

RESTRICTED

GATT/1/SR.3
6 March 1948

ORIGINAL: ENGLISH

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

Held at the Capitolio, Havana, Cuba, on 5 March 1948

Chairman: Mr. L. D. WILGROSS (Canada)

1. Position of countries which are not yet Contracting Parties.

Mr. HAKIM (Lebanon) asked for clarification of the position at this Session of signatories of the Final Act at Geneva who were not applying the Agreement. He felt that on certain questions the rights of these countries were the same as those of the signatories of the Protocol of Provisional Application.

The CHAIRMAN pointed out that the position of countries such as Lebanon was met by the Rules of Procedure. As regards their right to vote in connection with the super-session and amendment of the Agreement, it had been previously agreed to endeavor to establish a unanimous text all twenty-three countries could sign. The legal position was clear and was covered by the definition of "Contracting Parties" contained in the Agreement.

Mr. HAKIM (Lebanon) reiterated his feeling that the question of voting might arise when discussing the contents of the proposed Protocol. It was undesirable that the two sets of countries signatories of the Final Act at Geneva should be on different footings when considering so important a matter.

2. Corrections to the Summary Record of the previous meeting.

At the request of Mr. HOLLOWAY (South Africa), it was agreed to amend paragraph 4 on page 3 of document GATT/1/SR.2 to read: "...the trend of the discussion indicated that...", instead of "there seemed to be general agreement that". The statement of Mr. S. A. HASNIE (Pakistan) contained in paragraph 3 of page 4 of document GATT/1/SR.2 was, at his request, amended to read: "Said that his Government was likely to take the same view on this matter".

3. Amendment and Super-session of the General Agreement.

Mr. ROYER (France) felt that action should not be delayed at the present
/Session

Session through the inability of any signatory of the Final Act at Geneva to adhere to whatever document was drafted, provided all the Contracting Parties were in a position to sign such a document.

Mr. LEDDY (United States of America) recalled the proviso of paragraph 2 (a) of Article XXIX and pointed out that the Protocol of Provisional Application was open for signature until 30 June 1948. Therefore, as any non-Contracting Party could adhere to the Protocol of Provisional Application at any time up to 30 June next, the only practicable procedure was to have a Protocol of amendments to be adhered to by the twenty-three Geneva signatories.

The CHAIRMAN felt the moment had not come to consider points of legal detail and introduced document GATT/1/9 containing the amendments of the United States delegation to the Rules of Procedure.

4. Consideration of the Rules of Procedure (document GATT/1/1).

Mr. ROYER (France) stated, in connection with Rule 1, that the United States amendment thereto had the effect of leaving the Contracting Parties without a Secretariat at the end of the Havana Conference.

Mr. LACARTE (Deputy Executive Secretary) confirmed the view of the French representative.

Mr. SHACKLE (United Kingdom) felt that the Secretariat, which had acquired much valuable experience in the course of the last year or two, should not be dispersed at the end of the Conference.

Mr. GUERRA (Cuba) recalled it had been mentioned at a previous meeting that the United Nations Department of Economic Affairs in New York could serve as a central point for matters concerning the General Agreement.

Mr. LACARTE (Deputy Executive Secretary) stated it was unlikely this service could be provided free of charge to the Contracting Parties.

Mr. GUERRA (Cuba) was willing to agree to the United States amendment provided suitable arrangements were made with the United Nations. He felt it was essential to ensure a common point of contact, as well as certain services.

The CHAIRMAN pointed out that Item 4 of the Agenda of the First Session would be one of the last items to be considered and that it covered the matter under discussion. The Rules of Procedure were intended to apply to the conduct of the meetings being held and a decision in connection therewith would not prejudice the consideration of Item 4. He suggested that the United States amendment be dealt with and that questions pertaining to the Secretariat should be discussed under Item 4 at a later stage.

/Mr. SHACKLE

Mr. SHACKLE (United Kingdom) requested that the Secretariat make inquiries in New York as to the possibility of the Department of Economic Affairs acting as a central clearing office as proposed by the Cuban representative.

The CHAIRMAN conveyed the Secretariat's assurance that this would be done.

Messrs. ROYER (France), GUERRA (Cuba) and LAMSVELT (Netherlands) felt Rule 1 should remain as it stood.

