

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

IC/SR.40

21 July 1958

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Intersessional Committee

SUMMARY RECORD OF THE MEETINGS

Held at the Palais des Nations, Geneva,
on 9 and 10 July 1958

Chairman: Mr. J. ETIENNE (Belgium)

- Subjects discussed:
1. Tariff of the Federation of Rhodesia and Nyasaland - Extension of time-limit in the Decision of 3 December 1955
 2. Request by Australia for Authority to enter into Re-negotiations
 3. Request by the United States for Authority to enter into Re-negotiations
 4. Consultations under Article XIV:1(g) - Timing of consultations with the United Kingdom
 5. Tariff Negotiations with Brazil
 6. Subsidies - Review of Article XVI

In the absence of the Chairman and Vice-Chairman of the CONTRACTING PARTIES, Mr. J. Etienne (Belgium) was elected to preside.

1. Tariff of the Federation of Rhodesia and Nyasaland - Extension of time-limit in the Decision of 3 December 1955 (GATT/AIR/132)

The Representative of the Federation of Rhodesia and Nyasaland, referring to document GATT/AIR/132, informed the meeting that in view of an extremely heavy programme of work arising out of deliberations in GATT and Commonwealth fields, the Federal and the Australian Governments had not been able to terminate, within the period provided in the Decision of 3 December 1955, their negotiations for the adjustment of preferences provided for in their Trade Agreement of 30 June 1955. His Government wished to pursue these negotiations

with a view to their earliest conclusion and requested that the time-limit in the Decision be extended; a report on the progress of the negotiations would be submitted to the Thirteenth Session. The Representative of Australia supported the request that the time-limit be extended.

On the understanding that the two Governments would report at the Thirteenth Session on the progress of their negotiations, the Committee considered that there was no urgent need to extend the time-limit in the Decision and recommended that the CONTRACTING PARTIES should take any appropriate action at their Thirteenth Session to enable the two Governments to put into effect the adjustments envisaged in the waiver.

The Committee heard a statement by the representative of the Federation of Rhodesia and Nyasaland on certain problems that arose in connexion with the special customs treatment which the Federation granted to products of the soil originating in Mozambique. The Federal Government would at the appropriate time submit a detailed report to the CONTRACTING PARTIES.

2. Request by Australia for authority to re-negotiate certain items in Part II of Schedule I (GATT/AIR/135 (SECRET))

The representative of Australia stated that his Government sought authority to re-negotiate the duties on certain products bound in Part II of Schedule I; this authority was sought in connexion with recommendations contained in a report by the Tariff Board on its enquiry into the need to protect the production of these products in Australia. The Tariff Board had found that the present duties, which had been established in 1939, were no longer adapted to the economic conditions of the industry concerned. The Australian Government deemed it necessary to act on the recommendations of the Tariff Board as rapidly as possible in order to remedy a situation where, on some items, the preferential duties were excessively high with undesirable repercussions on prices to the consumers and, on other items, unreasonably low with the consequent lack of protection for the domestic production. There were no bindings of the most-favoured-nation duties. It was intended to re-negotiate all the bound duties covered by the notification and not only those which would be increased. Overall, the renegotiation would mean increasing or reducing some of the duties and retaining some existing duties. The representative of Australia added that it could be taken for granted that there would be no increase in preferential margins, but if the negotiations should result in any margin of preference being increased, his Government would take appropriate action under the General Agreement.

Several members of the Committee observed that because of the submission of the request at a late stage, their governments had not had sufficient time to consider the application carefully; moreover, the required statistical and other data had not been distributed in advance of the meeting. As a consequence their delegations were without instructions. In particular the

representative of the United States said that, having had no time to obtain instructions, his delegation should not be considered as either supporting or opposing the request.

After hearing the facts of the case as put forward by the representative of Australia, and in the light of Note 2 to paragraph 4 of Article XXVIII, the Committee agreed to authorize the Government of Australia to re-negotiate the items notified.

The representative of Denmark stressed that his delegation had supported the request on the understanding that the re-negotiation would not result in an increase in preferential margins and that if any technical difficulties should arise the matter would be brought before the CONTRACTING PARTIES by the Austrian Government.

The Chairman then enquired whether any contracting parties represented at the meeting considered that they had a "principal supplying interest" or a "substantial interest" in the items.

