

CENTRAL DRAFTING COMMITTEE

PROPOSED REDRAFT OF FINAL TEXT OF ARTICLES 42, 42A AND 42B

Article 42

Territorial Application of Chapter IV

1. The provisions of Chapter IV shall apply to the metropolitan customs territories of the Members and to any other customs territories in respect of which this Charter has been accepted /pursuant to/ in accordance with the provisions of Article 99. Each such customs territory shall, exclusively for the purposes of the territorial application of Chapter IV, be treated as though it were a Member; Provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Charter has been accepted by a single Member.
2. For the purposes of this Chapter a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

Article 42A

Frontier Traffic

The provisions of this Chapter shall not be construed to prevent:

- (a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; /or/
- (b) advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace /arising out of the Second World War.

Article 42B

Customs Unions and Free-Trade Areas

1. Members recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of [participants] the countries parties to such agreements.

They also recognize that the purpose of a customs union or [of a] free-trade area should be to facilitate trade between the parties [to it] and not to raise [obstacles] barriers to the trade of other Member[s] countries with such parties.

2. Accordingly, the provisions of this Chapter shall not [therefore be construed to] prevent, as between the territories of Members, the formation of a customs union or [the establishment of] a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or [a] free-trade area; Provided [.] that:

- (a) with respect to a customs union, or an interim agreement leading to the establishment formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with Member/s of the Organization countries not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
- (b) with respect to a free-trade area, or an interim agreement leading to the establishment formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the establishment formation of such free-trade area/s/ or the adoption of such interim agreement/s/ to the trade of Member/s/ countries not participating in the arrangement included in such area or parties to such agreement shall not be higher or more restrictive than the corresponding tariffs duties and other regulations of commerce existing in the same constituent territor~~y~~ies prior to the establishment formation of the free-trade area, or interim agreement, as the case may be; and
- (c) any interim agreement referred to in sub-paragraphs (a) and (b) above shall include a plan and schedule for the attainment of such a customs union or the establishment of such a free-trade area within a reasonable length of time.
3. (a) Any Member deciding to enter into a customs union or a free-trade area, or an interim agreement leading to the formation

of such a union or free-trade area, shall promptly notify the Organization and shall make available to it such information regarding the proposed union or free trade area as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) If, after having studied the plans and schedules provided for in an interim agreement under referred to in paragraph 2. in consultation with the parties to that agreement and taking due account of the information made available in accordance with the terms provisions of sub-paragraph (a), the Organization finds that such agreement is not likely to result in a customs union or in the establishment of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one; the Organization shall make recommendations to the parties to the agreement. If The parties are not prepared to modify the agreement in accordance with such recommendations they shall not maintain or put into force, as the case may be, it in force or institute such agreement if it has not yet been concluded, they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 2(c) shall be notified communicated to the Organization, which may request the Members concerned to consult with it if the change seems likely to jeopardize or delay unduly the achievement formation of the customs union or the free-trade area.

4. For the purposes of this Charter:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories,

so that

- (i) [tariffs] duties and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) are eliminated [on] with respect to substantially all the trade between the constituent territories of the union or at least [on] with respect to substantially all the trade in products originating in such territories, and,
 - (ii) subject to the provisions of paragraph 5, substantially the same [tariffs] duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union [subject to the provisions of paragraph 5];
- (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the [tariffs] duties and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) between such territories are eliminated on substantially all the trade in products originating in the constituent territories [of the free-trade area].
5. The preferences referred to in paragraph 2 of Article 16 shall not be affected by the [constitution] formation of a customs union or a free-trade area but may be eliminated or adjusted by means of negotiations with Members affected. This procedure of negotiations with affected Members shall, in particular, apply to the elimination of preferences required to conform with the provisions of [sub-] paragraph [s] 4(a)(i) and paragraph 4(b) [of paragraph 4].
6. The Organization may, by a two-thirds majority of the Members present

and voting, approve proposals which do not fully comply with the requirements of the preceding paragraphs, provided that they such proposals lead to the establishment formation of a customs union or a free-trade area in the sense within the meaning of this Article.

Interpretative Note

and Paragraph 5 of Article 12B

It is understood that the provisions of Article 16 would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty and is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and the most-favoured-nation rate.
