

GENERAL AGREEMENT ON TARIFFS AND TRADE

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ANTI-DUMPING AND COUNTERVAILING DUTIES

Submission of Laws and Regulations

The following statements have been received from the Governments of Denmark and the Union of South Africa:

DENMARK

" ... in Denmark there exist no laws or regulations providing for the levy of anti-dumping and countervailing duties or other supplementary duties and charges intended to protect domestic production against the competition of low-priced imports."

UNION OF SOUTH AFRICA

" ... I now submit copies of each of the following:

- "I Extracts from the South African Customs Act No. 55 of 1955, embracing articles 83 to 90, 92 and the 'Observation' under tariff item 43;
- "II Extracts from the Trade Agreement between the Governments of the Union of South Africa and the Federation of Rhodesia and Nyasaland: Article 8.

"The South African Government may, at a later stage, have comments to provide regarding their experience in this field.

"In conclusion I should like to draw your attention to the fact that the Bill to amend the law relating to customs, which was passed recently, provides for the amendment of articles 83 and 89 of the Customs Act (No. 55 of 1955). This amendment act has, however, not yet been promulgated and the amendments concerned have, therefore, not been included under I above."

Extracts from the Customs Act, 1955 (No.55 of 1955)

CHAPTER V.

Dumping and Special Duties

Imposition
of dumping
duty

83. (1) Whenever the Minister is satisfied, in respect of goods which are of a class or kind produced or manufactured in the Union, that

- (a) such goods have been or are being or are likely to be exported to the Union at an export price which is less than the domestic value thereof; or
- (b) such goods are being or are likely to be sold or offered for sale at a place in the Union in the ordinary course of trade for an amount which is less than the domestic value thereof plus freight, insurance and all charges to that place, including landing, transportation and delivery charges and any duty (other than a dumping or special duty) payable under this Act; or
- (c) such goods have been or are being or are likely to be exported to the Union and that a bounty has been or will be granted in respect thereof in the territory in which they were produced or manufactured or from which they were exported; or
- (d) such goods have been or are being or are likely to be conveyed to the Union from a particular territory or place of despatch at a rate of freight less than the rate certified by the South African Shipping Board or other person designated by the Minister as being the normal rate chargeable on that class or kind of goods from that territory or place and that such abnormal rate of freight is exceptional in character; or
- (e) such goods have been or are being or are likely to be imported into the Union from a territory the currency of which is depreciated in relation to Union currency, or that the currency of the territory of origin of such goods which have been or are being or are likely to be imported into the Union is likewise depreciated,

and is further of the opinion that detriment may from one or more of the above causes result to an industry within the Union, and that it would be in the public interest to impose in respect of such goods a dumping duty, the Minister may, by notice in the Gazette, notify the class or kind of goods and declare that one

or more of the dumping duties enumerated in section eighty-four and set forth in such notice, shall be levied upon goods of such class or kind which are imported into the Union from or originate in a territory named in the notice, and from the date of publication of such notice in the Gazette such dumping duty or duties shall, in addition to any other duty payable thereon, be paid on such goods upon their importation into the Union: Provided that the Minister may limit the amount of any dumping duty mentioned in section eighty-four (or, if more than one of the duties so mentioned has been imposed, the total of such duties) to a percentage of the value of the goods for duty purposes, or alternatively to a specific rate per unit of quantity, volume or weight, which percentage or alternative specific rate shall be determined by him.

(2) Whenever the Minister is satisfied in terms of sub-section (1) that it would be in the public interest to impose a freight dumping duty on any goods, he may for that purpose determine by notice in the Gazette the minimum rate of freight which shall be applicable to that class or kind of goods when conveyed from any particular territory or place to any place of discharge in the Union or to any place in Africa at which goods are discharged for removal overland into the Union: Provided that the minimum rate of freight so determined shall in no case exceed the normal freight rate as certified in terms of paragraph (d) of sub-section (1).

(3) The Minister may from time to time amend any determination made by him in terms of sub-section (2).

(4) The dumping duties mentioned in paragraphs (a), (c), (d) and (e) of section eighty-four shall be paid by the importer upon importation, and the dumping duty mentioned in paragraph (b) of section eighty-four shall be paid by the person in the Union who sells the goods for an amount which is less than the domestic value thereof, as defined in section eighty-five, plus the expenses and charges set forth in paragraph (b) of sub-section (1).

