

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/261

27 October 1954

Limited Distribution

Original: English

REVIEW OF THE GENERAL AGREEMENT

Proposals by the Government of the Federal Republic of Germany

At the Eighth Session of the CONTRACTING PARTIES in October 1953 it was decided to revise the Agreement in order to make it more effective and to adapt it to developments which have taken place in the meantime. The Government of the Federal Republic of Germany was a party to this decision. It has since examined the contents and the application of the Agreement both in respect of its own interests and of the general interest in the promotion of world trade, and has decided to make the following proposals.

I

General Viewpoints Underlying the German Proposals¹

1. It is recognized that the Agreement during the six years of its application has served to a not inconsiderable extent to further the aims, set by the Contracting Parties, of promoting international trade, commerce and economic welfare in the world. Although the Agreement has often been subjected to criticism owing to the multiplicity of its special provisions and because of its transitional regulations and escape clauses, as well as owing to the flexibility of its principles and provisions, it must be stated, on the other hand, that from the point of view of general commercial policy it has been useful and secured considerable and tangible advantages for the contracting parties. The fact must also be borne in mind that it was possible through GATT to unite such a large number of countries, representing about 80 per cent. of world trade, in acknowledging common basic principles of international trade, and to induce them to recognize in principle and in general also to apply internationally agreed rules of trade policy. In view of the great differences in the economic structure and the degree of economic development of the individual countries it has been and will continue to be inevitable that the provisions of GATT should show great flexibility. The economic realities of the individual countries cannot simply be disregarded. It is, however, of decisive importance that the contracting parties to GATT are united under common liberal principles of commercial policy and that here an institution exists within which economic issues can be settled in accordance with commonly recognized principles. Although in past years the spirit and letter of the Agreement may not have been complied with in all cases, it can be noted that the principles underlying the Agreement have gained increasing recognition and have more and more been observed. This is particularly

¹ The detailed proposals will be circulated to Delegations separately.

evident from the fact that public opinion in all countries expects GATT to be of assistance in finding, or at least suggesting, solutions to the current problems of international trade policies.

Even though the discussions on the value and the future of GATT reveal differences of opinion due to special interests of individual countries or of economic groups, it should be emphasized on the other hand that a general interest does exist in the cooperation of peoples under the liberal principles and rules supplied by GATT for commercial policies.

2. The general principle of most-favoured-nation treatment as the supreme principle of commercial policy has been acknowledged and consolidated through GATT and should continue to be the guiding common principle of the commercial policies of all the countries linked together by this Agreement.

The multilateral tariff arrangements made within the framework of GATT have led to a reduction and a stabilization of tariffs all over the world and have considerably promoted international trade. GATT will continue to be a useful platform for international multilateral tariff negotiations.

The provisions of GATT concerning the restrictions on imports or exports and the avoidance or elimination of discriminations are, according to the time of conclusion and the then prevailing conditions, highly flexible and partly contradictory. They urgently need revision. However, it must be recognized that restrictions in foreign trade have decreased during the last few years and that in this field numerous countries have conformed to the principles embodied in GATT. Other regulations of GATT, such as are contained in the provisions concerning internal taxation, dumping and subsidies as well as the different forms of administrative protectionism through formalities and other impediments connected with importation and exportation have proved useful and should be maintained or supplemented on the basis of the experiences made.

The provisions of the Agreement referring to the situation and interests of the underdeveloped countries are of particular importance. In view of the worldwide aim of GATT to promote the international exchange of goods of all countries and thus to increase universal prosperity, the needs of the underdeveloped countries will also in future have to be taken into consideration. It is necessary to keep these countries linked on a common basis with the more developed countries as regards the guiding principles of commercial policy. At the same time, however, they must be granted those facilities which their present economic needs or emergencies require.

3. The legal basis of GATT is the multilateral founding act of 30 October 1947 and the Protocols of Annecy and Torquay. Action by GATT is based on the decisions of the CONTRACTING PARTIES acting jointly and as a rule taking their decisions by a simple majority and in particular cases by a qualified majority. The decisions of the CONTRACTING PARTIES can, according to some Articles of GATT (e.g. Article XII, Article XXV) affect the substance of the rights and obligations, and consequently the legislative power of, contracting parties in the field of commercial policy. This is the case especially when decisions are taken which authorize one

or more contracting parties to discriminate against a third contracting party. It is well known that it is for this reason that certain parties to the GATT have not been able so far to bring about ratification of the Agreement by their legislative bodies. Though it appears desirable to maintain in GATT the application of certain sanctions against contracting parties not complying with their obligations under the Agreement, an attempt should be made to find a settlement of this question that would be acceptable to all contracting parties, it being understood that the existing possibilities of causing contracting parties to observe the recognized obligations should be maintained to the largest possible extent.

The existing system under which the affairs of GATT are conducted by the Secretariat of the Interim Committee of the ITO, can only be considered as a temporary solution. It will be necessary to constitute GATT as a separate Organization with appropriate organs.

II

Summary Description of the Specific German Proposals

1) Substantive Provisions

a) Proposals for Supplementing or Amending Specific Articles of the Agreement.

Most-Favoured-Nation Clause

The most-favoured-nation clause, as formulated in Article I of the Agreement, should continue to be considered as the leading principle of international commercial policy. In this connection only a few proposals are made for supplementing the "Interpretative Notes" to the most-favoured-nation clause in Annex I to the Agreement on the basis of the practical experiences made in the meantime.

