

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.8/10/Rev.1
13 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 (Revised)

As the United Kingdom delegation explained at the Third Meeting of the Working Party, the draft waiver and procedures circulated under cover of W.8/10 were subject to any modification of drafting that might seem necessary from a technical and legal point of view.

The United Kingdom delegation have now prepared the following revision of the draft waiver and procedures incorporating certain modifications of drafting that seemed necessary from the technical and legal standpoint.

DRAFT WAIVER

TAKING NOTE that the Government of the United Kingdom of Great Britain and Northern Ireland has requested the CONTRACTING PARTIES for facilities, consistent with the objectives of the General Agreement, to relieve it of the requirement in paragraph 4(b) of Article I of the Agreement not to increase margins of preference when it imposes or increases a most-favoured-nation rate of protective duty chargeable in respect of a class or description of products which has traditionally been admissible free of protective duty when imported into the United Kingdom from the territories listed in Annex A to the General Agreement, and thus enable the Government of the United Kingdom to enjoy the same freedom as other contracting parties to modify rates of protective duty on products not now described in the Schedules annexed to the Agreement,

CONSIDERING the explanations given by the Government of the United Kingdom regarding the circumstances which preclude it from resolving this problem by a general modification of existing tariff legislation enabling them to impose duties on products traditionally admissible free of protective duty when imported into the United Kingdom from the territories listed in Annex A,

TAKING NOTE of the assurance of the Government of the United Kingdom that its intention in seeking from the CONTRACTING PARTIES the aforesaid facilities is not to enable it to increase the advantage enjoyed in the United Kingdom market by products imported from the territories listed in Annex A over products imported from other sources,

TAKING NOTE of the declaration of the Government of the United Kingdom that it remains desirous of contributing to the objectives of the General Agreement through reciprocal and mutually advantageous appropriate arrangements directed to the reduction of trade barriers including tariffs and that the grant of the facilities sought by it will not affect its continued readiness to participate in studies undertaken by the CONTRACTING PARTIES of ways and means of securing a multilateral reduction of tariffs,

TAKING NOTE of the assurances given by the Government of the United Kingdom with regard to the consultations and procedures to be followed where an increase in a margin of preference, incidental to the imposition or the increase of a most-favoured-nation rate of protective duty on a product not now described in Part I of Schedule XIX annexed to the General Agreement, might have the effect of increasing imports of that product from the territories listed in Annex A at the expense of imports of that product from other sources so as to constitute a substantial diversion of trade,

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 Government of the United Kingdom, in imposing or increasing a most-favoured-nation rate of protective duty chargeable in respect of a given class or description of products not now included in Part I of Schedule XIX to the General Agreement, shall be required to impose a duty on products of that class or description imported from any of the territories listed in Annex A to the General Agreement; provided that protective duty has at no time since 1 January 1939 been chargeable in respect of that class or description of products when imported into the United Kingdom from the aforesaid territories;

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

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 which both (i) has a substantial interest in the trade in an item and (ii) 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 in that item from the aforesaid contracting party 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 x days from the date of notification under (a).

(c) Consultations under (b) shall, if the United Kingdom or one or more of the countries with which it is consulting so requests, take place at meetings organised and serviced by the GATT secretariat.

(d) It shall be open to the United Kingdom to seek a speedy determination on the matter from the CONTRACTING PARTIES, through appropriate intersessional machinery if the case arises which 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.

(e) If the United Kingdom enters into consultation under paragraph (b) above with any contracting party, or if the CONTRACTING PARTIES determine under paragraph (c) above that the grounds on which consultation is requested by any contracting party satisfy the terms of paragraph (b) (ii) above, the United Kingdom will inform, in strict confidence, such contracting party of the proposed rate of duty.

(f) 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.

(g) 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.

(h) 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.

(1) 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.

