

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/3541
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REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE DEMOCRATIC REPUBLIC OF THE CONGO

1. The Working Party was appointed by the Council of Representatives on 28 April 1970 "to examine the application of the Government of the Democratic Republic of the Congo to accede to the General Agreement under Article XXXVIII and to submit recommendations which may include a draft protocol of accession". The Working Party met on 7 and 14 June 1971 under the Chairmanship of Mr. J.R. Samaranyake (Ceylon). It had before it the Memorandum on the foreign trade régime of the Congo (L/3376) and the written replies of the Congo to the questions put by contracting parties (L/3522).
2. The Working Party welcomed the application of the Democratic Republic of the Congo and complimented its representatives for the comprehensive documentation that had been made available to the Working Party. The Working Party carried out an examination of the various points raised in the written questions and replies and asked for additional information on certain points.
3. The representative of the Congo confirmed that the Congo's foreign trade system was based on the principle of non-discrimination; no preferences were granted to any suppliers, and should preferences be granted in the future they would be in accordance with the provisions of Article XXIV.
4. In reply to a question concerning bilateral trade agreements, the representative of the Congo stated that his Government had some commercial agreements but none of them contained provisions for discriminatory tariff rates, quotas or any other form of quantitative import commitments.
5. Members of the Working Party pointed out that the statistical tax of 3 per cent ad valorem applied by the Congolese authorities on imports was not commensurate with the service rendered and was contrary to the provisions of Article VIII:1(a). The representative of the Congo recognized that this tax exceeded the cost of the service, and explained that the surplus revenue from the tax would be employed toward improving the service. His authorities were prepared to consider the adjustment of the statistical tax, in the light of the provisions of Article VIII as soon as they would be in a position to afford it. The Working Party took note of this statement and invited the Government of the Democratic Republic of the Congo to re-examine its present method of application of the statistical tax and to report to the CONTRACTING PARTIES on the possibilities of bringing the tax into line with the provisions of Article VIII:1(a).
6. A member of the Working Party referred to the Superintendence Company whose functions were described in the Memorandum (L/3376) as including the supervision of imported goods - the checking of quality and quantity, and until January 1969, the checking of ex-factory prices of imported goods - and asked whether this did not

constitute a burdensome formality for importers. The representative of the Congo explained that the control had been introduced at a time when the Congo had import quotas and foreign firms tended to repatriate funds by over-invoicing their imports. Since 1967, when the foreign reserve situation had improved, the control was reduced and was now limited to spot checks of price and quality on selected goods. The control was in no way designed to create obstacles to trade, but rather to ensure better use of external assets.

7. In reply to a question on the application of the turnover tax charged on imports described in the Memorandum (L/3376), the representative of the Congo stated that the tax was not applied exclusively to imports, but was equally applied to numerous domestic goods and services.

8. Members of the Working Party remarked that the Congo's "Tariff of Import Duties" is composed of two elements: the customs duty, and the revenue duty, which together make the aggregate import duties. It was pointed out that the rates bound in the schedule as proposed by the Congo would relate to the customs duty only, and that in fact these rates would be bound at a higher level than the current applied rate. With regard to the revenue duty, the representative of the Congo confirmed that it was applicable to imports only, and without discrimination as to origin. It was pointed out that shifts in the level of the revenue duty could have the effect of nullifying a concession on the bound customs duty if the aggregate import duties reached a higher level than that of the present aggregate. It was suggested that the question be dealt with in a separate note.

9. The delegation of the Congo stated emphatically that the instructions given by its Government did not allow it to extend the tariff concessions to the revenue duties appearing in the customs tariff. Thus the concessions could only apply to the customs duties as such. In support of this decision by his Government, the representative of the Democratic Republic of the Congo put forward the following arguments, which in his view were not at variance with the provisions of the General Agreement, especially those of Article II.

