

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SR.9/28

10 January 1955

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CONTRACTING PARTIES
Ninth Session

SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 7 January 1955, at 10.30 a.m.

Chairman: H.E. Mr. L. DANA WILGROSS (Canada)

- Subjects discussed:
1. Review of the Agreement
Interim Report of Review Working Party IV
on Entry into Force of Amendments and
appointment of Legal and Drafting Committee
 2. Complaints: French Statistical Tax on Imports
and Exports - Report by France
 3. Complaints: French Stamp Tax
 4. Complaints: French Special Temporary
Compensation Tax on Imports
 5. Discrimination in Transport Insurance
 6. Article XV:6 - Request for Waiver by New Zealand

1. Interim Report by Review Working Party IV on Entry into Force of
Amendments and appointment of Legal and Drafting Committee (L/304)

Mr. COUILLARD (Chairman of Review Working Party IV), introducing the report, said that its purpose was to request the CONTRACTING PARTIES to appoint a Legal and Drafting Committee and to instruct that Committee, when appointed, to give early attention to the legal questions which had arisen in connexion with the entry into force of amendments to the General Agreement agreed upon in the course of the Review. The Working Party requested that the Legal and Drafting Committee should be instructed to report to it during the forthcoming week so as to enable the latter to complete its examination of the question.

The CHAIRMAN remarked that the only matter in the report which required immediate action was the request for the appointment of the Legal and Drafting Committee. Working Party IV had given preliminary consideration to the question of the entry into force of amendments to the General Agreement but so far had reached no conclusions on the matter. A number of legal issues had arisen during the course of the discussion and the Working

Then we pass on to paragraph 1 (c) - we pass by (b).

Mr. MA (China): Mr. Chairman, what happened to (b)?

CHAIRMAN: We shall take that afterwards. Leave out the U.S. proposal, and take (b) as a separate item.

It is only to say whether the Committee agrees to the very slight Drafting Amendment to (c) that the United States strike out the superfluous words "or consultation"; "consultation" and "binding" is the same thing, and it seems superfluous to have two expressions for the same item.

The Delegate of Australia.

Mr. COOMBS (Australia): We have certain comments to make as to (b) and (c) and in view of that I think perhaps it might be desirable to deal with them together or in the order as they appear.

CHAIRMAN: Then we pass on to point (d).

You have before you the United States proposal, which really is only a drafting amendment of the New York text, and you have on page 12 of Doc. 150 a proposal by the Australian Delegation. And I should to be complete also mention that a certain point of paragraph (b) is the object of a reservation by the Delegates of India, New Zealand and the Union of South Africa.

Perhaps the Australian Delegate would be kind enough to explain his point.

Mr. COOMBS (Australia): Mr. Chairman, as I think I explained to the Committee earlier in our present meeting, it is the view of the Australian Delegation that neither of the Rules omitted in (b) or (c) is necessary.

This Article contemplates negotiations directed towards the

Chairman: Mr. Perez Cisneros

- Mr. Sydney Abramson Commercial Treaties Department of the British Board of Trade, assisted by Mr. Darwin.
- Dr. von Bargen Minister, Legal Adviser, German Federal Foreign Ministry.
- H.E. Mr. Toru Haguiwara Envoy Extraordinary and Minister Plenipotentiary in Switzerland, former Director of the Treaty Bureau, Ministry of Foreign Affairs, Japan.
- Mr. Walter Hollis Bachelor of Law. Member of the Bar of the State of New York and a Legal Advisor to the United States Department of State.
- Mr. Riccardo Monaco Professor of International Law and Conseiller d'Etat and Head of the Treaty Office of the Italian Ministry of Foreign Affairs.
- Mr. de Saint-Légier Doctor of Law, Honorary Advocate of the Paris Bar, and graduate of the Ecole d'Administration, French Ministry of Foreign Affairs.
- Mr. G. Stuyck Doctor of Law, former member of the Brussels Bar, member of the Belgian Ministry of Foreign Affairs.

Terms of Reference

- (a) To give advice on any legal issues which may be referred to it for that purpose by the CONTRACTING PARTIES, or by any of the working parties or their sub-groups established to consider Item 3 of the Agenda.
- (b) To consider proposals designed to remove drafting imperfections in the present text of the General Agreement or to improve and simplify the text.
- (c) To review from a legal standpoint texts established in the working parties set up to consider Item 3 and to secure conformity between the texts in the two official languages.

The CHAIRMAN, in reply to a question by the delegate of Norway concerning the Scandinavian proposals for a more functional arrangement of the Articles of the Agreement, replied that this and other drafting matters were covered by paragraph (b) of the terms of reference. In reply to suggestions by the Danish delegate, he agreed that it would be useful for all delegations to be kept informed of the questions that had been referred to the Legal and Drafting Committee. In reply to an observation by the

question, it is clearly desirable; but whether in fact the binding of a low tariff or a tariff retreatment is equal or equivalent in value to a substantial reduction of another high tariff item, is something which only the parties themselves can judge. Sometimes such a binding will be of very great value, particularly, for example, if there is a high degree of probability that the country concerned will take advantage of an unbound situation to increase it. But if that is not probable in the nature of the circumstances, obviously a lower value for negotiation purposes would be attachable to it.

I have had very limited experience of these tariff negotiations, but it does seem to me, when I think of men with the skill and experience of Mr. Hawkins, and Mr. McCarthy of my own Delegation, being told summarily by this Conference that the binding shall be regarded as equivalent to something or other - it savours somewhat of teaching your Grandmother to suck eggs.

