

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES

Ninth Session

## EXISTING MANDATORY LEGISLATION

### Information received from Governments

#### Addendum

The replies of the delegations of Australia, Ceylon, Denmark, Finland, Germany, Japan, Pakistan, Rhodesia and Nyasaland, Union of South Africa, and the United Kingdom have been circulated in documents L/309 and L/309/Add.1.

The replies of the Canadian, Indian and United States delegations follow.

#### NOTE BY THE CANADIAN DELEGATION

The only legislation passed by the Parliament of Canada which requires action inconsistent with provisions of Part II of the Agreement is contained in the Customs Tariff, Schedule C. This Schedule lists goods, the importation of which is prohibited. Most of these prohibitions are not inconsistent with Part II. There are four, however, which do not appear to fall under the list of exemptions in Articles XI, XX and XXI of the General Agreement. These prohibitions are:

1. Tariff Item 1204 which prohibits the import of oleomargarine, butterine and other similar substitutes for butter;
2. Tariff Item 1215 which prohibits the import of used or second-hand motor vehicles for resale;
3. Tariff Item 1216 which prohibits the import of used or second-hand aircraft for resale and;
4. Tariff Item 1218 which prohibits the import of second-hand periodical publications for resale.

#### NOTE BY THE INDIAN DELEGATION

In the twenty-seventh meeting of the CONTRACTING PARTIES held on 22 December 1954, after discussing the United Kingdom note on the problem of existing mandatory legislation (L/299), it was decided that delegations should try their best to provide information as to the extent to which they were prevented by internal mandatory legislation existing on the date of the Protocol

of provisional application from complying with the provisions of the Agreement. In the course of the discussions many delegations, including the Indian delegation, had expressed the view that it would be very difficult to give a complete answer on the points raised by 15 January 1955. The Indian delegation has, however, been in communication with the Government of India on the subject and what is set out below may be of some use in the proposed study of the problems relating to definitive application of the Agreement.

At the outset it is necessary to point out that in India the powers to legislate over matters affecting trade and commerce vest not only in the Indian Parliament but also in the Legislatures of the States (formerly Provinces of British India and Indian States). Within the time given, no attempt whatsoever could be made to examine the legislation of the various States and no idea can, therefore, be formed at this stage of the possible scope of the Government of India's obligations under paragraph 12 of Article XXIV.

Secondly, in most instances legislation in India is not framed in a mandatory form, though its effect, so far as the Government is concerned, may not be different. By giving powers to the Executive to act in a particular way in particular circumstances Parliament, in fact, expects that such action would be taken and the permissive character of the legislation is often intended to be no more than an arrangement for flexibility in administration.

Within the time available, and in view of the special factors referred to above, the Indian delegation is able to draw attention at this stage only to the following measures which may have a bearing on the subject:

- (a) Section 18 of the Sea Customs Act, 1878 (copy attached);
- (b) The Indian Power Alcohol Act, 1948 (copy attached); and
- (c) The Imports and Exports Control Act, 1947.

Except for Section 18 of the Indian Sea Customs Act, the others have a permissive character and not a mandatory one. All the same, for the reasons explained above, the provisions of the Indian Power Alcohol Act are intended to be used so long as the particular situation which warranted its enactment continues. It will be noticed that its main object is to ensure that in certain States or areas, petrol is not sold except in admixture with power alcohol. The provisions of the Import and Export Control Act are in that sense less stringent because the Executive has the freedom to vary the incidence of restrictions on import and export according to the needs of the situation, though while this Act continues to be in force any damage to India's domestic economy or external finances will render the Executive liable to explain to Parliament why action in terms of the Act was not taken. These

measures have been mentioned as illustrative of those which India would have liked to bring to the attention of the CONTRACTING PARTIES, if it were possible to collect fuller data within the time available. It will need further examination to decide whether or not any of these measures is actually inconsistent with the provisions of the General Agreement.

