

GENERAL AGREEMENT ON TARIFFS AND TRADE

REPORT OF THE WORKING PARTY ON THE ACCESSION OF THE PHILIPPINES

1. At its meeting on 14 November 1978, the Council appointed a Working Party to examine the application of the Government of the Philippines to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which might include a draft Protocol of Accession.

2. The Working Party¹ met on 5 December 1978 under the Chairmanship of Dr. P. Tomić (Yugoslavia) and on 19-20 February 1979.

3. The Working Party had before it, to serve as a basis for its discussions, a Supplemental Memorandum on the Foreign Trade Régime of the Philippines (L/4724 and Corr.1), a tabulation listing items which, in accordance with the Philippines revenue laws currently in force, were subject to tax rates which vary according to whether the items are locally manufactured or imported (L/4724/Add.1), as well as the Memorandum on Foreign Trade Régime submitted earlier by the Philippines (L/3841) in connexion with provisional accession and the Report of the Working Party on the Provisional Accession of the Philippines (L/3888). The representative of the Philippines made available to the Working Party the following material:

- (a) the Tariff Schedule of the Philippines;
- (b) Book I - Tariff Law - and Book II - Customs Law - of the Philippines Tariff and Customs Code as amended by Presidential Decree No. 1464 of 11 June 1978;
- (c) Presidential Decree No. 1357 of 21 March 1978 amending Section 195 of the National Internal Revenue Code 1977;
- (d) Presidential Decree No. 1358 of 21 April 1978 amending certain sections of the National Internal Revenue Code as amended;
- (e) the Philippines legislation on consular formalities (Sections 1310 and 1312 of the Tariff and Customs Code); and
- (f) documentation pertaining to the commodity coverage of the Central Bank foreign exchange regulations.

¹The membership of the Working Party is set out in L/4739/Rev.2.

4. In an introductory statement, the spokesman for the Philippines delegation stated that the Philippines had been trading with over 140 countries, of whom seventy-five were contracting parties to the General Agreement. In 1977, 82 per cent of Philippine foreign trade was carried out with contracting parties. While the aggregate value of Philippine trade had been increasing, the trade balance in recent years had been unfavourable, resulting in a cumulative trade deficit of about \$3 billion for the period 1973-77. It was the hope of his Government that the multilateral trade negotiations and accession to the GATT would lead to an improvement in this situation. The Philippines had entered into a number of trade agreements with other countries. These agreements were of a non-discriminatory nature and embodied most-favoured-nation provisions consistent with the General Agreement. The spokesman stated that the Philippines was prepared to enter into tariff negotiations in the context of the MTN, as had been indicated at the time of the Philippines provisional accession to GATT. Although at that time, his Government had taken the view that possible eventual accession would depend on the results of the MTN, and these results, in particular the additional benefits for developing countries, were not yet clear, it had been decided to pursue accession to the GATT at this stage in the hope that the MTN, including the bilateral negotiations between his country and various participants, would bring about liberalization of the trading conditions for Philippine export products. In expressing the hope that the accession process could be completed within the MTN time-table, he stressed his Government's desire to maintain GATT relations with contracting parties.

5. Members of the Working Party welcomed and expressed support for the application of the Philippines for accession to the General Agreement, and agreed that every effort should be made to complete the work of the Working Party leading to Philippine accession within the MTN time-table. A number of these delegations stated that they were in contact with the Philippines delegation concerning the tariff negotiations mentioned by the representative of the Philippines. One member, speaking on behalf of a sub-regional economic grouping of which the Philippines is a member, referred to trade policy developments in the Philippines in recent years, which had led towards a more open trading system.

6. The Working Party carried out an examination of various points concerning the Philippines foreign trade régime. During the examination in the Working Party, the Philippine delegation supplied additional information on the Philippine Government's economic and commercial policy. The main points brought out in the discussion in the Working Party are set out hereunder in paragraphs 7 to 21.