The representatives of Belgium (speaking on behalf of the Belgium-Luxemburg Economic Union) and India, not having had time to study the situation, wished to reserve the position of their Governments with respect to any claims of interest.

The Committee instructed the Executive Secretary to inform contracting parties not represented at the meeting of the decision taken and to advise them that any claim of "principal supplying interest" or "substantial interest" should be addressed without delay to Australia. If Australia recognized any such claim this would be deemed a determination by the Committee, and if no agreement could be reached, the matter could be referred to the Committee.

3. Request by the United States for Authority to re-negotiate two items in Schedule XX (GATT/AIR/132 and 133)

The Committee considered the request by the United States Government for authority, under the provisions of Article XXVIII:4, to re-negotiate in part the concessions on items 1530(E) and 1537(B) in Schedule XX.

In presenting his request the United States representative explained that footwear was being exported to the United States so prepared as to avoid classification under the tariff item - bound under the General Agreement - within which, because of its nature and end use, it was intended by United States tariff legislation that it should fall. Thus, it had been found that the existing tariff descriptions provided a loophole for the entry of this type of footwear at a lower rate of duty than that intended and the United States Government had concluded that this loophole would have to be closed. The proposed legislation to prevent this evasion had already been passed by the House and by the Senate and was now awaiting Presidential action. It included

a new definition intended to prevent circumvention of the 1933 Presidential proclamation which made the type of footwear under reference dutiable on the basis of American Selling Price. The intention to prevent evasion having become known, it seemed desirable that action should be taken without delay: if the proposed action were delayed until the end of the present period of firm validity of the Schedules, the trade in this type of footwear would be encouraged and the tariff action taken at that time would consequently be more disruptive of trade than if it were taken at present. United States imports of the footwear under reference were shown in the tables annexed to the application. However, since these classifications included other footwear as well, the amount of trade which would be affected by the action proposed would only be a minor part of the amounts shown in the tables.

The representative of the United Kingdom was concerned that in the case before the Committee there had been a departure from the usual practice for a contracting party not to undertake commitments in public before it was satisfied that the action it proposed to take raised no problems under the General Agreement. The representative of the Kingdom of the Netherlands, showed the concern expressed by the United Kingdom representative. The Italian representative pointed out that the decision by the United States legislature to put the proposed tariff modifications into effect on a certain date appeared to present the contracting parties with a fait accompli.

The Chairman enquired whether the Committee considered that the circumstances set out by the United States representative constituted "special circumstances" in the sense of paragraph 4 of Article XXVIII which would warrant the granting of authority to enter into the proposed negotiations.

Several members of the Committee, considering that the application related to circumstances which were the same as those adduced for the request which the United States had submitted in July 1954 (IC/SR.15), agreed to the finding of "special circumstances". The representative of the United Kingdom was concerned that precedents might be established which would unduly weaken the provisions of Article XXVIII:4 and perhaps make it difficult for other governments to abide by the procedures and objectives of that Article. He felt that although the circumstances under which applications under Article XXVIII:4 might vary it was inherent in the logic of this paragraph that these should be an element of urgency. His Government's view and its attitude towards domestic interests had been that applications for authority to re-negotiate would only be considered by the CONTRACTING PARTIES if there were a genuine and urgent need for action and if serious consequences would result from any delay in taking such action. After careful examination of the application his Government considered that the circumstances could reasonably be regarded as "special" in the sense of Article XXVIII:4. He regretted that the proposed re-definition of the two items accompanied by a re-classification of certain types of footwear would lead to a rise in the tariff on this footwear and their transfer to the system of customs valuation based on American Selling Price, which was highly restrictive and was, in principle, not in accordance with the General Agreement.

The representative of India considered that the proposed transfer of certain types of footwear to a more restrictive customs valuation procedure, which was contrary to the provisions of Article VII:2, would have serious adverse effects on the export trade of countries which were able to export at prices lower than American selling prices. The Danish representative also regretted that the proposed re-classification would extend the scope of application of the ASP valuation procedure.

The United States representative said he could not agree that a request for re-negotiation under Article XXVIII:4 must necessarily be based on circumstances involving an element of urgency.

After hearing further detailed clarifications on the technical aspects of the case the Committee agreed that special circumstances in the sense of Article XXVIII:4 existed and decided to authorize the Government of the United States to re-negotiate the items requested.

