

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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GROUP OF CUSTOMS EXPERTS ON COUNCIL OF EUROPE PROPOSAL

Draft Report and Memorandum as amended by the Drafting Group

I.

Draft Report

On 12 February 1952 the Council of Europe submitted to the CONTRACTING PARTIES a recommendation which had been adopted by the Consultative Assembly concerning a common policy of lowering tariff barriers in Europe.

The CONTRACTING PARTIES decided at their meeting of 17 October 1952 to appoint the following customs experts to give their views on the technical implications of this recommendation:

Chairman: Mr. K. L. Press (New Zealand)
Members: Mme. L. M. Pirajá (Brazil)
M. W. Hagemann (Germany)
M. E. Anzilottie (Italy)
Mr. Y. Wickberg (Sweden)
Mr. J. K. Hulme (United Kingdom)
Mr. J. F. Hight (United States)

The group has studied the problem as requested by the CONTRACTING PARTIES and has prepared the attached memorandum on the basis of the secretariat's paper L/22. It should be emphasized that this memorandum deals only with the technical problems which would have to be solved in the realization of the plan. It does not deal with the obligations of acceding governments under the most-favoured-nations clause as this point already constitutes an essential part of the considerations in the "Low Tariff Club" report of the Council of Europe.

II.

Draft Memorandum

on the Technical Implications of the three Principles
proposed as a Basis for an International Convention

FIRST PRINCIPLE: A MAXIMUM FOR ALL CUSTOMS DUTIES
(35% AD VALOREM)

(i) Valuation

1. All European governments which are members of the Council use the c.i.f. system. Therefore, the maximum ad valorem rate established by the Convention should be on a c.i.f. basis. If any non-European government using the f.o.b. system should adhere to the Convention, provision should be made for the addition of some percentage, say 10%, to the maximum rate, which for that government would then be 38.5%. It should be borne in mind that a uniform coefficient will not be applicable to goods in widely differing classes, e.g., raw materials and finished goods.

(ii) Specific Duties

2. The observance of the Convention would be more complicated where specific rates of duty are employed. If a participating government does not wish to replace all its specific by ad valorem duties, the only really satisfactory alternative would be to convert them into mixed duties, each such duty rate being given the qualification that it shall not exceed 35% ad valorem. If mixed duties were introduced, the control on the observance of the maximum rate would be applied to each shipment of goods at the time of customs clearance. It should be recognised that there is a small number of articles (e.g. films) for which it is impracticable to establish any relationship between the specific duty and the value of the goods. These cases might be excepted from the obligation to fix ad valorem ceilings. In any case, the application of such mixed duties with ad valorem ceilings presupposes the establishment of an effective evaluation machinery.

3. The case of a participating government which does not wish to convert its specific duties into ad valorem or mixed duties presents considerable difficulties. Under one suggestion for meeting the situation, the government concerned would be required to furnish statistical data each six months showing, in respect of each tariff item, the total value of imports and the relative duty receipts so that other governments would have data whereby they could satisfy themselves that the upper ceiling of 35% ad valorem had been respected. It should be recognized that any government maintaining specific duties would have to institute adequate procedures for determining the value of imported goods and that it would be essential that such procedures gave values comparable with those that would be declared in countries operating ad valorem or mixed duties; thus, the c.i.f. basis should be employed wherever possible and if not the necessary correction factor should be applied.

4. The Group of Experts did not consider that such a suggestion would provide adequate assurances for countries applying ad valorem duties or mixed duties that the specific duties maintained by any other participating government did not exceed the ad valorem ceiling of 35%, either in regard to individual items which were able to pass the tariff barrier or in regard to items which were excluded by it. It might happen that the total trade under a particular tariff item comprised 100 articles of a total value of \$1000, on which duty amounting to \$349 was paid. But a statistical calculation that the duty was $\frac{349}{1000} \times 100\% = 34.9\%$ would conceal the possibility that 80 of those articles had a total value of \$900 and thus paid duty at the rate of $\frac{3.49 \times 80}{900} \times 100\% = 31\%$ while the remaining 20 had a total value of \$100 and thus paid duty at the rate of $\frac{20 \times 3.49}{100} \times 100\% = 69\%$.

5. The preceding example is based on the hypothesis that the 20 articles of total value \$100 were able to surmount the tariff of \$3.49 per article. It might well be, of course, that they were totally excluded by the duty; but this very significant factor would not be revealed by a simple division of duty receipts on the articles imported by the value of those articles.

6. These unsatisfactory aspects of any proposal by which countries were permitted to maintain specific duties, which would be aggravated by any downwards change in general price levels, were such as to force the Group to the conclusion that any such proposal would not produce results compatible with the Council's objective of setting an upper limit of 35% ad valorem and could not, accordingly, be entertained.

