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SPECIAL PROBLEMS OF DEPENDENT OVERSEAS TERRITORIES

Memorandum submitted by the United Kingdom Delegation

This paper sets out (1) the action which it is permissible for a metropolitan country to take, on behalf of its dependent overseas territories, under Article XVIII of the GATT and (2) the action which a metropolitan country would be enabled to take under other provisions of the GATT on behalf of its dependent overseas territories if the contracting parties accept the formula proposed in the United Kingdom paper L/296.

(1) Action under Article XVIII

2. A metropolitan country can, under the terms of the GATT as it now stands, invoke the procedures of Article XVIII on behalf of its dependent overseas territories in respect of changes in their own tariffs or other import arrangements. The amendments now being negotiated to Article XVIII will not affect this general situation. The dependent overseas territories are under-developed countries within the definition of the proposed new provisions of Article XVIII and the facilities of the new Article would therefore be open to them.
3. Article XVIII is of interest to the dependent overseas territories in connection with their own development plans where these lead to the establishment of industries to serve the domestic market. The United Kingdom delegation is co-operating in the discussions of possible amendments to Article XVIII with a view to ensuring, inter alia, that the terms of the revised Article meet the legitimate needs of the British Colonial territories. However, while Article XVIII allows, and should continue to allow, a dependent overseas territory to give special assistance, in certain defined circumstances, to its industries in respect of its own domestic market, it does not provide for any such assistance in any form in relation to exports of these industries to the metropolitan market.
4. The main problem with which the United Kingdom Government is faced in this connection is that of assisting Colonial export industries whose prosperity depends largely on continued access to the United Kingdom market. As Article XVIII is not directed to this problem, either in its present form or in the form in which it is proposed to amend it, the United Kingdom has had to seek another

solution outside the scope of Article XVIII. As the GATT now stands, the United Kingdom could invoke the waiver provisions of Article XXV, but for reasons which have been explained by the United Kingdom delegation in plenary session and at the first meeting of the Working Party, this is not an acceptable alternative. It was therefore decided to submit to the Review Session the formula contained in paragraph 6 of United Kingdom paper L/296.

(2) Action to be taken under proposed Colonial formula

5. The basic purpose of the United Kingdom formula is to enable a metropolitan country to accord the same treatment to Colonial exports which rely substantially on the metropolitan market as it could consistently with the GATT accord to its own industry and agriculture. The formula contains the important proviso that any measures taken under it shall operate substantially to the exclusive benefit of the dependent territories.

6. At the present stage of the Review Session it is not possible to describe in precise terms how this purpose would be fulfilled under the formula. But in the following paragraphs an attempt is made to analyze the ways in which the formula would work in respect of the various provisions of the GATT:

- (i) changes in tariffs;
- (ii) protective quotas;
- (iii) subsidies;
- (iv) countervailing duties;
- (v) other action.

(1) Changes in tariffs

7. The recognition given in the formula that the provisions of the Agreement shall apply as if the dependent territories were within the customs area of the responsible metropolitan country means, in effect, that a reduction of duty for imports from the dependent overseas territories would be treated as equivalent to a reduction of an internal tax and would, as such, be disregarded in the application of the most-favoured-nation provisions of the GATT in respect of customs duties; similarly an increase in the customs duty on a foreign product would be treated as increasing the protection for the product of the dependent overseas territories as if the latter were a domestic product. In practice, since the most-favoured-nation rates in respect of most Colonial commodities which would qualify for special tariff treatment under the formula are bound and since moreover Colonial entry into the United Kingdom market is in most cases duty free, the United Kingdom could normally make use of the formula in the tariff field only after re-negotiation of the most-favoured-nation rate under the terms of Article XXVIII. Moreover, the proviso in the formula would preclude the increase of any tariff which would also benefit a United Kingdom industry and the increase of a preferential margin which would also benefit non-Colonial Commonwealth countries. These various factors would in practice impose strict limits on the use which the United Kingdom would be able to make of the formula so far as concerns the tariff instrument.

(ii) Protective quotas

8. Article XI as it now stands contains a general prohibition (subject to certain closely defined exceptions) on the use of quantitative restrictions for other than balance-of-payments reasons. So long as that Article stands unamended, therefore, it would not be possible for a metropolitan country to justify, by reference to the Colonial formula, the maintenance of quota restrictions in its own market for the benefit of exports to that market from its dependent overseas territories. At this stage in the Review it is still uncertain whether any provisions will be made for the exceptional use of quantitative restrictions for protective purposes. To the extent that their use by a metropolitan country might be permitted in respect of metropolitan industry and agriculture, the operation of the Colonial formula would allow their use also for the benefit of exports to the metropolitan country from the dependent overseas territories (subject again to the proviso in the formula).

(iii) Subsidies

9. The incorporation into the GATT of the Colonial formula would have the effect, so far as subsidies are concerned, of extending to subsidies paid by a metropolitan country to a Colonial industry or to Colonial exports to the metropolitan market the same provisions as apply to domestic subsidies.

(iv) Countervailing duties

10. By the operation of the Colonial formula the provisions of Article VI will be automatically extended so as to provide a metropolitan country with a right to impose anti-dumping or countervailing duties when imports of dumped or subsidized goods cause or threaten material injury in the metropolitan market to exports of an industry of its dependent territories.

(v) Other Action

11. Where provision is made in Articles of the GATT not referred to above for a metropolitan country to take action to safeguard its own industries against imports under specified circumstances, the operation of the Colonial formula would enable the metropolitan country to take similar action to protect in its own market the industries of its dependent territories.