

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES

Ninth Session

Review Working Party II on Tariffs,
Schedules and Customs Administration

ARTICLES I, II, III AND XXIV

Draft Report by Working Party II

Review Working Party II has examined the proposals relating to Articles I, II, III, XIX and XXIV. This report contains recommended amendments to the text of the Agreement and to the Interpretative Notes. It also contains notes on the reasons for rejecting certain proposed amendments. The recommendations are based principally on the report of Sub-Group II-B (W.9/193).

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 Protocol 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. The Australian delegation reserved its position on the Working Party's conclusions in respect of its proposed amendment.

(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 records 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 imposed 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. It is the understanding of the Working Party that "charges of any kind" would not include ordinary commercial charges for effecting the international transfer of payments for imports. 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 representatives of Chile and Indonesia 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 records 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. Several representatives 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. Some other 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, with the understanding that such changes would be of a minor character and would not apply to a concession provided for in a schedule to the General Agreement.

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".