

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

COM.TD/D/W/2
1 June 1965

Limited Distribution

Committee on Trade and Development

Ad Hoc Group on the Expansion of Trade Between
Less-Developed Countries

BACKGROUND NOTE PREPARED BY THE SECRETARIAT ON EARLIER DISCUSSIONS AND PROPOSALS BEFORE THE GROUP

1. Discussions in the GATT on the problem of expanding trade among less-developed countries go back to the first review session held in 1954. At this session, the Chilean delegation proposed the incorporation in the General Agreement of the provisions of Article 15 of the Havana Charter which provided for new preferential arrangements in the interests of economic development and reconstruction. Since this was not acceptable to a number of delegations, the delegate of Chile subsequently suggested that Article XXV be amended, or an interpretative note should be added to it, whereby contracting parties would undertake to examine, in the light of the provisions of Article 15 of the Havana Charter, any request for the establishment of new preferential arrangements for economic development. It was however, considered unnecessary to insert these special provisions on the ground that a request for such a waiver can be dealt with under Article XXV, paragraph 5, as it stands. It was considered by the Group responsible for examining the matter that each request for a waiver should be treated on its merits, and that conditions and criteria should not be prescribed.¹
2. A reference to the importance of expanding trade between less-developed countries was also made in the Declaration adopted at the GATT Ministerial Meeting in December 1961. The Ministers "recognized that there are important possibilities for encouraging sound economic development in the less-developed countries through increased trade among themselves and that these countries should keep this in mind in formulating their tariff, commercial and economic policy measures. Lest the development of this important trade potential be prevented, or unduly delayed, they should strive to attain and preserve liberal access to one another's markets in the same manner as they now seek to secure improved access to the markets of the economically advanced countries".²
3. In subsequent GATT discussions, the possibility of evolving appropriate tariff, commercial and economic policy measures which would help to further trade between less-developed countries has been discussed largely in the context of

¹BISD, Third Supplement, page 208.

²BISD, Tenth Supplement, page 32.

proposals for the establishment of preferences between less-developed countries. At their meeting in May 1963, Ministers of contracting parties agreed that proposals for the granting of preferences on selected products by less-developed countries to all other less-developed countries should be studied by a working party.

4. The deliberations of the Working Party on Preferences have concentrated largely on what was the first part of its terms of reference, namely, the study of proposals for the granting of preferences on selected products by industrialized countries to less-developed countries as a whole. Nevertheless, in the course of the discussions in the Working Party, a number of proposals, relating to the legal provisions to be inserted in the General Agreement to authorize preferences between less-developed countries, the criteria for the selection of products, and the procedures for negotiations, were also put forward.¹

5. The question of inserting specific provisions in the General Agreement, aimed at permitting the establishment of preferences between less-developed countries, was also discussed by the Committee on the Legal and Institutional Framework of the GATT. In this connexion, a proposal was submitted by the United States which provides for regional arrangements between developing countries with contiguous territories or between those belonging to the same economic region in the interests of their economic development. The text of this proposal is set out in Annex I to this paper. Since the United States' proposal appears to follow closely the provisions of Article 15 of the Havana Charter, the latter text has also been appended as Annex IA for convenience of reference.

6. Since the Committee on the Legal and Institutional Framework could not reach agreement on the United States' proposal or on any other text, the matter was remitted to the Committee on Trade and Development. In response to the invitation issued by the Committee, a specific proposal for the establishment of preferences between less-developed countries was presented by the United Arab Republic Government. This is set out in Annex II to this note. The matter was taken up by the Committee on Trade and Development at its meeting in March which decided to set up the present Ad Hoc Group to examine the problems involved and to report with appropriate findings and recommendations.

7. At the present time, the only detailed proposals which are before the CONTRACTING PARTIES for their consideration are those submitted by the United States and by the United Arab Republic respectively.

¹The reports of the Working Party on Preferences L/2196/Rev.1, dated 2 April 1964, paragraph 9, and L/2282 dated 26 October 1964, paragraph 5 respectively. L/2196 summarizes earlier proposals for the establishment of preferences among less-developed countries.