Mr. LEDDY (United States of America) withdrew his amendment. His only concern was that the Rules of Procedure should not imply that a separate Secretariat existed for the Contracting Parties.

Rules 1 to 5 were then agreed as contained in document GATT/1/1. Rule 6 was adopted as it stood and the United States amendment was withdrawn. Rule 7 was approved as follows: "The representatives of countries signatories at Geneva of the Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment which have not become Contracting Parties may attend meetings in the capacity of observers participating in the discussions." Rules 8, 10, 11, 12 and 13 were adopted as contained in document GATT/1/1.

It was agreed that Rule 9, the second sentence of which had been deleted at the first meeting, should be considered at a later stage.

The United States proposal on Chapter V was approved, as amended by the French representative, so that Rule 14 was added to Chapter IV, reading as follows: "During the First Session of the Contracting Parties, the Executive Secretary of the United Nations Conference on Trade and Employment and his staff shall perform the usual duties of a Secretariat." Chapter V as contained in document GATT/1/1 was therefore deleted and a consequential renumbering of the following Chapters and Rules was automatically effected. Rules 17 to 22, inclusive, (numbering as in document GATT/1/1) were approved as they stood. Rule 23 was amended at the request of the Indian representative to read as follows: "The Chairman, with the consent of the Contracting Parties may limit the time allowed to each speaker." The rest of the Rules of Procedure was adopted with no amendment from the text contained in GATT/1/1 and the United States amendment on Rule 38 was withdrawn.

The CHAIRMAN then stated that the Rules of Procedure had been agreed with the exception of Rule 9 which would be considered at a later stage.

5. Draft Protocol of Super-session and Amendments.

The CHAIRMAN introduced document GATT/1/11 containing a draft Protocol
/of Super-session

of Super-session and Amendments prepared by the Secretariat. He stressed the desirability of attaining early unanimity on the text of such a document, although he recognized that not all the provisions could be agreed to immediately.

Mr. SHACKLE (United Kingdom) recalled that he had already stated that his Government might have some difficulty in agreeing to the early incorporation into the Agreement of Articles 13, 15 and 23 of the Charter as agreed at Havana. He had now received instructions to the effect that his Government could not agree to such substitution taking effect before 1 January 1949 in any case and that Parliament would have to debate the matter before such changes could be agreed to by the United Kingdom.

Mr. HOLLOWAY (South Africa) inquired as to the Full Powers needed to sign the proposed Protocol.

Mr. LACARTE (Deputy Executive Secretary) stated that the Legal Adviser was preparing a report on the Full Powers which had been submitted to date, in the light of the contents of the Agenda, and that his views would be put to the Contracting Parties at a forthcoming meeting.

In reply to a point made by Mr. HOLLOWAY (South Africa), Mr. LACARTE (Deputy Executive Secretary) stated that the Secretariat proposal under discussion was intended to be signed by all twenty-three countries. If unanimity could be attained, there would be no further legal difficulties. Should it not be possible to attain unanimity, then would be the time to seek other formulas.

Mr. ROYER (France) suggested the Protocol should remain open for signature after it was signed at Havana. Reverting to the statement by the United Kingdom delegate, he inquired whether it meant that the United Kingdom did not wish to give up its rights under the proviso of paragraph 2 (a) of Article XXIX. However, Mr. Shackle's mention of 1 January 1949, seemed to imply agreement that amendment could take place before the entry into force of the Charter. He further wished to know whether the statement by the United Kingdom representative applied to the amendments proposed by France, which were of very great importance to the latter country.

Mr. SHACKLE (United Kingdom) stated that the United Kingdom Government could not accept substitution before 1 January 1949. His Government needed an adequate opportunity to present the Charter to Parliament and to secure its views.

Mr. LEDDY (United States of America) did not agree with Mr. Royer in that he felt that all signatures to the proposed Protocol should be

/affixed at

affixed at Havana so that non-participants in the Geneva negotiations would know the text of the General Agreement when signing the Final Act of the Trade Conference. In connection with the statement by the United Kingdom representative, he wished to know what Articles the date of 1 January 1949 applied to.