10. "The purpose of the revenue duty is:

1. to provide revenue for the Treasury;
2. to serve as the main source of budgetary revenue from imports and as a basis for the annual budget estimates;
3. to ensure a measure of stability of budget receipts in spite of the establishment of regional agreements, free-trade areas, or customs unions. In no instance may substantial fiscal losses be incurred as a result of special régimes.

As far as the General Agreement is concerned, the revenue duty is not a restrictive measure within the meaning of Article XXIV:8.

It is applicable without discrimination of any kind, and in the case of customs unions and free-trade areas alike, it is levied both on products from the countries belonging to such unions or areas and on products from third countries. Actually, the latter are less adversely affected since the customs reductions apply only to a part, in some cases a very small part, of the duties charged when goods are imported.

The revenue duty is an absolute necessity for developing countries. Everyone recognizes that if they are to develop, these countries must be able to enjoy the benefit of financial resources of their own. It is also in their interest, in relation to industrialized countries or to other developing countries, to establish customs territories more extensive than that circumscribed by their own frontiers. But in view of the present state of their economic development and the need to integrate it into world economy, it is clearly necessary to ensure stability of fiscal revenue, and total tariff disarmament would render this problematical. To offset it by instituting a variety of internal charges, as has become current practice in the more developed countries, might well have the effect of putting a decided brake on the rise in standard of living of the population, whose purchasing power is still restricted. Thus the importance of fiscal revenue from customs-type duties is abundantly clear. This has already been recognized by the CONTRACTING PARTIES, as is evident from various provisions inserted in Part IV of the General Agreement. But it should be noted in this connexion that the provisions in question refer only to the proceeds from customs duties charged exclusively on exported goods.

While recognizing the importance of the measures set forth in Article XXXVII concerning the commitments undertaken by developed contracting parties in regard to the elimination of barriers to trade - measures already taken by EEC in the Second Yaoundé Convention and by other contracting parties under the system of general preferences - it must be pointed out that the proceeds from exports are insufficient to ensure the necessary budgetary stability. Frequently, serious fluctuations occur in the prices of products which make the conditions for their disposal on the world markets less favourable and hence bring about a reduction, sometimes a considerable reduction, in revenue.

Actually, Part IV of the General Agreement and Article XXXVII in particular makes a distinction between the commitments of developed and developing contracting parties with respect to both customs duties and fiscal measures.

It must be recognized, however, that the customs tariff on imports takes on a considerable importance in the developing countries. With regard to the Democratic Republic of the Congo, because of the existence of revenue duties, distinct from customs duties as such, this tariff has made it possible to obtain an increasingly high percentage of import revenue as compared with export revenue. Thus in the past year, 1970, the former amounted to 50 per cent, and according to the estimates the proportion will be 65 per cent for 1971.

As far as the Democratic Republic of the Congo is concerned, the revenue duty - which as must be repeated is distinct from the customs duty - constitutes a special levy on imports. Article II:1(b) makes reference to this type of duty. The provisions of the Article do not require this type of duty to be mentioned in the schedule of bindings.

The Democratic Republic of the Congo has therefore submitted a schedule of concessions including only customs charges, i.e. only comprising customs duties proper. Actually, account has therefore been taken, in accordance with Article XXVIII bis:3, of special fiscal and developmental needs.

In the view of the Congolese delegation, in the spirit of the provisions of Article II it would seem that by virtue of becoming a contracting party, a country is automatically committed in respect of these provisions. The Congolese representative therefore wonders whether it is appropriate at the time of its accession to specify this in a special note.

The Democratic Republic of the Congo, having no experience in respect of the practical application of the General Agreement, therefore feels it must bring the problem to the attention of the Working Party."

11. After discussion of the nature and effect of the revenue duties the Working Party considered that the revenue duties in the tariff of the Congo were not internal charges in the sense of Article III but should be considered as "other duties or charges" in the sense of Article II:1(b).

12. Following the discussion that ensued on the subject of the potential effect of shifts in the rates of revenue duties on the value of the bound customs duties, and taking into account the particular structure of the customs tariff, the representative of the Democratic Republic of the Congo agreed to make a Declaration of Intent, annexed to this report, concerning the level of the aggregate import duties. This Declaration of Intent would be referred to by a note in the schedule.

