

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.Secretariat Draft*Protocol of Interpretative Notes to the
General Agreement on Tariffs and Trade

At the time of certifying the text of the General Agreement on Tariffs and Trade, the Representatives of the Governments of the Commonwealth of Australia, Belgium, Ireland and Luxemburg, United States of Brazil, Canada, Republic of Chile, Republic of China, Republic of Cuba, Czechoslovak Republic, French Republic, India, Lebanon, New Zealand, Kingdom of Norway, Pakistan, Syria, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, and the United States of America, agree to the following interpretative notes relative to the Agreement:

ARTICLE I

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

(i) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10 April 1947; and

(ii) the application to a particular commodity of a tariff item other than that which was actually applied to importations of that commodity on 10 April 1947, in cases in which the tariff law clearly contemplates that such commodity may be classified under more than one tariff item.

* NOTE: As requested at the 8th meeting of the Tariff Agreement Committee (see E/PC/T/TAC/PV/8), the Secretariat has prepared this draft of a protocol of interpretative notes. The body of the draft consists of slightly modified versions of the notes approved by the Preparatory Committee for inclusion in the Draft Charter relating to Articles, or parts of Articles, which correspond to Articles in the version of the Draft General Agreement presented in E/PC/T/189. The language of the comparable notes in the Draft Charter has been changed only to the extent necessary to allow for the different terms and style employed in the Draft General Agreement.

ARTICLE II

Paragraph 3

With reference to the second proviso, the method and degree of adjustment to be permitted in the case of a primary product that is the subject of a domestic price stabilization arrangement should normally be a matter for agreement at the time of the negotiations.

ARTICLE IV

Paragraph 5

With regard to transportation charges, the principle of paragraph 5 refers to like products being transported on the same route under like conditions.

ARTICLE V

Paragraph 1

Hidden dumping by associated houses (that is, the sale by the importers at a price below that corresponding to the price invoiced by the exporter with which the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping.

Paragraph 2

Multiple currency practices may in certain circumstances constitute a subsidy to exports which can be met by countervailing duties under paragraph 2 or may constitute a form of dumping by means of a partial depreciation of a country's currency which can be met by action under paragraph 1 of this Article. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Paragraph 7

The obligations set forth in paragraph 7 are subject to the provisions of Article XVIII.

ARTICLE VI

Paragraph 1

Consideration was given to the desirability of replacing the words "at the earliest practicable date" by a definite date or, alternatively, by a provision for a specified limited period to be fixed later. It was appreciated that it would not be possible for all contracting parties to give effect to these principles by a fixed time, but it was nevertheless understood that a majority of the contracting parties would give effect to them at the time the Agreement enters into force.

Paragraph 2

It would be in conformity with Article VI to presume that "actual value" may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount or other reduction from the ordinary competitive price.

It would be in conformity with Article VI, 2(b), for a contracting party to construe the phrase "in the ordinary course of trade", read in conjunction with "under fully competitive conditions", as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

The prescribed standard of "fully competitive conditions" permits contracting parties to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.

The wording of (a) and (b) permits a contracting party to assess duty uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

ARTICLE VII

Paragraph 4

While Article VII does not cover the use of multiple rates of exchange as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a contracting party is using multiple currency exchange fees for balance of payments reasons with the approval of the International Monetary Fund, the provisions of paragraph 2 fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.

ARTICLE X

Paragraph 2(c)

The term "in any form" in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective.

Paragraph 2, last sub-paragraph

The term "special factors" includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement.

ARTICLE XI

Paragraph 3 (b) (i)

The phrase "notwithstanding the provisions of paragraph 2 of this Article" has been included in the text to make it quite clear that a contracting party's import restrictions otherwise "necessary" within the meaning of sub-paragraph 2 (a) shall not be considered unnecessary on the ground that a change in domestic policies as referred to in the text could improve a contracting party's monetary reserve position. The phrase is not intended to suggest that the provisions of paragraph 2 are affected in any other way.

ARTICLE XII

Paragraph 2 (d)

The phrase establishing "commercial considerations" as a rule for the allocation of quotas was omitted because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it was practicable, a contracting party could apply this consideration in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

Paragraph 4

See note relating to "special factors" in connection with the last sub-paragraph of paragraph 2 of Article X.

ARTICLE XIII

Paragraph 3

Consideration was given to the question of whether it was necessary to make express reference in paragraph 3 of Article XIII to the need of the Committee to consult with the International Monetary Fund. The contracting parties considered that no such reference was necessary since such consultation in all appropriate cases was already required by virtue of the provisions of paragraph 2 of Article XIV.

ARTICLE XIV

Paragraph 4

The word "frustrate" is intended to indicate, for example, that infringements by exchange action of the letter of any Article of this Agreement shall not be regarded as offending against that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus a contracting party which, as part of its exchange control, operated in accordance

Paragraph 4 (cont.)

with the Articles of Agreement of the International Monetary Fund, required payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund would not thereby be deemed to be offending against Article X or Article XII. Another example would be that of a contracting party which specified on an import licence the country from which the goods might be imported for the purpose not of introducing any additional element of discrimination in its import licences but of enforcing permissible exchange controls.

ARTICLE XVI

Paragraph 1

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of sub-paragraphs (a) and (b).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Charter.

The charging by a State enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1, sub-paragraph (a)

Governmental measures imposed to ensure standards of quality and efficiency in the execution of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

Paragraph 1, sub-paragraph (b)

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

Paragraph 2

The term "goods" is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

IN FAITH WHEREOF, the Representatives of the above mentioned Governments have signed the present Protocol.

DONE at Geneva the thirtieth day of September, one thousand nine hundred and forty-seven.

For the Commonwealth of Australia
For Belgium
For the Netherlands
For Luxemburg
For the United States of Brazil
For Canada
For the Republic of Chile
For the Republic of China
For the Republic of Cuba
For the Czechoslovak Republic
For the French Republic
For India
For Lebanon
For New Zealand
For the Kingdom of Norway
For Pakistan
For Syria
For the Union of South Africa
For the United Kingdom of
Great Britain and Northern Ireland.....
For the United States of America