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GENERAL AGREEMENT ON TARIFFS AND TRADE

MINUTES OF THE MEETING OF A GROUP OF LESS-DEVELOPED COUNTRIES ON 28 SEPTEMBER 1964

1. The fourteenth regular weekly meeting of a group of less-developed countries was held on 28 September 1964 under the chairmanship of H.E. Mr. E. Letts, Ambassador of Peru.

2. Present were the representatives of Argentina, Brazil, Chile, India, Israel, Peru, Trinidad and Tobago, Tunisia, United Arab Republic, Uruguay and Yugoslavia.

3. On the outcome of the informal consultations presided over by the Executive Secretary, it was stated by a member of the group that some progress had been made in so far as a better understanding of the difficulties of the industrialized countries was concerned and a start had been made in the exploration of means to resolve them. After the re-statement of these difficulties, the Executive Secretary had tried, as far as possible, to separate difficulties connected with legal and constitutional problems, from those which related to the desire of countries to maintain their sovereign right to take decisions for the safeguarding of what had been considered to be of "overriding national interest". From the explanations given by the industrialized countries, it had been difficult in some cases to conclude with precision that a particular difficulty was of a legal character or related to "overriding national interest". The discussion had been mainly focussed on three commitments spelled out in paragraphs 3:A(a), 3:A(b) and 3:A(c) of the Model Chapter.

4. The Executive Secretary had invited consideration of sub-paragraph 3:A(b), the standstill clause, which was in effect an indirect binding of all tariffs and all trade measures of the developed countries. From the discussion it appeared that the industrialized countries had difficulty in accepting it either for legal and constitutional reasons or for reasons of "overriding national interest". They had stressed that the scope of the provision was too wide, and as a great number of unforeseen situations could arise, the industrialized countries could not afford to delegate all their authority in this field to an international organization.

5. After considerable discussion and in the light of the comments made, it was felt that efforts should be made to explore the possibility of writing into this provision, a clause that would connect the meaning of "to the fullest extent possible" with the consultation procedures in Article XXII and the joint action by the CONTRACTING PARTIES for facilitating and furthering the objectives of the General Agreement under Article XXV:1. A draft safeguard clause interpreting "to the fullest extent possible" had been prepared by the secretariat and had been examined by the group. It appeared that this clause was more or less acceptable to the United Kingdom. The United States, having suggested some amendments to the draft text, had indicated that they would study the matter and would make their reactions known at a later stage.

The European Economic Community had not rejected the draft but thought that there was no reason to separate into two different paragraphs the reservations made for covering legal and constitutional difficulties and those falling under "overriding national interest". In their opinion as they had no legal and constitutional difficulties except those linked with "overriding national interest", they would wish the two ideas to be placed in the same paragraph. In summary, as far as sub-paragraph 3:A(b) was concerned, there appeared to be a workable approach.

6. As far as sub-paragraph 3:A(a) was concerned, all developed countries insisted that it was necessary to have a safeguard clause. However, the United Kingdom was of the opinion that such a safeguard clause might not be necessary in all cases. Although the import of the remark had not been quite clear, it was believed that the United Kingdom could possibly accept this formulation "to the fullest extent possible" if it were agreed to by others. The United States pointed out that "accord high priority" might imply that the United States administration had an obligation to take action to reduce tariffs affecting less-developed countries as a priority of national policy, and not merely to give special attention to such a reduction in the course of trade negotiations for which congressional authority existed. The view was expressed that the commitment in sub-paragraph 3:A(a) would be exceedingly weakened if the words "to the fullest extent possible" were maintained, since the use of the term "accord high priority" had already provided a sufficiently strong escape clause for the developed countries.

7. A question had been posed as to whether a procedure on the same lines as in relation to 3:A(b) would be acceptable. It appeared, though not conclusively, that the United States would be willing to consider the idea of having a safeguard clause with provisions for consultation procedures. They had suggested that this idea could be explored further. The suggestion that the phrase "to the fullest extent possible" be deleted did not seem to promise any practical result in the future. The industrialized countries would continue to insist on some sort of a safeguard clause. Thus the interpretative note prepared by the secretariat in relation to 3:A(b) based on legal and constitutional problems on the one hand and "overriding national interest" on the other, might well be the solution to this problem. In sub-paragraph 3:A(a), the legal and constitutional matters as far as the United States were concerned were safeguarded through the interpretative note that such reductions would take place only through negotiations. There was, however, no firm declaration on the part of the United States to the effect that they would consider the interpretative note as being sufficient to safeguard their legal and constitutional position. The EEC was not very clear in expressing their intention in this regard. It was believed that they did not reject the approach.

8. In the case of sub-paragraph 3:A(c) relating to internal fiscal measures, the EEC stated that they were unwilling to accept any commitments even if the safeguard clause "to the fullest extent possible" was maintained. All the other developed countries present, stated that they might accept the commitments, provided the safeguard clause "to the fullest extent possible" was kept. However, the decisive factor on the issue would be the decision of the EEC. Replying to a question whether they would be willing to undertake a political commitment if the safeguard clause were maintained, they stated that they did not wish to go further than what

was contained in Article 47(a) of the Coffee Agreement on the examination of ways and means whereby such taxes could be reduced and replaced. The situation was not very clear at the end of the discussion in relation to 3:A(c) and no avenues for further work were explored at the meeting. It could therefore be concluded that at present it would not be feasible for less-developed countries to draft a formula based on consultations and joint action procedures because the industrialized countries would not agree to it.

