

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Review Working Party II on Tariffs,
Schedules and Customs Administration

ARTICLES I, II, III, XIX AND XXIV

Statement of Recommendations submitted by Sub-Group B to Working Party II

The Sub-Group has examined the proposals referred to it by Working Party II and has discussed them with those delegations (not members of the Sub-Group) which expressed particular interest in them when they were first considered by the Working Party.

In the following statement the Sub-Group presents a draft for the sections of the Working Party's report to the CONTRACTING PARTIES on Articles I, II, III and XXIV. It contains recommended amendments to the text of the Agreement and to the Interpretative Notes, which are supported unanimously by the members of the Sub-Group except where otherwise noted. It contains also notes on the reasons for rejecting certain proposed amendments.

In an Annex the Sub-Group presents a statement on the outcome of its considerations of the other proposals affecting Articles I, II and XXIV and also Article XIX. On these proposals the Sub-Group has no recommendation to put forward but wishes to place on record its reasons for their rejection.

Article I - General Most-Favoured-Nation Treatment

Paragraph 1

1. Insert after the words "Article III" the phrase "... and with respect to the application of internal taxes to exported goods ...".

Note: This change is proposed because the words "with respect to all matters referred to in paragraphs 2 and 4 of Article III" might be construed as relating only to taxes on imported goods. It was necessary at the Second Session for the Chairman to give a ruling on an instance of discrimination in the exemption of exports from the levy of an excise tax. The amendment will remove any uncertainty on this point.

2. Delete the second paragraph of the interpretative note.

Note: This note had significance only until the Protocol Modifying Part II and Article XXVI entered into force.

3. The representative of Germany informed the Working Party that German customs law requires that special treatment for gifts to heads of foreign states, equipment for diplomatic and consular offices and goods for the use of representatives of foreign governments may be granted only on a basis of reciprocity, thus not permitting observance of most-favoured-nation obligations for such imports. Many other countries follow the same practice. The Working Party took note of this situation and saw no reason why established practice in these cases should be disturbed.

Paragraph 2(d)

4. Amend the words "Annexes E and F" to read "Annex E". And amend Annex E to read:

"Annex E

"Lists of Territories covered by Preferential Arrangements
between Neighbouring Countries referred to in paragraph 2(d)
of Article I

"(i) Chile, on the one hand, and

1. Argentina
2. Bolivia
3. Peru, on the other

"(ii) Uruguay and Paraguay."

Note: Provision for the maintenance of preferences between Uruguay and Paraguay is contained in the Annex F of Terms of Accession. The present Annex F can be deleted since Lebanon and Syria are no longer contracting parties.

Paragraph 4

5. Several delegations submitted proposals relating to the adjustment of preferential tariff margins and the establishment of new preferences. The Working Party wishes to place on record its conclusions on these matters:

(a) The New Zealand delegation suggested that a contracting party should be allowed to make slight changes in preferential margins in customs duties, which might result from readjustments of import duties and taxes, without seeking the approval of the CONTRACTING PARTIES in each instance. Some delegations opposed the insertion of an interpretative note which would authorize an increase in a preferential margin, however slight, without interested parties having an opportunity of scrutiny. Therefore, and since the proposal as an amendment of Article I would require unanimity, the Working Party considers that the New Zealand objective could best be sought by an application for a suitable waiver under Article XXV:5(a) of obligations of paragraph 4. The representative of New Zealand withdrew his proposal and stated that the question of applying for a waiver would be considered.

(b) The Australian delegation proposed an amendment to Article XXIV to allow a contracting party to make an adjustment in a margin of preference permitted under Article I provided it was the result of negotiation with the contracting parties concerned and was approved by the CONTRACTING PARTIES. The Working Party considers that such an amendment of Article XXIV would not be in accordance with the principles of that Article unless the increased preferences were part of a plan for bringing about a customs union or a free-trade area. The delegate for Australia acknowledged that the sort of adjustments his Government had in mind were not intended to lead to that result, and he enquired whether Article XXV could be amended to provide that if a contracting party submitted the results of a negotiation with other contracting parties for an adjustment in a margin of preference with a request for a waiver of obligations, the CONTRACTING PARTIES would consider the request under the provisions of paragraph 5(a) of that Article. The Working Party considers that such an addition to Article XXV is unnecessary since the CONTRACTING PARTIES are authorized under paragraph 5(a) to waive obligations under the Agreement in exceptional circumstances and since a proposal such as that envisaged could properly be submitted to the CONTRACTING PARTIES for consideration under that paragraph. It appears that the Government of Australia is concerned with the possibility that a contracting party invited to enter into negotiations for an adjustment in a margin of preference, for which it would offer compensation with a view to submitting an agreement to the CONTRACTING PARTIES with a request for a waiver of obligations under Article XXV:5(a), might base a refusal to negotiate on the ground that it is debarred from participating in such negotiations by the provisions of Article I. The Working Party therefore notes that there is nothing in Article I which would prevent contracting parties from participating in such negotiations with a view to a waiver being sought under Article XXV.