7. In response to a request for information concerning the negotiation of a Philippine tariff schedule in connexion with Philippines accession to the General Agreement, the representative of the Philippines said that when negotiations with interested contracting parties had been completed, the results which would also constitute a Philippines contribution to the multi-lateral trade negotiations, would be made available, hopefully by the time the Working Party's report came up for adoption at a meeting of the GATT Council.
8. In response to questions put forward by members of the Working Party, the representative of the Philippines stated that Presidential Decree No. 1464 of 11 June 1978 was not a new code but principally a consolidation of all amendments to the tariff and customs code of the Philippines as of that date.
9. As regards the anti-dumping provisions of the Tariff Law, the representative of the Philippines explained that section 301(i) and (j) provided that dumping duties applied to foreign articles would be subject to adjustment based on the prevailing home consumption price in the country of origin, or in the absence thereof, on the cost of production. Philippines statistics indicated that in recent years anti-dumping duties had been levied, on average, on about one product a year. Where anti-dumping duties were being applied, the Tariff Commission conducted quarterly examinations and/or verifications of the fair value to determine whether there was a need to adjust dumping duties. Furthermore, whenever the Tariff Commission, on its own motion or upon application by any interested party, determined that any of the conditions which necessitated the imposition of the dumping duty had ceased to exist, it was required to submit a recommendation to the Secretary of Finance relating to the discontinuance or modification of the dumping duty in question. Decisions or orders made under this section by the Secretary of Finance were published in the Official Gazette and/or in any domestic newspaper of general circulation. Recalling that the duration of dumping duties were formerly for an indefinite period of time, he said that the five-year limit now provided for, set the maximum duration of anti-dumping duties which might be applied by the Philippines authorities. However, in exceptional circumstances the Secretary of Finance may decide to continue the imposition of the dumping duty following representations by an interested party, provided that the Tariff Commission found that dumping continued to exist.
10. In response to a further question, the representative of the Philippines said that for dumping duties to be imposed, the Tariff Commission had to determine that an industry producing like goods in the Philippines was being injured or was likely to be injured or was retarded from being established

by reason of the importation of that kind of goods into the Philippines at a price less than its fair value. In this connexion it was understood that dumping had to be the principal and direct cause; the representative of the Philippines expressed the view that this was consistent with GATT provisions concerning material injury. The Working Party welcomed the Philippines statement that its application of the anti-dumping law was in conformity with the General Agreement. Some members noted that, this being the case, it should be relatively easy for the Philippines to change its law concerning injury to conform more closely to Article VI of the General Agreement. The representative of the Philippines further stated in relation to the determination of injury that there was provision for public hearings and presentation of evidence to the Tariff Commission by interested parties. It was the view of the Philippines authorities that the provisions concerning fair value, determination of dumping and posting of bonds in sections 301(a), (b), (c), (d) and (e) of the Tariff Law and their implementation were in conformity with Article VI of the General Agreement.

11. Some members of the Working Party, referring to the provisions of Article VI:6(a) of the General Agreement as they relate to the question of material injury, noted that the Philippines régime concerning the criteria for levying countervailing duties was not in conformity with those provisions and sought clarification of this matter. In reply, the representative of the Philippines said that as a result of certain developments in the international trading system which had made it necessary to protect domestic industries, section 302 of the Tariff Law no longer contained the injury element as a precondition for the imposition of countervailing duties. However, these countervailing provisions had not been applied. The Philippines authorities would be willing to consider the appropriateness of reviewing the countervailing provisions of the Tariff Law, in the light of developments in international trade relations and taking into account the observations made by members of the Working Party with regard to paragraph 6(a) of Article VI of the General Agreement and the relevant codes being negotiated in the multilateral trade negotiations.

12. The representative of the Philippines confirmed that up to now section 304 of the Tariff Law on the application of additional duties upon articles originating in foreign countries which discriminate against the commerce of the Philippines had not been invoked. The provision which had originally been established in 1957 had never been used. His Government would examine how use of this clause of the Tariff Law in the future might be reconciled with the dispute settlement procedures of the General Agreement. In this connexion he noted that if a question of discrimination arose the Philippines would abide by the relevant provisions of the General Agreement. At the same time, his authorities expressed the hope and expectation that contracting parties to the General Agreement would not engage in discriminatory practices against the commerce of the Philippines.