Mr. SEACKLE (United Kingdom) stated his instructions applied only to Articles 13, 15 and 23 of the Charter.

Mr. FORTHOMME (Belgium) felt some lapse of time at the end of the Trade Conference should be allowed to sign the Protocol. As regards the automatic substitution by the Charter of Article I and Part II of the Agreement, this should not take place before the entry into force of the Charter. If the Havana Charter never entered into force, Belgium would prefer to keep the Geneva text and such a development could be precluded by substitution of the Geneva text by the Havana text taking place too early. He felt it was too soon to talk about Articles 23 and 42 of the Charter because their final texts were not yet known.

Mr. SEACKLE (United Kingdom) appreciated the need for all signatories of the Final Act of the Havana Conference to know what would be the contents of the Agreement. However, they could always be sure that Part II would be superseded by the Charter and the only serious doubts that could arise were connected with the Articles not in Part II, i.e. Article II and Part III.

Mr. GUERRA (Cuba) pointed out, in relation to Mr. Shackle's remarks, that if the Contracting Parties did not waive their right to lodge objections to automatic super-session within sixty days of the termination of the Havana Conference, the signatories of the Final Act of the Havana Conference would not have any assurance as to the final text of the Agreement.

Mr. ROYER (France) recalled that the sixty-day provision had been drafted to meet the worst possible case, that is, a complete reversal at Havana of the text agreed at Geneva. However, no such thing had happened. Only two of the articles under consideration had been substantially modified: Articles 13 and 23 of the Charter. Furthermore, all Governments had surely been kept advised of developments throughout the Conference. As some delegates had pointed out their difficulty in signing the Final Act at Havana without knowing the final text of the Agreement, the Contracting Parties should surely make every effort to meet their case. He felt that, due to political considerations, it was desirable for the text of Article 23 of the Charter to be substituted for the corresponding provision of the Agreement as early as possible. He had cabled for instructions on the latest possible /date that

date that France could agree to for such substitution but felt that it could surely not be later than 1 January 1949.

As regards Article 42 of the Charter, it was essential for France that substitution should take place at the earliest possible date, due to the negotiations for a customs union with Italy, which would be having juridical effects in about one month's time.

Mr. HAKIM (Lebanon) agreed with the French representative and stated that the proviso in paragraph 2 (a) of Article XXIX of the Agreement did not apply because the Agreement was not in force.

The CHAIRMAN disagreed with Mr. Hakim's interpretation and pointed out that "Contracting Parties" were defined in Article XXXII.

Mr. FORTHOMME (Belgium) suggested the immediate substitution of certain Articles of the General Agreement on Tariffs and Trade without necessarily providing for the substitution of the full text. It had been agreed at Geneva that the Contracting Parties were entitled to keep the Geneva text until it was necessary to apply the Havana text. He was opposed to the French position and felt there was nothing very terrible about waiving rights under the proviso of paragraph 2 (a) of Article XXIX, although only a very small risk was involved in its operation for countries which had not participated in the Geneva negotiations. He was opposed to the automatic replacement of the provisions of the General Agreement before the entry into force of the Charter, but was ready to recommend to his Government all logical amendments.

The CHAIRMAN felt that it would be better to examine GATT/1/11 paragraph by paragraph and for this purpose suggested that consideration should be given in the first instance to paragraph 3 on pages 2 and 3.

Mr. LEDDY (United States of America) wished the problem divided into two parts: (i) countries which had not been represented at Geneva should be put in a position to know what would be the final text of the Agreement; (ii) what Charter Articles should be inserted in the Agreement before the entry into force of the Charter.

The CHAIRMAN agreed with this view. He suggested consideration of paragraph 3 of GATT/1/11 and pointed out that the contents of this paragraph had been agreed in principle by the Heads of Delegations of the Trade Conference.

Mr. FORTHOMME (Belgium) proposed the insertion of the word "Havana" at the end of line 3 of (b).

Mr. SHACKLE (United Kingdom) stated his Government was ready to see this change take effect when the Charter came into force.

/The CHAIRMAN

The CHAIRMAN then referred to paragraph 4, on page 3 of GATT/1/11, which was agreed. He then called the attention of the meeting to paragraph 5, on page 3.