13. With reference to the Declaration of Intent, it was explained that the term "prior notification within a reasonable period" was to be understood as meaning that when changes referred to in the Declaration were made, they would not be applicable to goods in course of shipment to the Congo.

14. In reply to a question, the representative of the Democratic Republic of the Congo confirmed that the current revenue duties were those contained in the 1968 "Tariff of Import Duties", which was deposited with the secretariat. A list of modifications introduced since that time has been deposited with the secretariat.

Conclusion

15. Having carried out the examination of the foreign trade régime of the Democratic Republic of the Congo and in the light of the assurances given by the Democratic Republic of the Congo, the Working Party reached the conclusion that, the Democratic Republic of the Congo should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party has prepared a draft Protocol of Accession to which the Schedule of Tariff Concessions is annexed and a draft Decision for the Accession of the Democratic Republic of the Congo (annexed to this report). It is proposed that these texts be approved by the Council when it adopts this report. The draft Decision for the Accession will be submitted to a vote by CONTRACTING PARTIES in accordance with Article XXXIII.

When the Decision is adopted, the Protocol would be open for acceptance and the Democratic Republic of the Congo would become a contracting party thirty days after it accepts the Protocol.

Annex I

DEMOCRATIC REPUBLIC OF THE CONGO: DECLARATION OF INTENT

Because of the structure of its customs tariff, which provides for the application of the customs duty and a revenue duty, the Democratic Republic of the Congo declares its intention not to increase such revenue duties - applied, like customs duties on the c.i.f. value of the goods - above the level which, when aggregated with the customs duties, would exceed the combined rate of the customs duty rate set forth in this Schedule and the rate of revenue duty imposed on the date of entry into force of the Schedule. In any case, the Democratic Republic of the Congo will not do so without prior notification to the CONTRACTING PARTIES within a reasonable period. In this event, the contracting parties concerned will endeavour, in the course of the consultations within the framework of the appropriate provisions of the General Agreement, to maintain a situation not less favourable to trade than existed on the date of accession of the Democratic Republic of the Congo.

Annex II

DRAFT PROTOCOL FOR THE ACCESSION OF THE
DEMOCRATIC REPUBLIC OF THE CONGO

The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "contracting parties" and "the General Agreement", respectively), the European Economic Community and the Government of the Democratic Republic of the Congo (hereinafter referred to as "the Congo"),

Having regard to the results of the negotiations directed towards the accession of the Congo to the General Agreement,

Have through their representatives agreed as follows:

Part I - General

1. The Congo shall, upon entry into force of this Protocol pursuant to paragraph 6, become a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply provisionally and subject to this Protocol:
 - (a) Parts I, III and IV of the General Agreement, and
 - (b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

2. (a) The provisions of the General Agreement to be applied by the Congo shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which the Congo becomes a contracting party.
 - (b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of the Congo shall be the date of this Protocol.

Part II - Schedule

3. The schedule in the Annex shall, upon the entry into force of this Protocol, become a Schedule to the General Agreement relating to the Congo.
4. Should certain negotiations not be completed in time for the results to be annexed to this Protocol when it is opened for signature any further concessions resulting from those negotiations shall be annexed to this Protocol, and shall be governed by the provisions thereof, as from the day following the signature of a Procès-Verbal by the interested parties.
5. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the schedule annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the schedule annexed to this Protocol shall be the date of this Protocol.

Part III - Final Provisions

6. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for signature by the Congo until the close of the twenty-seventh session. It shall also be open for signature by contracting parties and by the European Economic Community.
7. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been signed by the Congo.
8. The Congo, having become a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.
9. The Congo may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 8 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.

10. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each signature thereto, pursuant to paragraph 5, to each contracting party, to the European Economic Community and to the Congo.

11. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this _____ day of _____ one thousand, nine hundred and _____ in a single copy, in the English and French languages, except as otherwise specified with respect to the schedule annexed hereto, both texts being authentic.

