GENERAL AGREEMENT ON TARIFFS AND TRADE

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Ninth Session

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 March 1955, at 10.30 a.m.

Chairman: H.E. Mr. L. Dana WILGRESS (Canada)

Subjects discussed:

1. Report of Review Working Party III
2. Report of Review Working Party IV - Proposals by New Zealand and Australia for intersessional procedures
3. Belgian Restrictions on Imports of Coal
4. Report of Working Party 2 on Schedules
   (a) Finnish application for the adjustment of specific duties in Schedule XXIV
   (b) Draft Fourth Protocol of Rectifications and Modifications

1. Report of Review Working Party III (L/334 and Corr.1 and Add.1)

Mr. GARCIA OLDINI, Chairman of the Working Party, introduced the report. After a long and difficult study of the proposals which had been referred to it, the Working Party had decided to suggest the amendment of Article VI and the addition of an interpretative note, as well as some paragraphs in the report itself explaining the reasons for which it had not been possible to adopt certain proposals that had been made. Two views had emerged regarding the provisions on subsidies but it had been possible to arrive at a compromise, recommending the addition of a Section B to Article XVI containing new provisions regarding export subsidies. The Working Party approved the insertion of four interpretative notes in order to safeguard the position of under-developed countries. The report contained explanations of Article XVI and Mr. Garcia Oldini called attention in particular to paragraphs 16 and 19 of the report. The Working Party had recommended the addition of two new paragraphs to Article XVII - the first one with a view to preventing state trading enterprises from being operated so as to create serious obstacles to trade and the second referring to the kind of information contracting parties making use of such enterprises should furnish to the CONTRACTING PARTIES. The Working Party had also drawn up the text of an interpretative note to replace the existing note to

paragraph 4 of Article II, taking as its basis Article 31:2(a) and (b) and 4 of the Havana Charter. It had been impossible to arrive at an agreement on the insertion of a new article on the disposal of surpluses and the Working Party therefore proposed a resolution for adoption by the CONTRACTING PARTIES. The Working Party recommended the deletion of Section II of Article XX. The liquidation of stocks had been the object of a long debate in the Working Party and although there had been near unanimity to insert an Article on this subject into the General Agreement, the Working Party had been forced to recognize that such an article would be useless if it could not be applied by the contracting party which held the largest stocks. The Working Party therefore recommended a resolution for adoption by the CONTRACTING PARTIES.

The report was then taken paragraph by paragraph and comments were made on individual paragraphs as noted below.

Mr. PRESS (New Zealand) referring to paragraph 4, said that the Working Party had dealt with matters of great importance to New Zealand. His delegation had come to the present Session convinced that the Agreement was heavily weighted against such countries as his own which were exporters of agricultural products, and in the hope of redressing the imbalance. They had found hostility to their efforts to protect themselves against dumping, and to the proposals which they had put forward with this in mind. Moreover, they had found that the country which was asking for an unfettered right to protect its own agriculture had been against any strengthening of the provisions regarding dumping in the Agreement. His delegation had proposed that the existing Article VI be amended by the addition of the words "and accordingly contracting parties shall refrain from any action that might cause or encourage dumping of this kind". His delegation had been distressed by the opposition to this amendment and could only conclude that the countries who opposed it were in favour of and intended to continue dumping practices. It had been argued that governments could not undertake obligations regarding dumping by private commercial enterprises but the New Zealand amendment did not ask governments to control firms within their own territories, only that governments should not take such action as would encourage or cause dumping by private firms. Paragraph 4 of the report met the view of the New Zealand Government to only a very minor extent.

Dr. NAUDE (Union of South Africa), referring to paragraph 9, withdrew the reservation recorded by his delegation.

Mr. STREET (Brazil) said that in the view of his delegation the effects of dumping were as damaging as those of subsidies and they had reserved their position with regard to sub-paragraph (c), which referred only to countervailing duties and not to anti-dumping duties, in order to permit the CONTRACTING PARTIES to decide whether they wished to strengthen the defences against subsidies only. They would maintain their reservation.

Mr. KOJEVE (France) referred to paragraph 10 which contained a reservation of the French delegation relating to a matter raised by the French delegation in the Working Party as to whether a countervailing duty should be applied in a non-discriminatory manner against two countries, the exports of both of which were subsidized. The Working Party had stated that this was clear from the text. If the CONTRACTING PARTIES considered that the text as it was drafted clearly implied the non-discriminatory application of countervailing duties, his delegation would have no objections to its adoption.

Mr. BROWN (United States) observed that the purpose of an anti-dumping or countervailing duty was to deal with situations of dumping and must be applied with the particular object in view. The purpose of such a duty would be defeated if it were mandatory to apply it in a non-discriminatory manner.

