

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/67

6 December 1954

Special Distribution

CONTRACTING PARTIES  
Ninth Session

Original: English

Review Working Party III on Barriers to  
Trade other than Restrictions or Tariffs

## DOMESTIC SUBSIDIES

### Note by Australian Delegation for discussion

One of the most important objectives of the Havana Charter and the General Agreement is "to promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade". Article 17 of the Charter was drawn up to provide the procedural arrangements necessary to reach the objective of reduction of tariffs and other barriers to trade. It provided that individual contracting parties should bring about this reduction of tariffs by exchanging reductions (or bindings) in their tariffs.

These reciprocal reductions once made (or bindings contracted) amount to a fairly tight contract which the GATT seeks to guard by requiring a commitment by contracting parties that they will not void these contracts by the use of quantitative restrictions and other devices except under exceptional and controlled conditions.

Countries exporting mainly primary goods were already in 1947 in the position of having free entry into many of their main export markets (or a low rate of duty only) for many of their products. Therefore industrialized countries - which constituted their main markets - had little to give in negotiations except to bind the already free-entry or low-duty rate. Article 17 laid it down that such a binding should be regarded as equivalent to a substantial reduction of the high duties which these industrialized countries faced in many of their markets.

In view of this, Australia and other exporters of primary commodities negotiated reductions in their own tariffs in return for free entry or low-duty bindings in the tariffs of others.

However, as explained in Working Party III (document W.9/28), it has transpired that many markets for agricultural and other primary commodities which Australia and others thought they could look forward to enjoying under conditions of free entry or with only low duties to combat are diminishing rapidly. Some are already seriously impaired because of a change in the competitive position of imports with domestic supplies.

The reason for this change is that many industrially advanced countries have adopted, or applied more extensively, domestic subsidies (and related measures) as an alternative device to tariff protection. Indeed, protection of agriculture by means of subsidies seems to have become a permanent means of protection and in many cases it is claimed to be more suitable or effective than tariffs.

Had countries resorting to subsidies (and/or complementary measures) used tariffs to protect their primary industries, they would have been required, by their commitment under GATT, to go through the procedure of modification of their bindings by negotiation and compensation. That they can give protection to their industries by avoiding tariff changes and by using subsidies imposed unilaterally and involving no compensation is a serious weakness in the present GATT. It is one which should be remedied if the GATT is to be an equitable instrument capable of reaching its objective of reductions in barriers to trade.

Domestic subsidies operate in a variety of ways but virtually all impair any tariff concession given in regard to a particular product.

It may be argued that contracting parties affected by the use of domestic subsidies in their markets have recourse to Article XXIII where nullification or impairment has taken place. While it seems certain that both those to whom bindings were made and others who could reasonably have expected to share indirectly in the benefits of those bindings have a claim under Article XXIII, it is not so certain that their claim could easily be substantiated before the CONTRACTING PARTIES. In the long run, such a claim would have to rest on what is considered by the CONTRACTING PARTIES to have been the reasonable expectation of benefits of individual contracting parties at the time when particular concessions were given. Certainly, a complainant contracting party which had to rely on Article XXIII could find no explicit obligation therein in regard to the use of domestic subsidies on the part of the contracting party with whom the concession was negotiated.

Whether or not Article XXIII could provide effective recourse to a contracting party which claimed that a domestic subsidy had impaired or nullified the concession it had obtained or the benefits which it expected would have accrued to it directly or indirectly under GATT, it must be admitted that recourse to this Article would be an involved and tortuous procedure. This Article was designed to provide for the exceptional case of impairment not suitably or explicitly provided for in other Articles, and certainly could not be viewed as part of a regular procedure to be used as a kind of parallel to Article XXVIII.

For this reason the Australian Delegation suggested in W.9/28 that domestic subsidies for the purposes of negotiation of reduction in barriers to trade should be treated on an equal footing with tariffs and other protective devices.

Either domestic subsidies (and related measures) must be banned - a course which is not suggested - or there must be developed in GATT machinery comparable to that designed to protect tariff concessions from being voided.

As long as a domestic subsidy can be imposed unilaterally and can make ineffective a tariff concession gained by negotiation, there is no inducement for exporters of primary goods which already have low or free rate of duties against most of their exports to enter into negotiations. They stand to get concessions which can be revoked at will and for which any compensation can only be sought by doubtful resort to Article XXIII.

Accordingly, the Australian delegation suggests for examination that a provision on the following lines be incorporated in GATT.

DOMESTIC SUBSIDIES

1. Any contracting party which, in order to promote the establishment, stability or development of a primary industry, grants assistance in the form of subsidies or other protective devices or introduces measures necessary to the effective operation of any system of price-support which operate directly or indirectly to decrease the imports into its territory of any primary commodity in respect of which it has entered into obligations through negotiations with any other contracting party -

- (a) shall promptly enter into direct negotiations with any contracting party which considers serious prejudice to its interests is caused or threatened by such subsidization or other protective measures;
- (b) shall, in the event of a dispute as to whether or not serious prejudice to the interests of a contracting party is caused or threatened by the subsidization, apply to the CONTRACTING PARTIES to determine which are the contracting parties, if any, whose interests are so prejudiced.

2. The contracting parties so concerned shall be free to proceed in accordance with the terms of any agreement resulting from such negotiations, provided that the CONTRACTING PARTIES are informed thereof.

3. If agreement is not reached with the contracting parties primarily concerned within a reasonable period, such contracting parties may suspend the application to the trade of the contracting party granting assistance by means of subsidies or other protective measures such substantially equivalent obligations or concessions under this Agreement as the CONTRACTING PARTIES do not disapprove.

4. In so far as a product the subject of consideration under this Article may also be the subject at the same time of consideration under other Articles dealing with liquidation of surplus stocks and/or export subsidies, due regard will be had by the contracting parties concerned in any action contemplated under any of these Articles to its relationship to the action contemplated or desirable under the other Articles.