ANNEXE*

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

Seul le texte français de la présente Liste fait foi

PREMIERE PARTIE

Tarif de la nation la plus favorisée

Outre les droits dont les taux sont spécifiés ci-dessous, la République démocratique du Congo perçoit des droits fiscaux auxquels s'applique une Déclaration d'intention de la République démocratique du Congo, dont le texte figure en annexe au rapport du Groupe de travail de l'Accession (IBDD, Supplément No 18).

Position du tarif	Désignation des produits	Taux des droits de douane
03.02.10	Poissons simplement salés ou en saumure, séchés ou fumés	5%
04.02.	Lait et crème de lait, conservés, concentrés ou sucrés:	
	Lait conservé:	
21	entier	5%
22	écrémé	5%
	Lait concentré, même sucré:	
31	entier	5%
32	écrémé	5%
	Lait à l'état sec (sous forme solide telle que blocs ou poudre) même sucré:	
41	entier	5%
42	écrémé	5%
10.05.10	Maïs	10%
10.06.	Riz:	
20	Riz entier	10%
10.07.10	Sarrasin, millet, alpiste, graines de sorgho et dari; autres céréales	10%

*Français seulement/French only

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

PREMIERE PARTIE (suite)

Position du tarif	Désignation des produits	Taux des droits de douane
11.01.	Farines de céréales:	
20	de froment et méteil	5%
11.07.	Malt, même torréfié:	
90	autres	10%
30.03.	Médicaments pour la médecine humaine ou vétérinaire:	
90	autres	10%
32.05.	Matières colorantes organiques synthétiques; produits organiques synthétiques du genre de ceux utilisés comme "luminophores"; produits des types dits "agents de blanchiment optique" fixables sur fibre; indigo naturel:	
20	Indigo naturel ou synthétique	10%
90	autres	10%
48.01.98	Autres papiers fabriqués mécaniquement, en rouleaux ou en feuilles	15%
48.03.30	Papiers et cartons grease-proof, en rouleaux ou en feuilles	10%
68.14.10	Garnitures de friction (segments, disques, rondelles, bandes, planches, plaques, rouleaux, etc.) pour freins, pour embrayages et pour tous organes de frottement, à base d'amiante, d'autres substances minérales ou de cellulose, même combinées avec des textiles ou autres matières	10%
84.06.	Moteurs à explosion ou à combustion interne, à pistons:	
	Parties et pièces détachées:	
99	pour autres moteurs	10%

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

PREMIERE PARTIE (suite)

Position du tarif	Désignation des produits	Taux des droits de douane
84.10.	Pompes, moto-pompes et turbo-pompes pour liquides, y compris les pompes non mécaniques et les pompes distributrices comportant un dispositif mesureur; élévateurs à liquides (à chapelet, à godets, à bandes souples, etc.):	
20	Pompes distributrices de carburants et de lubrifiants comportant un dispositif mesureur et compteur	5%
	Pompes à main:	
31	à eau	5%
32	à acide	5%
33	à huile	5%
39	autres	5%
40	Pompes alternatives	5%
50	Pompes rotatives	5%
60	Pompes centrifuges et turbo-pompes	5%
70	Pompes à injection	5%
80	Elévateurs de liquides divers	5%
90	Parties et pièces détachées	5%
84.22.	Machines et appareils de levage, de chargement, de déchargement et de manutention (ascenseurs, skips, treuils, crics, palans, grues, ponts roulants, transporteurs, téléfériques, etc.), à l'exclusion des machines et appareils du No 84.23:	
20	Grues, autres que les voitures-grues, du No 87.03	10%
30	Ponts roulants, ponts portiques, ponts tournants et similaires	10%
41	Ascenseurs, cages de mines, skips, monte-charges et similaires	10%
42	Elévateurs pour grains et graines	10%
50	Treuils et cabestants	10%
61	Crics, vérins; palans et moufles d'une force inférieure à 3 tonnes	10%
69	autres machines et appareils de levage	10%
80	autres machines et appareils de manutention	10%
90	Parties et pièces détachées	10%

