

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## CONTRACTING PARTIES

Ninth Session

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

### REPORT BY SUB-GROUP III-B ON STATE TRADING ETC.

The Sub-Group was directed by the Working Party:

- to consider the various proposals with respect to the subjects listed below
- to attempt to reconcile as far as possible conflicting points of view and
- to report on the measure of agreement and the nature of disagreement on the various problems involved:
  - A. State Trading
  - B. Liquidation of non-commercial stocks
  - C. Disposal of surpluses
  - D. General exceptions

On these subjects the Sub-Group reports as follows:

#### A. State Trading

The Sub-Group considered a proposal submitted by the delegation of Denmark (L/273) aimed at the insertion into the General Agreement of the provisions of Article 31 of the Havana Charter, plus an additional provision requiring contracting parties to report annually on their state-trading operations.

The conclusion was reached in the Sub-Group that the Danish proposal contained a number of provisions which, in whole or in part, were already in the Agreement, and consequently the recommendations of the Sub-Group have been limited to clarifying certain existing provisions and supplementing the Agreement with those elements of the proposal which were accepted by a majority.

#### 1. The Sub-Group reached agreement on the following general principles

The Sub-Group agreed that any principles adopted with respect to tariff negotiations generally, should apply, so far as applicable, to negotiations in respect of the protection which is afforded on a product by the operation of a state monopoly. The Sub-Group was not yet in a position to submit a concrete recommendation on this subject in view of the fact that Working Party II

has not yet reached definitive conclusions in respect of principles for tariff negotiations. However, it recommends, subject to approval by the Working Party of the agreement described above, that the Sub-Group be instructed to submit detailed recommendations as to the form of an amendment on this subject as soon as Working Party II has reached a decision on tariff negotiations.

2. The Sub-Group herewith submits recommendations pertaining to:

- (a) an interpretative note to Article II, paragraph 4, to replace the present interpretative note (Annex I).

The attention of the Sub-Group was drawn to this problem both by a proposal by the United Kingdom delegation (document W.9/70) for the amendments of this interpretative note and by the Danish proposal, which incorporated Article 31 of the Havana Charter.

The members of the Sub-Group agreed that the present interpretative note was intended to refer to the provisions of paragraphs 2(a) and (b) and 4 of Article 31 of the Charter. Consequently the note recommended by the Sub-Group contains the substance only of these paragraphs.

The Sub-Group agreed to recommend the text of the interpretative note which is included in the Annex, though a number of representatives found it necessary to maintain a formal reservation until they had received new instructions from their governments.

- (b) new paragraphs to be added to Article XVII (Annex III).

Except for the delegate for Indonesia who reserved his position on the whole of the proposed addition, because of lack of instructions, and the Czechoslovak delegate, who, for the same reason, reserved his position in respect of the new sub-paragraphs 3(b) and (c), as well as the Italian delegate who could not accept the proposed new paragraphs pending a change in his instructions, the Sub-Group was in agreement on all points.

Briefly, the new paragraphs require contracting parties to notify the CONTRACTING PARTIES of all products which are subject to monopoly trading (paragraph 3(a)). Furthermore, contracting parties operating an import monopoly on a product, which is not the subject of a concession in the Schedules, are required to inform the CONTRACTING PARTIES, at the request of an interested contracting party, of the import mark-up on such product (paragraph 3(b)). Paragraph 3(c) provides for the submission of reports on the operation of monopolies, but this paragraph contains a general condition, viz. that such reports shall only be requested in order to ascertain whether or not these monopolies operate in conflict with the provisions of the General Agreement. Finally, paragraph 3(d) provides for a general exception (as at present contained in Article X) which excludes from the above-mentioned obligations confidential information which would impede law enforcement, etc.

An interpretative note to paragraph 3(b) contains a definition of "import mark-up", which is the same as the definition of import duty contained in the proposed interpretative note to Article II:4 except for the two provisos which are not relevant in this context.

Finally, the Sub-Group recommends an alteration in the title of Article XVII.

B. Liquidation of non-commercial stocks

The Sub-Group considered two proposals, viz. one, submitted by the Chilean delegation (L/272/Add.1) dealing with non-commercial stocks only, and one put forward by the Australian delegation (W.9/78) referring to both non-commercial stocks and stocks of surplus products. Because of a number of pertinent differences between the two problems the Sub-Group decided to deal with them separately.

The Sub-Group agreed to recommend to the Working Party the insertion into the General Agreement of a new article dealing with the liquidation of non-commercial stocks (Annex III).

The United States delegate was unable to support this recommendation. He explained that the United States was prepared to accept a commitment in the Agreement giving facilities equivalent to those given to domestic producers of stockpiled commodities. A draft of a new article on these lines submitted by him did not receive the support of the Sub-Group.

The general aim of the new article is to require contracting parties liquidating non-commercial stocks to endeavour to minimize injury to the interests of producers and consumers, as well as to avoid any undue disturbances to the markets for such commodities. The article stipulates that the contracting party wishing to liquidate a substantial quantity of such stocks shall notify the CONTRACTING PARTIES and substantially interested contracting parties of their intentions, affording at the same time to all concerned an adequate opportunity for consultation with a view to reaching an agreement concerning the liquidation which is satisfactory to all contracting parties.

