

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/6090

26 November 1986

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WORKING PARTY ON CARIBCAN

Report

1. The Working Party was established by the Council on 12 February 1986 with the following terms of reference: "To examine, in the light of the provisions of the General Agreement and relevant Decisions of the CONTRACTING PARTIES, the request by Canada in document L/5948 for a waiver under Article XXV:5, and to report to the Council".
2. The Working Party which was open to all contracting parties indicating their wish to serve on it, met on 13, 14, and 22 October, and 3, 24 and 26 November 1986 under the Chairmanship of Ambassador R. Nottage (New Zealand). The membership of the Working Party is set out in L/5965/Rev.2.
3. The Working Party had before it the following documentation:
 - (i) Canada's request for a waiver (L/5948)
 - (ii) Questions and replies (L/6008)
 - (iii) CARIBCAN draft legislation and rules of origin regulations (L/6008)
 - (iv) Trade data provided by Canada

General observations

4. In an introductory statement, the representative of Canada recalled that in January 1986, his Government had notified to the CONTRACTING PARTIES the intention to provide preferential tariff treatment for the Commonwealth Caribbean nations as part of a package of trade, development assistance and double taxation measures known as CARIBCAN. These measures would serve to give concrete expression to the special relationship and ties which existed between Canada and the Commonwealth Caribbean. In addition to a common language, similar legal systems, extensive trade and commercial links, people from the Caribbean Commonwealth had settled in Canada and many Canadian citizens visited frequently those countries. The commonality of interests had led Canada and most of the Commonwealth Caribbean countries to join in the same constituency to select a single representative within the IMF and the World Bank. In 1985, the Prime Minister of Jamaica, acting on behalf of the Commonwealth Caribbean States, had proposed that Canada grant unilateral duty-free treatment to those Caribbean exports not entitled to duty-free access under the General Preferential Tariff or the British Preferential Tariff. With its 1986 initiative, Canada had responded positively to this request. The specific objectives which CARIBCAN was designed to promote were as follows: (i) the enhancement of the Caribbean Commonwealth's existing trade and export earnings; (ii) improving the economic development prospects of the region; (iii) promoting new investment opportunities; and (iv) encouraging greater economic integration and cooperation within the region. The attainment of these objectives would strengthen the special relationship between Canada and the Caribbean Commonwealth region.

5. The representative of Canada also said that the CARIBCAN draft legislation circulated in the Annex to document L/6008 had entered into force as of 15 June 1986 after having received Royal Assent on 27 June 1986. Customs officials had confirmed that traders were already making use of the CARIBCAN duty-free tariff treatment.

6. The representative of Canada added that even though it was felt that CARIBCAN was in line with the objectives of the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, his Government had requested a waiver in order to ensure that the duty-free treatment under CARIBCAN would not conflict with Canada's obligations under the General Agreement.

7. The Working Party welcomed Canada's efforts and initiative aimed at providing additional economic benefits to the Commonwealth Caribbean countries. A number of members of the Working Party stated, however, that exceptions to the m.f.n. rule such as the one contained in CARIBCAN required careful consideration. A member added that in order to meet the criteria provided for in paragraph 3 of the Enabling Clause, the terms and conditions of the waiver should ensure that action in pursuance of CARIBCAN would not cause adverse effects on the trade interests of contracting parties who are not beneficiary countries. In supporting in principle Canada's CARIBCAN initiative in favour of some developing countries and having regard to the general observations made by other members, another member recalled that his Government had consistently maintained that waivers had to safeguard the basic principles of the General Agreement and be subject to strict terms and conditions.

8. Some members of the Working Party referred to the autonomous approach utilized by Canada to further develop trade relations with the Commonwealth Caribbean countries. In their view, in the context of the Canadian request considering both its regional scope and absence of time-limit, a free trade agreement in line with Article XXIV of the General Agreement might have been suitable and preferable. Another member questioned Canada's reasons for utilizing a unilateral instrument such as CARIBCAN instead of making use of the Generalized System of Preferences which allowed for special and differential treatment in favour of the least-developed countries as appropriate. In response the representative of Canada said that having regard to the origin of this initiative and the traditional links which existed between Canada and the Commonwealth Caribbean countries, his Government had preferred a unilateral and non-contractual arrangement rather than seeking to enter into negotiations aimed at the establishment of an Article XXIV-type agreement with the beneficiary countries. In establishing duty-free treatment for the majority of Commonwealth Caribbean imports into Canada, CARIBCAN provided additional benefits in favour of the Commonwealth Caribbean countries exclusively. His Government had not felt the need to adjust the General Preferential Tariff. This scheme which already provided special and differential treatment for the least-developed countries in the form of duty-free access would be maintained and would not be affected by CARIBCAN.

