

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/189/Add.1

6 July 1954

Limited Distribution

THE REVIEW OF THE AGREEMENT

Some Advance Notes by the Secretariat

Addendum

This addendum contains further comment on some of the provisions of the Agreement which will require special attention in the course of the review.

Articles I:1 and II:1(b)

It was suggested in L/189 that the text of these paragraphs might be reconsidered with a view to making it clear whether the provisions of Article II:1(b) apply to charges imposed on the international transfer of payments for imports as well as to other kinds of duties and charges imposed on or in connection with importation. The following additional notes may be helpful to contracting parties in studying this question.

Supplementary charges take various forms and are administered in various ways, though the effects on trade and on the value of concessions provided for in the GATT schedules through increasing the cost of importation may be the same. It makes little difference as regards these effects, for example, whether a tax is collected by the customs authorities when documents are presented to clear goods through the customs or by the treasury or banking institutions when foreign currency is purchased to effect payment: thus the method used for the collection of a charge is not a satisfactory criterion on which to base a distinction having a legal significance.

It can be argued that the omission of any reference to charges on transfers from Article II:1(b) was intentional - that if those who drafted this paragraph had intended such charges to be covered they would have referred to them explicitly as was done in Article I:1 where it was clearly intended to cover such charges. On the other hand, it may be argued that the language of Article II is all inclusive; paragraph 1(b) speaks of "... all other duties or charges of any kind imposed on or in connection with importation ...". In support of this contention reference could be made to paragraph 2 of Article II which sets out the special charges, duties and fees which do not fall under paragraph 1(b); it could be said that if transfer charges were to be excluded from the operation of paragraph 1(b) they would have been mentioned in paragraph 2. Moreover it should be noted that the two Articles were drafted by different people in different contexts: Article I was taken practically without change from Article 16 of the draft Havana Charter, while Article II was written in the context of the General Agreement.

There are many instances of exchange taxes from which the products listed in the schedules to the Agreement are not exempted and therefore it appears desirable that the interpretation of Article II:1(b) should be clarified. The study of this particular question should be considered also in relation to Article XV:9 which is discussed below.

Article XV. Paragraphs 1 and 9

In L/189 reference is made to difficulties that have been experienced in the interpretation of paragraph 9. In endeavouring to clarify the meaning of this paragraph, the first question to consider is whether the words of subparagraph (a) - "in accordance with the Articles of Agreement of the IMF" - cover exchange controls and exchange restrictions which are approved by the Fund in addition to those which are authorized under the Fund Articles. If so, and in view of the fact that approval by the Fund may be sought for measures which would adversely affect GATT commitments and the rights and benefits of other contracting parties, it might be desirable to provide for consultation on such requests between the CONTRACTING PARTIES and the Fund. Provision for such consultations could be made under paragraph 1 of Article XV. Probably those who drafted Article XV thought that some flexibility could be allowed under paragraph 9 because of the protection afforded by paragraph 1. This paragraph, however, has not been implemented during the provisional application of the Agreement and consideration might now be given to the desirability of making an arrangement with the Fund to replace the more limited arrangement made in 1948 on the basis of paragraph 3 only.

There is, however, another category of measures which requires consideration: namely, exchange controls and exchange restrictions upon which the Fund has given no ruling. When a measure is challenged before the CONTRACTING PARTIES and it is claimed that it is an exchange measure, the CONTRACTING PARTIES must determine whether it is covered by paragraph 9 (a), and in order to make this determination they must ascertain whether the measure is an exchange control or an exchange restriction and if so whether it is applied in accordance with the Fund Articles. Only the Fund can furnish the required information. Provision for the reference of such enquiries to the Fund could be included in the arrangement made under paragraph 1.

When reviewing the provisions of paragraph 9 the contracting parties might note that the words "Nothing in this Agreement shall preclude ..." are different in an important respect from the corresponding words in the Havana Charter (Article 24) which reads "Nothing in this Section shall preclude ...", that is to say, nothing in the Quantitative Restrictions and Exchange Controls Section of the Commercial Policy Chapter.

Article XVIII

The Executive Secretary was instructed by the Eighth Session to study the special problems which the application of the General Agreement raises for the less developed countries and in this connection to establish contact with the Economic Commissions for Latin America and Asia and the Far East. These problems have been discussed at length with the Executive Secretaries of the two Commissions as well as with many of the governments concerned. A report will be issued prior to the Session.

Relations with Non-Contracting Parties

Most contracting parties grant unlimited and unconditional most-favoured-nation treatment to many non-contracting parties. The result is that a country may, by remaining outside the Agreement, receive the benefits of the tariff reductions and bindings negotiated under GATT without accepting the commercial policy commitments subject to which these tariff concessions were granted to contracting parties. This is an important and difficult question which might be discussed during the review. However, it probably cannot be resolved in the review and might be referred to the Organization for further study.

Entry into force of Amendments

The changes in the Agreement will have to be made effective by amendment under Article XXX. To avoid confusion in the texts applied by the various contracting parties it would be desirable to provide that a contracting party cannot accept some of the amendments while rejecting others. The amendments (except those to Articles I, II, XXIX and XXX, which will be referred to in a subsequent paragraph) will enter into force, in respect of those contracting parties which accept them, when they have been accepted by two-thirds of the contracting parties. Other contracting parties will remain bound by the unamended articles until they also accept the amendments. Thus, there is some risk that there may be an indefinite period during which two-thirds or more of the contracting parties will be governed by the new set of rules and the others by the old. To avoid delay in the entry into force of these amendments for all contracting parties it may then be desirable for the CONTRACTING PARTIES to prescribe a date, under paragraph 2 of Article XXX, for the acceptance of these amendments by the other contracting parties.

Definitive Application of the Agreement

When the amendments which require acceptance by two-thirds of the contracting parties have entered into force under Article XXX, it will be desirable that the Agreement thus revised should itself enter into force definitively under Article XXVI. Accordingly, it might be provided that acceptance of the amendments must be accompanied by acceptance of the revised Agreement under Article XXVI. When the Agreement has entered into force definitively under

Article XXVI, the contracting parties which have so accepted it might wish to decide, under paragraph 2 of Article XXXII, that any contracting party which had not accepted it by a specified date would cease to be a contracting party. This would also ensure the entry into force of the amendments to the Articles which require unanimity - Articles I, II, XXIX and XXX.

Entry into force of the Protocol
of Organizational Provisions

In view of the fact that there may be some delay in the entry into force of the amendments, consideration should be given to the desirability of arranging for the organizational protocol to enter into force more quickly, say when signed by a simple majority. In that case, however, provision should be made whereby a member which does not accept the amendments would be free to withdraw from the Organization on sixty days notice. If the organizational protocol is to enter into force before the amendment of Article XXV (providing for the vesting of functions in the Organization) becomes effective, it would be necessary for the CONTRACTING PARTIES to take a formal decision assigning their functions under Article XXV to the Organization; the Organization could then assume responsibility for the administration of the Agreement without waiting for the amendment of Article XXV to enter into force.

