

GENERAL AGREEMENT ON TARIFFS AND TRADE

Contracting Parties

Second Session

Working Party 6 on the United States Proposal
Relating to Western Germany

Draft of Report to the Contracting Parties

1. The Working Party held three meetings under the Chairmanship of Dr. G. GUTIERREZ (Cuba). All members of the Working Party, namely, Australia, Canada, China, Cuba, France, the Netherlands, Pakistan, the United Kingdom and the United States, took an active part in the deliberations, and in addition the representative for New Zealand informed the Working Party of the views of his Government.

2. The following were the Working Party's terms of reference:

(a) To consider the appropriateness of the procedure suggested by the United States having regard to the Final Note in Annex I to the General Agreement on Tariffs and Trade and to the arguments advanced in the course of the discussion at this Session.

(b) Having regard to (a) above, to consider the draft agreement submitted by the United States and to make recommendations thereon to the Contracting Parties.

3. The Working Party first considered the appropriateness of the procedure suggested by the representative of the United States in the light of the discussions at the 10th and 12th meetings of the Contracting Parties on the 23rd and 25th of August.

4. The representative of Australia expressed the view that, as it was generally accepted that the proposed agreement would be entirely separate from the General Agreement and that any difficulties which might arise between signatories would be matters for adjustment between the signatories concerned, the question was beyond the competence and authority of the CONTRACTING PARTIES; in the light of these and other considerations to which he referred it would be inexpedient and improper for the meeting of the Contracting Parties to make recommendations regarding the form of the proposed agreement. The representative of New Zealand stated that his government held similar views and considered that the agreement proposed by the United States should be taken up bilaterally with governments interested rather than at meetings of the Contracting Parties.

5. All other members of the Working Party supported the proposal of the United States representatives to prepare a multilateral agreement, limited in scope to most-favoured-nation treatment for Western Germany, and wished to proceed with the preparation of a draft which might be signed by those contracting parties which wished to adhere to it. In supporting this procedure the representative of China stated that his Government did not wish any agreement that might be signed in respect of western Germany to be accepted as a precedent to be applied later to the trade of Japan.

6. The Working Party then examined the draft agreement proposed by the Government of the United States in document GATT/CP.2/W/5. In submitting to the Contracting Parties the draft agreement contained in the Annex to this Report, the Working Party does not suggest that it should be formally

approved. The Working Party believes that the agreement is now in a form in which it will be acceptable to many of the Contracting Parties. It is included in this Report, together with the following explanatory notes on a few points which received particular attention during the discussions, merely for purposes of record.

7. It will be noticed that the Agreement does not provide a fixed date of termination but that in Article I there is provision for the automatic termination of the obligation of most-favoured-nation treatment when no signatory any longer participates in the occupation or control of any area in western Germany, and under Article V signatories can withdraw from the Agreement in 1951.

8. The Working Party would draw attention to two phrases used in Article I. First, the term "merchandise trade" means trade in goods and is used in preference to "products", which would in this context exclude trade in goods produced elsewhere than in the area concerned, and also in preference to the word "trade" which might be interpreted to include services such as insurance, shipping, etc. Secondly, the reference to the most-favoured-nation provisions of the General Agreement is meant to cover various provisions of Part II of the Agreement as well as Article I.

9. The Working Party desires to point out that under Article II a signatory would be obligated to extend most-favoured-nation treatment to the occupied areas concerned only to such extent as its trade received most-favoured-nation treatment. The standard of the treatment to be accorded is set by the most-favoured-nation provisions of the General Agreement (including the exceptions) and

accordingly, under the reciprocity clause of Article II, the same standard would be used to measure the treatment received. If a signatory considered that it was not in fact receiving treatment conforming to the standard, it would not consider itself obligated to grant treatment in accordance with the standard. Differences of view between signatories would naturally, however, be the subject of consultation.

10. In reply to questions by members of the Working Party on the reference to tariff barriers in Article III, the representative of the United States said that there is at present only a nominal tariff imposed on imports into western Germany and he offered to obtain further details for the information of the Contracting Parties. He explained that, as in most other countries at the present time, there are various barriers to imports in western Germany in addition to the nominal tariff, but these were imposed, as in many other countries, mainly for balance-of-payments reasons. Further, it would be incorrect to say that the import trade of western Germany is subject to monopoly control; the establishment of a trade monopoly does not seem any more likely in Germany than elsewhere. In reply to questions on the reference to "the principles relating to the reduction of tariffs on a mutually advantageous basis which are set forth in the Havana Charter" the representative of the United States said that this was intended to refer particularly to paragraph 4 of Article 17 and to allow the withholding of most-favoured-nation treatment in the event of the failure of negotiations.