9. The question of reciprocity had been touched briefly. The United States resumed their original position that they were willing to see the removal of the word reciprocity, and again put forward their formula that the countries might not expect "equivalence in concessions". This concept was not studied in detail and the developing countries insisted that the UNCTAD formulation should be adopted.

10. The informal consultations under the chairmanship of the Executive Secretary would be resumed on 8 October 1964, the intention being that the time between now and then would profitably be employed by the industrialized as well as developing countries in reporting back to their capitals with a view to seeking fresh instructions which would enable them to proceed beyond the present stage.

11. It was stressed that the most important point that had been reached in the informal consultations was that the developing countries wanted the elimination of the words "to the fullest extent possible" in paragraphs 3:A(a), 3:A(b) and 3:A(c) of the Model Chapter. As this had not been accepted by the developed countries, some of the less-developed countries considered that if these words had to be retained in the text then they would need to be elaborated upon in an explanatory note. The most important elements of the explanatory note, which had been drafted by the secretariat were:

> "...It was further agreed that when, in the view of any contracting party, another contracting party was failing in any particular case to comply with the commitments referred to, the matter shall be referred to the CONTRACTING PARTIES who shall consult with the contracting party concerned and all interested contracting parties with respect to it.
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> "It was recognized that the consultation referred to in the two previous paragraphs might, in appropriate cases, be directed towards agreement on joint action by the CONTRACTING PARTIES designed to further the objectives of the Agreement, as envisaged in paragraph 1 of Article XXV."[1]

These explanatory notes would lend themselves to the interpretation that it would always be for less-developed countries to lodge complaints against the industrialized countries, if they had failed in honouring some of their commitments. Earlier discussions in the group of less-developed countries had indicated that it should

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[1] See document INT(64)531.

be incumbent upon the industrialized countries to report to the CONTRACTING PARTIES on any derogation of their commitments in relation to less-developed countries. It was therefore a matter for decision by the group whether the present idea that the developing countries would have to bring to the attention of the CONTRACTING PARTIES that a particular commitment was not fulfilled by industrialized countries should be accepted, or whether it would be advisable to change the language in a way to indicate that the developed countries would be the ones to report to the CONTRACTING PARTIES as to why they could not honour their commitments towards less-developed countries.

12. With regard to the reference to paragraph 1 of Article XXV, in the proposed interpretative note, it should be made very clear that the kind of joint action referred to was not merely a report by the industrialized countries to the CONTRACTING PARTIES, but to some kind of a review by the CONTRACTING PARTIES as a whole, in which the developed country concerned should prove to the satisfaction of the CONTRACTING PARTIES that, due to "overriding national interest", it had not been possible to comply with its commitments. In other words, the onus of proof for the incapacity to fulfil a commitment, should be placed on the developed contracting party.

13. On the significance and importance of the interpretative note suggested by the Executive Secretary with respect to sub-paragraph 3:A(b) of the commitments, it was suggested that the matter should be brought to the notice of as large a number as possible of less-developed countries belonging to the group by widely distributing the minutes of this meeting with a view to obtaining their views on this important issue. The chairman took it upon himself to see that this was done.

14. On the possible advantages which might be derived from the application of some formula as a solution to the problem of the phrase "to the fullest extent possible", it was stated that any criterion, the implementation of which was not well defined and having no legal guarantee as to its fulfilment, would not be acceptable.

15. On the question of reciprocity, it was stated that efforts to make the industrialized countries accept a simple formula in this respect, had been to no avail. While less-developed countries had insisted that "no reciprocity" should mean no reciprocity at all, the United States had taken it to mean "no equal concessions in return" implying thereby that there should certainly be some sort of concessions in return. This situation had stemmed out of the very ambiguous nature of the term "reciprocity". In the circumstances there seemed two alternatives - either the industrialized countries should accept the formulation reached in the UNCTAD - "of not expecting reciprocity" - which was not clear and could be interpreted in any way, or an effort should be made to define reciprocity in terms which would bring out clearly the limited extent to which it could be expected. It was suggested that less-developed countries should consider the possibility of the insertion of a clause whereby they should not expect to give reciprocal concessions that were not consistent with the development, financial and trade needs of the developing countries. The possibility of including in

the qualifying clause the trends of trade, instability of prices of primary products, and other economic factors, could also be explored. It was further suggested that the Executive Secretary should be requested to prepare a draft text on the basis of the work of the Trade Negotiations Committee and that less-developed countries should also draft a text, which would be used as a basis for discussion and for drafting of a final proposal for submission to the industrialized countries.

16. It was pointed out that due to the shortage of time, it would not be possible for the smaller group which was established earlier to deal with the concept of preferences covering both the question of the grant of preferences by developed countries to less-developed countries and the exchange of preferences between less-developed countries themselves. It was, therefore, suggested that a second small group be established to deal with the question of exchange of preferences between less-developed countries, the first group being responsible for the granting of preferences by the industrialized countries to less-developed countries. The representatives of Chile, India, the United Arab Republic, Uruguay and Yugoslavia were nominated to the second group.

17. As to the question of the range of representation of less-developed countries, at the policy level, at the informal consultations on preferences fixed for 19 and 20 October 1964, the representatives of Brazil, Chile, India, Jamaica, Peru, the United Arab Republic and Uruguay indicated that they would wish their countries to be represented at the informal consultations envisaged. Consequently, they requested the secretariat to extend an invitation to their governments to this effect, with a copy of the communication to their respective Permanent Missions in Geneva.

18. The next meeting of the group will be held on Monday, 5 October 1964, at 10.00 a.m. in Salle XV, Palais des Nations, Geneva.