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

PREMIERE PARTIE (suite)

Position du tarif	Désignation des produits	Taux des droits de douane
84.23.	Machines et appareils, fixes ou mobiles, d'extraction, de terrassement, d'excavation ou de forage du sol (pelles mécaniques, haveuses, excavateurs, décapeurs, niveleuses, bulldozers, scrapers, etc.); sonnettes de battage, chasse-neige, autres que les voitures chasse-neige du No 87.03:	
20	Excavateurs, pelles mécaniques, draglines	10%
30	Haveuses, railleteuses	10%
40	Décapeurs, pionniers, rouleaux pieds de mouton, dameuses, niveleuses, planeuses	10%
51	Machines et appareils de forage et de sondage	10%
52	Sonnettes de battage	10%
60	Bulldozers, scrapers et similaires	10%
80	autres	10%
90	Parties et pièces détachées	10%
84.41.21	Machines à coudre les tissus, même avec meuble	15%
84.59.	Machines, appareils et engins mécaniques, non dénommés ni compris dans d'autres positions du présent chapitre:	
20	pour l'huilerie, la savonnerie et l'industrie des graisses alimentaires	10%
30	pour l'industrie des matières plastiques artificielles, du caoutchouc et autres matières similaires	10%
40	pour la préparation des fils et câbles électriques	10%
50	pour les travaux publics, le bâtiment et autres travaux analogues	10%
80	autres	10%
90	Parties et pièces détachées	10%

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

PREMIERE PARTIE (suite)

Position du tarif	Désignation des produits	Taux des droits de douane
85.01.	Machines génératrices, moteurs et convertisseurs rotatifs; transformateurs et convertisseurs statiques (redresseurs, etc.); bobines de réactance et selfs:	
	Générateurs, moteurs et convertisseurs rotatifs:	
21	de plus de 5.000 kg	5%
22	de plus de 1.000 kg à 5.000 kg	5%
23	de plus de 200 kg à 1.000 kg	5%
24	de plus de 50 kg à 200 kg	5%
25	de 50 kg et moins	5%
	Transformateurs, convertisseurs statiques, bobines de réactance et selfs:	
31	de plus de 5.000 kg	5%
32	de plus de 1.000 kg à 5.000 kg	5%
33	de plus de 200 kg à 1.000 kg	5%
34	de plus de 50 kg à 200 kg	5%
35	de 50 kg et moins	5%
90	Parties et pièces détachées	5%
87.01.	Tracteurs, y compris les tracteurs-treuil:	
20	Tracteurs à vapeur	5%
30	Tracteurs à chenilles	5%
40	Tracteurs-treuil	5%
90	Tracteurs, autres	5%
88.03.	Parties et pièces détachées des appareils des Nos 88.01 et 88.02:	
20	Voilures et ailes complètes	5%
30	Fuselages complets	5%
40	Hélices	5%
90	autres	5%
91.01.10	Montres de poche, montres-bracelets et similaires (y compris les compteurs de temps des mêmes types)	15%
97.07.10	Hameçons et épuisettes pour tous usages; articles pour la pêche à la ligne; appelants, miroirs à alouettes et articles de chasse similaires	15%

LISTE LXVIII - REPUBLIQUE DEMOCRATIQUE DU CONGO

DEUXIEME PARTIE

Tarif préférentiel

Néant

Annex III

DRAFT DECISION FOR THE ACCESSION OF THE DEMOCRATIC
REPUBLIC OF THE CONGO UNDER ARTICLE XXXIII

THE CONTRACTING PARTIES,

Having regard to the results of the negotiations directed towards the accession of the Government of the Democratic Republic of the Congo to the General Agreement on Tariffs and Trade and having prepared a Protocol for the accession of the Congo,

Decide, in accordance with Article XXXIII of the General Agreement, that the Government of the Congo may accede to the General Agreement on the terms set out in the said Protocol.