

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/168

24 October 1953

Limited Distribution

DIFFICULTIES ARISING OUT OF THE APPLICATION OF ARTICLE I

Note by the Chairman

1. It will be recalled that there was considerable difference of opinion in the Working Party over paragraph (h) in the Procedures. In the hope of being able to achieve a broader measure of agreement between the contracting parties principally concerned, I have submitted to them an amended text for their consideration. Should this new formula command general acceptance by these contracting parties, I intend to submit the amendment for consideration by the CONTRACTING PARTIES when the report of the Working Party is discussed.

2. My suggestion is that paragraphs (g) and (h) of the Procedures should read as follows:-

"(g) Failing such agreement, it shall be open to the United Kingdom to seek arbitration by the CONTRACTING PARTIES (through appropriate intersessional machinery if the matter should arise while the CONTRACTING PARTIES are not in session) as to the likelihood of substantial diversion.

"(h) The CONTRACTING PARTIES or the appropriate intersessional body may reach one of the following three decisions:

- (i) that there is no likelihood of substantial diversion
- or (ii) that there is likelihood of substantial diversion
- or (iii) that the evidence is not sufficient for them to determine whether or not there is likelihood of substantial diversion.

In case (i) the waiver shall apply. In case (ii) the waiver shall not apply. In case (iii) the waiver shall apply conditionally; that is to say, the waiver shall apply but if the CONTRACTING PARTIES should determine, upon the representation of a contracting party affected, after a reasonable period of time (and not less than one year), that the increase in the margin of preference had in fact led to a substantial diversion of trade, the waiver shall cease to apply."

3. This would involve a number of minor consequential amendments:-

In the Procedures:-

Reword the last sentence of paragraph (b) as follows:-

"In the absence of any such request for consultation, the waiver shall apply after the expiry of thirty days from the date of notification under (a)".

Reword paragraph (f) as follows:-

"If in consultation in accordance with paragraph (b) above it is agreed that there is no likelihood of substantial diversion of trade in the sense defined in ~~that~~ paragraph, the waiver shall apply.

In the Decision amend the operative paragraph by inserting before the present proviso the following:

"provided that the incidental establishment or increase of a margin of preference is not likely to lead to a substantial increase of imports of goods of that class or description from the aforesaid territories at the expense of imports from other sources; and provided further that"