

GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED

W.8/10
5 October 1953

Special Distribution

Working Party 2 on Article I

DIFFICULTIES ARISING OUT OF THE APPLICATION OF ARTICLE I

Proposal by the United Kingdom Delegation

In the light of points made in plenary and Working Party discussions and in discussions with other delegations, the United Kingdom delegation have prepared, for consideration by the Working Party:

Annex I - a draft of the terms in which the CONTRACTING PARTIES might decide to grant a waiver according to the facilities requested by the United Kingdom in L/115;

Annex II - a draft of the terms in which the CONTRACTING PARTIES might, on the recommendation of the Working Party, simultaneously agree to establish the procedures to be followed for the application of the waiver in particular cases.

ANNEX I

DRAFT WAIVER

The CONTRACTING PARTIES

HAVING RECEIVED an application by the United Kingdom for facilities, consistent with the general purposes and objectives of the GATT, to relieve them, when having occasion to impose a new most-favoured-nation rate of protective duty on a product, from the requirement to apply an equivalent preferential rate of duty on imports which have traditionally been free of duty from the territories listed in Annex A and thus enable them to enjoy the same freedom as other countries enjoy to modify rates of duty on products not now described in the Schedules to that Agreement.

CONSIDERING the explanations given by the United Kingdom regarding the circumstances inhibiting them from resolving this problem by a general modification of existing tariff legislation enabling them to impose duties on goods traditionally free of duty from the said territories;

NOTING the assurance of the United Kingdom that their intention in seeking these facilities is not to enable them to increase the preferential advantage enjoyed by goods from the aforesaid territories over foreign goods in the United Kingdom market;

NOTING FURTHER the statement of the United Kingdom that she remains desirous of contributing to the objectives of the Agreement through reciprocal and mutually advantageous arrangements directed to the reduction of trade barriers including tariffs (and that the facilities to be accorded by the waiver would not affect the readiness of the United Kingdom to continue to participate in studies undertaken by the CONTRACTING PARTIES of ways and means of securing a multilateral reduction of tariffs);

CONSIDERING that an increase in a preferential margin incidental to an increase in a most-favoured-nation rate of duty on a given product which the United Kingdom, like other countries, is otherwise free to make might nevertheless have the effect of increasing imports of that product from within the preferential area at the expense of imports from other contracting parties so as to constitute a substantial diversion of trade;

NOTING the assurances given by the United Kingdom with regard to the consultations and procedures to be followed regarding action which might have the foregoing effect;

The CONTRACTING PARTIES, pursuant to paragraph 5(a) of Article XXV and in consideration of the assurances recorded above,

DECIDE that the provisions of paragraph 4(b) of Article I shall not be so applied that the United Kingdom, in imposing or increasing, consistently with

its present obligations in respect of tariff concessions, a most-favoured-nation rate of protective duty on imports of given products, shall be required to impose a duty on like products imported from any country eligible under paragraph 2 (a) of Article I for preferential treatment;

PROVIDED that imports of such products from that country have at no time since 1 January 1939 been chargeable with duty;

DECLARE that, in deciding as aforesaid, it is not their intention to impede the attainment of the objectives of Article I.

ANNEX II

DRAFT PROCEDURES

(a) The United Kingdom, before taking action under the waiver, will simultaneously, in strict confidence, notify (i) contracting parties which appear to the United Kingdom likely to have a substantial interest in the trade in the item in question, and (ii) the GATT secretariat, of their desire to act under the waiver in respect of that item. The United Kingdom will give figures for past trade in the product and, in the case of seasonal duties, will state the period in which it has been decided that the increased duty should operate. The GATT secretariat will immediately pass this information to all contracting parties, so that any contracting party not directly approached by the United Kingdom which might claim a substantial interest in the trade in the item may know what is proposed.

(b) The United Kingdom will enter into consultations with any contracting party (i) which has a substantial interest in the trade in an item and (ii) which, within x days of notification under (a), requests consultation on the ground that the increase in the margin of preference incidental to an increase in the most-favoured-nation rate of duty would involve likelihood of substantial diversion of trade from it to suppliers within the preferential area as defined in Annex A. Failing any such request for consultation, the United Kingdom shall automatically be free to put the increased duty into effect after the expiry of the x days.

(c) It shall be open to the United Kingdom to seek a speedy determination from the CONTRACTING PARTIES, through appropriate intersessional machinery if the case arises while the CONTRACTING PARTIES are not in session, if a contracting party requests consultations on grounds which do not appear to the United Kingdom to satisfy the terms of (b) (ii) above.

(d) Subject to (c) above, the United Kingdom will inform, in strict confidence, any contracting party requesting consultation under the foregoing procedures of the proposed rate of duty.

(e) The United Kingdom shall automatically be free to put the proposed increase of duty into effect if in consultation with any contracting party or parties having a substantial interest it is agreed that there is no likelihood of substantial diversion.

(f) Failing such agreement, it shall be open to the United Kingdom to seek arbitration by the CONTRACTING PARTIES, through appropriate intersessional machinery if the matter should arise while the CONTRACTING PARTIES are not in session, as to the likelihood of substantial diversion. If the CONTRACTING PARTIES or the appropriate intersessional body determine that there is no likelihood of substantial diversion the United Kingdom shall automatically be free to put the proposed duty into effect.

(g) If the CONTRACTING PARTIES or the appropriate intersessional body determine that there is likelihood of substantial diversion the waiver shall not apply. In this event it would be open to the United Kingdom to seek, after due consultation with foreign countries having a substantial interest, a specific waiver in respect of the item in question, provided, however, that it would be open to the United Kingdom to increase the duty if in critical circumstances, where imports were causing or threatening serious injury to domestic producers, the increase was necessary to prevent or remedy such injury; in which event it would be open to contracting parties whose interests were affected by any substantial diversion from them to suppliers within the preferential area which actually took place to suspend such substantially equivalent obligations or concessions the suspension of which the CONTRACTING PARTIES do not disapprove.

(h) It is recognised to be essential that there should be no disclosure of a proposed modification of duty before such modification is publicly announced by the United Kingdom. Accordingly, the CONTRACTING PARTIES agree to make provision for the observance of the utmost secrecy at every stage of the procedures set forth above.