(iii) Exclusion of Compensatory Taxes

7. The proposal by the Council of Europe includes the following rule which would be applicable to fiscal duties:

"In order to facilitate the application of this principle by the HIGH CONTRACTING PARTIES, states which have high customs duties of a fiscal nature shall be permitted within the above-mentioned period to convert such duties into taxes imposed equally on imported and internally produced commodities."

8. This proposal appears, at first sight, to provide an equitable and self-operating solution to the problem of so-called fiscal duties.

9. But it must be pointed out that there are several reasons which might make it difficult for countries to accept the proposition that they should convert their fiscal duties into internal taxes (with or without an additional customs duty).

- (a) Certain countries might be unwilling to effect such a conversion as regards items not produced domestically, on the grounds that the institution of an internal tax would be inappropriate.
- (b) In instances where any internal production is on only a very small scale, countries might not wish to make internal production subject to taxation, because the prejudice to

the export trade of other countries which might thus arise would be unimportant.

- (c) Countries might find that the methods of applying existing duties to home-produced goods could not be applied to imported goods. For example, an excise duty might currently be levied at an intermediate stage in the production of a substance (such as saccharin in one country); it would clearly be impossible to apply such a taxation system to imported saccharin. Some countries might be reluctant to undertake the complete revision of their existing systems of taxing home-produced goods.
- (d) It may be found that governments will encounter other difficulties in the attempt to convert fiscal duties into internal taxes. In particular, as regards customs or economic unions, the conversion in whole or in part of certain fiscal import duties into internal taxes might result in situations incompatible with the provisions of the Treaty for the union between the countries.

10. It may accordingly be necessary to provide an alternative method for dealing with fiscal duties. Countries might be allowed, if they did not wish to convert duties they regarded as fiscal into internal taxes, to exclude such duties from the ambit of the scheme. Countries which exercised this option would have to be requested to submit their lists of fiscal duties for the approval of other countries participating in any convention which might result from the proposals of the Council of Europe.

11. The governments which are members of the Sub-Group of the Working Party on Reduction of Tariff Levels have discussed the problem of fiscal duties in the context of another plan of tariff reduction. Members of the Sub-Group have submitted provisional lists of items imposed mainly for fiscal purposes which they would wish to exclude from the operation of the plan. These lists may be of interest to the Council in its future discussions of its own scheme, and therefore a copy is attached to this memorandum as Annex "A". A statement which was prepared by the Sub-Group showing the importance of these fiscal duties in the total customs revenue of the country concerned is also attached -- Annex "B". It should be noted that the list in Annex A is no more than a list of goods the duties on which countries consider should be excluded from the operation of the plan in question; no indications have been furnished or requested regarding the possibility of converting the duties into internal taxes.

SECOND PRINCIPLE: TARIFF CEILINGS FOR THREE CATEGORIES
OF TRADE: (5% for raw materials, 15%
for unfinished goods, and 25% for
finished goods and food products)

(iv) Number of categories and relative ceilings

12. The Group did not feel that its terms of reference permitted it to express any opinion on the appropriateness of three broad divisions of trade or of the ad valorem ceilings suggested for them. These appear to turn primarily on questions of national interest as between countries which may participate in the plan, and not to be essentially technical problems.

(v) Valuation and Specific Duties

13. The foregoing remarks in paragraphs 1 to 3 concerning valuation and specific duties in relation to the maximum duty rate would apply mutatis mutandis to the fixing of tariff ceilings, save that the maintenance of specific duties would present greater drawbacks in the case of tariff ceilings of 5%, 15% and 25% since existing tariffs are more likely to exceed these limits than they are to exceed the overriding maximum of 35%.

(vi) Classification

14. Effect would have to be given to the duty ceilings in the tariffs of the participating governments. If all participating governments had an identical tariff nomenclature it would be simple, from the technical point of view, to allot the items in this nomenclature to one or other of the three categories and thus determine with precision and uniformity the obligations of each participant. In view of the fact that most European countries are in the process of remodelling their tariffs on the basis of the Brussels Nomenclature for the Classification of Goods in Customs Tariffs, it appears to the Group that, if the majority of the signatories of any territories resulting from the proposals of the Council of Europe were European countries, it would be best to establish the three categories on the basis of the Nomenclature. This Nomenclature has the advantage over the Standard International Trade Classification that it is a tariff, not a statistical nomenclature, and is accordingly well suited to the requirements of a tariff plan. Furthermore, it will shortly be supported by a comprehensive set of explanatory notes indicating the scope and major contents of each heading.

15. Should it prove, however, that the Convention's signatories were primarily countries which did not envisage adopting the Brussels Nomenclature, it would be necessary to establish the division on the basis of some other nomenclature enjoying wide currency. In this connection, the S.I.T.C. would appear to have strong claims. Any division on the basis of the S.I.T.C. would, of course, have to be translated into tariffs and governments would have to be requested to furnish the division of their national tariffs thus established to all other participating governments, so that all countries might be fully seized of other countries' intentions.