13. The Working Party noted that under section 401, the "flexible" clause of the Tariff Law, the President, upon recommendation of the National Economic and Development Authority (NEDA) was empowered, inter alia, to modify existing import duties. However, in no case could the reduced rate of import duty be lower than the basic rate of 10 per cent ad valorem nor the increased rate of duty be higher than a maximum of 100 per cent ad valorem. With the only exception of cinematographic film, all tariff rates were and would continue to be applied on an ad valorem basis. It was understood that if the Philippines acceded to the General Agreement, the modification of import duties bound by the Philippines would have to comply with the GATT rules relating to this matter.

14. It was noted by some members that in certain cases contrary to Article III of the General Agreement, internal tax rates for imported goods were higher than the rates applicable to the same goods when manufactured in the Philippines. The representative of the Philippines said that a tabulation listing the items which were subject to such differential tax rates in accordance with the Philippines revenue laws currently in force, had been circulated in L/4724/Add.1. He added that these taxes, which contained certain protective elements, related to the implementation of programmes and policies for economic development in the Philippines. While the measures had a protective effect similar to that of import duties, there was an important domestic issue relating to the distribution of revenue between the central government on the one hand, and the regions and local authorities on the other. The conversion of differential internal taxes into customs duties would deprive the local authorities of a source of income and have repercussions for the decentralization programme of the Philippines Government. The Working Party noted that it was the intention of the Philippines, in reviewing its internal tax system, consistently with its development, financial and trade needs to take fully into account the points raised in this respect and to bring its tax system into line with the provisions of the General Agreement, including Article III. The representative of the Philippines said that because of the domestic issues outlined above, this might take some time. Having regard to the difficulties stated above, the Working Party recommended that the Philippines be given a five year period to bring its tax system into line with the provisions of the General Agreement including Article III.

15. As regards import restrictions being maintained by means of foreign exchange regulatory measures, details of which had been made available to the Working Party, the representative of the Philippines stated that the need for maintenance of such restrictions in the Philippines arose from balance-of-payments considerations which were covered by Article XVIII:B of the General Agreement. As a matter of course, the Philippines foreign exchange regulatory measures were reviewed in periodic consultations with the International Monetary Fund. With regard to these exchange regulatory measures it was the intention of the Philippines to adhere to the relevant provisions and requirements of Article XVIII of the GATT.

16. Some members of the Working Party expressed the hope that the Philippines would be able to eliminate the consular formalities now in force. The representative of the Philippines said that in compliance with the undertaking reflected in paragraph 13 of the report of the Working Party on the provisional accession of the Philippines to the General Agreement (L/3888), the Philippine Government had reviewed and simplified its consular formalities by eliminating this requirement for certificates of origin. It was now only in the case of imports of articles exceeding P 10,000 in dutiable value that the importers would have to submit a consular invoice. The system for processing consular invoices had also been simplified. In order not to delay the entry of goods, a commercial invoice and a bond for the subsequent production of the consular invoice was admitted when an importer was not able to produce a consular invoice at the time of entry. The Philippine Government was, however, keeping the situation under review. Some members of the Working Party urged the Philippines to remove these consular formalities as soon as possible.

17. Replying to a number of questions concerning customs valuation, the representative of the Philippines stated that since, under existing legislation, appeals against valuation decisions took place under proceedings of a quasi-judicial nature in which parties were given the fullest opportunity to be heard and be represented, there was possibility for full recourse against any alleged arbitrary increase in customs value. Initially an importer may appeal to the Commissioner of Customs, then to the Secretary of Finance and finally to the Court of Tax Appeals, a judicial body having the final say in these matters. Concerning the definition of what constituted "reasonable doubt" in determining whether the value indicated on a commercial or consular invoice was correct (Section 201 of Book I of the Tariff Law), he stated that this was a legal term which was interpreted in the normal jurisprudential way. A collector of customs might consider "reasonable doubt" to exist when there seemed to be a large difference between the price on the commercial or consular invoice and that at which such a good was normally traded internationally. The representative of the Philippines also stated that, in order to ascertain the home consumption values of goods in the country of export, the customs authorities may utilize, in addition to consular or commercial invoices, any commercial documents germane or relevant in determining home consumption value, for example catalogue or advertised prices or prices in the contract or in letters of credit.

