

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.8/29

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Special Distribution

Working Party 2 on Article I

PARTIAL DRAFT REPORT

1. Before addressing itself to the detailed proposals of the United Kingdom, the Working Party discussed the form of the United Kingdom request as set out in L/115. Some members felt that it would be much more acceptable to them if it took the form of a request for a specific waiver relating to named products with the possibility for the United Kingdom to request further specific waivers as the need might arise. A general waiver left other contracting parties completely uncertain as to the scope of the tariff increases which might follow from the granting of it, and they felt it difficult to give facilities which might lead to results which they considered contrary to the objectives of the General Agreement. The United Kingdom representative said that for reasons explained by the President of the Board of Trade in Plenary Session, it would not be acceptable to the United Kingdom to proceed by way of a series of specific waivers. The need of the United Kingdom was not merely to be free to exercise their right to make certain changes in duties which had for some time been the subject of applications for increased protection, but as explained in L/115, to be in a position to exercise - subject to the procedures and safeguards proposed - the same freedom as all countries enjoyed, to make changes in unbound rates of duty. A number of the members of the Working Party felt that they must reserve their position on this basic issue, but were prepared nevertheless to participate in a discussion of the more detailed proposals submitted by the United Kingdom in W.8/10 and W.8/10/Rev.1. The principal points arising in the course of the discussion are set out in the following paragraphs.

2. The majority of the Working Party felt that it would not be accurate to suggest that the United Kingdom did not, under the General Agreement, enjoy the same freedom as other contracting parties to modify unbound rates of duty. The situation from which the United Kingdom was seeking relief arose from the traditional policy of the United Kingdom to accord free entry of most goods imported from the Commonwealth, and the difficulty of seeking a general modification of existing tariff legislation which the United Kingdom considered would be necessary if it were to modify such free entry. It was therefore agreed to delete from paragraph I of the draft waiver the following phrase: "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". The United Kingdom agreed to this omission on the understanding that delegations representing contracting parties at the Eighth Session would inform their governments that the request for

the waiver had been put forward for the purpose of enabling the Government of the United Kingdom to exercise that same freedom which had been referred to in the phrase deleted.

3. Some members of the Working Party urged the insertion in the preamble to the waiver of a reference to the statement in the United Kingdom memorandum L/115, that the United Kingdom had no intention of embarking on a comprehensive or widespread upward revision of its protective tariffs, so that this assurance would be a condition of the granting of the waiver. They felt that such an assurance would be in line with the objectives of the General Agreement and thus make the waiver more acceptable. The representative of the United Kingdom maintained however that it would be improper for the CONTRACTING PARTIES to seek to make a request concerned with the preferential aspect of certain tariff changes which the United Kingdom wished to make conditional upon the assumption of obligations in respect to its unbound rates of duty which applied to no other contracting party. The United Kingdom representative pointed out that the levels of duty were relevant only to the likelihood of substantial diversion. He added that there was a distinction between incorporating in the preamble words that might seem to imply any such undertaking and statements made in the United Kingdom memorandum or by the President of the Board of Trade in explanation of the intended tariff policies of the United Kingdom. He pointed out that it would be open to any contracting party, when explaining to its own public why it had felt able to support the United Kingdom request, to refer to the statements made by the President of the Board of Trade to the Plenary Session of the CONTRACTING PARTIES.

4. Some members of the Working Party thought that an addition should be made to the preamble as follows:-

"Noting further the declaration by the United Kingdom that the granting of these facilities will not at any time be considered by them as an impairment of the principles contained in Article I:4 of the Agreement and that it is not their intention to impede the attainment of the objectives of Article I."

They suggested this addition in order to establish quite clearly that it was not the intention of the United Kingdom to use the granting of the waiver as a basis for seeking at a later date a departure from the substance of Article I. The representative of the United Kingdom replied that the intentions of the United Kingdom were made clear in the third paragraph of the preamble and that it seemed to the United Kingdom that it was for the CONTRACTING PARTIES, if they so wished, to indicate that the granting of the waiver should not be regarded as impairing the attainment of the objectives of Article I, nor serve as a precedent for any future request by any contracting party with this object. The Working Party felt that the final paragraph of the United Kingdom draft waiver should be expanded to cover this point so that the CONTRACTING PARTIES, including the United Kingdom, would make a declaration in the following terms:-

"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 and that in no circumstances shall the present decision be construed as impairing the principles of that Article."