Mr. KOJEVE (France) after the Cuban representative had observed that he could not subscribe to the interpretation simply on the basis of the oral statement, remarked that this was a question perhaps too difficult to settle positively at this time, nor did it seem that his interpreation was shared by other contracting parties. They would not object to the acceptance of the proposed text and would wish their interpretation recorded as the French interpretation of this text.

Baron BENTINCK (The Netherlands) agreed with the United States delegate that each case of dumping must be examined on its own merits and that no general rule of non-discrimination could be applied.

Mr. CRAWFORD (Australia) referring to paragraphs 13 to 24 stated that his delegation was dissatisfied with the draft Article XVI and would vote for it to go into the Protocol only because it seemed the only way of having a slightly stronger Article than the present Article XVI. From the beginning Australia had emphasized that export subsidies was an item on which they wished to see great improvement in the General Agreement and that a considerable tightening of the existing Article XVI was one means of helping to redress the imbalance in the General Agreement. The proposed addition did not measure up to their conception of what was needed and whether their Government would be able to accept it unreservedly was a matter on which he could make no forecasts.

The Article was weak because of the glaring and invidious comparison between weak limitations on subsidies of primary products as compared with the ban on subsidies of manufactured goods. There was an element of unfairness in making such a distinction. Moreover, by referring to equitable "shares of world trade" and not of "individual markets" the Article sought to solve the problem of primary products from the wrong end, since the danger of export subsidies was greatest in individual markets. It was possible to argue that notwithstanding damage being done by subsidization in individual markets a country's total share of world exports was not being increased. Mr. Crawford would forecast considerable difficulty in securing any limitation of subsidies on primary products with this formula.

Mr. Crawford was astonished at the little credit given to genuine competitive ability. Surely it was quite legitimate to increase exports through competitive ability, but the concept that subsidies that did not result in more than equitable shares were all right seemed to suggest that competitive ability resulting from low costs did not count, and it was a sorry commentary that countries with low costs should be prevented from getting into markets as a result of subsidization by others.

The Australian delegation felt that the review provided for in the Article should take place as soon as possible and, assuming their Government's acceptance of the Article, they were considering requesting that this review be put on the Agenda for the Eleventh Session.

Mr. SEIDENFADEN (Denmark) recalled that the Danish delegation at the beginning of the Session had proposed the adoption of a complete ban on the use of export subsidies. The new provisions proposed by Working Party III were far from satisfying to Denmark but his delegation accepted them as the best possible compromise.

It was only with great hesitation that the Danish Government had accepted different provisions for primary products and other commodities. They had done so because it was understood that, although only the subsidization of the export of industrial goods was prohibited, the use of export subsidies for primary products was also in principle considered contrary to the spirit and objectives of the General Agreement. In other words, Denmark could not agree that the difference in treatment of the two categories of goods should be interpreted as a recognition in principle of the subsidization of the export of agricultural products.

Furthermore, it was the understanding of the Danish delegation that the new provisions also covered subsidies granted to re-exports and goods in transport. The Danish delegation attached great importance to the last of the new paragraphs in which it was stipulated that the CONTRACTING PARTIES should review the operation of the provisions on subsidies from time to time; they hoped that it would also be possible to revise the new provisions in the not too distant future so as to remove the disparity of treatment between primary products and other commodities.

Mr. VARGAS GOMEZ (Cuba) associated himself with the statements that had been made by the representatives of Australia and Denmark and shared their views concerning the amended Article XVI. His delegation was particularly concerned at note 2 to paragraph 3 (page 12 of the report). This note excluded assistance for the stabilization of domestic prices or returns to domestic producers from being considered as subsidies and this seriously weakened the the provisions of paragraph 3 of the Article. It only confirmed his delegation in their view that primary commodities and agricultural producers were left

with no protection whatever under the Agreement. His delegation reserved its position on the whole Article and most particularly on this note.

Mr. PRESS (New Zealand) associated himself with the remarks of the Australian representative. He referred to paragraph 13 of the report and suggested the addition of the words "or increase" in the last line. Contracting parties had reason to expect that the value of a concession would not subsequently be impaired either by the introduction or by an increase in a domestic subsidy. The latter could nullify or impair a concession as much as the introduction of a subsidy.

The insertion of the words "or increase" in paragraph 13 was agreed.

U SAW OHN TIN (Burma) associated himself with the views expressed by the representatives of Australia, New Zealand, Denmark and Cuba. As a country entirely dependent on the export of one or two primary products he opposed the differentiation between primary and manufactured goods and recorded the reservation of his Government on this Article.

