

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

Held at the Capitol, Havana, Cuba, on 19 March 1948 at 6.00 p.m.

AUSTRALIAN RESERVATION CONCERNING THE REPLACEMENT OF ARTICLE XXIV BY  
ARTICLE 42 OF THE CHARTER AND AMENDMENTS TO PART III

The CHAIRMAN pointed out that as paragraph 2 (a) of Article XXIV could only be amended by the unanimous agreement of the contracting parties, further consideration would have to be given to the Protocol of Supersession and Amendments.

Mr. COOMBS (Australia) explained that he would have to reserve his position on the projected Customs Union between France and Italy, although his Government was not opposed to the idea of that particular agreement, because Article 42 (b) did not provide for settlement on a mutually advantageous basis. Nothing would be lost by not incorporating Article 42 in the revised Agreement and under instructions from his Government he would be forced to oppose its inclusion.

Mr. ROYER (France) pointed out that the maintenance of the present Article XXIV would have the effect of postponing the establishment of proposed customs unions for a further two years. The French parliament would reject any text which discouraged the establishment of customs unions. It might be possible to amend the provisions of Article XXIV although he was not in favour of a majority amendment with respect to the entry into force of important provisions.

Mr. LEDDY (United States of America) suggested that as the Australian delegation would be unable to accept the principle of general supersession, a resolution might be drawn up which would state inter alia that in view of the compromise which had emerged from the Co-ordinating Committee of the Trade Conference, governments would agree to waive the provision concerning submission of objections within sixty days of the closing of the Conference. A separate protocol could be drawn up with respect to the substitution of Articles 23 and 42 of the Charter.

Mr. SHACKLE (United Kingdom) suggested two separate Protocols for

/Articles 23

Articles 23 and 42 as the former had not been the subject of controversy.

Mr. SPEEKNERINK (Netherlands) accepted the United States suggestion as modified by the representative of the United Kingdom.

In reply to the representative of Cuba, Mr. LEDDY (United States of America) explained that he had deliberately suggested the idea of a resolution, rather than a Protocol so that it would be possible for all representatives to sign it.

Mr. COOMBS (Australia) said that it would be impossible for him to sign a resolution recommending that his Government should waive the provisions of Article XXIX (2) (a). He hoped that it would be possible, as suggested by the representative of France, to have a protocol which would be left open for subsequent signature.

Mr. SPEEKNERINK (Netherlands) expressed the view that if sufficient governments signed the Charter, its provisions would of necessity have to replace those set forth in the General Agreement. He was in favour of agreeing with respect to as much as possible, leaving what remained open for signature at a later date.

Mr. LEDDY (United States of America) wondered if it would be possible to adopt some form of resolution to the effect that the provisions of the Agreement would not be harsher with respect to new contracting parties than those laid down in the Charter. He was particularly anxious to allay the fears of certain delegations that the Geneva text of Article 13 would remain unchanged in the Agreement.

Mr. SHACKLE (United Kingdom) said that personally he doubted whether such a resolution would be adequate from the constitutional point of view. Secondly, it would have the effect of placing newcomers in an advantageous position. He suggested the preparation of one or more protocols which could be left open for signature for perhaps sixty days and at the following meeting of the contracting parties further consideration could be given to the matter.

After an exchange of views the CHAIRMAN took the sense of the meeting concerning a suggestion of the Lebanese representative that governments should simply be asked to pledge that they would not submit objections to any provision or provisions of the Agreement within sixty days of the closing of the Conference.

The representatives of Canada, Cuba, France, Brazil, India, Lebanon, Norway, and the Netherlands said that they would accept such a suggestion. The representative of the United States said that he would accept it provisionally. The representatives of Australia, China and Czechoslovakia said that they would be unable to accept the suggestion, while the

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representatives of New Zealand, South Africa, Luxembourg, and the United Kingdom were unable to state definitely what their position would be. Seven signatories of the Geneva Final Act were absent.