8. In the April 1964 report of the Working Party on Preferences, it was noted that the value of the exchange of preferences between less-developed countries, under certain circumstances, in increasing the foreign exchange earnings of these countries and in diversifying their economies, was widely recognized in the course of the discussions of the Working Party. In the October 1964 report of the Working Party it was also noted that there was no disagreement on the principle involved in the granting of preferences between less-developed countries, (though subject to agreement on conditions and criteria). It would be seen from the text of the specific proposals annexed to this note that, while both proposals are based on a recognition of the value of preferences in promoting the economic development of less-developed countries, the United Arab Republic's proposal would allow such preferences to be established among less-developed countries on the basis of reciprocal agreements aimed at promoting the trade of these countries in the interests of their economic development. The United States' proposal on the other hand limits the establishment of preferences between less-developed countries, to territories which are contiguous one with another or between parties belonging to the same economic region. The United States' proposal would also limit the establishment of preferences in each case to the need to ensure a sound and adequate market for a particular industry, branch of agriculture, or group thereof. To this end, the United States' proposal would also require the ad hoc approval of CONTRACTING PARTIES to each agreement for the establishment of preferences.

9. There has been little explicit discussion in the GATT of the specific objectives which preferences among less-developed countries should serve, presumably because it has been generally accepted that such preferences would enable less-developed countries to overcome the limitations imposed by the lack of adequate domestic markets, and to achieve the economies of large-scale production, a more efficient use of resources, and a more rational division of labour, by establishing integrated industrial units based on complementarity of production plans and the pooling of markets. However, those countries who have supported the establishment of preferences among less-developed countries also on a non-regional basis have referred to some of the arguments which are used in connexion with preferences for less-developed countries in the markets of the industrialized countries. These arguments relate essentially to the difficulties of suppliers from less-developed countries in competing in less-developed countries' markets with established suppliers in developed countries. It is pointed out that, in view of their limited share in present trade, less-developed countries would benefit only marginally from any reduction of duties effected by other less-developed countries on a most-favoured-nation basis. Further, in view of their fiscal, protective and developmental needs, it may not be possible for less-developed countries to reduce their tariffs, except in respect of the limited imports coming from other less-developed countries, and except, perhaps, on a reciprocal basis. Those who support the establishment of preferences only on a regional basis have argued that, unless the preferences serve as an instrument for promoting the integrated development of the economies of less-developed countries, they would merely tend to divert trade from more efficient suppliers and to increase the prices paid by less-developed countries for their imports, without corresponding gain in their production and growth possibilities.

10. A point which had been made in the discussion of the Working Party on Preferences, is that preferences among less-developed countries should not operate to the detriment of the less advanced of the developing countries. Neither the United States' nor the United Arab Republic's proposal contains any explicit provision on this point. Under both proposals, however, preferences would be established on the basis of agreement between less-developed countries negotiating voluntarily. Both proposals also provide for the adherence to the agreement of other less-developed countries, on terms and conditions to be negotiated, and if they meet the criteria prescribed in the proposal: the criteria in the United States' proposal being that the countries belong to the same economic region, or are geographically contiguous one with another, and in the United Arab Republic's proposal that the preferences should be in the interest of the programme of the economic development of the countries concerned and should not be granted on items which are against the interests of their domestic industries.
11. Past GATT discussions have concentrated on the tariff and trade aspects of the problem of developing commercial exchanges among less-developed countries. Any reference to other obstacles has been made largely in the context of the need for special measures in the tariff field which would help offset the difficulties which less-developed countries experience in competing in the markets of other less-developed countries. A fairly detailed discussion of non-tariff barriers to trade among less-developed countries is to be found in the records of the Second Committee of the UNCTAD and in the report of that Committee. Among the problems which have been mentioned are: lack of complementarity between the economies of less-developed countries; special ties between less-developed countries and certain industrialized countries (currency affiliations, preferential arrangements, sheltered markets, traditional marketing channels, etc.), lack of adequate communications; problems arising from the traditional institutional structure - banking, insurance, and marketing structure; difficulties for less-developed countries in extending export credits and the effect of tied loans on sources of supply.
12. The secretariat has not attempted an analysis or evaluation of these problems. The pilot study (COM.TD/D/W/1), prepared by the secretariat for the present meeting of the Group, sets out, however, data on tariffs, licensing and import regulations and imports and exports, relating to a number of primary products, semi-manufactures and manufactures which enter into the trade between less-developed countries, and in which less-developed countries have an interest either as importers or exporters. The Ad Hoc Group might wish to examine this data with a view to arriving at a fuller assessment than might otherwise be possible of the factors affecting the trade among less-developed countries in certain specific commodities with particular reference to the rôle of preferences in promoting such trade.