Dr. NAUDE (Union of South Africa), associated himself with the dissatisfaction expressed by other delegations with this Article. If it were formally proposed, he would support a review at the Eleventh Session of Article XVI.

Mr. ANZILOTTI (Italy) referring to paragraph 24 and the reservation recorded by the Italian delegation, recalled that his delegation had continuously supported the complete elimination of export subsidies. They had during the course of the debates in the Working Party been convinced that this view must be modified, and that the objective could only be gradually attained. However, his delegation had never accepted a difference in treatment between different categories of products. The texts proposed established a different treatment as between primary commodities and other products. The Italian delegation could not accept such a distinction and considered that the regulations governing other products should also cover primary commodities.

Mr. BROWN (United States) referring to paragraph 14 understood that it was clear from this paragraph that there was no obligation to negotiate on domestic subsidies any more than on unbound tariff rates and other charges. This paragraph simply meant that there was nothing to prevent such negotiations.

Mr. FINNMARK (Sweden) referring to paragraph 17 and the Interpretative Note No. 2 to paragraph 3 contained on page 12 observed that this had originally been intended to form part of Article III. His delegation would accept the Note on the understanding that it was without prejudice to the provisions of Article VI.

Mr. IBSEN (Norway) referring to paragraph 20 understood the last part of that paragraph in the same way expressed by the Swedish representative in regard to the Interpretative Note.

Mr. CRAWFORD (Australia) referring to paragraph 21 withdrew the reservation of his delegation.

Mr. LARRE (France), referring to paragraph 22, indicated the concern of his delegation that the words "world markets" had not been altered explicitly to include individual markets. This amendment had originally been proposed by the Australian delegation but later withdrawn and was now set out as an amendment by France and Uruguay. The French delegation felt that the regulations relating to agricultural export subsidies, weak as they were, would lose all value if they did not prevent such subsidies from destroying the position of another exporter in individual markets. The amendment had been opposed on the grounds that it was unnecessary since the text adopted was clear. His delegation would have preferred that the point be made explicit but would be satisfied if the record shows that his delegation accepted the paragraph only on the understanding that "world markets" included the concept of "individual markets" and that the CONTRACTING PARTIES as a whole accepted that interpretation.

The delegates of Uruguay, the Dominican Republic, Canada, Australia and Italy associated themselves with the view expressed by the French delegation.

Dr. RICHARDS (Canada) added that his delegation was concerned that this provision should not be interpreted to mean that an exporting country which used such subsidies but had not gained more than an equitable share of world trade was not therefore to blame. The first of the new paragraphs recognized the important principle that there might be harmful effects whether or not a country had gained more than its share of world exports.

Mr. CRAWFORD (Australia) said that his delegation quite agreed that a severe distortion in one market should be considered as a distortion of the world market. They had been anxious to have some sort of provisions on subsidies in the Agreement but would wish to have this Article reviewed at the Eleventh Session.

Mr. BROWN (United States) said that the amendment contained in the Annex to the report was the result of intense discussion in the Working Party and it would upset the balance of the agreement to attempt to insert an agreed interpretation into the record. His delegation would rest on the words of the Article as proposed.

Mr. LARRE (France) referring to paragraph 23 remarked on the lack of balance in the proposed Article which envisaged the total abolition of industrial subsidies while giving very different treatment to agricultural subsidies. The Article was also unbalanced in the treatment provided for the reimbursement of indirect taxes and that provided for the reimbursement of social charges, which were another form of tax. It was true that these charges were applied only in one country in the form actually envisaged by the text. The view of that country was that they presented exactly the same problem from the economic, financial and fiscal point of view as the reimbursement of indirect taxes. In these conditions his Government would be unable to present for ratification a draft Article which created a double discrimination and under which the subsidies practised by his Government would be twice affected. The French delegation reserved its position on the Article and particularly on paragraph 4.

In order that this reservation should not affect the participation of France in the GATT they had examined different solutions. One of these would have been to limit the new undertakings relating to industrial subsidies, as those relating to agricultural subsidies had been limited to such as would be likely to be accepted by the principal countries interested. This had been their purpose in suggesting an amendment to paragraph 5(b) which would have made the date of 31 December 1958 no longer a final limit but a desirable goal, and that subsidies maintained after that date would not be maintained as the result of an express authorization of the CONTRACTING PARTIES, but would simply be subject to recommendations by them. This proposal seemed unacceptable to the CONTRACTING PARTIES. The solution of a waiver had also been suggested to his country but it seemed to them paradoxical to undertake new obligations and at the same time request a waiver from them. This would raise legal as well as other objections within his own government. In the circumstances his delegation felt that the only solution was to reserve its position on paragraph 4 of the Article to the effect that the French Government could accept paragraph 4 only on the understanding that the reimbursement of social charges presently practised in France would not be treated less favourably than the reimbursement of indirect taxes.