Mr. LAMSVELT (Netherlands) felt that it was not essential to delete the proviso in paragraph 2 (a) of Article XXIX.

Mr. ROYER (France) in reply to a question put to him by Mr. Lamsvelt (Netherlands) regarding the incorporation of the text of Article 42 of the Charter in the Agreement explained that France will soon have to sign a Protocol of conditions under which a customs union with Italy is to take place. However, such a Protocol cannot be concluded if one of the two parties - in this case, France - has international commitments to the contrary.

He felt that paragraphs 1 and 2 of Article I of the Agreement could well be left as they stand instead of being replaced by the corresponding Charter text.

Mr. FORTHOMME (Belgium) supported Mr. Lamsvelt's views on the proviso in paragraph 2 (a) of Article XXIX and pointed out that the first words of the first line of paragraph 5 of document GATT/1/11 should read: "To amend paragraph 2 (a) of Article XXIX....."

Mr. BANERJI (India) was not clear on why reference was made in paragraph 5 of GATT/1/11 only to paragraphs 1 and 2 of Article I of the Agreement.

The CHAIRMAN pointed out that there is no provision equivalent to paragraph 3 of Article I of the Agreement in the Charter text of Article 16. If the French proposal were accepted, the words "paragraphs 1 and 2 of Article I" would be deleted from paragraph 5 of the Secretariat's draft Protocol.

Mr. TRABOULSIE (Syria) agreed with Mr. Royer on this point.

Mr. HOLLOWAY (South Africa) felt that the proposal to waive the rights of the countries which participated in the Geneva negotiations, under the proviso of paragraph 2 (a) of Article XXIX was either due to reasons of material substance or of convenience of other delegations which requested it. If the reasons were of substance, Governments need not waive their rights over the whole field when it was only necessary to do so on a narrow sector. If it were a matter of convenience, he asked himself whether it was not also proper that the convenience of the Contracting Parties should be met.

Mr. LEDDY (United States of America) was in favour of waiving the right to lodge objections within sixty days of the end of the Havana Conference.

/Mr. SHACKLE

Mr. SHACKLE (United Kingdom) stated that the Agreement had been debated and approved in the British Parliament and that the same would occur with the Charter. Previous Parliamentary consideration of the Charter, how could his Government agree to the automatic replacement of the Agreement (which had been approved by Parliament) by provisions not yet approved (i.e., the Charter)? This meant some countries would have to sign the Final Act at Havana without knowing the final text of the Agreement. In any case, such signature implied no commitment and, although it did cause some inconvenience to other Governments, it seemed proper to meet the position of countries such as the United Kingdom which required the support of Parliament in this matter.

Mr. ROYER (France) felt that it was precisely due to Parliamentary reasons that France wanted to know what the text of the Agreement would be. The text of the Agreement would be discussed by the French Parliament shortly after the end of the Havana Conference, and it was desirable that Parliament should know what was going to be the final text of the Agreement.

Mr. SKAUG (Norway) supported the French representative. Their Parliament had not yet ratified the Agreement mainly because Norway had certain reservations to the general text. It was expected that the Agreement would be submitted to the Norwegian Parliament shortly after the end of the Havana Conference, but it would not be possible to submit a text which was not known to be final.

Mr. LEDDY (United States of America) was not clear on how the United Kingdom Government would affect the position of Parliament by surrendering its freedom of action under the proviso of 2 (a) of Article XXIX.

Mr. SHACKLE (United Kingdom) felt an endeavour should be made to amend the Agreement on specific points and on a limited waiver of rights under 2 (a) of Article XXIX.

Mr. LOPEZ RODRIGUEZ (Brazil) agreed with the French and Norwegian representatives.

Mr. NASH (New Zealand) supported paragraph 5 of GATT/1/11 because he felt only one text should be submitted to the various Parliaments.

The CHAIRMAN in summing up, stated there appeared to be general agreement that super-session should take place on the date of entry into force of the Charter. There was support for the French view that references to Article I should be omitted from paragraph 5 of the Secretariat draft Protocol. The main point at issue appeared to be in regard to the deletion of the proviso contained in 2 (a) of Article XXIX.

It was decided to resume the discussion at the next meeting and the meeting was then adjourned.