11. Article IV was inserted in the Agreement in order that there should be no misunderstanding as to its independence of the General Agreement on Tariffs and Trade. There would be no obligation upon any Contracting Party to sign this Agreement,

and the rights and obligations of any Contracting Party which decides not to sign would not be in any way affected thereby.

12. A third paragraph has been added to Article V to provide for a meeting of signatories in the event that three or more signatories consider that circumstances have altered in such a manner as to require amendments to the provisions of the Agreement.

13. Finally, with respect to the proposed Interpretative Note, the Working Party considers that, as in the case of countervailing duties applied under paragraph 2 of Article VI of the General Agreement, the estimate of the amount of subsidy determined to have been granted would necessarily rest in the first instance with the signatory country applying the countervailing duty, although such an estimate could of course be questioned by the affected signatory.

A N N E X

DRAFT AGREEMENT ON MOST-FAVOURED-NATION
TREATMENT FOR AREAS OF WESTERN GERMANY
UNDER MILITARY OCCUPATION

Being desirous of facilitating to the fullest extent possible the reconstruction and recovery of the world from the destruction wrought by the recent war,

Believing that one of the most important steps toward such reconstruction and recovery on a sound basis is the restoration of international trade in accordance with the principles of the Havana Charter for an International Trade Organization, and

Considering that the application of reciprocal most-favoured-nation treatment to the trade of the areas of Western Germany under military occupation will contribute to the foregoing objectives,

The signatories agree to the following provisions:

Article I

For such time as any signatory of this Agreement participates in the occupation or control of any area in Western Germany, each of the signatories shall accord to the merchandise trade of such area the treatment provided for in the most-favoured-nation provisions of the General Agreement on Tariffs and Trade, dated October 30, 1947, as now or hereafter amended.

Article II

The undertaking by a signatory provided for in Article I shall apply to the merchandise trade of any area referred to therein only for such time and to such extent as such area accords reciprocal most-favoured-nation treatment to the merchandise trade of the territory of such signatory.

Article III

The undertaking in Article I is entered into in the light of the absence, on the date of this Agreement, of effective or significant tariff barriers to imports into the areas referred to therein. In the event that effective or significant tariff barriers are thereafter imposed in any such area, such undertaking shall be without prejudice to the application by any signatory of the principles relating to the reduction of tariffs on a mutually advantageous basis which are set forth in the Havana Charter for an International Trade Organization.

Article IV

The rights and obligations established by this Agreement are to be understood as entirely independent of the rights and obligations which are or may be established by the General Agreement on Tariffs and Trade or by the Havana Charter.

Article V

1. This Agreement shall be open for signature at Geneva on this day and shall remain open for signature thereafter at the Headquarters of the United Nations. The Agreement shall enter into force for each signatory upon the expiration of 30 days from the day on which such signatory signs the Agreement.

2. The undertakings in this Agreement shall remain in force until January 1, 1951, and, except for any signatory which at least six months before January 1, 1951 shall have deposited with the Secretary-General of the United Nations a notice in writing of intention to withdraw from this Agreement on that date, they shall

remain in force thereafter subject to the right of any signatory to withdraw upon the expiration of six months from the date on which such a notice shall have been so deposited.

3. On the request of any three signatories to this Agreement, and in any event not later than January 1, 1951, the Government of the United States of America shall convene a meeting of all signatories with a view to reviewing the operation of the Agreement and to agreeing upon such revisions as may be appropriate.

Article VI

1. The interpretative note to this Agreement shall constitute an integral part thereof.

2. The original of this Agreement shall be deposited with the Secretary-General of the United Nations, who shall send a certified copy thereof to each country to which it is open for signature, and he is authorized to effect registration thereof pursuant to paragraph 1 of Article 102 of the Charter of the United Nations.

3. The Secretary-General shall notify each signatory of the date of each signature of this Agreement subsequent to the date of the Agreement or of any notice of intention to withdraw pursuant to paragraph 2 of Article V.

IN WITNESS WHEREOF the respective representatives, duly authorised, have signed this Agreement.

Done at Geneva, in a single copy, in the English and French languages, both texts authentic, this day of September, 1948.

[/signatures/]

Interpretative Note

It is recognized that the absence of a uniform rate of exchange for the currency of the areas in Western Germany, referred to in Article I may have the effect of indirectly subsidizing the exports of such areas to an extent which it would be difficult to calculate exactly. So long as such a condition exists, and if consultation with the appropriate authorities fails to result within a reasonable time in an agreed solution to the problem, it is understood that it would not be inconsistent with the undertaking in Article I for any signatory to levy a countervailing duty on imports of such goods, equivalent to the estimated amount of such subsidization, where such signatory determines that the subsidization is such as to cause or threaten material injury to an established domestic industry or is such as to prevent or materially retard the establishment of a domestic industry. In circumstances of special urgency, where delay would cause damage which it would be difficult to repair, action may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.