**Kinds of
dumping
duty**

84. The dumping duties which may be imposed in terms of section eighty-three shall be the following, namely

- (a) "ordinary dumping duty", which shall be the amount by which the domestic value, as defined in section eighty-five, exceeds the export price as defined in that section, if such amount is greater than five per centum of the export price: Provided that if there be no

export price, the amount of the dumping duty shall, subject to any action taken by the Minister in terms of the proviso to sub-section (1) of section eighty-three, be an amount equal to the domestic value of the goods as defined in section ninety-two;

- (b) "sales dumping duty" which shall be the amount by which the domestic value of the goods, as defined in section eighty-five, plus the expenses and charges set forth in paragraph (b) of sub-section (1) of section eighty-three, exceeds the selling price in the Union;
- (c) "bounty dumping duty", which shall be the amount of the bounty referred to in paragraph (c) of sub-section (1) of section eighty-three, whether such bounty be by way of a bonus, rebate, subsidy or otherwise, and whether it be granted by a government or other authority or person;
- (d) "freight dumping duty", which shall be the amount by which the minimum rate of freight determined by the Minister in terms of sub-section (2) of section eighty-three exceeds the rate of freight actually paid;
- (e) "exchange dumping duty", which shall be the amount by which the actual cost of the goods as defined in section eighty-five is less than such cost expressed in the currency of the territory of origin or export of the goods and converted into Union currency at a rate which the Minister is hereby authorized to determine and notify in the Gazette.

Definitions

85. For the purposes of sections eighty-three and eighty-four "export price" means the price free on board at which goods are sold by the exporter to the importer in the Union;

"domestic value" means the domestic value as defined in section ninety-two less any drawback of duty granted by the government of the exporting country in respect of the goods in question on their exportation, but in the application of sub-section (1) of section ninety-two to paragraph (a) of sub-section (1) of section eighty-three and paragraph (a) of section eighty-four for the words "time of exportation to the Union" there shall be substituted the words "date of purchase thereof by the importer", except in the case of goods exported to the Union on consignment account or for which nominal prices are charged or for which no charge is made;

"actual cost" means the cost of the goods to the importer in Union currency free on board at the port of shipment or place of despatch to the Union, and in the case of goods exported to the Union on consignment account or for which nominal prices are charged or for which no charge is made, the price free on board at which similar goods are ordinarily sold for export, or if there be no such price, then the domestic value of such goods as defined in section ninety-two.

No dumping or special duty on goods imported under rebate or for the state

86. A dumping duty imposed under section eighty-three or a special duty imposed under section eighty-nine shall not apply to goods admitted into the Union under rebate of the ordinary duty in terms of section ninety-eight or in terms of a notice published under the provisions of paragraph (d) of sub-section (2) of section one hundred or to goods imported by or on behalf of the Government of the Union or the government of any other Commonwealth country, unless the Minister has notified in the Gazette that the dumping or special duty shall apply to such goods.

Special duties on wheat, etc.

87. Subject to the exemptions, and to any suspensions, rebates and conditions elsewhere provided for, there shall be paid on

- (a) wheat in the grain;
- (b) wheaten flour and wheaten meal; and
- (c) oats in the grain,

on importation into the Union, in addition to any other duties payable thereon, a special duty per cental equal to the amount by which eleven shillings and threepence in the case of wheat in the grain and eighteen shillings and sixpence in the case of wheaten flour and wheaten meal, and seven shillings in the case of oats in the grain, exceeds the cost per cental to the importer at the port of importation in the Union, which cost shall include the cost of packing, packages, landing charges, dock dues and the duties otherwise payable thereon: Provided that

- (a) the cost of such wheat, flour, meal or oats per cental to the importer, free on board at the port of shipment or place of despatch to the Union shall be taken to be a sum not greater than the ordinary market price for export per cental at the time of purchase, expressed in Union currency, of similar goods free on board at the port of shipment or place of despatch as aforesaid; and

- (b) the special duty shall not apply to wheat in the grain or to wheaten flour and wheaten meal, imported into the territory of South-West Africa for consumption therein.

