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GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

Report of Working Party No. 3

On the Request of the United States for a Waiver  
In respect of Preferential Treatment for the Trust  
Territory of the Pacific

According to its terms of reference, the Working Party has considered the request of the United States for a waiver in respect of preferential treatment for the Trust Territory of the Pacific Islands on the basis of the information submitted by the United States representative.\*) After a detailed discussion in which the members of the Working Party and a certain number of observers expressed their views as regards the legal and economic implications of the request of the United States, the Working Party reached the following conclusions:

1. It is appropriate for the CONTRACTING PARTIES to consider the request under Article XXV of the General Agreement on Tariffs and Trade. There is no other provision of the General Agreement under which that request could be examined.
2. The Working Party examined whether the request of the United States was based on the existence of "exceptional circumstances". It came to the conclusion that such exceptional circumstances existed as indicated in the following paragraphs.
3. The Islands of the Trust Territory were accorded preferential treatment by Japan so long as they remained under Japanese mandate and such preferential treatment would be eliminated with the inauguration of the United States administration. If the waiver requested were granted to the United States, the Islands would remain in a position similar to that existing before the inauguration of the United States administration and would enjoy the same privileges comparable to those enjoyed by other Trust Territories which, in accordance with the exceptions

\*) The documents GATT/CP.2/WP.3/5, GATT/CP.2/WP.3/6 and GATT/CP.2/WP.3/6 corr.1 contain statistical and factual information on the production and trade of the Trust Territory of the Pacific.

provided for in Article I of the General Agreement, receive preferential treatment for their imports into the territories of the respective administering authorities.

4. Also, unlike the situation prevailing under Japanese mandate, the administering authority would not enjoy any preference for their imports into the Trust Territory of the Pacific Islands.

5. Moreover, the Working Party considered that the exodus of the 70,000 Japanese who were mainly employed in the sugar, alcohol and dried bonito industries of the Islands would probably lead to the practical disappearance of those industries and that the transformation undergone by the economy of the Island would justify certain exceptional measures in order to enable the administering authority to fulfil its obligations in accordance with Paragraph 2 of Art. 6 of the Trusteeship Agreement for the former Japanese mandated Islands.

6. The Working Party was of opinion that the production figures and export possibilities of the Islands were so unimportant that, under the conditions expected to exist, the granting of the waiver would not be likely to cause substantial injury to the trade of the other contracting parties.

The export values of the five main export commodities of the islands amounted to about 11 million dollars in 1936, but sugar exports which accounted for more than half of those export values are not likely to be continued and the phosphate exports are expected to terminate by 1951, on account of the depletion of resources. The copra exports ranged from 10 to 15 thousand tons during the 1930's but it is unlikely that future production will exceed a yearly average of 10,000 tons. This estimated production would correspond to about 5% of the total United States' imports of copra.

Most of the products are now admitted duty-free and the system of sugar import quotas allocated by areas now in force in the United States would not allow an increase in the imports of sugar originating in the islands. While the reduction by 2 ¢ per pound in the tax on the processing of coconut oil from copra will improve the income derived by the Islands from copra exports, it is not expected that it will bring about a substantial increase in the total volume of such exports, which have to compete with the more efficient production of the Philippines.

It was, however, understood that if the underlying economic factors on which the decision of the CONTRACTING PARTIES would be based were modified so as to cause or threaten substantial injury to the trade of contracting parties, the decision to be taken at this session could be reconsidered by the CONTRACTING PARTIES. Moreover, it was pointed out that such a decision would only bind the contracting parties and that, when the Charter comes into force, the Conference of the ITO would, unless the provisions of Article 15 of the Charter were found applicable, have to examine an application for a waiver under Paragraph 3 of Article 77 of the Havana Charter.

7. The Working Party considered whether the waiver should take the form of a specific authorization to grant preferential treatment to certain products of the Trust Territory of the Pacific Islands or of a general authorization to apply a duty-free treatment to all products of that territory. In view of the small amount of trade involved and of the diversified but minor character of certain of the exports in question, the Working Party came to the conclusion that it would be more practicable to grant a general authorization applicable to all products of the Trust Territory of the Pacific Islands and imported into the customs territory of the United States, which consists of the United States and its possessions except the Virgin Islands, American Samoa, the island of Guam, Wake Island, Midway Islands, and Kingman Reef.

