

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REPORT OF THE WORKING PARTY ON RHODESIA AND NYASALAND/SOUTH AFRICA TRADE RELATIONS

1. Following the request to the CONTRACTING PARTIES by the Governments of the Union of South Africa and the Federation of Rhodesia and Nyasaland, the Working Party examined the question of the special commercial relationships between the two countries with a view to defining clearly the position of the CONTRACTING PARTIES in this regard. The request of the two Governments arose from their contention that, with the termination on 30 June 1960 of the Trade Agreement of 28 June 1955 between them, which was examined by the CONTRACTING PARTIES at the tenth session and to which the Decision of 3 December 1955 is related, the inclusion of the two fundamental principles of the 1955 Agreement is essential to the negotiation of any new agreement. These two principles are: (a) the duty-free admission, or admission at special preferential rates of duty, of a number of the Federation's products into the Union, and (b) the reciprocal exemption of each other's exports from balance-of-payments import restrictions.
2. In support of the contention of the two Governments that the maintenance of these two principles was vital to the special trade relations and to the interdependence of economic interests which had developed between the Union and the Federation under the exceptional arrangements which had governed the interchange of products between them for more than half a century, the South African delegation described to the Working Party the various preferential customs and trade agreements which had existed between South Africa and Northern and Southern Rhodesia prior to the conclusion, after the establishment of the Federation, of the 1955 Agreement now regulating the commercial relations between South Africa and the Federation as a whole. The South African delegation pointed out that the principle of free trade between South Africa and the two Rhodesias had, with variations differing in extent from time to time, been embodied in these special preferential customs and trade agreements, and that the Federation, because of its need for accelerated industrial development, now found it necessary to secure duty-free access, or access at special preferential rates of duty, to the Union market on a wider range of products than was provided for in the 1955 Agreement. At the same time the Federation desired to grant increased protection to its own industries against South African and other external competition, and therefore desired to revise the special preferential tariff treatment accorded to South African goods under the 1955 Agreement.
3. The South African delegation explained South Africa's particular interest in the economic strength and prosperity of the Federation, and the reasons for the South African Government's willingness to make certain important sacrifices in order to assist in the transformation of the Federation from a predominantly

primary producing country into a country with a more diversified and less vulnerable economy. They suggested that the matter should be judged not solely by a strict reference to the legal rules of the General Agreement, but should be viewed in its wider implications and as one which was closely related to the basic philosophy to which most contracting parties subscribe, namely, the urgent need for assistance to less-developed countries to diversify their economies and to introduce a greater measure of stability in their export earnings. The South African delegation pointed out that although South Africa itself was still a developing country and its ability to assist less-developed countries was, therefore, limited, the Union Government considered that, because of its geographical proximity to the Federation and its traditionally close economic ties with that country, it was in a better position than most other countries to help the Federation in achieving a greater degree of industrial development and more stable economic conditions.

4. The South African delegation's statement was supplemented by the Federation delegation's explanation of their country's need to provide increased and more rewarding employment opportunities for its people through more rapid industrial advancement. The Federation delegation stressed that since the domestic market, although expanding, would still be inadequate in the immediate future to absorb the products of Federal manufacturing industries in quantities which would permit of economic operation, it was essential for the success of these industrial undertakings to have access to the much larger South African market on terms generally equivalent to those enjoyed by South African manufacturers themselves. The Federation delegation explained that, because of geographical and other factors, Federation manufacturers had little prospect of exporting their goods to countries other than the Union in quantities which would ensure their economic operation and expansion. The Federation also could not sell its manufactured products in the Union unless it could count on obtaining unrestricted access to the Union's market without having to face the hurdles of tariffs and quantitative restrictions. It was stressed that the Federation was likewise unable to sell its manufactured goods in South Africa under the same tariff and other conditions which apply to imports from industrially advanced nations.

