

RESTRICTED

GENERAL AGREEMENT ON TARIFFS AND TRADE

L/115

28 August 1953

Limited Distribution

Original: English

DIFFICULTIES ARISING OUT OF THE APPLICATION OF ARTICLE I

Memorandum by the United Kingdom Government
(cf. G/46/Add.2)

1. The Government of the United Kingdom have notified their wish to have placed on the agenda for the Eighth Session of the CONTRACTING PARTIES to the GATT the need for facilities, consistent with the general purposes and objectives of the GATT, to relieve a country which has occasion to impose or increase protective duties on foreign goods from the requirement to impose corresponding duties on imports which, under preferential arrangements, have traditionally been free of duty.

2. It is the traditional policy of the United Kingdom to accord free entry to most goods imported from the Commonwealth and Her Majesty's Government could not impose duties on these Commonwealth products without a general modification of existing tariff legislation for which they could not expect to secure Parliamentary approval. In these circumstances, the effect of Article I is to bind virtually the whole of the United Kingdom protective tariff and thus to deny to the United Kingdom the freedom which other countries enjoy to increase most-favoured-nation rates - consistently with the general objectives of the GATT and their specific tariff commitments - when this may be judged necessary to give increased protection to domestic producers.

3. The aim of the United Kingdom is to seek a solution to this problem consistently with the basic provisions of the GATT. Her Majesty's Government therefore wish to make it clear that their purpose is to enable increased protection to be given to domestic industry and agriculture when this is judged necessary and not to increase the preferential advantage enjoyed by Commonwealth goods over foreign goods in the United Kingdom market. They are, therefore, not seeking a modification of the general objective of Article I.

4. Her Majesty's Government also wish to emphasize that they have no intention of embarking on a comprehensive or widespread upward revision of their protective tariff. Her Majesty's Government have made clear, both by word and action, their aim to achieve the GATT objective of removing the barriers to trade represented by import licensing restrictions as quickly and widely as their balance of payments and the state of their reserves permit. They have consistently warned their industries that they cannot look

to these import restrictions for protection against competition from imports, and have reiterated their policy that the tariff is the proper method of providing such protection as may in any cases be established to the satisfaction of the United Kingdom Government to be necessary. It will be increasingly difficult for Her Majesty's Government to maintain domestic support for pursuing this policy if they are not seen to possess the freedom - consistently with their obligations and commitments under the GATT - to implement it where there has already been or may in future be an established case for increased protection. There have been no increases in the United Kingdom tariff for protective purposes since 1939, and freedom to make reasonable adjustments in particular cases to meet changed conditions is essential if Her Majesty's Government is to be able to pursue the general objectives of the GATT and the principles of commercial policy which they have declared to be their aim.

5. In the cases where Her Majesty's Government now or at some future time judge it necessary to accord increased protection to domestic producers, there will, as a general rule, be little or no Commonwealth interest, and in such cases the incidental increase in the margin of preference resulting from a protective increase in the most-favoured-nation rate would involve a purely technical departure from the principles of Article I which could have no practical consequences in terms of diverting trade from foreign to Commonwealth sources. Her Majesty's Government recognize, however, that there might be cases, where, by reason of the extent of Commonwealth interest, foreign countries with an interest in the trade might fear the risk of substantial diversion of trade to Commonwealth countries. They recognize that in such cases these countries would wish to have adequate safeguard against any departure from the principles of Article I which would involve substantial damage to their interests.

6. The problem is thus the essentially technical one of devising procedures to place the United Kingdom on substantially the same footing as other countries, while safeguarding the interests of foreign countries where there is likelihood of substantial diversion to Commonwealth countries. It is, furthermore, a problem which assumes immediate practical importance in relation to presently unbound items, so long as there is a time bar on recourse to the procedures of Article XXVIII. On the basis that the CONTRACTING PARTIES are likely to decide in favour of a further extension of this time bar, the United Kingdom are therefore limiting the request now put forward to items not at present included in the United Kingdom Schedule. They reserve the right, however, to revert at an appropriate later stage to certain problems which might in future arise in relation to items at present in the Schedule.

7. The proposal which the United Kingdom accordingly put forward for consideration by the CONTRACTING PARTIES is that the United Kingdom should be accorded a general waiver, to relate to items not at present in the United Kingdom Schedule where there is free entry for imports from the Commonwealth and where, it is agreed, under appropriate procedures for consultation and arbitration, that there is no likelihood of substantial diversion of trade

from foreign to Commonwealth suppliers. It is essential from the United Kingdom standpoint that there should be no public disclosure of proposals for tariff changes before they are put into effect and therefore that the procedures should ensure for the consultations the same strict conditions of secrecy as apply to tariff negotiations.

8. The procedural suggestions for implementing these proposals are in substance as follows:

- (a) Before taking action under the waiver on any item the United Kingdom would simultaneously, in strict confidence, notify (a) contracting parties which appear to the United Kingdom likely to have a substantial interest, and (b) the GATT secretariat, of their intention to act under the waiver in respect of that item. The United Kingdom would give figures for past trade in the product in question and, in the case of seasonal duties, would state the period in which it had been decided that the increased duty would operate. The United Kingdom would not at this stage disclose the proposed rate of duty. The GATT secretariat would immediately pass this information to all contracting parties, so that any contracting party not directly approached by the United Kingdom which might claim a substantial interest would know what was proposed.
- (b) The United Kingdom would automatically be free to put the increased duty into effect after the expiry of an appropriate period (which should be as short as reasonably possible) unless a contracting party having a substantial interest in the trade requested consultations on the ground that substantial risk of diversion from it to Commonwealth suppliers might be involved.

Contracting parties with a prima facie claim to ask for consultation by reason of a substantial interest in the trade and fear of such substantial diversion would be entitled to be informed, in strict confidence, of the proposed rate of duty. Provision would need to be made for speedy appeal by the United Kingdom to the CONTRACTING PARTIES, through appropriate intersessional machinery, against objections not based on clear prima facie evidence of risk of substantial diversion from foreign to Commonwealth sources.

- (c) These consultations regarding risk of substantial diversion should take place under the aegis of the GATT in order to place them under the same conditions of secrecy as apply to tariff negotiations.
- (d) The outcome of these consultations might be:
 - (i) agreement between the interested parties that there was no likelihood of substantial diversion, in which even the United Kingdom would be automatically free to put the proposed increase of duty into effect;
 - (ii) disagreement as to the likelihood of substantial diversion.

- (e) In the event of (d) (ii) it would be open to the United Kingdom to seek arbitration by the CONTRACTING PARTIES (through appropriate intersessional machinery) as to the likelihood of substantial diversion. If the CONTRACTING PARTIES determined that there was no likelihood of substantial diversion the United Kingdom would be free to proceed as under (d) (i); this determination would be without prejudice to the application of Article XXIII if, in the event and contrary to expectation, substantial diversion could be proved to have resulted.
- (f) If the CONTRACTING PARTIES determined that there was likelihood of substantial diversion the proposed general waiver would not apply. In these circumstances it would be open to the United Kingdom to seek a special individual waiver, after due consultation with the interested foreign countries. This ultimate limitation on the scope of the general waiver would, however, be subject to the proviso that it would be open to the United Kingdom to increase the duty if in critical circumstances, where imports were causing or threatening serious injury to domestic producers, the increase was necessary to prevent or remedy such injury; and in that event it would be open to contracting parties whose interests were affected by any substantial diversion from foreign to Commonwealth suppliers which actually took place to retaliate by suspending such substantially equivalent obligations or concessions the suspension of which the CONTRACTING PARTIES did not disapprove.