5. It was suggested that the possibility of increased imports of like or directly competitive products from a preferential area should be covered in paragraph 5, and in the relevant paragraphs in the procedure. The United Kingdom representative maintained, however, that this question was not relevant. If, as the result of action taken under the waiver to increase the rate of duty on a particular product, there was an increase in imports of other products, this would happen whether or not a corresponding duty was imposed on any imports from the preferential area. It would then in no way be due to the incidental increase in the margin of preference, but would be due entirely to the increase in the rate of duty. In any case they felt that the situation was one that was most unlikely to arise in practice. Those who sought the addition of words to deal with the question of substitution, felt that the contingency was not so remote as the United Kingdom stated. Moreover, if, in fact there was a diversion of trade in favour of like or substitutable products from a preferential area, this would upset the balance of advantage which they had expected to enjoy when they accepted the compromise on preferences which is embodied in Article I of the Agreement.

6. There was some discussion in the Working Party as to whether paragraph 5a of Article XXV was the appropriate provision under which this Decision should be taken. Some members of the Working Party expressed concern at the tendency which had developed to give a very broad application to this provision. In this case they felt considerable doubt about the existence of "exceptional circumstances" within the meaning of that provision. The Working Party considered that if the CONTRACTING PARTIES felt that the necessary flexibility ought to be given to the application of Article I in order to meet the difficulties described by the United Kingdom, the most appropriate provision to which to relate such a decision would be paragraph 5(a) of Article XXV.

7. It was the general view of the Working Party that the United Kingdom should be asked to furnish an Annual Report which should consist of a list of tariff changes made under the decision with references to the consultations etc., provided for in the procedures, but should not necessarily include statistical data relating to the particular items of trade concerned. It was suggested that in addition to requiring an Annual Report of action taken under the waiver, it would be desirable in the decision to make provision for the decision itself and the procedures to be reviewed by the CONTRACTING PARTIES in the light of the report submitted. The Working Party felt, however, that such a requirement would be unnecessary as it was clear that the CONTRACTING PARTIES could - if the report and experience indicated that the procedures operated unsatisfactorily - consider their revision. Similarly, the decision itself, like any other decision of the CONTRACTING PARTIES, could be reviewed by them at any time.

8. The Working Party felt that it would also be unnecessary to state in the decision that it would be reviewed in connection with the general review of the General Agreement which it was intended to carry out in 1954. At that time, any provisions of the Agreement could come under consideration, and such consideration of any particular provision would necessarily extend to any decision affecting its interpretation or application.

Draft Procedures

9. There was some discussion in the Working Party as to whether in order to qualify for consultations under paragraph (b), the contracting party concerned would first have to establish the fact of a substantial interest. The Working Party felt that it would be sufficient that the contracting party asserted a substantial interest since if there was any dispute as to the right of a contracting party to claim consultation, both the question of the interest of the contracting party and the likelihood of diversion affecting the trade of that contracting party would be dealt with in accordance with the arbitration procedures referred to in paragraph (d).

10. Some members of the Working Party felt that it was unsatisfactory to qualify the word diversion in paragraph (b) by the word "substantial", the meaning of which could not be satisfactorily defined. Moreover, in some cases, whilst the contracting parties concerned might be able to demonstrate that diversion was likely to occur, it might be extremely difficult to establish what the extent of the diversion would be. The representative of the United Kingdom pointed out that if the United Kingdom were to be able to exercise the freedom that was the object of the waiver, it must be protected from claims based upon minimal or marginal diversion. The Working Party recognised that the word "substantial" was vague and difficult of definition, but pointed out that it is used in various Articles of the Agreement in order to define contracting parties which have a legitimate interest in, and therefore a right to be consulted about, the modification of tariff rates, e.g. in Article XIX and in Article XXVIII.

11. There was discussion as to the period during which contracting parties should have an opportunity to request consultation. The Working Party accepted the view of the United Kingdom that a period of thirty days was reasonable, provided that, if there was a dispute, there should be a further reasonable period of time thereafter before the matter was dealt with by the arbitration procedures described in paragraph (d). As regards this further period of time, they did not think it would be necessary to specify any particular period since the normal procedure would be that the party seeking arbitration would approach the Executive Secretary who would then consult the other parties concerned and fix a date which was mutually convenient and acceptable. In this connection the representative of the United Kingdom pointed out that in most cases where it would be clear that no problem of diversion could arise, it should be possible to deal with the matter in a very much shorter period than the thirty days proposed.

