

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

G/22

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General Distribution

## RESOLUTIONS SUBMITTED BY THE INTERNATIONAL CHAMBER OF COMMERCE ON VALUATION, NATIONALITY OF MANUFACTURED GOODS AND FORMALITIES CONNECTED WITH QUANTITATIVE RESTRICTIONS (GATT/GP/123)

### Note by the Executive Secretary

1. At the last Session these three resolutions of the International Chamber of Commerce were not considered, but were referred for the consideration of the Contracting Parties at the Seventh Session. In order to facilitate the discussion of the Contracting Parties, this note analyses the ICC proposals in relation to the provisions of the Agreement.

#### A. VALUATION OF GOODS FOR CUSTOMS PURPOSES

2. The ICC recommends that the Contracting Parties should consider the possibility of issuing a set of general recommendations and suggests that they might attempt, now or at some future date, to draw up a standard definition of valuation of goods for world-wide application.

##### (a) Principles embodied in the Recommendations

The recommendations which the ICC would like the Contracting Parties to approve cover the following principles:

3. (i) The system of valuation should be so devised that it cannot be used by the administration as a means of altering the tariff incidence and of increasing the protection afforded by law.

4. Article VII:2(a) of GATT expresses a similar idea in so far as it clearly excludes systems based on arbitrary or fictitious values and provides that the valuation should be based exclusively on the actual value of the imported merchandise. An attempt is made in Article VII:2(b) of GATT to give a definition of what is meant by "actual value".

5. It should be noted, in this connection, that the contracting parties were not required to apply these principles as soon as they became parties to the General Agreement and that they merely undertook to "give effect to these principles ... at the earliest practicable date". If the governments parties to the General Agreement were to give effect to the principles laid down in Article VII of the Agreement in a very near future, substantial progress would be made in the direction indicated by the ICC.

6. It is, however, to be recognised that if the application of the principle contained in paragraph 2 of Article VII would eliminate some of the methods

most widely criticised, the governments would not be required to adopt "a simple rule-of-thumb method" as suggested by the ICC.

7. (ii) The "simple rule-of-thumb method" suggested by the International Chamber of Commerce would require governments to use the price shown on a commercial invoice as the normal basis for valuation and to limit other methods to cases where there is a presumption of fraud or of undervaluation.

8. Similar proposals have been discussed before, but experience has shown that national customs administrations are not prepared to accept that system without further qualifications.

9. For instance, the definition arrived at by the Brussels Study Group and embodied in a Convention accepted by a certain number of European countries, is based on the concept of a "normal price". The application of that definition does not coincide with the ICC recommendation, in certain cases, but normally, as indicated in note 5 to the Brussels Convention, "In practice ... when imported goods are the subject of a bona fide sale, the price paid or payable on that sale can generally be considered as a valid indication of the normal price mentioned in the Definition".

10. (iii) The ICC further recommends that the valuation regulations should list the charges included in or excluded from the dutiable value, and that those regulations should be given adequate publicity. This recommendation does not differ from the provisions of Article VII, paragraph 5 of the Agreement.

11. (iv) Finally, the ICC requests that internal taxes from which the exported product is exempted should be excluded from the dutiable value. This principle is clearly stated in paragraph 3 of Article VII of GATT.

12. In conclusion, the first, third and fourth recommendations suggested by the ICC would amount to a re-affirmation of the principles contained in Article VII of the General Agreement. The Contracting Parties may feel that such a re-affirmation is of some practical value and they may wish, in this connection, to consider whether it would be appropriate for them to know to what extent contracting parties have already given effect to those principles. As regards the second recommendation, however, the contracting parties will no doubt wish to take note of the extensive work of the Brussels Study Group and wait until the Brussels Convention has been applied for some time.

(b) A Standard Definition

13. The ICC further suggests that an attempt be made of drawing up a standard definition for world-wide application. It has been noted under paragraph 8 above that a number of European countries have ratified or intend ratifying in the near future the Convention prepared by the Brussels Study Group on valuation.

14. The ICC has drawn attention to what it considers as grave shortcomings in the Brussels Convention and has discussed with the Brussels Study Group

a number of amendments. As the Convention has already been accepted by a number of governments, no change can be made at the present time but the matter will be considered in the near future by the Customs Cooperation Council to be set up in Brussels.