9. After the introductory statement by Canada, and the general observations made by some other members of the Working Party, members proceeded to a detailed examination of the trade-related provisions of CARIBCAN, on the basis of the questions and replies circulated in document

L/6008. Members of the Working Party also considered the terms and conditions of a possible waiver. The main points made by the members of the Working Party in respect of these questions are summarized hereunder.

CARIBCAN provisions

10. In response to the request made by some members, the representative of Canada said that the CARIBCAN legislation as enacted into law would be notified to the CONTRACTING PARTIES. The legislation was similar to the draft legislation annexed to document L/6008 with the addition of a technical reference to Schedule A of the Canadian Tariff. The relevant regulations would be notified to the CONTRACTING PARTIES as soon as passed into law.

11. Referring to the provisions concerning CARIBCAN beneficiary countries and rules of origin, a member said that, in the opinion of his Government CARIBCAN contained the following elements which unnecessarily restricted the scope of the duty-free preferences and increased the risk of trade diversion or deflection. Firstly, the CARIBCAN legislation did not provide for the extension of the tariff preferences at some future time to include non-Commonwealth Caribbean countries of the region. Second, the 60 per cent Commonwealth Caribbean or Canadian origin criterion based on the ex-factory price of the exported goods as packed for shipment to Canada tended to be limitative. In his view, CARIBCAN would have had a more positive impact if a more liberal country coverage and rule of origin criterion had been established.

12. In response to the preceding comments, the representative of Canada said that the Canadian Parliament had written the list of beneficiaries into the CARIBCAN law. Thus, there was no scope for the Canadian Government under the current legislation to extend the list of beneficiary countries. Nevertheless, in his view, CARIBCAN would not reduce trade opportunities for other developing countries because the preferences established in the General Preferential Tariff would be maintained. With reference to the rules of origin regulations, the representative of Canada said that the 60 per cent Commonwealth Caribbean or Canadian origin criteria and the cummulation principle specified in the draft regulations were similar to the rules currently applied in connection with Canada's General Preferential Tariff and under these rules there was a high rate of utilization by Commonwealth Caribbean countries, among others. In his view, CARIBCAN beneficiaries were already familiar with these rules. In the case of CARIBCAN, his Government considered that the proposed rules of origin would ensure that the benefits of CARIBCAN accrued to the beneficiaries and that significant processing occurred within the territories of the beneficiaries while offering sufficient scope for beneficiary countries to process third country imported parts or materials.

13. In response to questions raised by a member of the Working Party concerning the future functioning of Canada's fast track safeguard procedures for perishable products in the light of CARIBCAN and the risk for third countries of a rapid diversion or deflection of trade in case of fast track measures against perishable products from Commonwealth Caribbean countries, the representative of Canada stressed that CARIBCAN would not alter these procedures and that in the case of emergency safeguard action agricultural products of whatever origin would be treated equally. In this respect Canada would comply fully with the provisions of the General Agreement.

14. Questions were raised by some members with regard to the treatment of rum in the context of CARIBCAN and the rules applicable in Canada to similar products. A member of the Working Party referred to the replies to questions 7 and 36 in document L/6008 and said that they appeared contradictory as, in his view, at least with respect to rum, CARIBCAN appeared to extend trade benefits that went beyond the granting of duty-free treatment to the beneficiary countries. With reference to these questions the representative of Canada said that there were certain special conditions in trade in spirits in Canada. In response to a request made by the beneficiary countries, Canada had agreed to facilitate the marketing of rum from CARIBCAN eligible countries. Trade in rum was not large. Recalling that Canada had requested a waiver from the provisions of paragraph 1 of Article I of the General Agreement, the representative of Canada said that, in his view, Canada's trade promotion activities in favour of CARIBCAN rum were not tariff-related measures and need not be examined in the Working Party. Some members of the Working Party invited Canada to notify to GATT the special agreement with respect to rum from CARIBCAN eligible countries mentioned in the reply to question 36 in document L/6008, for the information of contracting parties. One member felt that this would need further reflection if the measures taken were not covered by the provisions of the General Agreement and were of a confidential nature.

