

RESTRICTED
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GENERAL AGREEMENT ON TARIFFS AND TRADE

Original: ENGLISH

Contracting Parties

Second Session

PROTOCOL MODIFYING PART II AND ARTICLE XXVI
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments of the Commonwealth of Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America acting in their capacity of contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as the Agreement)

Desiring to effect an amendment to the Agreement, pursuant to the provisions of Article XXX thereof,

HEREBY AGREE AS FOLLOWS:

1. The texts of Articles III, VI, XIII, XV, XVIII and XXVI of the Agreement and certain related provisions in Annex I shall be modified as follows:-

A.

The text of Article III shall read:-

"Article III.

National Treatment on Internal Taxation and Regulations

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2 but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreements in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.
4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.
5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.
6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947 or March 24, 1948 at the option of that contracting party; Provided that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.
7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.
8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV."

B.

The text of Article VI shall read:-

"Article VI

Anti-Dumping and Countervailing Duties

1. The contracting parties recognize that dumping by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another -

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of any other contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry. The CONTRACTING PARTIES may waive the requirements of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

- (a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and
- (b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties."

C.

The phrase "and to any internal regulation or requirement under paragraphs 3 and 4 of Article III" in paragraph 5 of Article XIII shall be deleted.

D.

The phrase "Subject to the provisions of paragraph 4 of this Article" in paragraph 9 of Article XV shall be deleted.

E.

The text of Article XVIII shall read:-

"Article XVIII

Governmental Assistance to Economic Development and Reconstruction

1. The contracting parties recognize that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries or branches of agriculture, and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade, and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

2. The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

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3. If a contracting party, in the interest of its economic development or reconstruction, or for the purpose of increasing a most-favoured-nation rate of duty in connection with the establishment of a new preferential agreement in accordance with the provisions of paragraph 3 of Article I, considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with an obligation which the contracting party has assumed under Article II of this Agreement, but which would not conflict with other provisions of this Agreement, such contracting party

(a) shall enter into direct negotiations with all the other contracting parties. The appropriate schedules to this Agreement shall be amended in accordance with any agreement resulting from such negotiations or

(b) shall initially or may, in the event of failure to reach agreement under sub-paragraph (a), apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall determine the contracting party or parties materially affected by the proposed measure and shall sponsor negotiations between such contracting party or parties and the applicant contracting party with a view to obtaining expeditious and substantial agreement. The CONTRACTING PARTIES shall establish and communicate to the contracting parties concerned a time schedule for such negotiations following as far as practicable any

time schedule which may have been proposed by the applicant contracting party. The contracting parties shall commence and proceed continuously with such negotiations in accordance with the time schedule established by the CONTRACTING PARTIES. At the request of a contracting party, the CONTRACTING PARTIES may, where they concur in principle with the proposed measure, assist in the negotiations. Upon substantial agreement being reached, the applicant contracting party may be released by the CONTRACTING PARTIES from the obligation referred to in this paragraph, subject to such limitations as may have been agreed upon in the negotiations between the contracting parties concerned.

4. (a) If as a result of action initiated under paragraph 3 there should be an increase in imports of any product concerned, including products which can be directly substituted therefor, which if continued would be so great as to jeopardise the establishment, development or reconstruction of the industry or branch of agriculture concerned, and if no preventive measures consistent with the provisions of this Agreement can be found which seem likely to prove effective, the applicant contracting party may, after informing, and when practicable consulting with, the CONTRACTING PARTIES, adopt such other measures as the situation may require, provided that such measures do not restrict imports more than necessary to offset the increase in imports referred to in this sub-paragraph; except in unusual circumstances, such measures shall not reduce imports below the level obtaining in the most recent representative period preceding the date on which the contracting party initiated action under paragraph 3.

(b) The CONTRACTING PARTIES shall determine, as soon as practicable, whether any such measure should be continued, discontinued or modified. It shall in any case be terminated as soon as the CONTRACTING PARTIES determine that the negotiations are completed or discontinued.

(c) It is recognized that the relationship between contracting parties referred to in paragraph 3 involves reciprocal advantages, and therefore any contracting party whose trade is materially affected by the action may suspend the application to the trade of the applicant contracting party of substantially equivalent obligations or concessions under this Agreement provided that the contracting party concerned has consulted the CONTRACTING PARTIES before taking such action and the CONTRACTING PARTIES do not disapprove.