15. In those circumstances, it would seem that the most effective contribution that the Contracting Parties could make would be to examine how an early application of the principles embodied in Article VII of the GATT could be obtained. When this is achieved, they might consider whether further action along the lines suggested by the ICC with a view to reaching greater uniformity in national valuation systems is required.

#### B. NATIONALITY OF MANUFACTURED GOODS

##### (a) Adoption of a common text for determining the nationality of imported goods

15. The ICC suggests that the Contracting Parties might consider the adoption of a common text for determining the nationality of imported goods to be recommended to governments for consideration and adoption.

16. In the General Agreement, the application of most-favoured-nation treatment regarding tariffs or other regulations is based on the "origin" of goods, a concept which seems to coincide with that of nationality referred to in the ICC resolution. It should be noted, however, that it was decided not to give a definition of the word "origin" in the Agreement but to leave each contracting party free to apply its own regulations. The only recommendation made in this connection at the Havana Conference was that the ITO might usefully consider the problem.

17. The Contracting Parties may wish to have from the ICC some information about the practical difficulties which the absence of uniform rules regarding nationality or origin has caused to international traders. So far as the application of tariffs is concerned, it may be pointed out that the General Agreement extends the benefits of most-favoured-nation rates to the bulk of international trade, that those rates are also applied to a number of countries outside the Agreement through bilateral arrangements, and that, even when no such agreements are in existence, certain countries apply in effect the same rates to all sources of supply. It would seem that the conflicts in regulations may occur only in isolated cases, certain of which may however be of some importance.

18. As regards exchange control, it would seem that the question would come within the province of the International Monetary Fund, and that, moreover, the exchange regulations would normally be based on the currency of settlement rather than on the nationality of the goods.

19. Finally, the problem of nationality in relation to tariff quotas, import and export quotas, has grown in importance during recent years, in view of the discriminatory application of many balance-of-payments quantitative restrictions. When, for instance, a product may be imported without

restrictions from some sources, while the import from other sources is strictly limited, exporters may exercise their ingenuity to secure the advantage of the more liberal regulations. As under the Agreement, discrimination is only permissible to any considerable extent during the post-war transitional period, the Contracting Parties may consider that no general definition would be required since individual difficulties which may arise in this connection are capable of solution through arrangement between customs administrations or through the consultation procedures of Articles XXII and XXIII of the Agreement. In the case of non-discriminatory quantitative restrictions permissible under the Agreement, the question of nationality may have some importance when the quotas are allotted to the various sources of supply, and it may prove useful to give to traders the advantages of a common, or at least, of a simple rule for the determination of the nationality or origin of the imported goods.

20. The definition suggested by the ICC is based on the principle that the nationality of a manufactured product should be that of the country in which the last manufacturing process has taken place.

21. If the Contracting Parties were to come to the conclusion that the problem should be considered by them, they may wish to set up a working party which would make a preliminary survey of the points raised by this definition and possibly instruct the secretariat to prepare adequate material for a further examination at a later session. If the secretariat is instructed to make such a study, it will of course maintain close collaboration with the Brussels Study Group which has placed this problem on its programme of work.

(c) Suggested rules concerning the "provenance" of goods

22. The ICC also suggests that the definition of nationality should be supplemented by the adoption of two rules regarding "provenance". The first one would be that transit and manipulation of the goods in a transit country should not affect the nationality of the goods.

23. This principle seems to be fully recognised by the General Agreement the provisions of which, in particular those of Articles I and II, are based on the origin of goods irrespective of their "provenance". The Contracting Parties may therefore wish to confirm to the ICC that in accepting the General Agreement, the contracting parties have accepted the principle of this recommendation.

24. It may be, however, that, as regards the application of the principle laid down in the ICC recommendation, national regulations may not always coincide with the ICC suggestions, and, as this question can hardly be separated from the definition of the nationality of imported goods, it would be advisable to discuss the detailed ICC proposals on this point, together with their suggestions regarding the definition of nationality.

25. The second rule suggested by the ICC is that the tariff and other treatment extended to imported goods should not be influenced by transit through the territory of a third country. This principle is clearly stated

in Article V:6 of the General Agreement, but subject to one exception of some importance, that of preferential duties. Any contracting party may insist that goods should be sent directly from the country of origin to be eligible for such preferential treatment; provided that such requirement was in force at a certain date (30 October 1947 for the original contracting parties, 10 October 1949 for the Annex acceders and 21 April 1951 for the Torquay acceders).

