

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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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

Party felt that it could not usefully continue its debates without expert advice on the legal issues involved. Moreover, the Steering Group's second report had envisaged the establishment of a legal and drafting committee to consider proposals designed to remove drafting imperfections in the present text of the Agreement and review, from a legal standpoint, texts established by working parties, and to secure conformity between the texts in the two official languages. The time had come to establish this Committee. Delegations had, in response to a request, proposed candidates for the Committee. The Chairman thought that it would be desirable for the working parties to be free to refer matters directly to the Legal and Drafting Committee, instead of following the usual practice whereby subsidiary bodies of the CONTRACTING PARTIES dealt only with matters referred to them by the CONTRACTING PARTIES themselves.

Mr. MACHADO (Brazil) supported the establishment of a legal and drafting committee. The interim report of Working Party IV, however, contained, in his view, points that were not strictly legal and which must be dealt with by the plenary.

The CHAIRMAN replied that the report contained no conclusions or recommendations on matters of substance and merely recited the preliminary discussion that had thus far occurred. It would not be appropriate to discuss these aspects until the working party had completed its consideration of them.

Mr. MACHADO (Brazil) said that the Review was being conducted under a confused understanding of the situation with regard to amendments, and he thought that Working Party IV and the other working parties required guidance from the CONTRACTING PARTIES in this matter. For example, in Working Party II a proposal by the Brazilian delegation had been rejected by one vote, whereas Working Party IV was envisaging that acceptance of amendments for inclusion in the Protocol of Amendments would not necessarily require the same majority as was required for their entry into force. Unless this question were settled by the CONTRACTING PARTIES, the work of the Review would be hindered. The question of the date to be set for ratification of the Protocol of Amendments seemed to him also a subject for the CONTRACTING PARTIES to take a decision on in principle before sending it to a sub-group and he would reserve the position of his delegation on these matters.

The CHAIRMAN pointed out that there was no question of delegating authority to any working party to take decisions on any matter and Brazil would have the opportunity to revert to the question when the report of Working Party IV was discussed by the plenary if it should so desire.

The CONTRACTING PARTIES agreed to establish the Legal and Drafting Committee as proposed by the Interim Report of the working party. The following membership and terms of reference were agreed to:

Chairman: Mr. Perez Cisneros

Mr. Sydney Abramson	Commercial Treaties Department of the British Board of Trade, assisted by Mr. Darwin.
Dr. von Bargaen	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

Brazilian delegate on the subject of questions which might concern more than one working party, the Chairman reiterated that no power of decision was given to subsidiary bodies unless a specific delegation was made by the CONTRACTING PARTIES. The Legal and Drafting Committee was established only to give advice and, if the occasion should arise that its advice were accepted by one working party and rejected by another, that eventuality could be discussed when it occurred.

Mr. SUETENS (Belgium) thought that the concern of the Brazilian delegate about matters that might relate to different committees would in practice be met by the various chairmen. Obviously a chairman of a sub-group would refer to the Legal and Drafting Committee only matters that were exclusively within his jurisdiction, similarly for chairmen of the working parties, and if there were matters that related to more than one working party or sub-group, the various chairmen would presumably address themselves to the chairman of the working party or the chairman of the CONTRACTING PARTIES as the case might be.

The CHAIRMAN said that this procedure seemed to him likely to be followed, and, in reply to an observation by the delegate of Turkey, stated that the question of coordinating the work of the various sub-groups was the responsibility of the chairmen of the respective working parties.

2. Complaints: French Statistical Tax on Imports and Exports

The CHAIRMAN referred to the discussion of this matter at the second meeting of the Ninth Session at which time the French delegation had indicated that the tax had been suspended from 1 October and that they would be able to report definitely on the action taken to abolish the tax later in the Session.

Mr. PHILIP (France) announced that by virtue of Article 3 of Decree No. 54-1318 of 31 December 1954, the French Statistical and Customs Control Tax had been abolished as from 1 January 1955.

The CHAIRMAN expressed the satisfaction of the CONTRACTING PARTIES at the outcome of this matter, which could now be considered disposed of.