Mr. HADJI VASSILIOU (Greece) shared the view expressed by the French delegation and wished to be added to the countries listed in paragraph 23 as reserving their position on this subject.

Mr. CLULOW (Uruguay) said that his delegation would have preferred that the provisions relating to subsidies would have permitted subsidies on all products.

They would, however, support the proposal of the Working Party as the only possible solution with the reservations listed in paragraph 23 of the report.

Mr. ANZILOTTI (Italy) disagreed with the French delegation and felt that the reimbursement of social charges must be considered differently from the reimbursement of other fiscal and economic charges.

Discussion on this subject was deferred pending distribution of the French reservation in writing.

Mr. ANZILOTTI (Italy), referring to paragraph 24, stated that his Government that his Government would prefer the date of 1 January 1956 for the beginning of the standstill rather than 1 January 1955, and 31 December 1958 for the abolition of subsidies rather than 1 January 1958.

Dr. NAUDE (Union of South Africa) referring to the Note 2 of paragraph 3 (page 12), withdrew the reservation of his Government.

Mr. ANZILOTTI (Italy) referring to paragraph 29 and the reservation recorded by his delegation, explained that the Italian Government could not accept a simple extention of certain obligations of Article XVII to state monopolies. Italy had a limited number of completely fiscal or social monopolies such as for example the quinine monopoly. Given the character of these monopolies and their financial importance, the Italian Government could not undertake strict general obligations relating to them and the reservation which they recorded reflected the exceptions contained in paragraph 6 of Article 31 of the Havana Charter. He wished to add that the Italian Government had always in practice taken into account principles which guaranteed the interest of other contracting parties.

Mr. CRAWFORD (Australia) referring to paragraph 30, recalled that his delegation had proposed the new Article relating to surplus disposals, because they had felt that only by such means could the destructive effects of surplus disposals on markets for primary products be effectively curtailed. They had three main points in mind in putting forward his proposal; that surpluses should be used in the interests of humanity, that they must be disposed of but this could rarely be done without interest to someone and that this injury should be minimized. The General Agreement was in their view the obvious place to make provision to this effect. They had found, with great regret that the United States had been unable to accept a commitment in the Agreement, but they were glad that they found it possible to associate themselves with a resolution on the disposal of surpluses. They noted that the United States had already taken steps to demonstrate its good faith by inviting other countries into consultation on dairy products and hoped that this meant that the consultations they had hoped would be provided for in an Article in the Agreement would be no less effectively achieved as a result of the discussions at this Session and of the resolution. He supported the draft resolution contained in Annex 2 of the report.

Mr. SEIDENFADEN (Denmark), referring to paragraph 32, and the reservation recorded by his delegation said that he was now in a position to withdraw the reservation. He wished to record the position of his Government with respect to the question of the disposal of surplus stocks. The existence of certain agricultural surpluses had concerned his Government for several years, although they had believed until a few years ago that the problem was a short-term one, and that the necessary adjustments in the marketing of these products would be carried through quickly so as to remove the underlying reasons for the accumulation of such stocks. However, ten years after the war the situation was more serious than ever, and no international organization which had considered the problem had found a solution which could contribute in any specific way to remove the concern of the countries interested in the export of the products in question.

The Danish delegation had thought that the review would have provided the opportunity for a more satisfactory solution. It was within the objectives and responsibilities of the GATT to create the best possible climate for international trade, and it would have been natural to amend the Agreement in such a way as to safeguard the interest of both the countries which exported agricultural products and of countries which held surplus stocks. It was with great regret that his delegation learned that the United States could accept no obligation in the Agreement regarding the disposal of surpluses. They felt that, following the adoption of the 1953 Food and Agriculture Organization resolution on surplus stocks, a highly regrettable change had taken place in the attitude of the United States Government with respect to the obligations that a country holding surplus stocks should undertake. The resolution proposed by the Working Party represented apparently the maximum that the United States delegation could accept. It contained nothing which could even remind one of an efficient international control over the disposal of surplus stocks. In view of the responsibilities of the GATT Organization, the Danish delegation was doubtful whether such a resolution should be adopted and would abstain when the resolution was put to the vote.

Dr. NAUDE (Union of South Africa) referring to paragraph 35, observed that the resolution referred only to agricultural products. If it were understood that this covered also processed agricultural products he would be satisfied to have this understanding recorded in the summary record.