ANNEX I

Proposed Amendment to Part II of the General Agreement, Relating to
Regional Agreements for Economic Development

Proposal by the United States¹

1. The contracting parties recognize that the need for economic development may justify regional agreements between two or more less-developed countries in the interest of the programmes of economic development of one or more of such countries.
2. Any less-developed contracting party or contracting parties contemplating the conclusion of such an agreement shall communicate its or their intention to the CONTRACTING PARTIES, and provide them with the relevant information to enable them to examine the proposed agreement.
3. The CONTRACTING PARTIES shall examine the proposal and, by a vote under paragraph 5 of Article XXV, may grant subject to such conditions as they may impose, a waiver from the provisions of Article I to permit the contracting party or contracting parties to implement the proposed agreement.
4. The provisions of Article I shall not apply to any such agreement, provided the CONTRACTING PARTIES find, in accordance with the provisions of paragraphs 3, 5 and 6, that the proposed agreement between less-developed countries fulfils the following conditions and requirements:
 - (a) the territories of the less-developed countries which are parties to the agreement are contiguous one with another, or all parties belong to the same economic region;
 - (b) the agreement is necessary to ensure a sound and adequate market for a particular industry, or branch of agriculture, or group thereof, which is being, or is to be, created, substantially developed, or substantially modernized;
 - (c) the parties to the agreement undertake to grant free entry for the products of the industry, or branch of agriculture, or group thereof, of other parties to the agreement, or to apply customs duties to such products sufficiently low to ensure that the objectives set forth in sub-paragraph (b) will be achieved;

¹This text is part of the United States' proposal (relating to Article XVIII-D) originally circulated in L/2136.

- (d) the agreement contains provisions permitting, on terms and conditions to be determined by negotiation with the parties to the agreement, the adherence of other less-developed countries, which are able to qualify as parties to the agreement under the provisions of this paragraph, in the interest of their programmes of economic development;

and

- (e) the agreement contains provisions for its termination within a period considered to be sufficient for the fulfilment of its purposes but, in any case, not later than at the end of ten years; any renewal shall be subject to the approval of the CONTRACTING PARTIES pursuant to the criteria and procedures of this Article, and no renewal shall be for a period longer than five years.

5. When the CONTRACTING PARTIES, upon the application of one or more contracting parties and in accordance with the provisions of paragraph 6, approve or renew an agreement as an exception to Article I in respect of the products covered by the proposed agreement, they may, as a condition of their approval or renewal, require a reduction in the most-favoured-nation rate of duty in respect of any product so covered if, in the light of the representations of any affected contracting party not a party to the agreement, they consider that rate excessive.

- 6. (a) If so requested by the applicant contracting party or parties, the CONTRACTING PARTIES shall vote on the decision described in paragraph 3 within sixty days after such request, but not less than ninety days after receipt of the application.
- (b) If the CONTRACTING PARTIES find that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to cause substantial injury to the external trade of a contracting party not a party to the agreement, they shall inform the applicant contracting party or parties of its findings and suggest that the parties to the agreement enter into negotiations with the contracting party the trade of which is likely to be injured. They may delay their action under paragraph 3 until notified of agreement in such negotiations. If, at the end of two months from the date on which the CONTRACTING PARTIES suggested such negotiations, the negotiations have not been completed and the CONTRACTING PARTIES consider that the contracting party which is likely to be injured is unreasonably preventing the conclusion of the negotiations, they may nevertheless proceed to vote on the decision described in paragraph 3 and at the same time shall fix a fair compensation to be granted by the applicant party or parties to the contracting party likely to be injured or, if this is not possible or reasonable, prescribe such modification of the agreement as will give such contracting party fair treatment.

- (c) If the CONTRACTING PARTIES find that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to jeopardize the economic position of the contracting party in world trade, it shall not authorize any departure from the provisions of Article I unless the parties to the agreement have reached a mutually satisfactory understanding with that contracting party.

Ad Article XVIII-D

Paragraph 4(a)

In considering whether the countries party to an agreement belong to the same economic region, the contracting parties shall take into account the prospects of their integrated development under the agreement.