3. Complaints: French Stamp Tax (L/245)

Mr. PHILIP (France) said that the French delegation had studied the United States complaint against the increase in the stamp tax on imports from 1.7 to 2 per cent in 1954. He stated that the levy of a customs stamp tax was mentioned in the consolidated Schedule XI A (France) appended to the General Agreement, wherein it was stated that "receipts issued by the French Administration are subject to a stamp tax". The tax, which was based on customs duty charged, was intended to defray

costs incurred by French customs clearance of imported goods, and corresponded to services rendered. It was therefore covered by the provisions of Article II:2(c) which provided that a contracting party should not be prevented from imposing fees or other charges commensurate with the cost of services rendered. Although the rate of the tax had been raised several times since 1947 to meet the value of the goods taxed, the dollar or gold value of the proceeds was no higher than in 1947. The increase from 1.7 to 2 per cent mentioned by the United States represented an additional charge of about 0.1 per cent of the value of imported goods. The French Government was, however, conscious of the requirements of Article II and did not intend to vary the amount of the stamp tax beyond the limit authorized by paragraph 2(c) thereof. It recognized also that a significant increase of the tax could have damaging effects and would be contrary to the provisions of Article II if the revenue from the tax ceased to relate to the cost of services rendered.

Mr. BROWN (United States) thanked the French delegate for his report. The United States Government was particularly concerned with the principle that the maintenance of an ad valorem charge alone would not satisfy the requirements of Article II. After the statement and explanation of the intentions and attitude of the French Government, and since there was no substantial injury to United States exports, his delegation was prepared to withdraw the complaint from the Agenda.

The CHAIRMAN said that this item could thus be considered satisfactorily disposed of.

4. Complaints: French Special Temporary Compensation Tax on Imports (L/213 and L/302)

The CHAIRMAN referred to the Italian complaint regarding the French Special Temporary Compensation Tax on Imports. At this meeting he wished merely to bring to the attention of the CONTRACTING PARTIES a draft decision which he had drawn up, after having consulted with the delegations of France, Italy, and other interested contracting parties. This matter could be taken up at the next plenary meeting.

It was agreed to defer consideration of the question until the next plenary meeting.

5. Discrimination in Transport Insurance (L/303)

The CHAIRMAN referred to the note by the Executive Secretary (L/303) which had been prepared in response to instructions by the CONTRACTING PARTIES at their Eighth Session, when they had given preliminary consideration to the question of discrimination in transport insurance on the basis of a Resolution of the Economic and Social Council of the United Nations (L/94). The report was based on replies by contracting parties and by some non-

contracting parties who were members of the United Nations, to a questionnaire (L/204), and on information obtained from other sources. It discussed the nature and extent of discrimination (paragraphs 6-8), the effects of discrimination (paragraph 9), and included proposals for international action (paragraphs 10 and 11).

It appeared from the conclusions of the report that discriminatory practices by some countries clearly affected the interests of the insurance business in others, and that there was some prima facie evidence of harmful effects of these practices on international trade. The evidence seemed sufficient to justify the CONTRACTING PARTIES pursuing the matter, and the note suggested that the matter be retained on the agenda to be dealt with by the CONTRACTING PARTIES at their Tenth Session. If this proposal were adopted, governments should, in the meantime, consider the real effects of such discrimination on their trade, and perhaps consult with insurance and commercial interests in their countries so as to prepare for a fruitful discussion at their next session.

Mr. MACHADO (Brazil) stated that this matter had first been raised by the International Chamber of Commerce at the United Nations, and that it was regrettable that their attention had been confined to the question of insurance. This field merited detailed investigation, but the question of maritime freight charges was connected with this one and equally important. He referred to the proposal by the Brazilian delegation on this question in Working Party IV where the response had been that this matter was beyond the competence of the CONTRACTING PARTIES. He questioned whether the CONTRACTING PARTIES should consider the matter of transport insurance while ignoring the more important aspect of maritime freight rates, where a formidable discrimination existed which worked greatly to the disadvantage of under-developed countries who had no commercial maritime fleets. It appeared that this was another case of imbalance in the Agreement; the question of transport insurance was a purely financial matter and one that interested particularly the more developed countries. The argument used in rejecting the Brazilian proposal that the secretariat did not have the means to investigate such matters seemed to apply equally well to the present proposal. The Brazilian delegation would vote against this recommendation, since it seemed to them a contradiction in terms to investigate transport insurance without investigating maritime costs. Either the CONTRACTING PARTIES should address themselves to all matters which affected international trade, or they should confine themselves strictly to the limited field of tariffs.