Special
duties
based on
c.i.f.
price.

88. (1) Whenever, after report by the Board of Trade and Industries, the Minister is satisfied that

- (a) iron and steel products; and
- (b) agricultural implements and parts therefor,

of any particular class manufactured in the Union have been or are being or are likely to be exported to the Union at a price that would cause detriment to an industry in the Union, and is further of the opinion that it would be in the public interest to levy in respect of such goods a special duty, the Minister may in respect of that class of goods from time to time determine by notice in the Gazette a price on board ship, aircraft or other vehicle at any place of discharge in the Union, or at any place in Africa at which goods are discharged for removal overland to the Union, below which price that class of goods shall not be imported into the Union through that place: Provided that the price so determined shall be an amount which, in the opinion of the Minister, upon a report by the Board of Trade and Industries, does not exceed the fair average of prices ruling in the territories where such goods are manufactured and where the manufacture thereof is not directly or indirectly subsidized, plus normal insurance and freight charges to the place of discharge.

(2) If after the issue of such notice any person imports into the Union any goods of a class to which in terms thereof such price is applicable, at a c.i.f. price which is less than the price so determined, in respect of the place of discharge of such goods, there shall be paid on such goods on importation into the Union, in addition to any other duties payable thereon, a special duty, equal to the difference between the said c.i.f. price and the price so determined.

(3) If after the issue of such notice any goods of a class to which such price is applicable are sold or offered for sale by the importer or any other person at any place in the Union in the ordinary course of trade for an amount which is less than the price so determined plus landing, transportation and delivery charges and customs duty, there shall be paid on such goods by the person so selling or offering them for sale, a special sales duty which shall be equal to the difference between the selling

price and the price so determined plus the charges and duty mentioned in this sub-section: Provided that the Minister may, if he is satisfied that the goods have deteriorated in quality or value after importation, exempt the seller from payment of the whole or any portion of such special sales duty in respect of such goods.

(4) In this section "c.i.f. price" means the price paid or to be paid by the importer for the goods on board ship, aircraft or other vehicle at the place of discharge including insurance and freight charges or, if there be no such price, the export price as defined in section eighty-five together with insurance and freight charges paid or to be paid for conveyance of the goods to the place of discharge.

(5) The Minister shall, in the course of each ordinary session of Parliament, lay upon the Tables of both Houses of Parliament a report by the Board of Trade and Industries showing the prices charged by producers in the Union for the classes of goods in respect of which a price has been determined in terms of this section, and the prices charged for those classes of goods by producers in the principal territories from which such goods are exported to the Union.

Imposition
of
temporary
special
duties

89. (1) Whenever, after investigation and report by the Board of Trade and Industries, the Minister is satisfied, in respect of goods which are of a class or kind produced or manufactured in the Union, that such goods have been or are being or are likely to be exported to the Union at an export price and in quantities which may seriously prejudice the production or manufacture in the Union of goods of that class or kind, and that it would be in the public interest to impose in respect of such goods a temporary special duty, the Minister may, by notice in the Gazette impose such duty and notify

- (a) the class or kind of goods;
- (b) the rate of the special duty, which may be either a percentage of the value for duty purposes, or a specific rate per unit of quantity, volume or weight; and
- (c) the period during which it shall operate,

and from the date of publication of such notice in the Gazette such special duty shall, in addition to any other duty which may be payable thereon, be paid on such goods on their importation into the Union, during the period mentioned: Provided that

- (i) any such special duty together with any other duty excepting a duty imposed under section seventy-nine or sections eighty-three to eighty-eight which may be payable on such goods shall not exceed one-half of the value for duty purposes as defined in section ninety-one;
- (ii) any such special duty brought into operation during any session of Parliament upon a date not less than twenty-eight days before the end of that session shall lapse at the end of that session unless it has been approved of during that session by resolution of both Houses of Parliament, and any such special duty brought into operation at any other time shall lapse at the end of the next ensuing session of Parliament unless it has during that session been approved of by resolution of both Houses of Parliament, but the lapsing of any such special duty shall not detract from its validity before it lapsed.

(2) The provisions of this section shall lapse after a period of five years from the date of commencement of the Customs Amendment Act, 1951.

