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Review Working Party II on
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SUB-GROUP B ON MOST FAVOURED NATION TREATMENT, NATIONAL TREATMENT AND SCHEDULES

Statement by the Chairman to Review Working Party II on the work of the Sub-Group up to 15 December 1954.

The proposals submitted by contracting parties for amending Articles I, II, III, XIX and XXIV have been referred to Sub-Group B. In the short time since its appointment, the sub-group has been able to examine only a few of these proposals.

The sub-group selected for first consideration the proposals of Australia, New Zealand and Chile concerning tariff preferences. When these were discussed in the Working Party, several questions arose concerning the possible amendment of, or the addition of interpretative notes to, Articles I, XXIV and XXV. The Executive Secretary gave his opinion on the legal aspects of these questions, and the sub-group has examined the proposals in the light of his statement. It will be useful to record in this report the questions put to the Executive Secretary and his opinions. The following are the three questions and their answers.

1. Would an amendment to the provisions of Article XXIV require unanimous acceptance for its entry into force if it involves a departure from the no-new-preference rule in Article I?

> By virtue of the provisions of Article XXX an amendment to Article XXIV would enter into force for those contracting parties accepting it upon acceptance by two-thirds of the contracting parties. This would apply, however, only in the case of an amendment which was in accordance with the principles of Article XXIV, that is to say if it relates to an arrangement for establishing a customs union or a free-trade area involving the complete or substantial abolition of duties or restrictions between the parties to the arrangement. If an amendment did not look to this objective it would amount to an amendment of Article I and would therefore require unanimity.

2. Could the obligations of Article I be the subject of a waiver under Article XXV:5(a)?

In Article XXV:5(a) there are no limitations on the obligations to which a waiver under that paragraph can apply. Therefore the paragraph is general in its application and a waiver can relate to any of the provisions of the Agreement. Several instances in which the CONTRACTING PARTIES have had recourse to the provisions of Article XXV:5(a) for the purpose of waiving the application of the provisions of Article I may be cited: e.g., the waivers granted to the United Kingdom at the Eighth Session, to the six countries of the Coal and Steel Community at the Seventh Session, and to the United States at the Second Session. This question was discussed in the Report of the Working Party of the Seventh Session on the waiver granted to the members of the Coal and Steel Community (Basic Instruments and Selected Documents, 1st Supplement, p. 86).

3. Could an interpretative note be attached to Article XXV prescribing the criteria for dealing with a request for a waiver under Article XXV:5(a)?

There seems to be no reason why the CONTRACTING PARTIES could not, if they so desired, prescribe in a note to Article XXV:5(a) the criteria which they would take into account in dealing with certain types of request which might be made for a waiver of obligations. But such criteria could not affect the voting requirements of Article XXV:5(a); these could be changed only by an amendment to Article XXV or by recourse to the provisions of Article XXV:5(a)(i) under which the CONTRACTING PARTIES may by a two-thirds vote "define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations".

The Australian Proposal (W.9/48 and 55)

The sub-group examined the proposal by the delegation of Australia to amend Article XXIV to include a recognition that the Agreement should not prevent adjustments in the margins of preference permitted under Article I provided they were the result of negotiation with the contracting parties concerned and were approved by the CONTRACTING PARTIES. The sub-group considered that such an amendment would not be in accordance with the principles of Article XXIV unless the increased preferences were part of a plan for bringing about a customs union or a free-trade area. The representative of Australia acknowledged that the sort of adjustments his Government had in mind were not intended to lead to that result. This was considered in the light of the opinion given by the Executive Secretary, quoted above, and it was evident from the discussion that unanimity could not be obtained for the Australian proposal.

The representative of Australia then enquired whether Article XXV could be amended to provide that if a contracting party which had reached agreement in negotiations with other contracting parties for an adjustment in a margin of preference and submitted the results to the CONTRACTING PARTIES with a

request for a waiver of obligations, the CONTRACTING PARTIES would consider the request under the provisions of paragraph 5(a) of Article XXV. The sub-group thought that such an addition to Article XXV was unnecessary since the CONTRACTING PARTIES are authorized under paragraph 5(a) to waive obligations under the Agreement in exceptional circumstances. Members considered, however, that a proposal such as that envisaged could properly be submitted to the CONTRACTING PARTIES for consideration under Article XXV:5(a).

It appeared that the Government of Australia was concerned with the possibility that, if it should request a contracting party to enter into negotiations for an adjustment in a margin of preference, for which it would offer compensation, with a view to submitting an agreement to the CONTRACTING PARTIES with a request for a waiver of obligations under Article XXV:5(a), the contracting party might base a refusal to negotiate on the ground that it was debarred from participating in such negotiations by the provisions of Article I. The sub-group noted that there is nothing in Article I which would prevent contracting parties from participating in such negotiations with a view to a waiver being sought under Article XXV, and suggested that it might meet Australia's difficulty if this were recorded in the report adopted by the CONTRACTING PARTIES on the Review of the Agreement.

The New Zealand Proposal (L/270/Add.1)

The sub-group considered the proposal of the Government of New Zealand that a contracting party should be allowed to make slight adjustments of preferential margins in customs duties which might result from readjustments of import duties and taxes without seeking the approval of the CONTRACTING PARTIES in each case. It became evident during discussion that some governments would oppose the insertion of an interpretative note which would authorize increased preferential margins, however slight, without interested contracting parties having an opportunity of scrutiny. Since an amendment of Article I requires unanimity, the sub-group considered whether there were other ways of meeting the difficulty of the New Zealand Government. It appeared that the case could best be met by means of a waiver of the obligations of Article I:4 with provision for notification of action intended and annual reports on action taken. Accordingly, the representative of New Zealand withdrew his proposal and stated that he would suggest to his Government that they apply to the CONTRACTING PARTIES for a waiver under Article XXV:5(a).

The Chilean Proposal (L/272)

The Chilean proposal envisaged the incorporation in the Agreement of the provisions of Article 15 of the Havana Charter which provides for new preferential arrangements in the interest of economic development and reconstruction. Since this proposal, evidently, would raise difficulties for some contracting parties, the Chilean delegation has withdrawn the proposal and, instead, has suggested an amendment of, or an interpretative note to, Article XXV.

The new proposal calls for the insertion of a paragraph or a note whereby the CONTRACTING PARTIES would undertake to examine any request for a waiver for the establishment of new preferential arrangements for economic development in the light of the provisions of Article 15 of the Havana Charter. Members of the sub-group, however, thought it unnecessary to inscribe special provisions for dealing with particular problems under Article XXV:5(a) because a request for such a waiver can be dealt with under this paragraph as it stands. In their opinion each request for a waiver should be treated on its merits, and conditions or criteria should not be prescribed. Accordingly, the sub-group cannot recommend the adoption of the amendment proposed by Chile, but will record in its report that there is nothing in the other Articles of the Agreement which would prevent a contracting party from submitting a request under Article XXV:5(a) for authority to enter into new preferential arrangements as part of a programme for economic development.