The article contains a provision which excludes from the general notification - and consultation - provisions routine disposals to avoid deterioration, rotation of stocks, emergency sales and the disposal of gold and silver from monetary stocks.

While recommending this new article for approval by the Working Party the Sub-Group decided to leave two points open for discussion in the Working Party viz. the fixing of a time-limit for requests for consultations and a maximum period for such consultations.

The Sub-Group proposes the addition of an interpretative note to this new article, providing that stocks held at the request or under the control of a contracting party, as well as those held by the contracting party itself are equally covered by this article.

The Sub-Group agreed, that the term "primary commodity" should be interpreted as defined in Article 56 of the Havana Charter. Since another Working Party deals with a formal proposal, directed to the inclusion in the

General Agreement of the definition included in Article 56 it was considered unnecessary to recommend the same in this connection, provided that such a definition appears at the proper place in the General Agreement.

C. Disposal of Surpluses

The Sub-Group considered an Australian proposal for a new article (W.9/78), which contained a set of rules for consultations with a view to reaching agreement between contracting parties prior to the disposal of surplus products, so as to avoid unnecessarily harmful disturbance to the markets of such products. Furthermore, attention was devoted to a number of statements of various delegates, made during earlier meetings of the Working Party.

A majority in the Sub-Group was in favour of an inclusion in the General Agreement of a new article governing the disposal of agricultural surplus commodities. However, the delegate for the United States, referring to the statement he made in the Working Party (W.9/117) explained that his Government, while being fully prepared to accept certain unilateral obligations, would not be in a position to agree to formal commitments in the General Agreement.

Since it seemed impossible to reach a unanimous agreement which, in view of the position of the United States in this matter was considered to be of paramount importance, the majority agreed that the best solution would be to formulate a draft Resolution to be submitted for approval by the CONTRACTING PARTIES relating to the orderly disposal of agricultural surpluses. This draft Resolution is attached to this report as Annex IV. In two cases alternatives have been placed between brackets because there was not unanimous agreement. The majority favoured "consider" and "arranging the disposal".

The delegate for Denmark explained that his instructions compelled him to insist upon the insertion into the General Agreement of formal obligations, but that he was prepared to seek new instructions from his Government in respect of the draft Resolution. He stated that the chances of this draft Resolution being accepted by his Government would be increased if the Resolution should provide that the disposal of agricultural surpluses be in accordance with the principles for the disposal of agricultural products, as agreed to by the Council of the Food and Agriculture Organization. Since other delegates, for different reasons, felt that such a provision was unnecessary, the Danish representative reserved his right to raise the question in the Working Party.

D. General Exceptions

The Sub-Group considered a number of proposals which were submitted by the delegations of Denmark, Germany, Norway and Sweden in respect of Part II of Article XX, by the delegation of Denmark concerning an interpretative note to sub-paragraph (b) of Part I of Article XX, by the delegation of Australia in respect of sub-paragraph (g) of Part I, as well as an oral proposal made by the delegate for Italy concerning a new provision relating to measures in cases of natural catastrophes etc.

The results of the Sub-Group's consideration of these matters may be summarized as follows.

Part I of Article XX

1. Sub-paragraph (b)

The proposed interpretative note to this sub-paragraph envisaged the possibility that a contracting party might be requested to revise its standards and regulations (in respect of the protection of human, animal or plant life or health) if they were found to have an unduly restrictive effect on trade.

The delegate for Denmark agreed to withdraw his proposal that the preamble of Article XX should be considered as adequate to cope with such situations.

2. Sub-paragraph (g)

The Australian proposal was withdrawn.

Part II of Article XX

1. Italian suggestion concerning a general exception for measures taken in cases of natural catastrophes, etc.

In view of the explanations given by other delegates that the General Agreement contained at present the necessary provisions which would allow contracting parties to take emergency action in cases of natural catastrophes, etc., the delegate for Italy agreed to withdraw his proposal.

2. Sub-paragraph (a)

The Sub-Group agreed to recommend the retention of sub-paragraph (a) in a revised version (Annex V). This text provides that the need for this paragraph shall be reviewed by the CONTRACTING PARTIES not later than 30 June 1960, which, if accepted, would imply the deletion of the concluding paragraph. It is suggested that the division of the Article in two sections be done away with and that the proposed text follow on as paragraph (a) of Article XX.

A minority reserved their right to refer to certain points during the discussion in the Working Party if new instructions should so require.

3. Sub-paragraphs (b) and (c)

The Sub-Group agreed to recommend (in conformity with the proposals of a number of delegations) that these paragraphs which refer to war - or immediate postwar periods - be deleted from the General Agreement.

In respect of sub-paragraph (c) two reservations of a general nature were put forward: the Chilean and Australian delegates support the recommendation of the Sub-Group, subject to a satisfactory outcome of the deliberations in respect of the proposed new article on non-commercial stocks; the United States delegate reserved his position until his delegation has received more definitive information on certain matters dealt with by another Working Party.

