

GENERAL AGREEMENT ON TARIFFS AND TRADE

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RECOMMENDATION FOR LOWERING TARIFF BARRIERS IN EUROPE

Communication from the Council of Europe

On 12 February 1952, the Council of Europe submitted to the Contracting Parties a Recommendation which had been adopted by its Consultative Assembly concerning the adoption of a common policy of lowering tariff barriers in Europe. The Council suggest that the Intersessional Working Party on the Reduction of Tariff Levels might be asked to include in its agenda a consideration of the technical implications of this Recommendation.

This request was reported to the Ad Hoc Committee on Agenda and Intersessional Business at its meeting in Geneva on 4 September. The Committee considered this request and agreed to recommend to the Contracting Parties that the Recommendation submitted by the Council should be dealt with separately from the French Plan so as to avoid confusion, and instructed the Executive Secretary to prepare a draft report on its technical aspects.

The Committee recommended further that the Contracting Parties should appoint a small working group to prepare a report on the basis of the secretariat's draft for submission to the Contracting Parties for approval and for transmission to the Council.

Accordingly a draft report on the technical implications of the Council's Recommendation has been prepared and is attached hereto.

RECOMMENDATION OF THE CONSULTATIVE ASSEMBLY
OF THE COUNCIL OF EUROPE ON A COMMON POLICY
OF LOWERING TARIFF BARRIERS IN EUROPE

(Ref: GATT/IW.2/9)

DRAFT REPORT

on the Technical Implications of the three Principles
proposed as a Basis for an International Convention

FIRST PRINCIPLE: A MAXIMUM FOR ALL CUSTOMS DUTIES
(35% AD VALOREM)

(i) Valuation

1. All European governments which are members of the Council use the c.i.f. system. Therefore, the maximum ad valorem rate established by the Convention should be on a c.i.f. basis. If any non-European government using the f.o.b. system should adhere to the Convention, provision should be made for the addition of some percentage, say 10%, to the maximum rate, which for that government would then be 38.5%.

(ii) Specific Duties

2. The observance of the Convention would be more complicated where specific rates of duty are employed. If a participating government does not wish to replace all its specific by ad valorem duties, the easiest alternative would be to convert them into mixed duties, each such duty rate being given the qualification that it shall not exceed 35% ad valorem. If mixed duties were introduced, the control on the observance of the maximum rate would be applied to each shipment of goods at the time of customs clearance.

3. A participating government which does not wish to convert its specific duties into ad valorem or mixed duties should be required to furnish statistical data each three months showing the total value of imports and the duty revenue collected in respect of each item so that other governments would know that the obligations had been observed. Governments adhering to this procedure would have to review their practice of determining the values for statistical purposes of the goods imported under specific duties; preferably, the c.i.f. system should be adopted. In the trade in each individual item there would remain the possibility that the duty collected would exceed the maximum rate on articles imported at less than the average cost. It is suggested that such occasional infringements of the Convention in respect of the duties charged on particular shipments would have to be accepted as inevitable where duties are charged on a specific basis. As for more widespread infringements when prices fall and the total duty collected on any item exceeds the maximum percentage of the value, provision should be made for periodic consultations with the other participating governments.

(iii) Fiscal Duties

4. The scheme recommended by the Council provides permission for the conversion of fiscal duties into internal taxes imposed "equally on imported and internally-produced commodities". Since customs duties are used as an instrument of commercial policy, governments have tried to avoid obligations affecting those which they regard as "fiscal" duties. It has to be recognized that such fiscal duties have a protective element insofar as "like" or "substitutable" articles are produced internally. The conversion of such duties to internal taxes would show the extent to which they were intended to serve protective purposes. In such conversion, difficulties could arise from varying interpretations of like and substitutable products as it might be difficult to reach agreement on the internally-produced articles which were to be treated as the same as, or substitutes for, the imported articles. Further, difficulties could arise regarding the existing differences in the structure of fiscal duties and internal taxes; for example, a tax may be levied on the alcoholic content of a beverage, whereas the import duty on the like product may be based on weight.
5. In cases where there is no internal production of a like product, a participating government should be permitted, in order to maintain its revenue, to convert the whole of the duty into an internal tax.
6. It may be found that governments will encounter other difficulties in the attempt to convert fiscal duties into internal taxes; for example, the obligations which Belgium has assumed in its Economic Union with Luxemburg that internal taxes shall not be increased. Therefore, provision should be made for the exclusion of the countervailing part of fiscal duties from the operation of the Convention in cases where conversion into internal taxes cannot be carried out.
7. Before the conclusion of the Convention each participating government should be required to submit a list of so-called fiscal duties proposed for special treatment, either for conversion into internal taxes or for exclusion from the operation of the Convention. These lists would have to be agreed upon before the Convention is concluded.
8. The governments which are members of the Sub-Group of the Working Party on Reduction of Tariff Levels have discussed the problem of fiscal duties in the context of another plan of tariff reduction. Members of the Sub-Group have submitted lists of items imposed mainly for fiscal purposes which they would wish to exclude from the operation of the plan. These lists may be of interest to the Council in its future discussions of its own scheme, and therefore a copy is attached to this memorandum as Annex "A". A statement which was prepared by the Sub-Group showing the importance of these fiscal duties in the total customs revenue of the country concerned is also attached -- Annex "B".