(c) The delegation of Chile proposed the incorporation in the Agreement of the provisions of Article 15 of the Havana Charter which provides for new preferential arrangements in the interest of economic development and reconstruction. This was opposed by several delegations. The delegate of Chile then suggested instead an amendment of, or an interpretative note to, Article XXV whereby the CONTRACTING PARTIES would undertake to examine, in the light of the provisions of Article 15 of the Charter, any request for a waiver for the establishment of new preferential arrangements for economic development. The Working Party considers it unnecessary to inscribe special provisions for dealing with particular problems under Article XXV:5(a), because a request for such a waiver can be dealt with under that paragraph as it stands. In their opinion each request for a waiver should be treated on its merits, and conditions or criteria should not be prescribed. Accordingly, the Working Party cannot recommend the adoption of the amendment proposed by Chile, but will record in its report that there is nothing in the

other articles of the Agreement which would prevent a contracting party from submitting a request under Article XXV:5(a) for authority to enter into new preferential arrangements as part of a programme for economic development.

Note: The representative of Cuba does not subscribe to the views presented in the foregoing paragraphs on the New Zealand, Australian and Chilean proposals. He states that his Government cannot accept the opinion of the Executive Secretary that the CONTRACTING PARTIES, by a two-thirds majority, can grant a waiver under Article XXV:5(a) involving, in effect, an amendment of an article which under Article XXX cannot be amended except by unanimity. He recalled that the position of his Government had been reserved on the waivers granted at the Seventh and Eighth Sessions which the Executive Secretary had cited in support of his opinion.

Article II - Schedules of Concessions

Paragraph 1(b) and (c)

6. Amend the second sentence as follows:

"Such products shall also be exempt from all other duties or charges of any kind imposed on or in connexion with importation, including charges of any kind imposed on the international transfer of payments for imports, in excess of those imported on the date of this Agreement ...".

Note: The wording of the present text is the same as that used in the most-favoured-nation clause in Article I, but it does not go on to include, as does Article I, "charges ... imposed on the international transfer of payments for imports". Thus sub-paragraphs (b) and (c) could be construed as meaning that the provision does not apply to charges on transfers. But clearly the value of tariff concessions would be impaired if contracting parties were free to introduce additional levies on imports in the form of transfer charges. It is considered that the language of this sentence is all-inclusive for it speaks of "... all other duties or charges of any kind imposed on or in connexion with importation ...", and paragraph 2, which sets out the special charges which do not fall under paragraph 1, does not refer to charges on transfers. The amendment will remove any possibility of misunderstanding.

The representative of Cuba, who opposed this amendment, reserves the position of his Government pending receipt of instructions.

The representative of Chile opposed the amendment on the ground that it might cause confusion to suggest that the CONTRACTING PARTIES can limit the rights of a contracting party to employ exchange measures consistently with the Articles of Agreement of the International Monetary Fund; further, some countries cannot readily and/or effectively protect their balance of payments only through the use of quantitative restrictions and must use measures such as exchange taxes.

Paragraph 2(a)

7. Delete the interpretative note.

Note: This note had significance only until the Protocol modifying Part II and Article XXVI entered into force.

Paragraph 6(a)

8. Amend as follows:

"The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally at the rate of exchange recognized by the Fund at the date of this Agreement. Accordingly, in case this par value the par value accepted or the rate of exchange recognized by the Fund is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; ...".

Note: The words proposed correspond more closely to the Fund's practices under its Articles of Agreement and cover cases not provided for in the present text. The second change is required in order to permit an adjustment of duties after a second devaluation of a currency.

Article III - National Treatment
on Internal Taxation and Regulation

Paragraph 1

9. The delegate for Sweden proposed an interpretative note, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 64, paragraph 54), as follows:

"Under the provisions of Article III regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there is a substantial domestic production as they are against imports (say, imported oleomargarine)."

