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GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES
Twenty-Third Session

WORKING PARTY ON NEW ZEALAND/AUSTRALIA FREE-TRADE AGREEMENT

Report of Working Party

1. The Working Party was set up by the Council "to examine, in the light of the relevant provisions of the General Agreement, the New Zealand/Australia Free-Trade Agreement of 31 August 1965, and to report to the CONTRACTING PARTIES at their twenty-third session".

2. The Working Party met from 21 March to 2 April 1966 under the Chairmanship of Mr. A. Langeland (Norway), and had before it the text of the Agreement and related documents (L/2485/Add.1) and replies provided by the parties to the Agreement to questions submitted by contracting parties (L/2585).

3. In his opening statement (the full text of which is annexed to this report) the spokesman for the parties to the Agreement said that there was not a great deal to be added to the statement by his delegation in the Council (L/2507). He recalled that the Agreement, which had entered into force on 1 January 1966, was in GATT terms an interim agreement and that both parties accepted the obligation to so apply and develop the Agreement as to achieve a free-trade area in conformity with the provisions of the General Agreement. He said that, if one conclusion emerged from the study of previous customs unions and free-trade areas by the GATT, it was that no two were the same and that each one needed to be considered individually against the broad background of the GATT objectives. He then went on to outline the particular considerations and circumstances which had influenced the form of the Agreement and concluded by expressing the belief that the Working Party, having fully informed itself of all the circumstances, would be able to advise the CONTRACTING PARTIES that Australia and New Zealand were acting, and would continue to act, consistently with the General Agreement in the evolution of their free-trade area.

4. The Working Party thanked the parties to the Agreement for the comprehensive answers to the questions which had been posed. Members of the Working Party then requested supplementary information and clarification of certain aspects of the Agreement before going on to examine the Agreement in the light of the relevant provisions of the General Agreement.

Elucidation of the Agreement

5. Several questions were raised in connexion with Article 3 of the Agreement. The Working Party noted that the provisions of the Agreement providing for the progressive establishment of the free-trade area applied only to those products listed in Schedule A, that the items initially listed in that Schedule accounted for only about half of current trade between the parties and that about 90 per cent of this trade was in items which were duty free before the conclusion of the Agreement. In reply to a question, the representative of the parties to the Agreement said that, although neither country compiled statistics on this basis, it was estimated that between 30 and 35 per cent of trade between the parties was subject to duties.

6. Some members of the Working Party noted that a significant number of agricultural products, of which Australia and New Zealand were generally considered to be efficient producers, were not from the outset subject to the operative provisions of the Agreement and in particular the provisions of Article 4. Another member noted, on the other hand, that some items of particular export interest to less-developed countries alone, such as essential oils, shellac, cashew nuts and jute fabrics, which were not produced at all or perhaps only in insignificant quantities by the parties to the Agreement had been included in Schedule A. The parties to the Agreement pointed out that it would not be fruitful at this stage to examine the reasons for the inclusion or exclusion of particular items in the initial coverage of Schedule A. They explained, however, in regard to the products of export interest to less-developed countries listed above that there was a limited trade between them and that one factor involved in including certain items was the desire to include complete Brussels tariff headings where practicable and thus avoid undue fragmentation of the tariff. The member of the Working Party concerned, while expressing apprehension that inclusion of such items might adversely affect its exports of these products, particularly in their processed and semi-processed forms, expressed the hope that, if the implementation of the Agreement had any adverse effects, the parties to the Agreement would give sympathetic consideration to any representations which they might make on the subject.

7. The Working Party noted that paragraph 3 of Article 3 provided for regular reviews of trade for the purpose of adding items progressively to Schedule A. In reply to questions, the representative of the parties to the Agreement said that no agreement existed between the parties or with any other countries which would prevent the addition of any item to that Schedule and that it was their intention to continue the process of adding items at least until "substantially all the trade" was included.

