

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4635

1 March 1978

Limited Distribution

REPORT OF THE WORKING PARTY ON THE FIRST AGREEMENT
ON TRADE NEGOTIATIONS AMONG DEVELOPING MEMBER
COUNTRIES OF THE ECONOMIC AND SOCIAL COMMISSION
FOR ASIA AND THE PACIFIC - BANGKOK AGREEMENT

1. The Working Party was established by the GATT Council at its meeting on 12 November 1976, to examine, in the light of the relevant provisions of the General Agreement, the provisions of the First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement), and to report to the Council.
2. The Working Party met on 23 and 24 February 1978, under the chairmanship of Mr. M.P. Lemmel (Sweden). The composition of the Working Party was as follows:

Australia	Gabon	Philippines
Austria	India	Sri Lanka
Bangladesh	Japan	Sweden
Canada	Korea	Switzerland
European Communities and their member States	Malaysia	Turkey
	New Zealand	United States

In accordance with the decision of the Council concerning non-contracting parties members of the Bangkok Agreement, Thailand was represented at the Working Party by an observer.

3. The Working Party had before it, as background material, the terms of reference of the Working Party (L/4439/Rev.1), the text of the Bangkok Agreement (L/4418 and Corr.1), and the questions posed by a number of contracting parties and replies thereto provided by the Standing Committee of the Bangkok Agreement (L/4529).
4. In introducing the Bangkok Agreement to the Working Party, the representative of India, on behalf of the participating States, recalled that the international community had recognized in resolutions adopted at the sixth and seventh special sessions of the United Nations General Assembly, as well as in the Action Programme for the Second Development Decade, that developing countries should make efforts

among themselves to achieve economic development and improve the standard of living of their people. The Bangkok Agreement constituted a modest effort among some developing countries members of ESCAP to further international economic co-operation and liberalize regional trade consistently with their respective present and future development and trade needs, taking into account the interests of third countries, particularly those belonging to other regions. Recalling the Tokyo Declaration and the objectives of the current multilateral trade negotiations which cover, inter alia, both tariff and non-tariff measures, he noted that the adjustment of tariffs alone was not sufficient to achieve the aforementioned objectives being sought by the developing countries members of ESCAP. Consequently, the Agreement also provided for possible action by the participating States in the field of non-tariff measures.

5. Members of the Working Party welcomed the initiative by States participating in the Bangkok Agreement to develop methods of economic co-operation aimed at the promotion of economic development through a process of trade expansion and through the adoption of mutually beneficial trade liberalization measures. In particular, some members noted that the Agreement was open for accession by all developing countries members of ESCAP, that the coverage of the concessions would be extended in future by the inclusion of new concessions, and that the Agreement made provision for specialized preferences for the least developed among the signatory countries. These members encouraged the signatory countries to pursue their efforts along those lines. Some members expressed the view that a rational and outward oriented expansion of production and trade could best be accomplished on the basis of non-discrimination in accordance with the provisions of the General Agreement. In the view of these members, the Bangkok Agreement which was not aimed at the establishment of a customs union or a free-trade area in accordance with Article XXIV of the General Agreement introduced an element of discrimination against traditional suppliers in a way which could affect their trade. As, in their view, the Bangkok Agreement was not covered by Article I of the General Agreement and Part IV did not override other Parts of the General Agreement, a waiver or other appropriate decision by the CONTRACTING PARTIES seemed called for in this case.

6. One member, while fully supporting the objectives of the Agreement and after recalling that his government was providing technical support to programmes aimed at regional trade expansion in ESCAP, noted that Article XXIV of the General Agreement had not been invoked. He expressed the view that in the normal course the participating States should obtain a waiver of their GATT obligations under Article XXV.

7. The spokesman for the parties to the Agreement expressed appreciation on behalf of the participating States for the encouragement and understanding of members of the Working Party with regard to the objectives of the Bangkok Agreement. He believed that Articles I, XXIV and XXXVII of the General Agreement all had equal force. In the Bangkok Agreement, the participating States were fulfilling the commitments and undertakings accepted by developing contracting parties in Part IV of the General Agreement in a manner which was consistent with their individual development, financial and trade needs taking into account past trade developments as well as the trade interests of developing contracting parties as a whole. The present stage of development of the participating States did not make it possible for them to enter into a customs union or a free-trade area agreement. The Bangkok Agreement provisions should be understood as being an intermediate, but nevertheless positive step in the direction of trade liberalization among the participating States without creating obstacles to the trade of other contracting parties. In the view of the participating States, a waiver of GATT obligations under Article XXV of the General Agreement was not necessary for the implementation of the Bangkok Agreement.