The Chairman then enquired whether any contracting party considered it had a "principal supplying interest" or a "substantial interest" in the items concerned.

The United States representative said his Government believed that the footwear which would be involved in the negotiation came mainly from the Netherlands, Japan and Hong Kong; however, from the statistics at present available it was not possible to see clearly which countries were the main suppliers. He said that his Government would recognize the claims of the United Kingdom, Japan and the Netherlands and would examine with Italy and Cuba the claims put forward by their representatives.

The Committee instructed the Executive Secretary to inform contracting parties not represented at the meeting of the decision taken and to advise them that any claim of "principal supplying interest" or "substantial interest" should be addressed without delay to the United States. If the United States recognized any such claim this would be deemed a determination by the Committee, and if no agreement could be reached, the matter could be referred to the Committee.

The Committee then considered the request of the United States Government for a waiver to allow effect to be given to the modification of the concessions on 1 September 1958, even if the negotiations under Article XXVIII:4 should not have been concluded by that time. Rather than initiate a postal ballot for a waiver at the present time, the Committee thought it would be preferable for the negotiations to be commenced and for the question of the timing of the United States action to be discussed by the negotiating parties. There appeared to be nothing in Article XXVIII which would prevent

the parties to the negotiations agreeing in the course of the negotiations to the United States giving effect to the modifications on or before 1 September even though the negotiations for compensation had not been concluded, it being understood that any compensation would become effective as soon as agreement was reached. The United States Government was therefore invited to explore the feasibility of following this procedure. On the other hand, if it were not found possible in the early stages of the negotiations to reach agreement to this effect, a request by the United States for a waiver could be submitted to the CONTRACTING PARTIES by the Executive Secretary by postal ballot prior to 1 September 1958. The representative of Cuba reserved the position of his Government.

4. Consultations under Article XIV:1(g) - Timing of consultation with the United Kingdom

The United Kingdom representative proposed that its 1958 consultation under Article XIV:1(g), which was scheduled to take place at the Thirteenth Session, be postponed until early in 1959 when it could be carried out in conjunction with the first of the annual consultations provided for in paragraph 4(b) of Article XII. Having regard to the number of Article XII consultations to be held the CONTRACTING PARTIES had considered it desirable that they should be spread out over the year rather than concentrated at the time of the Fourteenth Session and, in order to contribute to this end and, if the Article XIV:1(g) consultation could be combined with it, her Government was prepared to proceed with its consultation under Article XII:4(b) in the Spring of 1959.

The Committee agreed to recommend to the CONTRACTING PARTIES that, while the 1958 consultation under Article XIV:1(g) with the United Kingdom should be commenced at the Thirteenth Session as scheduled, substantive discussions should be postponed until early in 1959, to be taken up in the course of the Article XII:4(b) consultation to be held at that time.

5. Tariff Negotiations with Brazil

Mr. GUNDELAGH (Chairman of the Brazil Tariff Negotiations Committee) reported on the status of the negotiations. The tariff negotiations with Austria, Czechoslovakia, Finland, France, Italy, Norway and Sweden had been concluded and negotiations with several others were about to be completed. However, the negotiations with a certain number of contracting parties would not be completed within the time limit - 14 August 1958 - fixed in the Decision of 16 November 1956. Therefore, the Negotiations Committee recommended that the Intersessional Committee should extend the limit in order to allow time for the conclusion of all the negotiations and the putting into effect of their results. The Brazilian Government had agreed with other contracting parties to give effect to the results of the negotiations already concluded and had undertaken to follow the same procedure with the negotiations which were still in progress. This was of course, a temporary arrangement and after the completion of all negotiations the results would have to be embodied in a formal instrument to finalize the legal procedure.

The Committee adopted a formal Decision extending until 31 July 1959 the time limit in the Decision of 16 November 1956.

6. Subsidies - Review of Article XVI

The Chairman recalled that at the Thirteenth Session the CONTRACTING PARTIES would review the operation of the provisions of Article XVI. In document L/809 the contracting parties had been asked to submit notifications of their subsidy measures and also any other information which would facilitate this review. Thus far the secretariat had received very few replies. Members of the Committee were invited to remind their Governments to respond to the request as soon as possible.

¹ The text of the Decision is reproduced in L/834.