

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.6/24
19 September 1951
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Sixth Session

ITEM 23: NICARAGUA - EL SALVADOR FREE-TRADE AREA

Note by the Executive Secretary

1. The Treaty between Nicaragua and El Salvador for the establishment of a free-trade area, comprising the customs territories of these two countries, was distributed to contracting parties in GATT/CP/104/Add. 1. The Treaty entered into force on 21 August 1951.

2. Article XXIV of the General Agreement provides that the Agreement will not prevent the formation of free-trade areas "as between the territories of contracting parties". There is no provision in Article XXIV for the formation of a free-trade area by a contracting party and a government which has not acceded to the Agreement, but such a free-trade area could presumably be approved by the Contracting Parties under paragraph 10 of Article XXIV which provides that approval can be given by a two-thirds majority to proposals which do not fully comply with the requirements of the Article. This assumption is borne out by the report of a sub-committee of the Havana Conference on the provisions of the Charter relating to customs unions and free-trade areas, in which the following passage appears:

"The Sub-Committee could not reach a unanimous decision on the question whether the provisions of this paragraph should or should not apply to customs unions and free-trade areas of which one or more parties are not Members of the Organization. A majority favoured the insertion of the words "as between the territories of Members"..... It was the view of the members who supported the insertion of these words, that this Article, including the new paragraph 6 (paragraph 10 of the General Agreement) would not prevent the formation of customs unions and free-trade areas of which one or more parties were non-Members but would give the Organization an essential degree of control."

3. The communication from the Government of Nicaragua, dated 7 March 1951, appears to constitute a notification to the Contracting Parties in the sense of paragraph 7(a) of Article XXIV. It is stated that the two governments intend to proceed eventually to the formation of a customs union, and that the free-trade area Treaty is a first step in that direction.

4. The Treaty provides immediate exemption from all fees, taxes, charges, etc., levied in connection with import, export or the transfer of payments, for the commodities listed in Annex A of the Treaty, provided they are natural products of the countries or articles manufactured mainly from raw materials produced in the countries. Further, most of the commodities in this list (118 out of 147 categories) are exempt from any measure of quantitative

control which is or may be imposed by either government. It is not possible without more detailed statistics of the trade of the two countries than are provided in the annual published volumes to determine how closely this approaches to compliance with the definition of a free-trade area in paragraph 8(b) of Article XXIV which requires that duties and other restrictive regulations shall be eliminated "on substantially all the trade between the constituent territories in products originating in such territories".

5. There is no specific provision for the extension of the list of commodities from which duties and restrictions between the two countries are eliminated. But each government undertakes to appoint a national commission to study and propose "increases, reductions or modifications" in the list and to recommend measures "conducive to the more effective realization of the objects of the Treaty". In addition the two governments undertake to establish a Mixed Trade Commission which will meet every six months and will have among its responsibilities:

"to examine and recommend any increases, reductions or modifications in the annexed schedule, and also any useful provisions intended to encourage the economic integration of the two countries and the unification of their customs tariffs, with a view to arriving progressively at the customs union which it is the intention of both governments to establish".

6. The Treaty makes no mention of any period of time within which the free-trade area is to be achieved or when the customs union will be completed.

7. The Treaty will be valid for two years and will continue in force indefinitely so long as it has not been denounced by either party. A party denouncing the Treaty must give six months' notice.

NOTE: Document GATT/CP/104/Add. 1 contains two Annexes labelled "Annex B": the first, on page 18, entitled "Customs Formalities and Statistical Information", is referred to in Article XX; the other, on pages 19 to 32, entitled "Schedule of Products the Import of which is Duty Free between El Salvador and Nicaragua", is not mentioned in the text of the Treaty. The latter Annex appears to contain the customs tariff descriptions of products and the rates of duties pertaining to the categories of goods in Annex A.