E. Summary

(a) The following recommendations submitted for approval by the Working Party refer to:

- (i) A new interpretative note to Article II, paragraph 4 (Annex I).
- (ii) A new paragraph 3 to be added to Article XVII (Annex II) (including one interpretative note and a change in the title).
- (iii) A new article concerning the liquidation of non-commercial stocks (including one interpretative note) (Annex III).
- (iv) A draft Resolution concerning the disposal of agricultural surpluses (Annex IV).
- (v) A new text for paragraph (a) Part II of Article XX and the deletion of paragraphs (b) and (c) of Part II of Article XX (Annex V).

(b) The Sub-Group recommends that the following points of agreement, if accepted by the Working Party, be recorded in the report of the Working Party:

- (i) principles and procedures for negotiations concerning monopoly protection;
- (ii) incorporation of the definition of "primary commodities" (Article 56 of the Havana Charter) in the General Agreement;
- (iii) measures taken in cases of natural catastrophes, etc.

ANNEX IInterpretative Note to paragraph 4 of Article II

The provisions of this paragraph will be applied in the light of the following:

1. The protection afforded through the operation of an import monopoly in respect of products described in the appropriate schedule shall be limited by means of:
  - (a) a maximum import duty that may be applied in respect of the product concerned; or
  - (b) any other mutually satisfactory arrangement consistent with the provisions of this Agreement; any contracting party entering into negotiations with a view to concluding such arrangement shall afford to other interested contracting parties an opportunity for consultation.
2. The import duty mentioned in 1(a) above shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost; Provided that regard may be had to average landed costs and selling prices over recent periods; and provided further that, where the product concerned is a primary commodity which is the subject of a domestic price stabilization arrangement, provisions may be made for adjustment to take account of wide fluctuations or variations in world prices, subject to agreement between the countries parties to the negotiations.

## **ANNEX II**

## ARTICLE XVII

## State-Trading Enterprises



3(a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1(a).

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, notify the CONTRACTING PARTIES of the import mark-up on the product during a recent representative period.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interests under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1(a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

### Interpretative Note to paragraph 3(b) of Article XVII

The term "import mark-up" in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

ANNEX III

Liquidation of non-commercial stocks

1. Any contracting party wishing to liquidate a substantial quantity of its stocks of any primary commodity accumulated for non-commercial purposes shall notify its intention to the CONTRACTING PARTIES and to the contracting parties substantially interested and shall not proceed with any liquidation otherwise than in accordance with the procedure set out below.
2. Following such notification, the CONTRACTING PARTIES, at the request of any contracting party which considers itself substantially interested, shall arrange consultations with the parties substantially interested, in which the contracting party intending to liquidate stocks shall participate, with a view to reaching an agreement concerning the liquidation which is satisfactory to all concerned. If no consultations are requested within 15 days or, if agreement is not reached within 30 days of the notification, the contracting party holding such stocks shall be free to proceed, acting so as to minimise injury to the interests of producers and consumers of the commodity affected and giving due consideration to any recommendations of the CONTRACTING PARTIES.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to:
  - (a) routine disposal of supplies to avoid deterioration or the rotation of stocks which do not have the effect of altering the total volume of the stockpile; but in such cases the contracting party concerned shall act in a manner which avoids any undue disturbance to the market;
  - (b) emergency sales for the maintenance of internal consumption in the event of an interruption of supplies from normal sources;
  - (c) stocks of gold and silver disposed of for non-commercial purposes.

Interpretative Note:

Stocks held at the request or under the control of a contracting party, as well as those held directly, are covered by the provisions of this Article.

ANNEX IV

DRAFT RESOLUTION ON THE DISPOSAL OF SURPLUSES

RECOGNIZING

1. That surpluses of agricultural products may be expected to arise from time to time in the territories of certain contracting parties,
2. That the disposal for export of such surpluses without adequate regard to the effect on the normal commercial trade of other contracting parties could cause serious damage to their interests by restricting markets for their regular competitive exports and by disrupting world prices,
3. That disturbing effects of such disposals can be substantially diminished, and that the risk of injury can be minimized, if interested contracting parties consult with respect to the disposal of such surpluses,

NOTING

That the contracting parties hereby express their intention to liquidate any agricultural surpluses they may hold in such a way as to avoid unduly provoking disturbances on the world market that would adversely influence other contracting parties,

/RECOMMEND/    /CONSIDER/

That when /arranging the disposal/ /disposing/ of surplus agricultural products in world trade contracting parties should undertake a procedure of consultation with the principal suppliers of those products and other interested contracting parties, which would contribute to the orderly liquidation of such surpluses, including where practicable disposals designed to expand consumption of the products, and to the avoidance of prejudice to the interests of other contracting parties, and that they give sympathetic consideration to the views expressed by other contracting parties in the course of such consultations.

ANNEX V

DRAFT AMENDMENT TO ARTICLE XX - II - (a)

(j) essential to the acquisition or distribution of products in general or local short supply, provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of this Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this paragraph not later than 30 June 1960.