After discussion the representative of Sweden expressed his willingness to withdraw his proposal but desired that the Working Party's report should record his statement that the system of levying internal fees on home-produced and imported raw materials for oleomargarine manufacture, as well as on imports of oleomargarine, in order to help in the stabilization of the marketing of butter, which was mentioned in the report of Sub-Committee A of Committee III at Havana and found by that Sub-Committee to be consistent with the terms of the Charter Article 18 (Article III of GATT), was still in force. The Working Party took note of the Swedish statement.

10. The delegate for Germany proposed the insertion of an interpretative note as follows:

"The words 'internal taxes or other internal charges ... applied directly or indirectly' as employed in the first sentence of paragraph 2 shall be construed to denote the overall charge, including the charges borne by like domestic products through being subjected to internal taxes or other internal charges at various stages of their production (charges borne by the raw materials, semi-finished products, auxiliary materials, etc. incorporated in, and by the power consumed for the production of, the finished products)."

The Working Party considered the significance of the phrase "internal taxes or other internal charges" in relation to taxes which are levied at various stages of production, and in particular whether the rule of national treatment would allow a government to tax imported products at a rate calculated to be the equivalent of the taxes levied at the various stages of production of the like domestic product or only at the rate of the tax levied at the last stage. Among the members of the Sub-Group by which this question was examined, the representatives of Chile, Cuba, France and Germany supported the former interpretation, while the representative of the United States, on the other hand, thought the reference to internal taxes covered only a tax levied on the final product competitive with the imported article. Against the latter view it was argued that that interpretation would establish a discrimination against countries which chose to levy taxes at various stages and in favour of those which levy a single turnover tax on finished products. The Canadian, Swedish and United Kingdom representatives were of the opinion that the equivalent of the taxes on the final product and on its components and ingredients would be permitted, but not taxes on power consumed in manufacture, etc. In view of these differences of opinion, the Working Party does not recommend the insertion of an interpretative note, it being understood that the principle of equality of treatment would be upheld in the event of a tax on imported products being challenged under the consultation or complaint procedure of the Agreement.

Paragraph 6

11. The delegate for Sweden proposed an interpretative note, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 65, paragraph 58), as follows:

"The exception permitting the continuance of existing mixing regulations has been drafted so as to bring out more clearly that a contracting party would be free to alter the details of an existing regulation provided that such alterations do not result in changing the overall effect of the regulation to the detriment of imports."

He explained that his Government wished to have it placed on record that the contracting parties concur in the interpretation of the proviso which was given by the governments assembled at Havana. The Working Party considers that it will not be necessary to insert a note in the Agreement as paragraph 6 is to be interpreted in this sense.

Article XXIV - Territorial Application - Frontier Traffic -
Customs Unions and Free-Trade Areas

Paragraph 3

12. The delegation of Germany proposed to amend sub-paragraph (a) as follows:

"... any advantages accorded at present or in future by any contracting party to adjacent countries in order to facilitate frontier traffic or traffic in specific frontier zones specially designated by treaty; ..."

These amendments are considered unnecessary. (i) There are many places in the Agreement where the words "at present or in future" could be inserted, but if inserted in some places and not in others confusion would result. (ii) While the CONTRACTING PARTIES would no doubt wish to examine the terms of any particular treaty in the event of a dispute, the Working Party understands that traffic in zones designated in treaties between adjacent countries, designed solely to facilitate clearance at the frontier would normally be covered by the phrase "frontier traffic".

ANNEX

Statement by Sub-Group B to Working Party II on
Proposals rejected by the Sub-Group

Article I - General Most-Favoured-Nation Treatment

Paragraph 1

1. 3¹ The Sub-Group considered the proposal of the Scandinavian delegations (W.9/53) to insert an interpretative note to the effect that the provisions of the most-favoured-nation clause should not be frustrated by manipulated tariff descriptions such as those based on distinctive regional or geographical criteria. There was no opposition to this proposal, although some delegates through it added nothing to the provisions of paragraph 1, which could only be applied and interpreted as individual cases arose, and since no agreement could be reached on a text, the proposal was withdrawn. For the same reason a similar proposal by the secretariat (L/189) was not pressed.
2. 6 The delegation of Germany suggested (L/261/Add.1) an amendment to provide that the words "charges of any kind" in the first line should not be regarded as including internal taxes or their equivalents imposed on imported goods, since such taxes are covered by reference to Article III. It was considered, however, that there is no duplication, since the words in question refer to charges imposed on or in connexion with importation, while the reference to paragraphs 2 and 4 of Article III covers internal taxes imposed on imported goods.
3. 7 The German delegation proposed (L/261/Add.1) that, to assist towards a definition of "like products", provision should be made in Article I that products which are classified under different items or sub-items of any customs tariff are not to be regarded as "like" products. This proposal received no support in view of the great differences in the nomenclature of the customs tariffs of contracting parties and because it would allow one country to decide for all countries that two products were unlike whatever were the views of other contracting parties.