8. The scope of the waiver would be the following:

- a) The entry into the customs territory of the United States of all products of the Trust Territory of the Pacific Islands could be made duty-free and the United States would not thereby be obliged to extend the same treatment to the like products of the territories of the contracting parties.
- b) The United States would be authorized to apply to coconut-oil processed from copra produced in the Trust Territory of the Pacific Islands and imported into the customs territory of the United States the lower rate of internal tax of 3 ¢ per pound presently applicable to coconut-oil processed from copra produced in the Philippine Republic and the United States would not be obliged to extend the same rate to coconut-oil processed from copra produced in the territories of the contracting parties, which would remain taxable at 5 ¢ per pound.

9. The provision contained in the note to Annex D of the General Agreement to the effect that "the imposition of an equivalent margin of preference to replace a margin of preference in an internal tax existing on April 10, 1947, exclusively between two or more of the territories listed in this Annex, shall not be deemed to constitute an increase in a margin of tariff preference" would apply mutatis mutandis to the margin of preference in the processing tax applicable to coconut-oil processed from copra produced in the Trust Territory of the Pacific Islands.

10. The Working Party recommends that the preferential treatment to be accorded in favour of the imports from the Trust Territory in the Pacific Islands should be governed by the provisions of Article I of the General Agreement and that the date of April 10, 1947, referred to in sub-paragraphs (a) and (b) of the final paragraph of Article I should be replaced, in the case of the preferences covered by the decision, by the date on which such preferences come into force.

Finally, it was understood that these preferences would be subject to negotiations under Article 17 of the Havana Charter as all preferences covered by Article 16 of the Charter.

11. The Working Party submits to the CONTRACTING PARTIES the following decision for their approval :

DECISION CONCERNING A WAIVER UNDER PARAGRAPH 5 (a) OF ARTICLE XXV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE IN RESPECT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS.

The CONTRACTING PARTIES, acting pursuant to paragraph 5 (a) of Article XXV of the General Agreement on Tariffs and Trade,

Taking note of the request of the Government of the United States with respect to the establishment of preferential treatment for imports into the United States from the Marshall, Caroline and Marianas Islands (other than Guam), which islands were formerly held by Japan under mandate and which, by agreement with the Security Council of the United Nations approved on April 2, 1947, have been placed under the trusteeship system of the United Nations with the United States as the administering authority,

Considering that while under Japanese mandate, the exports of such islands were entitled to preferential treatment in the market of the metropolitan territory of Japan, upon which such exports were substantially dependent, and that such preferential treatment has been terminated upon the establishment of the trusteeship under the administration of the United States,

Considering further that while under Japanese mandate such islands applied a system of preferential treatment for imports from Japan, which system will, under United States administration, be replaced by a system of non-discriminatory treatment for the goods of all countries,

And considering further that the replacement of preferential entry for the exports of such islands into the market of Japan by preferential entry into the market of the United States is not, in view of the nature and small volume of the production and trade involved and of the underlying economic factors affecting such production and trade, likely to result in substantial injury to the trade of any of the contracting parties,

HEREBY DECIDE AS FOLLOWS :

1. Subject to paragraph 2 of this Decision, the provisions of paragraph 1 of Article I of the General Agreement on Tariffs and Trade shall be waived to the extent necessary to permit the Government of the United States

(a) to accord duty-free treatment, except as otherwise provided for in paragraph (b), to all products of the Trust Territory of the Pacific Islands imported into the customs territory of the United States without obligation thereby to extend the same treatment to the like products of the other contracting parties, and

(b) to accord, in respect of products of the Trust Territory of the Pacific Islands imported into the customs territory of the United States, the same rate of internal tax on the processing of coconut-oil (or, if such internal tax should be converted into the equivalent import duty, the same rate of equivalent duty) as may be applied consistently with the General Agreement on Tariffs and Trade, in respect of the like products of the Philippine Republic, without obligation to extend the same treatment to the like products of the other contracting parties.

2. The margins of preference created upon the institution of the treatment provided for in paragraph 1 shall thereafter be bound against increase in the same manner as other preferences under the General Agreement on Tariffs and Trade and for this purpose the date of April 10, 1947, referred to in sub-paragraphs (a) and (b) of the final paragraph of Article I of the General Agreement shall be replaced by the date on which such treatment is instituted; such date shall be notified to the CONTRACTING PARTIES by the Government of the United States.

3. In the event that the underlying economic factors affecting the production and trade of the Trust Territory of the Pacific Islands should change so that the preferences authorized by this Decision should result or threaten to result in substantial injury to the competitive trade of any contracting party, the CONTRACTING PARTIES, upon the request of any affected contracting party, shall review this Decision in the light of all relevant circumstances.