Paragraph 4(d)

1. The contracting parties may, as a condition to their approval of an agreement pursuant to this Article, prescribe procedures under which they would have an opportunity, prior to the adherence by a new country to the Agreement, to consider such proposed adherence in the light of the provisions of this paragraph.
2. The provisions of Article XXII may be invoked by a less-developed contracting party on the grounds that it has been unjustifiably excluded, by the parties to the agreement, from participation in such agreement.

ANNEX IA

EXTRACT FROM THE FINAL ACT AND RELATED DOCUMENTS
OF THE HAVANA CHARTER

Article 15

Preferential agreements for economic development and reconstruction

1. The members recognize that special circumstances, including the need for economic development or reconstruction, may justify new preferential agreements between two or more countries in the interest of the programmes of economic development or reconstruction of one or more of them.
2. Any member contemplating the conclusion of such an agreement shall communicate its intention to the Organization and provide it with the relevant information to enable it to examine the proposed agreement. The Organization shall promptly communicate such information to all members.
3. The Organization shall examine the proposal and, by a two-thirds majority of the members present and voting, may grant, subject to such conditions as it may impose, an exception to the provisions of Article 16 to permit the proposed agreement to become effective.
4. Notwithstanding the provisions of paragraph 3, the Organization shall authorize, in accordance with the provisions of paragraphs 5 and 6, the necessary departure from the provisions of Article 16 in respect of a proposed agreement between members for the establishment of tariff preferences which it determines to fulfil the following conditions and requirements:
 - (a) the territories of the parties to the agreement are contiguous one with another, or all parties belong to the same economic region;
 - (b) any preference provided for in the agreement is necessary to ensure a sound and adequate market for a particular industry or branch of agriculture which is being, or is to be, created or reconstructed or substantially developed or substantially modernized;
 - (c) the parties to the agreement undertake to grant free entry for the products of the industry or branch of agriculture referred to in sub-paragraph (b) or to apply customs duties to such products sufficiently low to ensure that the objectives set forth in that sub-paragraph will be achieved;

- (d) any compensation granted to the other parties by the party receiving preferential treatment shall, if it is a preferential concession, conform with the provisions of this paragraph;
- (e) the agreement contains provisions permitting, on terms and conditions to be determined by negotiation with the parties to the agreement, the adherence of other members, which are able to qualify as parties to the agreement under the provisions of this paragraph, in the interest of their programmes of economic development or reconstruction. The provisions of Chapter VIII may be invoked by such a member in this respect only on the ground that it has been unjustifiably excluded from participation in such an agreement;
- (f) the agreement contains provisions for its termination within a period necessary for the fulfilment of its purposes but, in any case, not later than at the end of ten years; any renewal shall be subject to the approval of the Organization and no renewal shall be for a longer period than five years.

5. When the Organization, upon the application of a member and in accordance with the provisions of paragraph 6, approves a margin of preference as an exception to Article 16 in respect of the products covered by the proposed agreement, it may, as a condition of its approval, require a reduction in an unbound most-favoured-nation rate of duty proposed by the member in respect of any product so covered, if in the light of the representations of any affected member it considers that rate excessive.

6. (a) If the Organization finds that the proposed agreement fulfils the conditions and requirements set forth in paragraph 4 and that the conclusion of the agreement is not likely to cause substantial injury to the external trade of a member country not party to the agreement, it shall within two months authorize the parties to the agreement to depart from the provisions of Article 16, as regards the products covered by the agreement. If the Organization does not give a ruling within the specified period, its authorization shall be regarded as having been automatically granted.
- (b) If the Organization finds that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to cause substantial injury to the external trade of a member country not party to the agreement, it shall inform interested members of its findings and shall require the members contemplating the conclusion of the agreement to enter into negotiations with that member. When agreement is reached in the negotiations, the Organization shall authorize the members

contemplating the conclusion of the preferential agreement to depart from the provisions of Article 16 as regards the products covered by the preferential agreement. If, at the end of two months from the date on which the Organization suggested such negotiations, the negotiations have not been completed and the Organization considers that the injured member is unreasonably preventing the conclusion of the negotiations, it shall authorize the necessary departure from the provisions of Article 16 and at the same time shall fix a fair compensation to be granted by the parties to the agreement to the injured member or, if this is not possible or reasonable, prescribe such modification of the agreement as will give such member fair treatment. The provisions of Chapter VII may be invoked by such member only if it does not accept the decision of the Organization regarding such compensation.