THE SEA CUSTOMS ACT, 1878

(VIII of 1878)

(As modified up to 1 December 1950)

Prohibitions and Restrictions of Importation and Exportation

18. No goods specified in the following clauses shall be brought, whether by land or sea, into India:

- (b) counterfeit coin, or coin which purports to be Indian coin, or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight or fineness;
- (c) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article;
- (d) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code, or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889;
- (e) goods made or produced beyond the limits of India, and having applied thereto any name or trade mark being, or purporting to be, the name or trade mark of any person who is a manufacturer, dealer or trader in India unless
  - (i) the name or trade mark is, as to every applicant thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of India and
  - (ii) the country in which that place is situated is in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the English language;
- (f) piece goods manufactured outside India, such as are ordinarily sold by length or by the piece, if each piece has not been conspicuously marked:

- (i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and
  - (ii) with the real length of the piece in standard yards, inscribed in the international form of numerals;
- (ff) goods made or produced beyond the limits of India and intended for sale, and having applied thereto, a design in which copyright exists under the Indian Patents and Designs Act, 1911, in respect of the class to which the goods belong or any fraudulent or obvious imitation of such design except when the application of such design has been made with the licence or written consent of the registered proprietor of the design;
- (g) matches made with white phosphorous;
- (h) goods which are required by a notification under Section 12A of the Indian Merchandise Marks Act, 1889, to have applied to them an indication of the country or place in which they were made or produced, unless such goods show such indication applied in the manner specified in the notification;
- (i) cotton yarn manufactured outside India, such as is ordinarily imported in bundles, if each bundle containing such yarn has not been conspicuously marked:
- (i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and
  - (ii) with an indication of the weight and the count of the yarn contained in it, in accordance with the rules made under Section 20 of the Indian Merchandise Marks Act, 1889;
- (j) cotton sewing, darning, crochet or handicraft thread manufactured outside India, if each of the units in which the thread is supplied has not been conspicuously marked:
- (i) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and
  - (ii) with the length or weight of the thread contained in it and in such other manner as is required by the rules made under Section 20 of the Indian Merchandise Marks Act, 1889.

Act No. XXII of 1948

An Act to Provide for the Development of  
the Power Alcohol Industry

WHEREAS it is expedient in the public interest that the Power Alcohol Industry should be developed under the control of the Central Government;

It is hereby enacted as follows:

1. SHORT TITLE, EXTENT AND DURATION

- (1) This Act may be called the Indian Power Alcohol Act, 1948.
- (2) It extends to all the Provinces of India.
- (3) This Act or such portion thereof shall come into force in such area, and in such date as the Central Government may, by notification in the official Gazette specify in this behalf.

2. DECLARATION AS TO EXPEDIENCY OF CENTRAL GOVERNMENT'S CONTROL

It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the development of the Power Alcohol Industry.

3. DEFINITIONS

In this Act, unless there is anything repugnant in the subject or context;

- (a) "molasses" means the heavy, dark-coloured residual syrup drained away in the final stage of the manufacture of sugar by vacuum pans in sugar factories either from sugarcane or by refining gur, when such a syrup has fermentable sugars (expressed as reducing sugars), but does not include the final residual syrup left in the manufacture of sugar by the open pan process;
- (b) "petrol" means dangerous petroleum as defined in clause (b) of Section 2 of the Petroleum Act, 1934 (XXX of 1934);
- (c) "power alcohol" means ethyl alcohol containing not less than 99 per cent by volume of ethanol measured at sixty degrees Fahrenheit corresponding to 74.4 over proof strength.

4. PRODUCTION OF POWER ALCOHOL

- (1) No person shall manufacture power alcohol from any substance other than molasses or such other substance as may be specified by the Central Government.
- (2) If any dispute arises as to whether any substance is or is not molasses the decision of an officer authorized by the Central Government in this behalf regarding such dispute shall be final and shall not be called in question in any Court.

