

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/113
6 January 1955

Special Distribution

CONTRACTING PARTIES
Ninth Session

Original: English

Review Working Party III on Barriers
to Trade other than Restrictions
or Tariffs

DOMESTIC SUBSIDIES

Note by Australian Delegation for Discussion

Following discussion in Working Party III on the question of domestic subsidies or other protective devices which operate to decrease the imports of a contracting party into its territory of any commodity in respect of which it has entered into obligations through negotiation with any other contracting party, the Australian delegation wishes to submit an alternative proposal to that outlined in its paper W.9/67 of 6 December.

The Australian delegation felt that there was a large measure of agreement in Working Party III, that any claim for impairment or nullification of a benefit based on Article XXIII and arising from the operation of a domestic subsidy should not be impeded by argument as to what should have been the reasonable expectation of the party receiving the concession at the time it was negotiated. Members of the Working Party seemed to agree that, while quite clearly the CONTRACTING PARTIES would have to deal with each particular claim under Article XXIII on its merits, the substantive question at issue in each case would be not the anticipations of either party at the time the concession was given but the nature and extent of the prejudice which may have resulted from the operation of the subsidy.

Further it seemed clear from the discussion that there was nothing to prevent arrangements or understandings in regard to subsidies or other protective devices relating to any commodity being provided for in the appropriate Schedule annexes to the Agreement, provided those understandings did not conflict with other provisions of the Agreement.

Under these circumstances the Australian delegation feels that its purposes would be met by the addition of an interpretative note to Article XVI of the Agreement to read as follows:

"Although Article XVI does not prohibit the use of domestic subsidies, a contracting party exporting a product on which a concession has been granted under Article II has the right to expect that the value of that concession will not be nullified or impaired by the contracting party

granting the concession through a domestic subsidy or other incentive to domestic production. Accordingly, a contracting party which claims the right to be consulted under this Article or which brings a case under Article XXIII involving nullification or impairment of such a concession would not be required to establish the reasonableness of such an expectation."