Imposition
of special
duties

90. (1) Whenever, after report by the Board of Trade and Industries, the Minister is satisfied that goods of a class or kind produced or manufactured in the Union have been or are being or are likely to be exported to the Union at an export price which, in his opinion, is below a reasonable price for such goods, and that detriment may thereby result to an industry in the Union producing or manufacturing goods of that class or kind, and that it would be in the public interest to protect such industry, he may impose upon goods of that class or kind imported into the Union from or originating in any particular country or territory, a special duty equal to the difference between the said export price and a price which, in his opinion is equal to

- (a) (i) the total unit cost of production, including a reasonable profit, of such or similar goods in the country or territory of origin thereof; or
- (ii) the average comparable domestic price at which such or similar goods have been sold in that country or territory during the preceding six months; or

(iii) the average free on board price at which such or similar goods have been exported to the Union from that country or territory during the preceding six months; or

(b) if it has not been found possible to obtain the information necessary to enable the Minister to arrive at a price on a basis set out in sub-paragraph (i), (ii) or (iii) of paragraph (a)

(i) a price sufficient to cover the cost of the requisite raw materials, calculated at not less than world market prices, plus normal manufacturing costs, including a reasonable profit, in any country or territory in which such or similar goods are regularly produced and sold; or

(ii) a comparable wholesale selling price quoted by an efficient producer in the Union for such or similar goods.

(2) Any special duty imposed under sub-section (1) shall be made known by notice in the Gazette and shall, from the date of publication of such notice and for the period specified therein or, where no period is so specified, until the Minister by like notice otherwise directs, be payable on the goods in question upon their importation into the Union: Provided that any special duty imposed during any session of Parliament upon a date not less than twenty-eight days before the end of that session shall lapse at the end of that session unless it has been approved of during that session by a resolution of both Houses of Parliament; any such special duty imposed at any other time shall lapse at the end of the next ensuing session of Parliament unless it has during that session been approved of by resolution of both Houses of Parliament; but the lapsing of any such special duty shall not detract from its validity before it lapsed.

(3) For the purpose of this section "export price" in relation to any goods, means the price free on board at which such goods are sold by the exporter thereof to the importer in the Union.

CHAPTER VI

Value for Duty Purposes

Definition
of domestic
value

92. (1) Subject to the provisions of this section and of section eighty-five, the domestic value of any goods imported into the Union shall be the market price at which, at the time of exportation to the Union, such or similar goods are freely offered for sale, for consumption in the territory from which such exportation takes place, in the usual wholesale quantities in the ordinary course of trade to all purchasers in the principal markets of that territory, including the cost of packages ordinarily used in those markets, plus the extra cost of packing and packages for export, carriage to the port of shipment or other place of final dispatch in that territory, and all other expenses (other than such abnormal costs as are described in sub-section (2) of section ninety-one) incidental to placing the goods on board ship or vehicle at that port or place, ready for export to the Union, but shall not include excise duties or sales taxes imposed by the government of that territory.

(2) When goods are sold in the territory from which they are exported to the Union under such conditions that no domestic value thereof can be calculated in terms of sub-section (1), or when goods exported to the Union are not sold for consumption in the territory from which they are so exported, the Commissioner may determine a value which, subject to the right of appeal to the Minister, shall be deemed to be the domestic value of those goods.

First Schedule

CUSTOMS TARIFF

ex Item 43. Sugar and sugar substitutes:

NOTE: In the case of sugar upon which bounties are granted in the country of origin, an additional duty equal to the amount of such bounty is to be levied.

II

Extracts from the Trade Agreement between the
Governments of the Federation of Rhodesia and
Nyasaland and the Union of South Africa:

Article 8

(1) A party to this Agreement may impose dumping duties on goods, grown, produced or manufactured in the territory of the other party and imported into the territory of the first-mentioned party.

(2) A party to this Agreement may impose countervailing duties to offset any subsidies granted, directly or indirectly, by the other party or by other bodies or individuals, in respect of any goods exported to the territory of the first-mentioned party from the territory of the other party.

(3) The parties undertake, on request by one of the parties, to afford the other party all possible assistance in the investigation of any allegation of dumping in respect of goods exported from the territory of one party to that of the other party.