5. POWER TO REGULATE PRODUCTION AND DISPOSAL OF POWER ALCOHOL

The Central Government may regulate the production and disposal of power alcohol by any distillery situated in any area in which this Section is for the time being in force.

6. POWER TO DIRECT USE OF POWER ALCOHOL AS MOTIVE POWER

- (1) The Central Government may, by notification in the official Gazette, direct that in such area as may be specified therein no petrol shall be sold or kept for sale except with an admixture of power alcohol.
- (2) The proportion of petrol and power alcohol in such mixture shall in any area and for any purpose be such as may from time to time be specified by the Central Government but such proportion of power alcohol in the case of mixture with petrol meant for use as motive power for any motor vehicle shall not be more than 25 per cent or less than 5 per cent by volume.
- (3) The power alcohol to be employed for such mixture shall be obtained from such distilleries as may, from time to time, be specified by the Central Government.

7. PENALTY

Whoever contravenes any of the provisions of Sections 4 and 5 or any order of the Central Government issued thereunder shall be punishable with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and in the case of a continued contravention with a further fine which may extend to one hundred rupees for every day during which the contravention is continued after conviction therefore.

8. DELEGATION OF POWERS

The Central Government may, by notification, in the official Gazette, direct that any power conferred by this Act shall, subject to such conditions, if any, as may be specified in the direction, be exercisable also by:

- (a) such officer or authority subordinate to the Central Government; or
- (b) such Provincial Government or such other officer or authority subordinate to a Provincial Government;

as may be specified in the direction

9. OFFENCES TO BE BAILABLE

All offences punishable under this Act or any rule made thereunder shall be bailable within the meaning of the Code of Criminal Procedure, 1898 (V of 1898).

10. POWER TO MAKE RULES

- (1) The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may:
  - (a) provide for the licensing of the manufacture of power alcohol;
  - (b) prescribe the specifications and tests in respect of the purity of power alcohol intended for admixture with petrol in order to ensure its suitability for use in motor vehicles;
  - (c) fix the price at which power alcohol may be sold for the purpose of admixture with petrol;
  - (d) provide for imposing and collecting a duty of excise on power alcohol intended for admixture with petrol;
  - (e) prescribe conditions in respect of the transport and storage of power alcohol intended for admixture with petrol and for the manner in which the admixture is to be affected;

- (f) prescribe the submission by a manufacturer of power alcohol or importer or distributor of petrol of returns regarding the power alcohol and petrol manufactured, purchased, stored or sold, as the case may be;
  - (g) provide for denaturing of power alcohol at the distilleries;
  - (h) provide for any other matter which is to be or may be prescribed under this Act.
- (3) Rules made under this Act may provide that any contravention of such rules shall render the offender liable on conviction to a fine not exceeding one thousand rupees.

#### 11. POWER OF EXEMPTION

Notwithstanding anything contained in this Act, the Central Government may, by notification in the official Gazette, declare that any of the provisions of this Act shall not apply to any case or class of cases.

#### NOTE BY THE UNITED STATES DELEGATION

(Summary of more important legislative provisions)

##### Article I

(a) There is a 2 cents per pound preference in the processing tax accorded coconut oil derived from Philippine coconuts (26 USC 2470)

Note: It would be permissible under the note to Annex D to the General Agreement to convert this processing tax preference to a tariff preference.]

##### Article III

(a) Sections 4511 and 4513 of the Internal Revenue Code impose processing taxes on imported coconut, palm, and palm-kernal oil which are not imposed on the processing of competing domestic oils (26 USC 4511 and 4513). Note: It would be permissible as above under the note to item 54 of Part I of Schedule XX of the General Agreement to convert these processing taxes to import duties.]