SECOND PRINCIPLE: TARIFF CEILINGS FOR THREE CATEGORIES
OF TRADE: (5% for raw materials, 15%
for unfinished goods, and 25% for
finished goods and food products)

(iv) Valuation and Specific Duties

9. The foregoing remarks in paragraphs 1 to 3 concerning valuation and specific duties in relation to the maximum duty rate would apply mutatis mutandis to the fixing of the tariff ceilings.

(v) Classification

10. For defining the three categories of products, the most convenient classification is that adopted by the United Nations known as the Standard International Trade Classification. This code is used for the submission of trade statistics to the United Nations, and key tables reconciling it with tariff schedules have been established. (The new Brussels tariff nomenclature would not offer these advantages.) However, if a grouping of tariff items based upon this code is agreed upon, governments should be asked to furnish a division of their national tariffs so as to avoid any misunderstanding as to the application of their obligations. A suggested division of the 570 items of the SITC into the three categories, which might be of use to the Council in its further discussions, will be found in Annex "C".

(vi) The Exemption of a certain Sector of Trade

11. The provision that these three ceiling rates need be observed in the first year of the life of the Convention only in respect of items which comprise 70% of import trade in each category (in the second year only 80%, and in the third year only 90%), while leaving the whole of trade subject to the general 35% maximum, should require periodical evidence of compliance. Each participating government should furnish, after the end of each of the first three years, import statistics (and, if necessary details of duty collections) to show that the items on which the duties were below the ceilings constituted at least the required percentage of import trade in each category.

12. It appears to be implicit in the Council's scheme that after the first three years a rate of duty which was below the ceiling for the relevant category when the Convention came into force, or which was reduced to bring it below the ceiling, should not thereafter be increased above the ceiling. In other words, participating governments should not be free to remove items, in respect of which the obligations of the Convention have been applied, to the exempted sector of trade, and a special provision to this effect should be included in the Convention. If the Convention prohibits such switching of items, each participating government will in effect have assumed obligations by the end of the third year in respect of its whole tariff with the exception of the items which fall within the exempted 10% of trade in each category. This binding of tariff rates could then be regarded as final even though there might be changes in the composition of trade such as to increase or decrease the relative size of the exempted sector.

(vii) Extension to the Whole of Trade

13. When the possibility of applying the three ceilings to 100% of trade is considered the relative commercial importance of the countries participating in the Convention will have to be taken into account. One of the objects of the exemption of a sector of trade is to allow the participants to exclude from the operation of the Convention those items which are imported principally from outside countries. The eventual extension to the whole of trade will depend partly upon this.

(viii) Tariff Ceilings for individual Items

14. If in addition to the ceilings provided for in the Convention, participating governments wish to negotiate lower ceilings for particular items, the procedures employed by the contracting parties to GATT at the Geneva, Annecy and Torquay Conferences with variations could be employed. To facilitate discussion when the time arrives for consideration of this proposal, the following suggestions might be made. A government wishing to propose a duty ceiling on a particular tariff item should submit its proposal to the other government. This should be addressed not only to those governments whose duties on that item are known to be higher than the ceiling proposed; it should be addressed to the others also since they will be expected to accept a commitment that their duties, if increased, will not be above the proposed ceiling. Governments whose duties are above the proposed ceiling should be required to reply within a set time and their comments and counter-proposals should be submitted to all participating governments. By the time all proposals and counter-proposals have been made, most of the participating governments may be directly involved in requests for duty reductions. At an agreed time and place the participating governments should send delegations to enter into negotiations in an effort to reach a mutually satisfactory agreement. Ceiling duties for particular items should be made a part of the Convention by protocols requiring the signature of each participating government before becoming effective.

THIRD PRINCIPLE: CONVENTION OPEN TO ALL GOVERNMENTS

15. Although the Convention is to be open to all countries, it should be assumed that many will not adhere to it and that the most-favored-nation obligations of the participating governments will require the extension of all tariff reductions to these outside countries. Before the Convention enters into force or during the first two years of its application the participating governments may wish to enter into negotiations to obtain compensation from the outside governments whose trade would gain substantial benefit as a consequence of the conclusion of the Convention. These outside governments might be expected to reduce their duties on items of particular interest to the export trade of the participating countries. When arranging for the conduct of such negotiations the following adaptation of the GATT technique might be useful.

17. Governments wishing to obtain compensation from outside countries should submit to the Organization the list of items in the tariffs of those countries on which they would wish to obtain duty reductions or other concessions. The participating governments should jointly submit all requests so put forward to the governments concerned and invite them to

enter into negotiations, at which the requests made and the counter-proposals will be the subject of discussion with a view to reaching an amicable settlement. The resulting commitments, by the participating and by the outside governments, if they are contracting parties to the General Agreement, should be made a part of GATT by means of suitable protocols.

PROVISION FOR CONSULTATIONS

18. To provide evidence of compliance with the obligations of the Convention each government should be required to furnish copies of its customs tariff and to notify all changes in tariff rates. In bringing into operation a convention of such far-reaching importance, there will be many technical problems to straighten out and, relating to the observance of the obligations, there may be numerous differences to settle. Therefore, the Convention should provide procedures for consultations among the participating governments. A consultation procedure would be of particular value if the obligations, not to maintain import duties higher than the ceilings fixed for the three categories of trade, are drawn up in such a way as to allow some flexibility in application in place of rigid regulations.