In other words, the values attachable to any concession are something which can be judged by the people who are engaged in the bargaining, and they do not need to be told exactly how to deal with them, and any attempt to lay down such a system of values is capable of interfering with a fair assessment of the exchanges between the parties.

Perhaps my point on this may be illustrated if I draw attention to the fact that in view of the wording of (c) as it at present stands, it might not be unreasonable to add an additional sentence which would say that the binding of high tariffs shall not be regarded as a concession at all.

However, Mr. Chairman, we do not need to be told that, nor do I suggest that anybody else in this Conference needs to be told that. Consequently we have very grave doubts as to whether any practical value is obtained by the inclusion of Rules (b) and

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(c), and in the case of (b) we are definitely of the opinion that there are serious disadvantages to the conduct of negotiations in the existence of such a rule.

Rule (c) is not of such importance from that point of view, because I believe that the negotiating parties can be trusted to take such notice of the Rule as it is entitled to, and consequently we do not propose to worry very much about the inclusion of (c); as a statement of a general point of view we are not opposed to it, in fact we favour it; and therefore we are content to let it go, although we do think it is superfluous.

So far as (b) is concerned, we cannot accept it in its present form. We would say, briefly, the Rule should be omitted completely. But we understand that for historical reasons there are difficulties for some of the parties concerned in its complete omission.

We have, therefore, sought to set down the basis on which we were, in practice, approaching this problem in our consideration of the current negotiations, and to set out what appeared to us, in the present context, to be a reasonable approach to the way in which negotiated reductions in Most-Favoured-Nations rates and, where they are associated, preferential rates, should be dealt with, and we have set that out in the suggested amendment which appears on page 12 of the annotated Agenda.

I would like to make it clear that our distinct preference would be for the elimination of this rule altogether, but since there may be difficulties in that elimination being acceptable to other parties vitally concerned, we are prepared to accept a rule of the kind set out in (b), in the hope that, without proving a burden and handicap to the conclusion of mutually advantageous agreements, it will satisfy the particular requirements of the interested parties.

Mr. SANDERS (United Kingdom) said that his delegation attached importance to this matter, and thought it would be valuable and proper to have the question of discrimination in transport insurance studied. They were as yet unable to express an opinion as to how this study should be carried forward. It seemed clear, however, that further studies would be needed, and that deferring consideration of the matter until the Tenth Session was inevitable.

Mr. SEIDENFADEN (Denmark) said that the Scandinavian delegations agreed with the conclusions of the Executive Secretary's note that the matter should be further studied, and that this be done at the Tenth Session. They withdrew their suggestion that the matter should be taken up during the Review. He wished to emphasize the fact that this was a subject that was not within the competence of any other international organization.

Mr. COUILLARD (Canada) referred to paragraph 12 and said that he supported the conclusion that the CONTRACTING PARTIES should pursue their consideration of this matter at the Tenth Session, but he thought they should address themselves to the question of the harmful effects on international trade rather than to the effects on the interests of insurance businesses.

Mr. MACHADO (Brazil) wished to make it clear that the opposition by his delegation to this recommendation lay in the fact that they could not agree to discuss discrimination in transport insurance without discussing discrimination in maritime freight rates. He thought this was a matter that also would have to be discussed in connexion with the scope of the Agreement, and in reply, the CHAIRMAN observed that the question of the scope was still under consideration in Working Party IV.

It was agreed that this item be maintained on the agenda for discussion at the Tenth Session.

The CHAIRMAN said that, in the meantime, governments should give consideration to the question of the real effects of such discrimination on their trade; the remarks of the representative of Canada and the reservation of the representative of Brazil would be noted.

It was also agreed that the note by the Executive Secretary (L/303) with the exception of the Annex, should be de-restricted immediately.

6. Article XVI:6: Request for a Waiver by New Zealand (L/300)

The CHAIRMAN, referring to the waiver requested by New Zealand (L/300), said it was customary to have such requests examined in the first place by a working party, and he accordingly suggested that the New Zealand request should be studied by the Ninth Session Working Party on Balance-of-Payments Restrictions.

preference simply by operating on the most-favoured-nation rate. That is a physical impossibility. We should not have a rule whose meaning is indeterminate in this way in a Charter. For that reason we press very strongly for the change in the wording which would make the meaning clear. We think that the Australian elaboration of the rule does make the meaning clear, and we think that the interpretation of the Australian wording is clear and we would agree with the general principles which that wording wishes to convey.

Consequently, we support, in principle, the Australian amendment.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, we are very sorry indeed that we cannot accept the Australian amendment, especially in regard to (i) and (ii) of sub-paragraph (b).

When we started these tariff negotiations, we really thought that the reduction or elimination of any margin of preference could operate automatically between the different nations. But we have experienced more than once that Country A., having a large amount of business with Country B., have undertaken very important negotiations to reduce their preferences and they have received offers themselves, and made counter-offers, for the reduction of such preferences. At the same time, for example, Country A. has made offers of tariff reductions to Country C., but Country C. does not offer anything to Country A., absolutely nothing: in one case because it would mean a substantial reduction of the fiscal taxes; in some other cases simply because there is a prohibition on the importation of a commodity which is of primary importance to Country A.

But then afterwards it comes that, with the automatic operation of the reduction of preferences, Country C receives all the benefits of the long negotiations between Countries A and B. Besides that, some countries have not offered anything to other countries.

So we are at this time in a different position from that in which we were when we started these negotiations, and we simply cannot accept sub-paragraphs (i) and (ii), which would mean increasing more and more the automatic