8. Several questions were asked about the "special measures beneficial to the trade and development of each member State and designed to further the objectives of the Agreement" which "may include the remission or reduction of duties on agreed goods or classes of goods in part or in whole", referred to in paragraph 7 of Article 3, that might be introduced in relation to goods not listed in Schedule A. The representative of the parties to the Agreement explained that the introduction of any measures under this paragraph would take place as a means of easing transition to full free-trade treatment. He said that no present plans existed for the use of this provision but that its use could involve action on any barrier to trade, including quantitative restrictions. The Working Party welcomed the statement of the representative of the parties to the Agreement that it was their firm intention that items subject to action under this provision would subsequently be included in Schedule A.

9. Article 4 of the Agreement, lays down, inter alia, a plan and schedule for the elimination of import duties on items listed in Schedule A. It was noted that the Agreement did not contain a schedule for the elimination of duties on items not contained in that Schedule. The representative of the parties to the Agreement said, in reply to questions, that the same schedule for eliminating duties would apply to other items as they were added to Schedule A. It was noted that paragraph 7 of Article 4 provided that, subject to agreement, duties on scheduled goods might be eliminated over a longer period than provided in the plan and schedule contained in the Article.

10. Some members of the Working Party expressed concern at the provisions contained in Article 5 of the Agreement which appeared intended to allow the parties to discriminate in each others favour in the administration of quantitative restrictions. As the issue was one which the Agreement raised in common with other regional agreements examined by the CONTRACTING PARTIES and as the different views on this subject were well known to the CONTRACTING PARTIES, members of the Working Party did not go further in the examination of the principles involved.

11. The representative of the parties to the Agreement explained that under paragraph 3 of Article 8 a member State could withdraw items from Schedule A only after consultation with the other member State. The Working Party noted the statement of the representative of the parties that, in any circumstances that they could at present envisage, if a product were withdrawn from Schedule A under this paragraph it would revert to the status it would have had if it had not been included in Schedule A.

12. Several questions were asked on the subject of the points in the exchange of letters relating to Article 5 of the Agreement. The Working Party noted that in the case of certain forest products import duties imposed by both parties to the

Agreement would be "so reduced and eliminated that they are equal at each step of the transitional period provided for in paragraph 2 of Article 4". The Working Party noted that in general the procedure had been to defer the reduction of New Zealand duties until the Australian rate had been reduced to the equivalent of the New Zealand rate. In regard to two items, however - namely plywood and cellulose wadding - New Zealand had raised its duties to the level of the Australian duties. Some members of the Working Party expressed their serious concern at the policy implications of such action in the context of a free-trade area. The Working Party welcomed the assurance that it was only in exceptional circumstances that duties would be increased in respect of other products added to Schedule A in the future. In reply to further questions, the representative of New Zealand said that it was the intention to reduce the tariff on plywood to its original level as the duties on the trade within the area came down. The position would be the same in respect of cellulose wadding except for the fact that this was a new manufacture in New Zealand and it had not been possible for the Tariff and Development Board to report regarding it before the conclusion of the Agreement. Any future recommendations of the Board would have to be taken into consideration.

Examination of the Agreement in the light of relevant provisions of the General Agreement

13. The Working Party expressed its understanding of the desire of the parties to the Agreement to intensify co-operation in the area and appreciated the contribution which the formation of a free-trade area in the full sense of Article XXIV could make towards this aim.

14. It was recalled, however, that the question before the Working Party was whether the provisions of the New Zealand/Australia Agreement met the requirements laid down in the General Agreement, and in particular in Article XXIV. The Working Party welcomed the declaration of the parties that the elimination of barriers to trade between the parties on items accounting for at least substantially all the trade between them was one of the objectives of the Agreement.