(vii) The exemption of a certain Sector of Trade

16. The provision that these three ceiling rates need be observed in the first year of the life of the Convention in respect of items which comprise 70% by value of import trade in each category (in the second year 80% and in the third year 90%), while the rest of trade remained subject to the overriding 35% maximum, should require evidence of compliance. To this end, a base year should be agreed upon by the signatories and each country should determine the percentage, by value, of its total trade covered by each tariff item in that year. Each participating government should furnish, at the beginning of each of the first three years, particulars to show that the items on which the duties were below the ceilings constituted at least the required percentage of import trade in each category.

17. It appears to be implicit in the Council's scheme that after the first three years a rate of duty which was below the ceiling for the relevant category when the Convention came into force, or which was reduced to bring it below the ceiling, should not thereafter be increased above the ceiling. In other words, participating governments should not be free to remove items, in respect of which the obligations of the Convention have been applied, to the exempted sector of trade, and a special provision to this effect should be included in the Convention. If the Convention prohibits such switching of items, each participating government will in effect have assumed obligations by the end of the third year in respect of its whole tariff with the exception of the items which fall within the exempted 10% of trade in each category. This binding of tariff rates could then be regarded as final even though there might be changes in the composition of trade such as to increase or decrease the relative size of the exempted sector.

18. The progressive increase in commitments from 70 to 90% of trade is, it is understood, intended primarily to provide a transitional period in which the necessary adjustments could be made and secondarily, to allow countries to limit their commitments to articles which are imported mainly from other signatories. The Group did not feel called upon to express an opinion on the methods chosen to meet the primary objective but, as regards the second, it thought it might be worthwhile to point out other methods which might be more appropriate. One possibility would be the exclusion of tariff items under which more than 50% of the imports came from non-signatory countries or under which the principal supplier was a non-signatory.

(viii) Tariff Ceilings for individual items

19. If participating countries wish to negotiate for particular items' rates lower than those provided for in the Convention, the procedures employed by the contracting parties to GATT at the Geneva, Annecy and Torquay Conferences with variations could be employed. To facilitate discussion when the time arrives for consideration of this proposal, the following suggestions might be made. A government wishing to propose a duty ceiling on a particular tariff item should submit its proposal to the other government. This should be addressed not only to those governments whose duties on that item are known to be higher than the ceiling proposed; it should be addressed to the others also since they will be expected to accept a commitment that their duties, if increased, will not be above the proposed ceiling. Governments whose duties

are above the proposed ceiling should be required to reply within a set time and their comments and counter-proposals should be submitted to all participating governments. By the time all proposals and counter-proposals have been made, most of the participating governments may be directly involved in requests for duty reductions. At an agreed time and place the participating governments should send delegations to enter into negotiations in an effort to reach a mutually satisfactory agreement. Ceiling duties for particular items should be made a part of the Convention by protocols requiring the signature of each participating government before becoming effective.

THIRD PRINCIPLE: CONVENTION OPEN TO ALL GOVERNMENTS

20. Although the Convention is to be open to all countries, it may happen that many will not adhere to it and that the most-favoured-nation obligations of the participating governments will require the extension of all tariff reductions to these non-participating countries. Before the Convention enters into force or during the first two years of its application the participating governments may wish to enter into negotiations to obtain compensation from the outside governments whose trade would gain substantial benefit as a consequence of the conclusion of the Convention. These outside governments might be expected to reduce their duties on items of particular interest to the export trade of the participating countries. When arranging for the conduct of such negotiations the following adaptation of the GATT technique might be useful.

21. Governments wishing to obtain compensation from non-participating countries should submit to the Organization the list of items in the tariffs of those countries on which they would wish to obtain duty reductions or other concessions. The participating governments should jointly submit all requests so put forward to the governments concerned and invite them to enter into negotiations, at which the requests made and the counter-proposals will be the subject of discussion with a view to reaching an amicable settlement. The resulting commitments, by the participating and by the outside governments, if they are contracting parties to the General Agreement, should be made a part of GATT by means of suitable protocols.

PROVISION FOR CONSULTATIONS

22. To provide evidence of compliance with the obligations of the Convention each government should be required to furnish copies of its customs tariff and to notify all changes in tariff rates. In bringing into operation a convention of such far-reaching importance, there will be many technical problems to straighten out, and relating to the observance of the obligations, there may be numerous differences to settle. Therefore, the Convention should provide procedures for consultations among the participating governments; these might require the services of a permanent organisation. A consultation procedure would be of particular value if the obligations, not to maintain import duties higher than the ceilings fixed for the three categories of trade, are drawn up in such a way as to allow some flexibility in application in place of rigid regulations.