8. In response to a question seeking an elaboration of the reply to question 7 in document L/4529, the spokesman for the parties to the Agreement stated that it was not the intention of Article 8 of the Agreement to inhibit the reduction of tariffs on an m.f.n. basis and it was not expected that it would have this effect. Article 8 required that, in the event that concessions granted to other participating States might be impaired, for example by concessions granted in another framework, then action would be taken to re-establish the value of the concessions granted under the Agreement by the participating State concerned. This action could take many forms and need not involve the preservation of preferential margins for the products affected. The provision was designed to facilitate rather than inhibit the exchange of concessions with third countries.

9. In reply to a question, the spokesman for the parties to the Agreement stated that while some other ESCAP member States had been discussing the question of accession with the Standing Committee of the participating States, there had so far been no further accessions.

10. One member of the Working Party, in seeking clarification on the relationship between the Bangkok Agreement and other preferential arrangements among developing countries to which some of the participating States may also be parties, enquired what would be the situation if a participating State under the Bangkok Agreement negotiated a new preferential concession under the Protocol Relating to Trade Negotiations Among Developing Countries. Would this concession have to be extended to other participating States under the Bangkok Agreement? In reply, the spokesman for the parties to the

Agreement stated that parties to the Agreement were able to exchange concessions within the framework of other arrangements, but that concessions made under these arrangements should be extended to participating States members of the Bangkok Agreement. However, this would be considered in the light of discussions aimed at maintaining a balance of advantages.

11. One member of the Working Party referring to question 15 in document L/4529, asked whether there had been any further developments concerning the harmonization of the concessions contained in the Bangkok Agreement with those in the various agreements and arrangements in which participating States of the Bangkok Agreement were members. The spokesman for the participating States indicated that, while the matter had been discussed, there had until now been no concrete developments in this direction.

12. One member said that the provisions in the Agreement for the exchange of concessions on non-tariff measures took the Agreement beyond a simple exchange of tariff concessions and raised serious questions about the rights of contracting parties. He asked whether any negotiations on non-tariff measures had been planned. The spokesman for the participating States stated that insofar as non-tariff measure actions under the Bangkok Agreement were concerned, a number of possibilities had been discussed but no decision had been reached.

13. Some members recalled the concern that they had expressed in other working parties examining preferential arrangements, that rules of origin can be and sometimes are used, in their opinion, to divert trade from third countries. They noted that the rules of origin under the Agreement had not yet been spelt out and urged that these should be as simple, clear and straightforward as possible, preferably being based on a simple 50 per cent value-added criterion. The spokesman for the participating States stated that the participating States would attempt to make the rules of origin as simple as possible. He would transmit the observations made on this matter to the Working Party of the participating States dealing with this subject which was scheduled to meet in April.

14. With reference to Article 14 of the Bangkok Agreement, a member asked how participating States taking balance-of-payments action could safeguard the value of concessions exchanged under the Agreement, while respecting the requirements of Articles XIII and XVIII of the General Agreement. The spokesman for the participating States stated that Article 14 of the Agreement did not imply any inconsistency with Articles XIII and XVIII of the GATT. Article 14 stated that, if balance-of-payments safeguard action impaired concessions under the Agreement, then in regard to participating States of the Bangkok Agreement, such safeguard action would be provisional and consultations would take place to see how the balance of advantage under the Agreement could be restored.