15. Some members of the Working Party said that in their view the Agreement did not meet the requirements laid down in the General Agreement. It had been submitted as an interim agreement in the terms of Article XXIV:5(c). In particular, an interim agreement was required to include a plan and schedule relating to substantially all the trade for the formation of a free-trade area within a reasonable length of time. The only plan and schedule in the New Zealand/Australia Agreement, which was set out in Article 4, did not at present meet this requirement since it related only to those items listed in Schedule A to the Agreement which accounted for about 50 per cent of current trade between the parties. Although note

was taken of the assurances of the parties that these provisions would not be widely used, the Agreement provided the possibility of delaying indefinitely the removal of trade barriers on these products and of withdrawing items from the Schedule. The representative of the parties to the Agreement pointed out that paragraph 3 of Article 3 contained a plan for the addition of goods to Schedule A. Moreover, the parties had reached agreement on the procedures to be adopted for the first review of Schedule A which would result in the addition of further goods to the Schedule by 1 January 1968. The Working Party noted that this procedure, which would also be followed in the subsequent annual review, would require producers to show reasons why their products should not be included in Schedule A or why such inclusion should be delayed. The members of the Working Party referred to above pointed out that, while assurances had been given by the parties to the Agreement that it was their intention to add items to Schedule A, no precise plan and schedule existed for this purpose. These members concluded by urging the parties to the Agreement to take steps as soon as possible to bring it into line with the General Agreement.

16. Other members of the Working Party acknowledged that there was force in the arguments that had been put forward pointing out the deficiencies of the Agreement in relation to the General Agreement. They noted, however, that the parties to the Agreement had stated their determination to establish a free-trade area in full conformity with Article XXIV and expressed the hope that a solution to the problem which was acceptable to all interested contracting parties would be found. Some members urged the parties to implement the provisions of the Agreement providing for the elimination of barriers to trade between the two countries in such a way as to establish rapidly a free-trade area covering substantially all the trade. It had been the experience of these members that only in this way could the arrangement be beneficial to all contracting parties. They expressed regret that the Agreement, which had been the subject of long negotiations, provided only a legal framework and incorporated few concrete measures. The initiative that had been taken was, however, to be welcomed. If followed up energetically it would promote the economic development of the two parties and would, at the same time, ensure that the Agreement would become more and more soundly based on the provisions of Article XXIV.

17. The parties to the Agreement reiterated their firm determination to develop a free-trade area fully consistent with the provisions of Article XXIV. At the present stage they were presenting an interim agreement leading to this end. They conceded that it did not meet, in every specific respect, the provisions of the Article but pointed out that other regional arrangements presented to the GATT had not been judged perfect. This did not mean, however, that they had been inconsistent with the objectives of the GATT. The main concern should be not the presentation of a theoretically perfect interim agreement but the consistency

of the Agreement with the objectives of Article XXIV and in particular its likely effect on the development of world trade. Both parties would have wished to fix a time-limit but this had not been possible because of the special economic situation of the two countries, to which reference had been made in the introductory statement. The Agreement already covered over 50 per cent of trade between the parties and contained provision for the addition of further items. The parties would pursue with vigour the objective laid down in Article XXIV, and would build up the schedule to cover at least substantially all the trade. The parties had felt it important to obtain a base on which to build - this was contained in Schedule A to the Agreement - but they had no theoretical percentage in mind at which the process of adding to this base would be halted. The representative of the parties concluded by agreeing that it was in the interest of both countries to move ahead in the formation of the free-trade area as quickly as possible. They were willing to report to the CONTRACTING PARTIES on the development of the free-trade area and would consider it more appropriate for the CONTRACTING PARTIES to judge the arrangement on performance rather than on any preconceived theoretical consideration.