26. It is clear that the last recommendation of the ICC, in so far as it refers to the application of preferential tariffs, could not be accepted by the Contracting Parties unless the second sentence of Article V:6 were amended, and in view of the discussions which have taken place at Geneva and Havana, there would seem to be no prospect of obtaining the required majority for such an amendment.

27. The GATT obligation to extend the most-favoured-nation treatment to goods having been in transit through a third country is limited to transit through the territory of a contracting party and, as is the rule in the General Agreement, no commitment is entered into regarding non-member countries. As most trading nations enjoy the same privileges through bilateral or multilateral agreements, the principle recommended by the ICC seems to be applied in practice except for the special case of preferential duties.

### C. FORMALITIES CONNECTED WITH QUANTITATIVE RESTRICTIONS

28. In this resolution, the ICC embodied "comments and suggestions designed to complete and, where necessary strengthen, the Standard Practices" recommended by the Contracting Parties at their Fifth Session.

29. The main criticism of the ICC relates to Article 3 of the Standard Practices. It will be remembered that the Contracting Parties recommended that, in the case of new or intensified restrictions, goods en route as well as those covered by an irrevocable letter of credit should be exempted from the new measures, but, as regards goods "proven to have been covered by adequate confirmed prior order", the licensing authorities were only invited to give special consideration to cases where the goods were "not marketable elsewhere without appreciable loss". The ICC feels that it is "not admissible that the possibility for a trader to fulfill a regular contract should be left to the decision of an official" and recommended that

"new or intensified restrictions should never apply to goods covered by a bona fide order before the entry into force of these measures is announced, unless failure to apply these would dangerously affect the interests of the country in question".

30. Since the ICC submitted this recommendation, a number of countries have introduced drastic measures of import control as the result of a serious deterioration of their external financial position and, in order to make these measures promptly effective, they either cancelled licenses already granted or declared that the new or intensified restrictions should apply even to goods covered by previous orders. It should be noted, however, that

subsequent administrative action usually followed the lines suggested in Article 3 of the Standard Practices and that special consideration was in effect given to hardship cases. The following examples may illustrate the legal position resulting from the official announcements. In the case of the United Kingdom, the restrictions introduced in November 1951 provided for exceptions only in the case of goods en route; the same is true of the new restrictions introduced in March 1952, it being stipulated at that time that "goods not in transit before 12 March will require an import license notwithstanding that the goods have been paid or that irrevocable credits have been opened or that shipping space has been booked in respect of such goods". These announcements did not exclude special consideration being given by the licensing authorities to goods covered by contracts entered into before 11 March. In the case of France the reintroduction of licensing requirements for all imports in February provided exceptions only in favour of goods actually en route, but administrative remedies appear to have been available. In the case of Australia, a simplified licensing procedure was provided for paid goods already en route and the Government undertook to grant licenses for imports covered by irrevocable credits or the like. And in the case of New Zealand, all licences issued for imports from scheduled countries were submitted to a review, but provision was made for revalidating licences for goods in transit or covered by confirmed or irrevocable credits, or shipped by vessels departing not later than a certain date.

31. In view of these developments, the ICC re-examined the problem and adopted a resolution on the "Sanctity of Contracts" which has been circulated to the contracting parties (G/11). The Twentieth International World Conference also submitted comments along the same line (GATT/CP/123). It would seem that the ICC would obtain satisfaction if Article 3 of the Standard Practices were amended and made more definite. In a letter sent to the Executive Secretary, the Secretary General of the ICC stated that "he is convinced that something stronger than the doubtful protection afforded to traders by the third paragraph of the Standard Practices is necessary in order to restore trading confidence", and suggested that Article 3 of the Standard Practices might be supplemented with such a statement as "governmental regulations should be so administered as to allow traders to honour bona fide legitimate contracts"; or, alternatively, that an interpretative note be added to the Article to the effect that "every possible effort will be made to provide for the carrying out of bona fide legitimate contracts entered into before the imposition of restrictive regulations".

32. It may be noted in this connection that the OEEC has considered this problem and that its Council, on 13 August 1952, has adopted a resolution which affords a more definite protection of goods covered by contracts than the Standard Practices recommended by the Contracting Parties.

33. The other suggestions of the ICC relate to administrative problems connected with the issue of import documents or the treatment of special cases. They do not seem to raise any question of substance, except perhaps recommendation No 10 relating to deposit requirements.