Paragraph 2

4. 14 The delegate for Turkey withdrew his Government's proposal (L/282) that if preferential tariffs are not abolished compensatory advantages should be granted to under-developed countries.

¹ The numbers in square brackets are the numbers of the proposals as summarized in W.9/45.

Paragraph 3

5. [10] The secretariat suggested (L/189) that the Government of Turkey might be asked whether this paragraph need be retained, since it had been inserted at the request of Syria which is no longer a contracting party. The delegation of Turkey requested that the paragraph should remain; the Turkish Government had no present intention of having recourse to this provision, but it is in accordance with its contractual rights under the Treaty of Lausanne. The Sub-Group agreed that the paragraph should be retained.

Article II - Schedules of Concessions

Paragraph 1

6. [15] The second sentence of sub-paragraphs (b) and (c) has the phrase: "... imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date". The secretariat enquired (L/189) whether these words need be retained. The Sub-Group favoured the retention of these provisions.

Paragraph 2

7. [16] Consideration was given to a secretariat suggestion (L/189) that the wording of sub-paragraph (a) might be improved by making the following changes:

"a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III in respect of on the like domestic product or in respect of an article from which the imported product has been wholly or partly manufactured or produced in whole or in part:"

This proposal was not adopted. It was pointed out that "in respect of" was more appropriate where the tax was on a transaction involving the domestic product, and that "in whole or in part" might be more apt where the article entered into the imported product uniformly as an ingredient.

8. [16] Consideration was given to a secretariat suggestion (L/189) that the wording of sub-paragraph (c) might be brought into conformity with that of Article VIII:1 by making the following change:

"fees or other charges commensurate with limited in amount to the approximate cost of services rendered."

This was rejected on the ground that there is a substantive difference in the wording of the two provisions and that the proposed amendment of Article II, which is in Part I of the Agreement, would impose a stricter obligation on contracting parties.

Paragraph 4

9. 167 The proposals by the United Kingdom delegation (W.9/70) and the secretariat (L/189), concerning the Interpretative Note, were referred to Review Working Party III, which was examining proposals relating to state trading.

Paragraph 5

10. 167 The secretariat suggestion (L/189) that, if this paragraph (which deals with a specific problem of limited interest) is to be retained it might be removed to an annex of regulations and interpretative notes, received some support. Some delegates, including the United States delegate, at the instance of whose government the paragraph was originally inserted, thought that the paragraph might have value. It was agreed by the majority that the paragraph contained a provision of substance and should be retained in the text of the Article.

Paragraph 6

11. The delegation of Czechoslovakia proposed several changes (W.9/109/Rev.1) in sub-paragraph (a) to provide for the status and adjustment of specific duties of countries which have no par values or recognized exchange rates under the Fund. The Sub-Group considered that there would be very few cases which would not be covered by the phrase "... at the par value accepted or at the rate of exchange recognized by the Fund ...", and that any such cases should be treated by special measures rather than by an amendment of the text. Consequently, the Sub-Group decided they could not recommend the changes proposed.
12. The United States delegation also proposed amendments in addition to those recommended by the Sub-Group, viz.: "... at the par value accepted or at the effective rate of exchange recognized by the Fund..." and "... in case the par value accepted or the effective rate of exchange recognized by the Fund as most generally applicable to commercial transactions is reduced ...". These changes were intended to cover the case of a country with multiple exchange rates and which had granted concessions in specific duties on products to which different rates were applicable. The Sub-Group understood that even for countries with multiple currencies there would normally exist par values accepted or rates of exchange recognized by the Fund. There was little support for the proposal and it was withdrawn.