15. Referring to sugar, a product of export interest for his country in the Canadian market, a member of the Working Party requested assurances that CARIBCAN would not be used as a basis for establishing rights of access to its market on the basis of discriminatory non-tariff measures. In his view, such assurances should be reflected in the operative provisions of the waiver. In response the representative of Canada said that Canada did not operate a system of quotas for sugar. Canada would agree, however, to the inclusion in the waiver of a general provision aimed at safeguarding the trade interests of contracting parties who were not CARIBCAN beneficiaries.

Terms and conditions of a possible waiver

16. In commenting on the terms and conditions of a possible waiver, several members noted that the basic principles of the General Agreement had to be preserved and as stated in the Punta del Este Ministerial Declaration, the role of GATT had to be strengthened. These members referred therefore to the need to establish specific provisions in the waiver with respect to the following matters: limited duration of the waiver; application of the waiver to tariff matters exclusively; the waiver should not permit the establishment of barriers or the creation of undue difficulties for the trade of other contracting parties; provision for consultations with interested contracting parties with respect to any difficulty or matter that may arise in relation to the implementation of CARIBCAN; provision for consultation with the CONTRACTING PARTIES if necessary; regular reports on the implementation of CARIBCAN; periodic reviews of the waiver, etc. Reference was also made to the need for Canada to notify to the CONTRACTING PARTIES measures taken under the CARIBCAN legislation and relevant regulations and to ensure that CARIBCAN provisions would not be an impediment for preserving and enhancing the benefits which non-beneficiary contracting parties derive from the GSP.

17. The representative of Canada noted that a waiver had been requested from the provisions of paragraph 1 of Article I of the General Agreement in order to implement the duty-free treatment provisions of CARIBCAN. The waiver had been requested for an indeterminate period of time because the CARIBCAN legislation as enacted by Canada's Parliament had no time limit. The Canadian authorities felt that the establishment of duty-free treatment on a permanent basis was more likely to give stability to the proposal and to facilitate action aimed at furthering trade and investment in the region. Canada could, nevertheless, agree to the establishment in the waiver of a time-limit of such duration as not to cause undue uncertainty to the beneficiaries. With reference to the time-limit of the waiver, several members of the Working Party recalled that in the past in a number of waivers a ten year time-limit had been established. In their view, such a time-limit would also be appropriate in this case. One member drew attention to the indeterminate period for the waiver relating to the United States/Canada Automotive Agreement and suggested that this might be used as a precedent. Some members who are also beneficiaries of CARIBCAN proposed that in keeping with the time-limit set out in a similar waiver, a twelve year period be established in this case. This time-limit was accepted by the Working Party.

18. The representative of Canada stated that his Government was ready to provide to the CONTRACTING PARTIES regular reports on the implementation of CARIBCAN on the understanding that for practical considerations the first annual report would be submitted in 1988. Canada would also provide all interested contracting parties with the opportunity for prompt consultations with respect to any difficulty or matter that may arise under the GATT provisions in relation to the implementation of CARIBCAN, and in accordance with normal practice would also be ready to consult with the CONTRACTING PARTIES. The representative of Canada reiterated that the waiver would not impede m.f.n. tariff reductions nor the operation of the General Preferential Tariff. He confirmed that his Government had the intention of administering CARIBCAN in a manner which would not damage the trade interests of non-CARIBCAN suppliers to the Canadian market.

19. A member of the Working Party proposed three elements for inclusion in the waiver which he advised had been drawn up in consultation with the delegation of Canada. He indicated that these provisions were considered necessary to protect the trade interests of his country but would not in any way, as was clear by the Government of Canada's agreement to the terms, impair the tariff benefits of the CARIBCAN legislation to the Commonwealth Caribbean countries. These elements were: (i) the preambular section of the waiver should record the assurances that the Government of Canada did not envisage the introduction of any discriminatory non-tariff measure, in pursuance of CARIBCAN, which would adversely affect the trade of contracting parties who are not beneficiary countries; (ii) operative paragraph 1 of the waiver should state that the provisions of paragraph 1 of Article I of the General Agreement were being waived only to the extent necessary to permit the Government of Canada to grant duty-free treatment to eligible imports of Commonwealth Caribbean countries; (iii) operative paragraph 4 should record the agreement by the Government of Canada that the waiver was granted solely to provide duty-free treatment for imports from beneficiary Commonwealth Caribbean countries and provided no basis for establishing rights of access to its market on the basis of discriminatory non-tariff measures. The member added that his Government welcomed the Canadian initiative in seeking to assist developing countries with whom it

has had a long standing relationship. However the special nature of Article XXV paragraph 5 waivers required that their terms be formulated with great care. In his country's view, it was necessary that the terms of a waiver should be unambiguous as to what obligations under the General Agreement were being waived and those obligations which were not being waived. In his view, the practice of recording the terms of understandings and assurances in waiver decisions was acknowledged in the opinion of the GATT Secretariat reproduced in paragraph 22 hereunder which also indicated that the proposed additions were in conformity with this practice.