-B-

5. In the case of any non-discriminatory measure affecting imports which would apply to any product in respect of which the contracting party has assumed an obligation under Article II of this Agreement and which would conflict with any other provision of this Agreement, the provisions of sub-paragraph (b) of paragraph 3 shall apply; Provided that before granting a release the CONTRACTING PARTIES shall afford adequate opportunity for all contracting parties which they determine to be materially affected to express their views. The provisions of paragraph 4 shall also be applicable in this case.

-C-

6. If a contracting party in the interest of its economic development or reconstruction considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with the provisions of this Agreement other than Article II, but which would not apply to any product in respect of which the contracting party has assumed an obligation under Article II, such contracting party shall notify the CONTRACTING PARTIES and shall transmit to the CONTRACTING PARTIES a written statement of the considerations in support of the adoption, for a specified period, of the proposed measure.

7. (a) On application by such contracting party the CONTRACTING PARTIES shall concur in the proposed measure and grant the necessary release for a specified period if, having particular regard to the applicant contracting party's need for economic development or reconstruction, it is established that the measure

- (i) is designed to protect a particular industry established between January 1, 1939 and March 24, 1948, which was protected during that period of its development by abnormal conditions arising out of the war; or
- (ii) is designed to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity when the external sales of such commodity have been materially reduced as a result of new or increased restrictions imposed abroad; or
- (iii) is necessary, in view of the possibilities and resources of the applicant contracting party to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity, or for the processing of a by-product of such industry, which would otherwise be wasted, in order to achieve a fuller and more economic use of the applicant contracting party's natural resources and manpower and, in the long run, to raise the standard of living within the territory of the applicant contracting party, and is unlikely to have a harmful effect, in the long run, on international trade; or
- (iv) is unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Agreement, which could be imposed without undue difficulty, and is the one most suitable for the purpose having regard to the economics of the industry or branch of agriculture concerned and to the applicant contracting party's need for economic development or reconstruction.

The foregoing provisions of this sub-paragraph are subject to the following conditions:

- (1) any proposal by the applicant contracting party to apply any such measure, with or without modification, after the end of the initial period, shall not be subject to the provisions of this paragraph; and
- (2) the CONTRACTING PARTIES shall not concur in any measure under the provisions of (i), (ii) or (iii) above which is likely to cause serious prejudice to exports of a primary commodity on which the economy of the territory of another contracting party is largely dependent.

(b) The applicant contracting party shall apply any measure permitted under sub-paragraph (a) in such a way as to avoid unnecessary damage to the commercial or economic interests of any other contracting party.

8. If the proposed measure does not fall within the provisions of paragraph 7, the contracting party

(a) may enter into direct consultations with the contracting party or parties which, in its judgment, would be materially affected by the measure. At the same time, the contracting party shall inform the CONTRACTING PARTIES of such consultations in order to afford them an opportunity to determine whether all materially affected contracting parties are included within the consultations. Upon complete or substantial agreement being reached, the contracting party interested in taking the measure shall apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly examine the application to ascertain whether the interests of all the materially affected contracting parties have been duly taken into account. If the CONTRACTING PARTIES reach this conclusion, with or without further consultations between the contracting parties concerned, they shall release the applicant contracting party from its obligations under the relevant provision of this Agreement, subject to such limitations as the CONTRACTING PARTIES may impose, or

(b) may initially, or in the event of failure to reach complete or substantial agreement under sub-paragraph (a), apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly transmit the statement submitted under paragraph 6 to the contracting party or parties which are determined by the CONTRACTING PARTIES to be materially affected by the proposed measure. Such contracting party or parties shall, within the time limits prescribed by the CONTRACTING PARTIES, inform them whether, in the light of the anticipated effects of the proposed measure on the economy of the territory of such contracting party or parties, there is any objection to the proposed measure. The CONTRACTING

PARTIES shall,

- (i) if there is no objection to the proposed measure on the part of the affected contracting party or parties, immediately release the applicant contracting party from its obligations under the relevant provision of this Agreement; or
- (ii) if there is objection, promptly examine the proposed measure, having regard to the provisions of this Agreement, to the considerations presented by the applicant contracting party and its need for economic development or reconstruction, to the views of the contracting party or parties determined to be materially affected, and to the effect which the proposed measure, with or without modification, is likely to have, immediately and in the long run, on international trade, and, in the long run, on the standard of living within the territory of the applicant contracting party. If, as a result of such examination, the CONTRACTING PARTIES concur in the proposed measure, with or without modification, they shall release the applicant contracting party from its obligations under the relevant provision of this Agreement, subject to such limitations as they may impose.