5. In considering the statements of the two delegations, the Working Party noted that, in substance, the two Governments desired the CONTRACTING PARTIES to agree that the Union may go beyond the terms of the 1955 Agreement insofar as permissible tariff preferences are concerned, not only by increasing preferences on products specified in the Agreement but by introducing new preferences, as the need arises, on products not so specified nor specified in any new trade agreement between them, and that, in addition, they desired the CONTRACTING PARTIES to sanction the maintenance of the principle embodied in the 1955 Agreement in terms of which the two countries grant to each other's products exemption from their balance-of-payments import restrictions.

Tariff Preferences

6. Although there was no sentiment among the other members of the Working Party for accommodating the desire of the Federation and the Union to grant each other increased tariff preferences on a reciprocal basis, it was recognized that there were a number of precedents for the recognition by the CONTRACTING PARTIES of the justification for limited increases in margins of preference, under strictly limited conditions, above those permissible under the General Agreement, by a more developed country in order to encourage the economic development of a less-developed country with which it had special relationships. The representatives of the Federation and the Union were unable to give assurances that any new agreement they might negotiate would contain no increases in margins of preferences for Union products in the market of the Federation above the margins permissible under the 1955 waiver, but there was an indication by them that by and large the preferential position of South African exports to the Federation would be reduced compared with that presently applicable. It was the feeling of the other members of the Working Party that any increases in margins of preference applicable to individual South African products exported to the Federation would make it more difficult for their governments to support favourable action by the CONTRACTING PARTIES with respect to the new agreement, since it would mean that this case would be a departure from prior cases in which the CONTRACTING PARTIES had recognized new or increased preferences as justified for purposes of economic development.

7. It would be of considerable assistance to the other contracting parties if they could be informed as long in advance as possible prior to the formal consideration of a new agreement (presumably at the sixteenth session) of the articles on which preferences for products of the Federation in the Union market would be increased by the Agreement, the extent of such increases, and whether they were considered as being adjustments permitted by and subject to the procedure of the Decision of 3 December 1955 or as being in excess of the increases permitted by this Decision. It was generally recognized by the other members of the Working Party that, to the extent that the increased preferences above those permitted by the 1955 waiver were limited to a relatively small list of specified articles, it would enhance the chances of favourable action by the CONTRACTING PARTIES when they consider a new agreement. It was suggested that the CONTRACTING PARTIES might find it desirable if they were considering a new agreement at the sixteenth session, to take the action referred to in paragraph (c) of the Decision of 3 December 1955 to establish the new base margins of preference applicable to the Federation and to Australia and South Africa in relation to products of the Federation.

8. A considerable problem would be created for other contracting parties by the desire of the Federation and the Union, during the life of a new agreement, to make still further increases in margins of preference. Most of the other members of the Working Party felt that their governments would consider granting accommodation to the Federation and the Union with respect to subsequent increases, above such new base margins as have been established

pursuant to paragraph (c) of the 1955 waiver, only if they took place following a procedure of notification and an opportunity for prior consultation or negotiation with contracting parties interested in trade in the products involved. In this connexion reference was made to the procedures set forth in paragraph 2 of the Decision of 24 October 1953 permitting Australia to grant new and increased preferences to products of Papua-New Guinea.

9. It was pointed out that the situations involved in the institution by the Union of increased preferences for products of the Federation above the new base margins would be of three types. The first would be that in which the increase in preference margin resulted from an increase in the Union duty, on a product included in the Union schedule to the General Agreement, above the rate provided for therein. In this instance, it would be necessary for the proposed notification to be followed by the procedures of consultation and negotiation provided for in applicable provisions of the General Agreement (normally Article XXVIII) in order that effect might be given to the proposed duty increase. It was considered that any waiver permitting the Union to grant increased margins of preference in such a situation should include provision that the consultations and negotiations involved should include, in addition to adjustments relating to the adverse effect of that duty increase provided for in Article XXVIII, comparable procedures of adjustment with respect to any detriment to their trade which other contracting parties anticipated would result from the increased margin of preference.