13. 17 The proviso in sub-paragraph (a) requires the concurrence of the CONTRACTING PARTIES that the adjustments will not impair the value of "concessions provided for in the appropriate schedule or elsewhere in this Agreement ...". The secretariat enquired (L/189) whether the words "or elsewhere in this Agreement" need be retained. The United Kingdom representative pointed out that they might be taken to cover the binding of margins of preference in specific duties and charges under the no-new-preference rule of Article I.
14. 18 The proviso in sub-paragraph (a) states that, in determining whether an adjustment of specific duties will impair the value of concessions, the CONTRACTING PARTIES shall take due account of "all factors which may influence the need for, or urgency of, such adjustments". The delegations of Germany (L/261/Add.1) and the United Kingdom (W.9/70) proposed interpretative notes to secure that changes in price should be taken into account in judging impairment. The Sub-Group agreed that such price changes would have to be considered in judging impairment, but thought it was not desirable to insert a note dealing with only one of the factors that might be relevant; it was not possible to foresee all the circumstances which would prevail at times when these determinations must be made and no note should be provided which could possibly prejudice the freedom of judgment of the CONTRACTING PARTIES in such matters.
15. 19 The delegations of Czechoslovakia (W.9/109/Rev.1) and Germany (L/261) proposed that the provision for the adjustment of specific duties when the par value of a currency is reduced should apply mutatis mutandis when a par value is increased. Most members were of the opinion that this eventuality need not be expressly provided for because it was unlikely to occur and because in the case of an upward revaluation of a currency a failure to reduce specific duties could be the subject of a complaint under Article XXIII. It was considered that an amendment was not necessary.

The representative of Czechoslovakia told the Sub-Group that his Government still wished to find some means of bringing the specific duties in its GATT Schedule into conformity with its customs tariff as adjusted to take account of the revaluation of the currency in June 1953. Members of the Sub-Group considered that this question was outside their terms of reference and that it was a matter which should be dealt with by the CONTRACTING PARTIES. The representative of Czechoslovakia said he would consider submitting an application for the rectification of the schedule in the protocol being prepared by a Working Party of the Ninth Session.

Article XIX - Emergency Action on
Imports of Particular Products

Paragraph 1(a)

16. [25] The delegation of Greece proposed (L/277) to delete the words "and under such conditions". The Greek representative explained, however, that his Government was seeking clarification of the meaning of this phrase and that if there was, in fact, no ambiguity he would withdraw the request for deletion. The Sub-Group considered that the phrase should be retained since there could be cases of temporarily increased importation in which, but for the inclusion of the phrase, a country might maintain, without sufficient justification, that serious injury was threatened. Moreover, other circumstances should be taken into account, for example, there might at the same time be an expanding demand for the product sufficient to avert the threat of serious injury.

The Sub-Group also considered the proposal that had been made in the course of discussions in Working Party II that the word "and" should be replaced by "or", on the ground that the difficulties which Article XIX is intended to solve might be the result of circumstances not necessarily accompanied by an increase of imports. This proposal also received little support. It was considered that importation in increased quantities should always be a condition of recourse to emergency action.

17. [26/7] Two amendments were proposed by the Scandinavian delegations (L/273, 275 and 276):

- (i) to require the Organization to fix a "reasonable period" during which emergency action might be maintained; and
- (ii) to limit action to cases in which imports are equivalent to a considerable part of domestic production of like or directly competitive products.

In addition the Danish delegation proposed (L/273) to limit action to cases in which the injury to domestic producers is not insignificant to the national economy.

These proposals received no support as it was considered that the text of the Article was well-balanced. Referring to (i), action is limited to such period "as may be necessary to prevent or remedy the injury", and the CONTRACTING PARTIES could not be in a position to determine in advance the length of time for which the action would have to be maintained. With reference to (ii) and to the Danish proposal, it was said that even a small increase in imports could in some

circumstances cause serious injury to producers and the intent of the Article was to provide for action in defence of any industry thus threatened whatever its size.

- 18./29/ The Scandinavian delegations (L/273, 275 and 276) also proposed a new sub-paragraph on the lines of the Interpretative Note to Article 40 of the Havana Charter. As this proposal did not meet general approval of the Sub-Group it was withdrawn.

Paragraph 2

- 19./28/ The Sub-Group examined a Scandinavian proposal (L/273, 275 and 276) providing for a recommendation by the CONTRACTING PARTIES as to the period of time within which the restoration of the obligations or concessions should take place. This amendment was also considered to be unnecessary.

Article XXIV - Territorial Application -
Frontier Traffic - Customs Unions and Free-Trade Areas

Paragraph 10

- 20./31/ The secretariat enquired (L/189) whether the voting provision should be modified by replacing the words "by a two-thirds majority" by the phrase "by a majority comprising two-thirds of the contracting parties". Some members of the Sub-Group favoured this change, but the others were opposed.

Paragraph 11

- 21./32/ In reply to an enquiry by the secretariat (L/189) the delegations of India and Pakistan explained that, because of the many problems confronting their governments since partition, the trade relations of India and Pakistan had not yet been established on a definitive basis; they requested that paragraph 11 and its Interpretative Note be retained.