- (c) If the Organization finds that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to jeopardize the economic position of a member in world trade, it shall not authorize any departure from the provisions of Article 16 unless the parties to the agreement have reached a mutually satisfactory understanding with that member.
- (d) If the Organization finds that the prospective parties to a regional preferential agreement have, prior to 21 November 1947, obtained from countries representing at least two thirds of their import trade the right to depart from most-favoured-nation treatment in the cases envisaged in the agreement, the Organization shall, without prejudice to the conditions governing the recognition of such right, grant the authorization provided for in paragraph 5 and in sub-paragraph (a) of this paragraph, provided that the conditions and requirements set out in sub-paragraphs (a), (e), and (f) of paragraph 4 are fulfilled. Nevertheless, if the Organization finds that the external trade of one or more member countries, which have not recognized this right to depart from most-favoured-nation treatment, is threatened with substantial injury, it shall invite the parties to the agreement to enter into negotiations with the injured member, and the provisions of sub-paragraph (b) of this paragraph shall apply.

ANNEX II

PREFERENCES AMONG LESS-DEVELOPED COUNTRIES

Proposal Submitted by the United Arab Republic

In response to an invitation to governments to submit concrete proposals concerning the granting of preferences on selected products of export interest to less-developed countries contained in GATT/AIR/434 and 449 the communication reproduced below, dated 16 February, has been received from the delegation of the United Arab Republic.¹

"... Following the decision of the CONTRACTING PARTIES at the Special Session, I have the honour to enclose herewith our proposal concerning the exchange of preferences between less-developed countries.

"We have limited our proposal to the exchange of preferences between less-developed countries, because contracting parties have already accepted this issue in principle, and it remains to consider the scope and the rules which will govern this concept. I shall be very grateful to you, if you will be kind enough to circulate our proposal to all members of the Committee on Trade and Development.

"I would like to draw the attention of the members of this Committee to the fact that, according to what has been decided in the Committee on Preferences, our deliberations and proposals do not commit our governments, and also that the United Arab Republic delegation is always ready to discuss any difficulty which may arise from our proposal and also any similar proposals which tend to limit the scope of the preferences..."

Text of the proposal submitted by the United Arab Republic

"1. Notwithstanding this agreement, and without prejudice to the rights of contracting parties in Article I, CONTRACTING PARTIES agree, with a view to promote trade between less-developed countries, that the latter could exchange preferential treatment by concluding agreements between themselves. Less-developed countries which are parties to such an agreement shall communicate such agreements to the CONTRACTING PARTIES, and provide them with the relevant information.

¹Originally circulated in document COM.TD/W.2.

"2. The CONTRACTING PARTIES shall examine the proposal as being in the interest of the programmes of economic development of less-developed countries members of such an agreement.

"3. The parties to such agreements shall take into consideration, when concluding such agreements, the following:

(i) no developing contracting party shall expect that another developing contracting party shall grant preferences on items which are against the interests of its domestic industries;

(ii) the preferential treatments to be exchanged between developing contracting parties shall not be less than that at present granted on similar products by some developing contracting parties to developed contracting parties;

(iii) the agreements contain provisions permitting, on terms and conditions to be determined by negotiation with the parties to the agreement, the adherence of other less-developed countries, which are able to qualify as parties to the agreement and to undertake the same commitments in the interest of their programmes of economic development;

(iv) that the preferences exchanged between less-developed countries, parties to such agreements shall not be extended, according to those agreements, to any developed country;

(v) the agreement contains provisions for its termination within a period considered to be sufficient for the fulfilment of its purposes but, in any case, not less than at the end of ten years, and not later than fifteen years; any renewal shall be subject to the approval of the CONTRACTING PARTIES.

"4. The CONTRACTING PARTIES shall approve such agreements by a two-thirds majority of votes, after being assured that the preferential treatment accorded will lead to the expansion of products to which preferences shall be granted. For the adherence of other less-developed countries, which are able to qualify as parties to such agreements, or for the introduction of a new item to be granted special treatment between less-developed countries, the CONTRACTING PARTIES can approve such modifications by a majority of the votes."