18. With regard to the codes being negotiated in the multilateral trade negotiations including possible revisions to the Anti-Dumping Code, the representative of the Philippines said that his Government would consider its position on the possible acceptance of or adherence to all such instruments. An ASEAN Working Group had also been set up to examine the possible Code on Customs Valuation and the Philippines authorities would be guided by the ASEAN position in this respect.

19. Responding to a question concerning penalties for failure to meet marking requirements, the representative of the Philippines stated that special duties were only imposed in exceptional circumstances when corrective marking was unreasonably delayed or deceptive marks had been affixed or the required marking had been intentionally omitted. The principal objective of such duties was to discourage commercial counterfeiting; thus they were in the interest of bona fide exporters. The Philippines would nevertheless be prepared to consult under GATT Article XXII with any contracting party experiencing particular difficulties in this connexion.

20. Referring to the State-trading firm mentioned in the Supplemental Memorandum on Foreign Trade Régime (L/4724, page 6), the representative of the Philippines said that a corporation entitled the Philippines International Trade Corporation had been established primarily to conduct trade on all types of products with socialist countries of Eastern Europe and other socialist countries.

21. Having carried out the examination of the foreign trade régime of the Philippines and in the light of the explanations and assurances given by the Philippines representatives, the Working Party reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, the Philippines should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party has prepared the draft Decision and Protocol of Accession annexed to this report. It is proposed that these texts be approved by the Council when it adopts the report. When the tariff negotiations between the Philippines and contracting parties in connexion with accession have been concluded, the resulting Schedule of the Philippines would be annexed to the Protocol, while concessions granted by contracting parties as a result of negotiations with the Philippines would be contained in the 1979 MTN Protocol. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. When the Decision is adopted, the Protocol of Accession would be open for acceptance and the Philippines would become a contracting party thirty days after it accepts the said Protocol.

ANNEX

ACCESSION OF THE PHILIPPINES

Draft Decision

The CONTRACTING PARTIES,

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

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

DRAFT PROTOCOL FOR THE ACCESSION
OF THE PHILIPPINES TO THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

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 Republic of the Philippines (hereinafter referred to as "the Philippines"),

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

Have through their representatives agreed as follows:

Part I - General

1. The Philippines shall, upon entry into force of this Protocol pursuant to paragraph 7, become a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply to contracting parties 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 to contracting parties by the Philippines 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 Philippines 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 Philippines shall be the date of this Protocol.

3. The Philippines intends to bring into line with Article III of the General Agreement, the sales and specific taxes with respect to the items listed in document L/4724/Add.1 whose rates, in accordance with the relevant sections of Titles IV and V of the Philippines Internal Revenue Code in force on the date of this Protocol, vary according to whether the items are locally manufactured or imported and will endeavour to do so as soon as possible in the light of its development, financial and trade needs. If by 31 December 1934, the above-mentioned taxes are still in effect with differential rates for imported items, the matter will be reviewed by the CONTRACTING PARTIES.

Part II - Schedule

4. The schedule in the Annex shall, upon the entry into force of this Protocol, become a Schedule to the General Agreement relating to the Philippines.

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 Philippines until [1979]. 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 Philippines.

8. The Philippines, 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 Philippines 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 6, to each contracting party, to the European Economic Community, to the Philippines and to each government which shall have acceded provisionally to the General Agreement.

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 seventy-nine, 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.

ANNEX

SCHEDULE LXXV - PHILIPPINES

(Text to be supplied later)