Conclusions

18. The Working Party, in the light of the foregoing discussion and subject to the consideration of this report by the CONTRACTING PARTIES, submits the following conclusions to the CONTRACTING PARTIES:

Noting that the Governments of New Zealand and the Commonwealth of Australia have, in accordance with paragraph 7(a) of Article XXIV of the General Agreement on Tariffs and Trade, informed the CONTRACTING PARTIES that an interim agreement leading to the formation of a free-trade area was concluded on 31 August 1965 by the Governments of New Zealand and the Commonwealth of Australia, and entered into force on 1 January 1966,

(a) the CONTRACTING PARTIES have examined, in accordance with the procedures of Article XXIV, the Agreement, and have taken cognizance of the information submitted by the parties to that Agreement in this connexion;

(b) the CONTRACTING PARTIES have taken note of the provisions of the Agreement and of the stated intention of the Governments of New Zealand and the Commonwealth of Australia to establish a free-trade area as defined in paragraph 8(b) of Article XXIV;

(c) the CONTRACTING PARTIES, whilst appreciating the circumstances which render it difficult for the two Governments to agree immediately upon a sufficiently comprehensive plan and schedule, invite them to give serious consideration to doing so as soon as possible;

(d) the CONTRACTING PARTIES note the intention of the Governments of New Zealand and the Commonwealth of Australia to report to the CONTRACTING PARTIES further on this point and more generally on the formation of the free-trade area.

ANNEX

Opening Statement by Spokesman for the Parties to the Agreement

There is not a great deal that can be added, by way of general statement, to what was said by the representative of Australia and New Zealand at the Council meeting in November last.

Since then the Agreement has entered into force (on 1 January) and the two countries have been proceding with the necessary institutional arrangements for its administration. Since then also contracting parties have had time to study the Agreement and the many detailed and wide-ranging questions that have been directed to Australia and New Zealand testify to the thoroughnesss of that study.

I do not wish unduly to delay a start along these lines, so what I shall now say about the Agreement in a general sense will be very brief.

It is worth repeating that both Governments accept the obligation to so apply and develop the Agreement as to achieve a free-trade area. Indeed the Agreement is, in GATT terms, an interim agreement designed to that end.

Over the years GATT has given consideration to quite a number of customs union and free-trade arrangements and if one conclusion emerges from a study of all these it is that no two are the same and that each one needs to be considered individually against the broad background of the GATT objectives. This has always in fact been the pragmatic GATT approach as evidence by what was, I believe, the first report on the subject, in 1949, which concluded that consideration by the CONTRACTING PARTIES would have to be based on the circumstances and conditions of each proposal.

The idea of a free-trade arrangement with Australia has developed in New Zealand slowly but under the pressure of wider international trade problems it has come to be accepted as a necessary next step in our economic development.

This is not the time or place for a recital of the problems facing a country hitherto almost entirely dependent on exports of primary products; members of the Working Party will certainly be familiar with the pressures on such a country to diversify its exports.

But diversification is easier to advocate than to achieve in a small country. Diversification in fact means industrialization and in achieving this a small country suffers from the grave disadvantage of a limited home market. It is frankly difficult to achieve, in a small country, those economies of scale which permit the establishment of an efficient and competitive industry. This is why we came to the

point where we felt that only by becoming, in effect, part of a much larger market, could our industries develop efficiently in the long run and New Zealand overcome its present economic vulnerability arising from excessive dependence on a relatively small number of primary exports.

But the very considerations that made a free-trade arrangement desirable introduced serious problems - problems associated largely with the different stages of industrialization in the two countries and with the fact that New Zealand is already a considerable market for the products of Australian industry whereas the converse is not the case. This is why an immediate full free-trade area was not possible and why a fixed time scale for its achievement could not be determined at this stage. This is why we have instead accepted the target of a free-trade area and provided the machinery for its progressive attainment in consultation and agreement.

Here I feel I should pay a tribute to our Australian colleagues who have throughout shown a helpful understanding of the problems of New Zealand - problems they were well able to appreciate because their own differ only in scale and not in nature.

We believe - and it is in this belief that we have concluded this Agreement - that the strengthening of the economies of our two countries will in fact contribute to the expansion of world trade. We believe that this Working Party, having fully informed itself of all the circumstances, will be able confidently to advise the CONTRACTING PARTIES that Australia and New Zealand are acting, and will continue to act, consistently with the General Agreement in the evolution of their Free-Trade Agreement.