20. With reference to the draft waiver, another member suggested that in the first preambular paragraph CARIBCAN be referred to by the name of the actual enabling legislation and/or regulations or by the name of the Act itself. Commenting on the proposed text for inclusion in preambular paragraph 6 of the draft waiver, this member noted that the CARIBCAN legislation was clearly limited to tariffs and provided no basis for action by Canada of a non-tariff nature; therefore, the reference to non-tariff measures, discriminatory or otherwise, was immaterial to the request for a waiver by Canada in respect of tariff treatment solely. A reference to discriminatory non-tariff measures might imply that Canada and possibly by extension beneficiary countries might be seeking the introduction of measures other than those relating to tariffs which were not consistent with the General Agreement. Consequently, he proposed the deletion of the word "discriminatory" from the proposed text of preambular paragraph 6. With reference to operative paragraph 1 of the draft waiver and the proposal to insert the word "only" after the words "15 June 1998", this member felt that the inclusion of the word "only" was a departure from previous waivers which did not add anything substantive to the understanding of the paragraph. This member emphasized that the request for the waiver was to provide differential and more favourable treatment for a number of beneficiary countries in respect of a range of products and that under CARIBCAN there was no provision for non-tariff measures and none were being sought. He recalled, moreover, that paragraph 26 below stated, inter alia, that it was understood that the waiver would in no way be considered as affecting the legal rights of contracting parties under the General Agreement. In his view, the statement in the proposed text of operative paragraph 4 that the waiver provided no basis for establishing rights of access to the Canadian market on the basis of discriminatory non-tariff measures was inappropriate and might be misleading. This member proposed, therefore, the following wording for operative paragraph 4 of the draft waiver: "The Government of Canada agrees that the waiver is granted solely to provide duty-free treatment for imports from beneficiary Commonwealth Caribbean countries and provides no basis for introducing any other measures which are not consistent with the General Agreement".

21. The representative of Canada recalled that Canada had requested the waiver in order to comply with its obligations under the General Agreement. Canada was ready to accept the inclusion of the proposed texts in the waiver because they simply reasserted that the waiver would apply to the granting of duty free treatment by Canada and not to other matters. In recognizing this fact, the waiver would not in any way in respect of measures outside the waiver be dictating a course of action to the Canadian Parliament.

22. In response to a request made by the Working Party, the representative of the secretariat said that in his opinion the texts proposed for inclusion in the preambular and operative paragraphs of the draft waiver served to bring out the intent and purpose of the provisions of operative paragraph 1 of the draft waiver and thus to exclude any possible uncertainty as to the scope of the waiver. It was not unusual for the CONTRACTING PARTIES to establish in the relevant sections of decisions certain specific considerations aimed at justifying the need for joint action and recording the understandings reached in the process of drafting a decision including, in particular, views expressed or assurances given with regard to matters of special interest to contracting parties.

Conclusions

23. There was a large measure of support and understanding in the Working Party with respect to the objectives and purposes of CARIBCAN particularly in regard to the objective of promoting economic development and raising the standard of living of the people in the Commonwealth Caribbean countries through increased access for their exports. These objectives, it was noted, were consistent with the objectives of the General Agreement.

24. The Working Party also noted that Canada intended to continue to foster the growth of trade and economic relations with third countries including, in particular, other developing countries and to ensure that the implementation of CARIBCAN would not be detrimental to the interests of other contracting parties. In this respect some members, however, expressed concern at the possibility that trade diversion might result from the implementation of CARIBCAN. In such event it was expected that Canada would take appropriate remedial action. Special reference was made to the treatment of rum and sugar in the context of CARIBCAN and to the need to ensure that non-beneficiary suppliers received fair treatment in the Canadian market.

25. Some members indicated that they continued to be in favour of the strengthening of the Generalized System of Preferences as the best approach for promoting the trade of developing countries generally. Some other members of the Working Party concluded that the waiver procedure under paragraph 5 of Article XXV was appropriate with respect to CARIBCAN.

26. In the light of the request of Canada and bearing in mind the explanations given by Canada and, in particular, the assurances that CARIBCAN would be administered in a manner which does not damage the trade of non-beneficiary suppliers, the Working Party prepared the draft waiver annexed to this report, for submission to the CONTRACTING PARTIES. It was understood that the waiver would in no way be considered as affecting the legal rights of contracting parties under the General Agreement. A number of members stated that the proposed waiver should not serve as a precedent in any respect.