10. The second situation would be that in which the increased margin of preference resulted from a reduction by the Union of the rate applicable to products of the Federation in the case of an article on which the most-favoured-nation had been included in the Union schedule, although no increase of the latter rate would be proposed. In this situation no negotiation or consultation under Article XXVIII would be necessary, but the other members of the Working Party considered it essential that any waiver which might be given to the Federation and the Union should provide for prior consultation and negotiations in such a case, pursuant to procedures comparable to those provided for in Article XXVIII, with respect to any adverse effect on their trade which other contracting parties considered would result from the increased preference involved.

11. Finally, the increased margin of preference may result from either an increase in the most-favoured-nation rate, or a reduction of the preferential rate applicable to products of the Federation, in the case of articles on which no tariff concession has been granted in the most-favoured-nation part of the Union schedule.

12. Although the representatives of the Federation and the Union stated that it would be difficult for them to accept a procedure of prior notification and consultation in cases where increased margins of preference resulted from the situations described in paragraphs 10 and 11, their Governments would be prepared to consider consultations with interested contracting parties after the margins of preference on unbound tariff items had been increased. Most other members of the Working Party

doubted whether their governments would be in a position to grant an accommodation to the Union and the Federation to permit future increases in preference margins on such tariff items which departed from the precedents in the Australia/Papua-New Guinea waiver and the United Kingdom Article I waiver, both of which require prior notification and consultation with interested contracting parties in the event of increases in margins of preference, above those otherwise permitted by the General Agreement in the case of tariff items not subject to a tariff concession relating to the most-favoured-nation rate.

13. The other Working Party members also indicated that, if their governments were to consider favourable action on an agreement between the Federation and the Union permitting increased preferences, it would be important for the latter to undertake to report annually to the CONTRACTING PARTIES regarding action taken under any new waiver which might be granted, and that the waiver be for a specified period after which the preferential situation between the Federation and the Union would be re-examined.

Exemption from Balance-of-Payments Restrictions

14. The representative of the Federation stated that the balance-of-payments import restrictions of the Federation have never been applied to imports from any part of the sterling area, and suggested that a provision in the new agreement providing for the exemption from such restrictions of imports from South Africa would accordingly have no particular meaning so long as South Africa remained a part of the sterling area. Although this would appear to some members of the Working Party to raise questions which were outside the terms of reference of the Working Party, the Working Party was aware that so long as this situation existed the problem of the exemption of South African goods was a part of a more general problem relating to the relations between the Federation and other parts of the sterling area rather than a particular one relating to its relations with South Africa with which the Working Party was concerned.

15. With respect to the desire of the Union to continue its present exemption from balance-of-payments restrictions for products of the Federation, the Working Party found nothing in the General Agreement nor in any prior waivers granted by the CONTRACTING PARTIES which would justify or constitute a recognition by the CONTRACTING PARTIES that balance-of-payments quantitative restrictions may justifiably be applied in a discriminatory manner to encourage economic development. The view was expressed that, particularly at a time when many contracting parties were removing discrimination previously justified under Article XIV, it would be undesirable for the CONTRACTING PARTIES to grant to the Union a waiver which would create a new precedent in this field. However, the Working Party noted the statement by the South African delegation that the South African Government regarded the question of discrimination in favour of the Federation under South African balance-of-payments import restrictions as a problem of temporary duration and that they considered that the position might well be reached before long when South Africa could consider the abolition of its balance-of-payments import restrictions.

16. It was recognized that this preferential situation had been enjoyed by products of the Federation throughout the period of the Union's post-war balance-of-payments restrictions and that application by the Union of its restrictions to Federation products might tend to defeat the purpose of such tariff preferences as the CONTRACTING PARTIES had recognized to be justified for reasons of economic development. Consequently, other members of the Working Party suggested that, although their governments would not be prepared to support a waiver to permit the continuation of this preferential treatment for products of the Federation, a possible solution for this aspect of the problem might be found by way of taking note in the preamble to any waiver which might be granted with respect to tariff preferences of the preferential treatment in practice being given and of an undertaking by the Union to eliminate it, through a general liberalization of its restrictions, as rapidly as its balance-of-payments and reserve positions permitted, giving priority to products for which the preferential treatment was meaningful to the trade of the Federation.