Concluding remarks

15. A number of members of the Working Party stated that they were concerned that some form of GATT cover should be provided for the Agreement, since in their view it was not fully consistent with the provisions of the General Agreement. While they believed that a waiver under the provisions of Article XXV allowing the participating States to put the Agreement into operation would be most appropriate, they were, however, prepared to recommend a decision by the CONTRACTING PARTIES which should contain three elements: a consultation procedure in case of injury to the trade interests of third parties, an undertaking to report on changes to the Agreement enabling the CONTRACTING PARTIES to consult in the event of modifications, and a periodic review procedure.
16. The spokesman for the parties to the Agreement reiterated that in the view of participating contracting parties the Agreement was consistent with the provisions of the GATT and a waiver was not necessary. The most appropriate action by the CONTRACTING PARTIES would be to take note of the Agreement and to follow developments on the basis of periodic reports from the participating contracting parties. However, the participating States were prepared to accept a decision which should be kept as simple as possible.
17. The Working Party prepared the draft Decision annexed to this report, which it recommends to the Council for adoption.
18. The United States delegate stated his delegation's understanding that the draft Decision was intended to meet the waiver requirements of Article XXV:5.
19. With reference to operative paragraph (a) of the draft Decision, it was the Working Party's understanding that in their reports on the operation of the Agreement, the parties to the Agreement would also report on developments under Articles 4 and 6 of the Agreement with regard to measures taken to relax quantitative and other non-tariff restrictions and provide information concerning rules of origin.
20. With reference to operative paragraph (c) of the draft Decision it was the Working Party's understanding that the CONTRACTING PARTIES would make such arrangements for the reviews as would be appropriate.
21. It was understood that the Agreement would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

ANNEX

FIRST AGREEMENT ON TRADE NEGOTIATIONS AMONG DEVELOPING
MEMBER COUNTRIES OF THE ECONOMIC AND SOCIAL COMMISSION
FOR ASIA AND THE PACIFIC
(Bangkok Agreement)

Draft Decision

The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade,

Considering that the Governments of Bangladesh, India, Laos, Philippines, Republic of Korea, Sri Lanka and Thailand (hereinafter referred to as the "participating States") have notified the CONTRACTING PARTIES that they have concluded a First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (hereinafter referred to as the "Agreement"), dated 31 July 1975 including a first list of concessions;

Noting that the stated objectives of the Agreement and the concessions concluded thereunder are to promote economic development through a continuous process of trade expansion among the developing member countries of the United Nations Economic and Social Commission for Asia and the Pacific (hereinafter referred to as "ESCAP");

Noting that the Agreement is open for accession to other developing countries in the ESCAP region and is intended to promote the rational and outward oriented expansion of production and trade of the participating States through the benefits to be gained from specialization and economies of scale;

Bearing in mind that developing contracting parties have agreed under Article XXXVII:4 of the General Agreement to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other developing contracting parties, insofar as such action is consistent with their individual present and future development, financial and trade needs, taking into account past trade developments as well as the trade interests of developing contracting parties as a whole;

Noting that the establishment of preferences among the developing countries of ESCAP is intended by the parties to this Agreement to be complementary to the efforts of the parties to the Protocol Relating to Trade Negotiations Among Developing Countries done at Geneva on 8 December 1971, to

expand trade among developing countries and that membership of the Agreement is not intended to preclude participation in the arrangements embodied in that Protocol;

Recognizing that the Agreement should not constitute an impediment to the reduction or elimination of tariffs and other trade barriers on a most-favoured-nation basis;

Decide that:

Notwithstanding the provisions of Article I of the General Agreement, the participating contracting parties may implement the Agreement in accordance with the conditions and procedures set out hereunder

Provided that any preferential treatment under the Agreement shall be designed to facilitate trade between the participating States and not to raise barriers to the trade of other contracting parties;

- (a) Any preferential concessions or arrangements or any similar measures introduced or modified pursuant to the Agreement shall be notified to the CONTRACTING PARTIES and all useful information relating to the actions taken shall be provided to them by the participating States;
- (b) Each participating contracting party shall afford adequate opportunity for consultations at the request of any other contracting party which considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the Agreement. If such consultations have proved unsatisfactory, the contracting party concerned may bring the matter before the CONTRACTING PARTIES, who will examine it promptly and will formulate any recommendations that they consider appropriate;
- (c) On the basis of a report by the participating States on developments under the Agreement, the operation of this Decision shall be reviewed biennially by the CONTRACTING PARTIES in the light of the provisions of the General Agreement and of the objectives stated above. The CONTRACTING PARTIES may, in the course of the reviews, make such recommendations to the participating contracting parties as may be appropriate, including any arising out of any consultations held in regard to the effects of the Agreement on the trade of contracting parties. The CONTRACTING PARTIES may also in the course of the reviews, take such decisions regarding the operation of this Decision as may be appropriate in the light of developments at that time.