ANNEX

CARIBCAN

Draft Decision

Taking note of the request of the Government of Canada for a waiver from its obligations under paragraph 1 of Article I of the General Agreement, with respect to the establishment of duty-free treatment to imports of eligible products into Canada from beneficiary Commonwealth Caribbean countries, from 15 June 1986, as provided under the "Customs Tariff, R.S., c.C-41", in accordance with the CARIBCAN initiative (hereinafter referred to as "CARIBCAN");

Bearing in mind the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Considering that the objective of granting preferential tariff treatment under CARIBCAN is to enhance the Commonwealth Caribbean's existing trade and export earnings and thereby promote economic development as well as to promote new investment opportunities and encourage enhanced economic integration and cooperation within the region;

Considering also that the duty-free treatment provided under CARIBCAN is designed to promote the expansion of trade and economic development of beneficiaries in a manner consistent with the objectives of the General Agreement and with the trade, financial and development needs of the beneficiaries and not to raise barriers or to create difficulties for the trade of other contracting parties;

Considering, moreover, that the duty-free treatment provided under CARIBCAN should not prejudice the interests of other contracting parties not benefitting from such treatment and that it is expected that the extension of such duty-free treatment will not cause a significant diversion of Canada's imports of products eligible for duty-free treatment under CARIBCAN originating in contracting parties who are not beneficiaries;

Having regard to the assurances that the Government of Canada does not envisage the introduction of any discriminatory non-tariff measure, in pursuance of CARIBCAN, which would adversely affect the trade of contracting parties who are not beneficiary countries;

Considering that the duty-free treatment provided under CARIBCAN by the Government of Canada shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

Considering, furthermore, that the duty-free treatment provided under CARIBCAN by the Government of Canada shall not adversely affect the maintenance, operation and improvement of the General Preferential Tariff (GPT) of Canada;

Noting, furthermore, the assurances given by the Government of Canada that it will, upon request, promptly enter into consultations with any interested contracting party on matters falling under the provisions of the General Agreement and related to the application of this Decision;

Having regard to the Guiding Principles to be followed in considering applications for waivers adopted on 1 November 1956;

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV of the General Agreement,

Decide that:

1. Subject to the terms and conditions set out hereunder, the provisions of paragraph 1 of Article I of the General Agreement shall be waived, until 15 June 1998, only to the extent necessary to permit the Government of Canada to provide duty-free treatment to eligible imports of Commonwealth Caribbean countries benefitting from the provisions of CARIBCAN, without being required to extend the same duty-free treatment to like products of any other contracting party.
2. Such duty-free treatment shall be designed not to raise barriers or create undue difficulties for the trade of other contracting parties.
3. The Government of Canada shall promptly notify the CONTRACTING PARTIES of any changes in the legislation covered by this waiver and any trade-related measure taken under CARIBCAN, in particular any modifications in the status of eligible imports and the duty-free treatment thereof, and shall furnish them with all the information they may deem appropriate relating to such action. Pursuant to the provisions of paragraphs 5 and 6, the Canadian Government shall consult with regard to any modifications in the status of eligible products.
4. The Government of Canada agrees that the waiver is granted solely to provide duty-free treatment for imports from beneficiary Commonwealth Caribbean countries and provides no basis for establishing rights of access to its market on the basis of discriminatory non-tariff measures.
5. The Government of Canada will, upon request, promptly enter into consultations with any interested contracting party with respect to any difficulty or matter that may arise as a result of the implementation of the provisions of CARIBCAN covered by this waiver; where a contracting party considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of such implementation, such consultations shall examine the possibility of action for a satisfactory adjustment of the matter.
6. Any contracting party which considers that the provisions of CARIBCAN are being applied inconsistently with this waiver or that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the implementation of CARIBCAN and that consultations have proved unsatisfactory, may bring the matter before the CONTRACTING PARTIES, which will examine it promptly and will formulate any recommendations that they judge appropriate.
7. The Government of Canada will submit to the CONTRACTING PARTIES an annual report on the implementation of the provisions of CARIBCAN covered by this waiver. The CONTRACTING PARTIES will, two years from

the date when this waiver comes into force and, biennially thereafter, review its operation and consider if in the circumstances then prevailing any modifications to or termination of the provisions of the present waiver are required.

8. This waiver shall not preclude the right of affected contracting parties to have recourse to Articles XXII and XXIII of the General Agreement.