Mr. WOULEROUN (Luxembourg) expressed the view that the representative of Belgium, who was not present at the meeting, would not oppose the establishment of a protocol along the lines suggested above.

Mr. HAKIM (Lebanon) pointed out that such a Protocol would not need to be left open for signature after the close of the Conference, as governments wishing to adhere to it could do so by renouncing their right to raise objections.

It was agreed that the Secretary would prepare a draft Protocol for consideration at the following meeting.

CONSIDERATION OF THE ADVISABILITY OF HAVING ONE OR TWO PROTOCOLS  
WITH RESPECT TO THE SUBSTITUTION OF ARTICLES 23 AND 42

After an exchange of views in which the representatives of the United Kingdom and France supported the idea of a separate Protocol for Article 23, and the representative of the United States expressed his anxiety to avoid obliging certain countries to sign a protocol, it was agreed that the Articles could be accepted under the provisions of Article XXX, it being understood that an instrument of acceptance was of equal validity with a protocol.

The CHAIRMAN felt there would be no objection to a Protocol modifying certain general provisions of the General Agreement if the replacement of Article XXIV by Article 42B as well as the question of supersession were omitted.

On that basis, document GATT/1/28 would be revised by the deletion of Sections I, III, IV; Sections V, VI, VII and VIII would remain (Section VIII as revised by GATT/1/40/Rev.1).

Section VII:

Mr. BEYLEVELD (Union of South Africa) said he was not yet in position to discuss the new Article XXXV.

To the remark of Mr. ADARKAR (India) that reference to paragraph 1 of Article XXIX would not be necessary in Article XXXV, the CHAIRMAN replied that whether to amend paragraph 1 of Article XXIX was a matter for consideration; however it would be in order for reference to remain in Article XXXV even if the contracting parties were bound to observe the spirit of the Geneva Charter rather than the Havana Charter.

Mr. SHACKLE (United Kingdom) thought it unnecessary to amend paragraph 1 of Article XXIX.

Two errors were noted in paragraph 2 of Article XXIV: add "Havana" before "Charter"; "parties" should be "party".

It was agreed to leave Section VII, subject to last minute review.  
Section VIII (GATT/1/44)

Mr. LEDDY (United States) suggested adding at the end of the first sentence of the third paragraph: "and such governments shall not be required to apply such modifications until they become contracting parties to the General Agreement as defined in Article XXXII of the General Agreement."

Mr. ROYER (France) agreed but suggested some re-drafting, while Mr. SHACKLE (United Kingdom) thought the paragraph redundant.

Mr. NASH (New Zealand) asked whether the fourth paragraph regarding registration should not be substituted by the wording of paragraph 6 of Article XXVI.

The CHAIRMAN replied that the legal adviser of the Secretariat had suggested the wording and it would perhaps be better to leave the matter to the Legal Department of the United Nations. The purpose of the provision was to save each government the trouble of registering documents of a multilateral character; the Secretary-General would choose the time of registration.

The meeting recessed from 8.00 to 9.45 p.m.

Continuation of Consideration of Section VIII (GATT/1/47, paragraph V)

Mr. ROYER (France) thought the United States addition to the third paragraph would oblige a country soon to become a contracting party to postpone signature until it had power to sign the amended text.

It was agreed to delete the second paragraph and the phrase suggested by the United States representative in the third paragraph (lines 4-6) "and such governments....on Tariffs and Trade".

Mr. GUTIERREZ (Cuba) had no objection to the deletion but wanted to make it clear that regarding the first paragraph he would take no responsibility for its validity according to the Cuban Constitution.

Sections I, II, III, IV and V of document GATT/1/47 as amended were approved subject to the Australian reservation to sub-paragraph (a) of Article XXIV, to confirmation of Article XXIV by the Union of South Africa, and to the remarks of the representative of Cuba regarding paragraph 1 of Section V. Provision for the replacement of Article XXIV by Article 42B and amendments to Article XXIX were deleted from the Protocol.