It was agreed that the understanding of the South African delegation was correct.

Mr. BROWN (United States) referring to the resolution on the disposal of surpluses, said that his delegation expected consultations under this resolution to be as effective as they would have been under a more formal article and wished to assure other delegations of this expectation of his Government.

Mr. GARCIA OLDINI (Chile), referring to the proposed resolution on the liquidation of strategic stocks (L/334/Add.1) said that there would have been unanimity in the Working Party in favour of the insertion of an article in the Agreement instead of this resolution, but for the United States which, as in the case of agricultural surpluses, had not been able to accept such an article. They understood the reasons of the United States but regretted the situation which resulted. They were sure that the same assurances which that delegation had given with regard to consultations on agricultural surpluses would be given with regard to the liquidation of strategic stocks.

Mr. PERERA (Ceylon) referring to paragraph 5 of the addendum and the reservation of his delegation, explained that his delegation had expected the insertion of an article similar to Article 32 of the Havana Charter which would have been more precise than the proposed resolution. They attached importance to this subject and therefore maintained their reservation.

Mr. BROWN (United States) wished to record that his delegation had been prepared to accept the obligations set forth in the proposed resolution in the form of an article of the Agreement. This had not been acceptable to other delegations and it was for that reason that the solution of a resolution had been adopted.

The report of the Working Party was approved as a whole subject to the reservations and comments noted.

2. Report of Review Working Party IV: Continuing Administration of the Agreement - Proposals by New Zealand and Australia concerning the Intersessional procedures (L/327)

The discussion reverted to paragraph 46 of the report of Working Party IV and to the proposal made by the New Zealand delegation (see SR.9/39, page 1). An alternative and more generally worded proposal was put forward by the Australian delegation for the addition of a new paragraph in the general procedures contained on page 10 of Basic Instruments and Selected Documents, Second Supplement, as follows:

> "There is nothing in these arrangements for the administration of the Agreement between sessions which would prevent a contracting party which considers its interests are substantially affected and is dissatisfied with a decision or determination of the Intersessional Committee from requesting that the decision or determination be reviewed by the CONTRACTING PARTIES."

and the deletion of paragraph 7 of the existing procedures contained on page 9.

This was agreed and paragraph 46 of the report of Working Party IV was agreed.

3. Report of Working Party 2 on Schedules (L/335)

Mr. GERIGK, Chairman of the Working Party, introduced the first part of the report relating to the Finnish application for the adjustment of specific duties in Schedule XXIV. The report explained the reasons for the request and the conclusions of the Working Party which submitted a draft decision to the CONTRACTING PARTIES for approval. Mr. Gerigk drew attention particularly to the decision which might be required of the CONTRACTING PARTIES under the final paragraph of the draft Decision in the event that Finland and any other contracting party claiming impairment should not reach agreement and that at that time the CONTRACTING PARTIES would not be in session. The Working Party recommended that authority be delegated to the Intersessional Committee to take such a decision if the question should arise.

The CONTRACTING PARTIES adopted the draft Decision on the adjustment of specific duties in Schedule XXIV by a vote of thirty-two in favour and none against.

Mr. SAVOLAHTI (Finland) thanked the CONTRACTING PARTIES for their decision and the Chairman and members of the Working Party.

Mr. MACHADO (Brazil), referring to paragraph 4, of the Working Party's report explained that he could not agree with the approach adopted by the Working Party that, having decided that Article II:6(a) was not applicable, the case should be treated as though the paragraph did apply.

It was agreed to delegate authority to the Intersessional Committee to take a decision on the case should it be necessary.

Mr. GERIGK, Chairman of the Working Party, introduced the second part of the report relating to the Draft Fourth Protocol of Rectifications and Modifications. Certain objections had been raised requiring time for settlement and new items had been submitted for incorporation in the Protocol and it had not therefore been possible to submit the draft Protocol to contracting parties earlier. Mr. Gerigk explained the considerations of the Working Party as set out in paragraphs 6, 7 and 8 of the report.

Mr. GOERTZ (Austria) referring to the Austrian request for rectifications which the Working Party had regarded as modifications requiring to be

negotiated in accordance with the proper procedures, observed that the difference of interpretation by his Government and by the Working Party continued. Nevertheless the Austrian Government had decided to request renegotiation of the items concerned in an effort to reach a settlement agreeable to all.

The report of the Working Party was approved. It was decided to revert to the draft Fourth Protocol at a later meeting.

The CHAIRMAN thanked the Chairman of the Working Party and the Working Party.

The meeting adjourned at 1 p.m.