned that the only subjects which appeared to require consideration under Item 9 were the proposal of the Delegation of France for an amendment of Article XXIV and the two recommendations of the Co-ordinating Committee.

/Mr. EVANS

Mr. EVANS (United States) said that he could not at present state the final position of his Government on the proposal of Mr. ROYER to amend Article XXIV; he would have to give further study to the position of bound rates of duty in the event of the formation of a customs union. Mr. ROYER in reply said that he would have no objection to providing some procedure whereby an injured party could seek a satisfactory adjustment or compensation; he mentioned in this connection the formula provided in Article XLIII and in Article XXVIII.

Mr. F. Garcia OLDINI (Chile) and Mr. E. L. RODRIGUEZ (Brazil) suggested respectively, that Article 15 and Articles 26, 27 and 28 should be added to the Agreement. Mr. HAKIM (Lebanon) and Mr. SAWAF (Syria) supported the proposal of Mr. Garcia OLDINI, but Mr. GUERRA (Cuba) said that he would be opposed and Mr. EVANS (United States) said that he believed his Government would not agree to the introduction of new Articles into the Agreement at the present time.

Mr. B. N. BANERJI (India) said that the attitude of his Government to the Charter and to the Agreement would depend largely upon the inclusion of a certain Article; if there was no corresponding Article in the Agreement to be superseded by the Article of the Charter to which he referred, he would wish to move an amendment that this Article be included; he would probably refer to this matter again on a future occasion. Mr. S. A. HASNIE (Pakistan) said that his Government took the same view on this matter.

Mr. HASNIE (Pakistan) referred to the negotiation of tariff concessions by the delegation of India at Geneva; the two Dominions of India and Pakistan had now been created and it was found that some of the concessions granted brought no compensatory advantages to Pakistan and therefore his Government would seek the privilege of re-opening negotiations with the countries concerned; the list of items suggested for re-negotiation would be restricted to the smallest number possible and might not exceed half a dozen. The Chairman suggested that this question might be brought up for discussion under Item 7 of the Agenda.

In summing up the discussion on Item 9, the Chairman said that there appeared to be general agreement that the substitution of the new Article 42 for parts of Article XXIV should be considered favourably; and secondly, that if the recommendations of the Co-ordinating Committee on Article XXV and the unanimity rule were adopted by the Heads of Delegations, these recommendations could then be considered by the contracting parties. The Chairman asked the Executive Secretary to prepare for further discussion a draft protocol covering these three amendments. The suggestion was made, and it was agreed, that the draft protocol should cover also the supersession of Article XIV. The Chairman then suggested that the representatives of the 23 signatories /should ask

should ask their governments for authority to sign protocols or other instruments relating to the supersession and amendment of Articles of the Agreement, in making the request it could be explained that these powers would not be used except on instruction following cable advice of the contents of the protocols.

Mr. SPECKENBRINK (Netherlands) suggested that a further change should be made in the Agreement, namely, a re-wording of paragraph I of Article XXIX to bring it up to date when the proposed adoption of a Charter by the United Nations Conference on Trade and Employment has actually taken place. The Chairman agreed that this should be included in the draft protocol.

3. Next Meeting

The Chairman stated the first subject on the Agenda for the next meeting would be the continuation of the preliminary examination of Items 3 and 9.