9. If, in anticipation of the concurrence of the CONTRACTING PARTIES in the adoption of a measure referred to in paragraph 6, there should be an increase or threatened increase in the imports of any product concerned, including products which can be directly substituted therefor, so substantial as to jeopardize the establishment, development or reconstruction of the industry or branch of agriculture concerned, and if no preventive measures consistent with this Agreement can be found which seem likely to prove effective, the applicant contracting party may, after informing, and when practicable consulting with, the CONTRACTING PARTIES, adopt such other measures as the situation may require, pending a decision by the CONTRACTING PARTIES on the contracting party's application; Provided that such measures do not reduce imports below the level obtaining in the most recent representative period preceding the date on which notification was given under paragraph 6.

10. The CONTRACTING PARTIES shall, at the earliest opportunity but ordinarily within fifteen days after receipt of an application under the provisions of paragraph 7 or sub-paragraphs (a) or (b) of paragraph 8, advise the applicant contracting party of the date by which it will be notified whether or not it is released from the relevant obligation. This shall be the earliest practicable date and not later than ninety days after receipt of such application; Provided that, if unforeseen difficulties arise before the date set, the period may be extended after consultation with the applicant contracting party. If the applicant contracting party is not so notified by the date set, it may, after informing the CONTRACTING PARTIES, institute the proposed measure.

11. Any contracting party may maintain any non-discriminatory protective measure affecting imports in force on September 1, 1947 which has been imposed for the establishment, development or reconstruction of a particular industry or branch of agriculture and which is not otherwise permitted by this Agreement; Provided that notification has been given to the other contracting parties no later than October 10, 1947 of such measure and of each product on which it is to be maintained and of its nature and purpose.

12. Any contracting party maintaining any such measure shall within sixty days of becoming a contracting party submit to the CONTRACTING PARTIES a statement of the considerations in support of the maintenance of the measure and the period for which it wishes to maintain it. The CONTRACTING PARTIES shall as soon as possible, but in any case within twelve months from the date on which such contracting party becomes a contracting party, examine and give a decision concerning the measure as if it had been submitted to the CONTRACTING PARTIES for their concurrence under paragraphs 1 to 10 inclusive of this Article.

13. The provisions of paragraphs 11 and 12 of this Article shall not apply to any measure in conflict with obligations under Article II of this Agreement.

14. In cases where the CONTRACTING PARTIES decide that a measure should be modified or withdrawn by a specified date, they shall have regard to the possible need of a contracting party for a period of time in which to make such modification or withdrawal."

F.

Sub-paragraph 5(b) of Article XXVI shall be deleted.

G.

Interpretative Notes ad Article III

The following interpretative notes to Article III shall be inserted:-

"Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III."

The following interpretative notes to paragraphs 1, 2 and 5 of Article III shall be inserted:-

"Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities within the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example,

the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties."

"Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and on the other hand, a directly competitive or substitutable product which was not similarly taxed."

"Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products."

Interpretative Notes ad Article VI

The texts of the interpretative notes to Article VI shall read:-

"Paragraph 1

Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer."

"Paragraphs 2 and 3

Note 1

As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

Note 2

Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments."

Interpretative Note ad Article XVIII

The following interpretative note to paragraph 7 (a) (ii) and (iii) of Article XVIII shall be inserted:-

"The word "processing", as used in these sub-paragraphs, means the transformation of a primary commodity or of a by-product of such transformation into semi-finished or finished goods but does not refer to highly developed industrial processes."

2. This Protocol shall, following its signature at the close of the Second Session of the Contracting Parties, be deposited with the Secretary-General of the United Nations.
3. The deposit of this Protocol will, as from the date of deposit, constitute the deposit of the instrument of acceptance of the amendment set out in paragraph 1 of this Protocol by any contracting party the representative of which has signed this Protocol without any reservation.
4. The instruments of acceptance of those contracting parties which have not signed this Protocol, or which have signed it with a reservation as to acceptance, will be deposited with the Secretary-General of the United Nations.
5. The amendment set out in paragraph 1 of this Protocol shall, upon the deposit of instruments of acceptance pursuant to paragraphs 3 and 4 of this Protocol by two-thirds of the governments which are at that time contracting parties, enter into force in accordance with the provisions of Article XXX of the Agreement.
6. The Secretary-General of the United Nations will inform all interested governments of each acceptance of the amendment set out in this Protocol and of the date upon which such amendment enters into force.
7. The Secretary-General is authorized to effect registration of this Protocol at the appropriate time.

IN WITNESS WHEREOF the respective representatives, duly authorized to that effect, have signed the present Protocol.

DONE, at Geneva, in a single English and a single French copy, both texts authentic, this day of September one thousand nine hundred and forty eight.