Schedules of Tariff Concessions

Without prejudice to any general action of tariff reduction that may eventually be decided upon by the CONTRACTING PARTIES, it is proposed that Article XXVIII be amended to extend the binding effect of the tariff concessions to 31 December 1957. It is furthermore proposed that in the case of an alteration or withdrawal of a tariff concession the contracting parties substantially interested in such a concession be granted the same legal status as the contracting party with which the concession was initially negotiated.

Anti-Dumping and Countervailing Duties

Ad Article VI it is suggested that the definition of the term "dumping" be supplemented. The refundment of duties or taxes should not exceed the charge borne by like products in the country of origin or exportation.

Import and Export Restrictions

The provisions of Articles XI - XIV and XX are considered to need revision, being inadequate to meet the present requirements of trade policy. In this connection it is, however, recognized that it is not possible for the time being to adapt these articles completely and generally to the principles of freedom of trade. Rather does it appear essential that these provisions of the Agreement be developed progressively during the years to come and that their effectiveness be increasingly improved to such an extent as appears feasible in the light of the economic conditions and the circumstances affecting commercial policies of all the contracting parties. In the meantime the wording of these provisions should have the permanent effect of influencing the contracting parties in the sense of relaxing their trade restrictions.

As to Article XI which contains the general principle of the elimination of trade restrictions, only one amendment is suggested to the Standard Practices enumerated in connection with that article. On the other hand, it is proposed that Article XII which deals with restrictions to safeguard the balance of payments be redrafted to the effect of reinforcing the aspect of overcoming balance of payments difficulties by measures aiming at an expansion rather than restriction of international trade. At the same time the provisions of Article XIII relating to motives resulting from the war and from viewpoints of economic policy should be deleted. It should be assumed that the period needed for adjusting the economy to post-war conditions and removing war damage is in general terminated. As far as possible the application of balance of payments restrictions for purely protectionist purposes should be prevented. The parties interested in the market concerned should be enabled to maintain an adequate share in it. The CONTRACTING PARTIES should revise existing trade restrictions periodically and try to reach understandings on the relaxation of restrictions.

Moreover, it is suggested that Article XIV concerning discrimination for balance of payments reasons be redrafted. Discriminations should be confined to the extent required by the position of the balance of payments. The present cooperation with the International Monetary Fund should be continued. The International Monetary Fund should continue to be the agency competent to judge the position of a contracting party's balance of payments and monetary reserves. On the other hand, GATT should remain competent to evaluate the economic and commercial effects of trade restrictions and discriminations.

The reasons for import restrictions mentioned in the general exceptions from the principle of free trading in Article XX Part II, are considered to have been superseded by developments. It is suggested that these restrictions be deleted.

Artificial Aid to Exporters

In view of the general efforts made to abolish artificial aid to exporters it is suggested that, after Article XVI, a new Article XVIa be inserted, containing a general condemnation of artificial aid to exporters which distorts the normal pattern of competition. The CONTRACTING PARTIES should start consultations on joint action for the abolition of such measures.

Formalities and Administrative Measures Connected with Importation and Exportation

Proposals are submitted on the following subjects: Valuation for customs purposes, fees in connection with importation and exportation, certificates of origin, consular invoices, requirements to mark the origin, and publication of statistics.

b) Proposals for New Provisions Designed to Develop the Agreement

The insertion of the following new provisions is proposed:

1. Obligation of the contracting parties to supply binding customs information;
2. Duty-free re-importation and re-exportation of containers, mounting tools, testing machinery and the like;
3. A separate article is proposed to define the term "origin of commodities";
4. Admission of the conclusion of contracts on maritime transport insurance;
5. Restrictive Business practices by cartels.

The individual contracting parties should within the framework of their national legislations take measures to prevent cartels from applying restrictive business practices in the field of foreign trade. In this connection the CONTRACTING PARTIES should play a conciliatory role in the settlement of complaints in this field;

6. Procedure for the reduction of tariff rates.

Particular directives are suggested for bilateral and multilateral negotiations on the reduction of tariff rates;

7. Recommendation of the conclusion of agreements to avoid double taxation;
8. Recommendation of arrangements on the freedom of establishment.

2) Questions of Organization

In his memorandum dated 12 April 1954, the Executive Secretary of GATT submitted proposals for the establishment of an Organization of GATT. These proposals are accepted in principle, it being understood that the future Organization of GATT should be an Agency of the United Nations. It is, however, considered necessary to supplement these proposals to the effect that further organs should be envisaged in addition to the Assembly of the CONTRACTING PARTIES, such as have proved useful in the case of OEEC.

It appears especially advisable that, in addition to the Assembly, there should be an Executive Council composed of a limited number of members. The Executive Council would have to supervise GATT's intersessional activities, take decisions and make recommendations in line with the directives laid down by the CONTRACTING PARTIES, and give the Secretariat directives for its work. Moreover, the creation of particular specialized or technical committees should be provided for.

The question should be examined whether it is desirable to consolidate the organizational provisions of the Agreement in a particular part containing the definition of the Organization's general objects, provisions concerning the organs of the Organization, their spheres of competence as well as any such provisions of a formal nature in the existing Agreement as concern accession, membership, rights and obligations of the contracting parties. That part could likewise contain general provisions on the procedure applicable to consultations and to the settlement of disputes arising among the contracting parties. This would not preclude the possibility for the substantive part of the Agreement to contain, in the individual Articles, references to the procedures of ascertainment or consultation to be applied by the CONTRACTING PARTIES acting jointly or by the organs of the Organization, as the case may be.

All the decisions taken so far by the CONTRACTING PARTIES as to procedures applicable to special fields should be consolidated in special rules of procedure of the Organization.