(b) Sections 4591, 4812, 4813, 4816, 4818, 4831, 4832, 7235(e) and 7265(b) and (e) of the Internal Revenue Code impose internal revenue taxes on imported oleomargarine, adulterated butter, and filled cheese which are not applied or are applied at lower rates to the like domestic product. (26 USC 4591, 4812, 4813, 4816, 4818, 4831, 4832, 7235(e) and 7265(b) and (e)).

(c) Sections 5001 (a)(3), 5007(b)(2), 4001, 4011, 4021 and 4471 of the Internal Revenue Code imposed a discriminatory tax on imported perfumes containing distilled spirits. (26 USC 5001(a)(3), 5007(b)(2), 4001, 4011, 4021, and 4471).

(d) Copyright legislation requires the printing in United States of all copies of most books in the English language, in excess of 1,500 copies, in order that copyright protection may be obtained. (17 USC 16 and 17). [Note: This provision has been repealed for works of nationals of, and works of other than United States nationals first published in, countries which with the United States became parties to the Universal Copyright Convention. (Public Law 743, 83rd Congress)].

#### Article VI

Section 303 of the Tariff Act of 1930 requires the assessment of counter-vailing duties to offset a subsidy or other grant without a showing of injury or threat of injury to domestic industry. (19 USC 1303).

#### Article VII

(a) The "American selling price" used is the basis of valuation of certain coal-tax products, some canned clams, woollen gloves and mittens, and rubber-soled footwear does not represent actual value but is based on the value of merchandise of national origin. (19 USC 1000, paras. 27 and 28, 1336(b), and 1402(g), T.D. 47031, T.D. 43183 and T.D. 46158).

(b) "United States value" and "cost of production", which may be used as bases of valuation if neither foreign or export value can be determined do not comply in all respects with Article VII. The statutory definition of the former contains certain arbitrary restrictions on deductions, and there is an arbitrary requirement that certain mark-ups be added in the case of the latter. (19 USC 1402(e) and (f)).

(c) The existing United States law is out of line with the provision of paragraph 2(b) of Article VII regarding the quantities, the price of which shall be taken in determining "actual value", since it frequently requires that the value of a shipment of imported merchandise be determined with respect to the price at which a lesser quantity is sold in the country of exportation. (19 USC 1402(c) and (d)).

(d) The Tariff Act, in providing for the use of foreign wholesale value in some cases, does not provide for the exclusion from value for duty purposes of all taxes imposed on products consumed domestically but from which exported merchandise is exempted. (19 USC 1402(a) and (c)).

Article XI

(a) There is prohibition against the exportation of tobacco seed (7 USC 516 and 517).

(b) Section 22 of the Agricultural Adjustment Act (of 1933) as amended (7 USC 624) on 30 October 1947 required the President to impose such quantitative limitations, not less than 50 per cent of the total quantity entered during a representative period, as he found to be necessary in order that the entry of the article on which such restrictions were imposed would not render or tend to render ineffective or materially interfere with any programme undertaken by the Department of Agriculture under the Agricultural Marketing Agreement Act, as amended, the Soil Conservation and Domestic Allotment Act, as amended, or Section 32, Public Law 320, 74th Congress, as amended, or would reduce substantially the amount of any product processed in the United States from any agricultural commodity with respect to which any such programme or operation is being undertaken. This provision could require the imposition of quotas in some situations which would not come under the exceptions provided for in Article XI or Article XX, or (in the case of quotas coming under the exception in paragraph (2)(c)(i) of Article XI) could require that the quotas be smaller than provided for in Article XI. [Note: Section 22 quotas which would be permissible under the Protocol of Provisional Application should not be confused with the action under that section not covered by that Protocol for which the United States has requested a waiver.]

(c) Copyright legislation prohibits the importation of more than 1,500 copies of most books in the English language for which United States copyright is obtained. (17 USC 16 and 17). [Note: This provision has been repealed for works of nationals of, and works of other than United States nationals first published in, countries which with the United States became parties to the Universal Copyright Convention. (Public Law 743, 83rd Congress)]