Mr. HAGEMANN (Germany) said that his delegation was satisfied with the recommendation contained in the Executive Secretary's note that the CONTRACTING PARTIES pursue the study of this question, and hoped that at the Tenth Session it would be possible to adopt a resolution providing for the conclusion of bilateral agreements in this field, as was recommended in the German proposals for the Review. This would constitute an important step toward the realization of liberal principles in all realms of international trade.

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 XV: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.

Mr. WHITE (New Zealand) agreed that this should be examined first by the working party. Consideration of the matter during this Session would enable the New Zealand Government to consider the amended Agreement in better circumstances. Had the requirement to sign a special exchange agreement been retained in the revised Agreement, New Zealand would, in effect, have been asked to accept an agreement of which it would be in breach from the outset, a most unfortunate situation. If a waiver were granted at this Session, however, favourable consideration of the revised Agreement would be facilitated. Although the New Zealand proposal was largely technical, and had no bearing on major questions of trade policy, it dealt with a real obstacle for his country.

Mr. White referred to the text of the proposed waiver (L/300). The preamble referred to the special circumstances due to which New Zealand had been unable to meet the requirements of Article XV:6, and he wished to explain what these circumstances were. New Zealand had not joined the Fund, and the text of the Agreement did not make GATT membership conditional on Fund membership. While not wishing to comment on the discussions in his country on this matter, he wished to emphasize that non-membership of the Fund did not arise from any exchange practices which were contrary either to the GATT or the Fund principles. New Zealand would continue to act on this basis, and the fourth paragraph of the preamble to the waiver set out this assurance. The special circumstances because of which New Zealand had not signed a special exchange agreement were mentioned in document L/270, in which the New Zealand Government proposed the deletion of paragraphs 6 and 7 of Article XV. In the opinion of his Government, the obligation not by exchange action to frustrate the provisions of the Agreement, an obligation which it took most seriously, was fully adequate to cover the situation. When they had accepted this obligation in 1947 and 1948, together with the obligation to sign a special exchange agreement if they did not join the Fund, they had expected that the text of the special exchange agreement would spell out the obligation somewhat, but had not expected that the text would constitute practically an exact replica of the Fund Articles. New Zealand could not sign such a special exchange agreement, as it would have meant accepting substantially all the Fund obligations without any of the Fund advantages.

Although his delegation would have preferred the deletion of paragraphs 6 and 7 of Article XV and considered that it would not have weakened the Agreement since the non-frustration clause would remain in paragraph 4 and recourse to Article XXIII would be open in the unlikely event that the trade of any other contracting party would be affected, they had found that many delegations, although sympathetic to their case, preferred that the matter be dealt with by means of a waiver.

Paragraph 1 of the proposed waiver set a time period. A specific time period of course, for the reasons outlined, would not assist in securing the assent of the New Zealand Government to the revised Agreement, and hence this was not specific. It was, however, a time period that could be brought to an end either following the annual consultations

mentioned in paragraph 3 or the specific consultations mentioned in paragraph 4. Paragraph 5 of the proposed text provided for this, and the waiver could only, thus, continue in operation for such a period of time as New Zealand's action in exchange matters continued to be fully compatible with Fund principles and with the intent of the provisions of the GATT. Paragraph 2 of the waiver covered a technicality; it legalized discrimination which New Zealand applied, but would limit it to the time and extent under which such discrimination would have been applied had New Zealand joined the Fund or signed a special exchange agreement.

With regard to the question as to whether the granting of such a waiver would create a precedent, Mr. White emphasized that New Zealand was at present the only country affected, and there seemed little likelihood that more than a very few possible prospective members of the Agreement could possibly be affected. The membership of the Fund was much larger than the membership of the GATT, and most prospective members of the latter would already be Fund members.

It was agreed to refer the proposed waiver (L/300) to the Working Party on Balance-of-Payments Questions for examination and report to the CONTRACTING PARTIES.

The meeting adjourned at 1.15 p.m.