DECISION CONCERNING THE FORMATION OF A CUSTOMS UNION  
BETWEEN FRANCE AND ITALY (GATT/1/38/Rev.1)

It was agreed to omit the phrase "between the territories of contracting parties", and to insert with necessary modifications the text of Article XXIV

/paragraphs 5 (a),

paragraphs 5 (a), 5 (c), 6 (a) and 7 (a), taking into account the addition to paragraph 5 (a) (see document GATT/1/41).

PROPOSED PROTOCOL PROVIDING FOR RENUNCIATION OF RIGHT TO LODGE  
OBJECTIONS TO SUPERSESSION (GATT/1/48)

The CHAIRMAN, replying to a question of Mr. GUTIERREZ (Cuba), said that a separate protocol was proposed because Australia was unable to agree to the replacement of Article XXIV by Article 42B.

The CHAIRMAN, replying to Mr. AUGENTHALER'S (Czechoslovakia) question as to whether the Protocol would remain open for signature, said that even if it were not signed, a country could give effect to the Protocol by not lodging complaint.

It was agreed to delete Section II regarding the effective date, inasmuch as the Protocol was declaration.

At the suggestion of Mr. LEDDY (United States) that Section I seemed mandatory in the sense that it appeared that countries were being requested to relinquish a right, the CHAIRMAN asked for re-drafting, and upon the submission of three notes, he requested the Secretariat to prepare a clean copy.

Mr. LEDDY (United States) said that agreement not to lodge objection within 60 days did not prevent submission of appropriate amendments later.

Mr. ROYER (France) suggested the use of the word "Declaration" rather than "Protocol".

PROTOCOL FOR AMENDING ARTICLE XXIV WITH CORRESPONDING TEXT OF ARTICLE 42B  
(United States White Paper No. 6500)

It was agreed to replace the words "TAKING NOTE OF" by the phrase "Having approved" and to insert after the phrase "AGREE to deposit" the phrase "before June 1, 1948....".

Mr. ROYER (France) replied to questions as to the effect on the amendments if two-thirds of the contracting parties did not meet the date of June first, by stating that the amendments would come into force (under Article XXX) at any time the two-thirds majority was reached. The only value of the Protocol was that it provided grounds to request action.

He felt it should be clarified that signature to "instruments of acceptance" would have the same legal force as signature to the Protocol for Provisional Application.

Mr. LEDDY (United States) said that in the opinion of his delegation an instrument of acceptance was a notification by a government that it would apply the provisions as long as it was applying the Protocol of Provisional Application.

Mr. SEACKLE (United Kingdom) agreed and added that while the General Agreement on Tariffs and Trade was in force under the Protocol of Provisional Application, a similar procedure for amendments would suffice.

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It was agreed that after the governments had been named (each contracting party except Australia) the following phrase should be added: "which are provisionally applying the General Agreement on Tariffs and Trade pursuant to the Protocol of Provisional Application."

Mr. DAO (China) asked whether a government, not now a contracting party, would have to sign the instrument of acceptance at the same time as it signed the Protocol of Provisional Application, or would the latter be considered as having been amended.

The CHAIRMAN replied that Article XXIV would be amended according to the provisions of Article XXX from the time two-thirds of the contracting parties had accepted the amendment. Therefore, a country becoming a contracting party after that date would also be bound by the provisions of the amendment.

Mr. COOMBS (Australia) doubted that the signatories at Geneva could be required to accept an amendment which they had not themselves accepted.

Mr. LEDDY (United States) felt there was little reason to suppose that such a requirement would be enforced.

#### PROTOCOL MODIFYING ARTICLE XIV OF THE GENERAL AGREEMENT (GATT/1/27)

Mr. SHACKLE (United Kingdom) asked that the Protocol be worded as set forth in GATT/1/27 inasmuch as approval of that text had been obtained from his government and there would not be time to obtain approval of a new text.

The CHAIRMAN said the new document would be available for the next meeting and it was agreed that the Protocol should be drawn up as set forth in GATT/1/27.

The meeting rose at 11.30 p.m.

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