

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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Working Party 5 on Dependent Overseas Territories

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## SPECIAL PROBLEMS OF DEPENDENT OVERSEAS TERRITORIES

### Draft Report of Working Party

#### I. INTRODUCTION

1. The Working Party was set up, by decision of the CONTRACTING PARTIES on 17 January 1955, (SR.9/29) with the following terms of reference:

"To examine in the light of the discussion in Plenary Session the proposal of the United Kingdom relating to the special problems of the dependent overseas territories, and to submit recommendations thereon to the CONTRACTING PARTIES."

The membership comprised representatives of Belgium, Brazil, Canada, Denmark, Dominican Republic, France, India, Indonesia, Italy, Federation of Rhodesia and Nyasaland, United Kingdom and the United States. Dr. Enderl (Austria) was appointed Chairman.

2. The decision to set up the Working Party originated from a discussion in Plenary Session of a proposal by the United Kingdom Government (L/296) to introduce in an appropriate article of the General Agreement the following paragraph:

"A metropolitan country may take any action, or invoke any procedure under this Agreement, on behalf of the economic interests and development of a dependent territory for those external relations it is responsible, and the provisions of the Agreement shall apply for this purpose as if the dependent territory were within the customs area of the metropolitan country; provided always that any measures taken by virtue of this paragraph shall operate substantially to the exclusive benefit of the dependent territories of the metropolitan country concerned."

This proposal was taken as the basis for discussion in the Working Party. The United Kingdom delegate was asked to explain and clarify the proposal and in particular to show how it would apply to the relevant Articles of the General Agreement. A further paper by the United Kingdom (W.9/153) enabled the Working Party to discuss the proposal in greater detail and to arrive at certain general conclusions upon it.

3. Two main kinds of difficulty were foreseen by the Working Party to the United Kingdom proposal. The first was that it was too broad, both in respect of its application to all dependent overseas territories

and in respect of the field of products covered by it. The second was that to proceed by way of a rule in the General Agreement on Tariffs and Trade would recognize the problem with which the proposal was intended to deal as a permanent one, whereas the Working Party felt it to be, in some respects at least, a transitional one. Moreover, it was considered that the adoption of a new Article in the General Agreement in the form proposed by the United Kingdom would constitute in effect an amendment to Article I and would therefore require unanimous acceptance by the CONTRACTING PARTIES. Lastly, as it was not expected that amendments to the Agreement would become effective before eighteen months after the close of the Session, and as the United Kingdom problem was apparently one for which a solution had to be found in the near future, the Working Party felt that procedure by way of a new Article in the Agreement as proposed by the United Kingdom would not provide an effective solution of the problem. For these reasons, although no firm conclusions were formulated at that stage of the discussion, the general consensus of opinion in Working Party was that further discussion of the United Kingdom proposal was not likely to lead to fruitful results and that it would be more appropriate to proceed by way of a waiver.

4. After informal discussions between members of the Working Party, the United Kingdom delegate informed the Working Party that his Government had agreed, in the light of their study of the previous discussions in the Working Party, that a new approach on the lines suggested in these discussions might be explored, and submitted a draft of a waiver in terms which were designed to meet the main difficulties foreseen in earlier discussions. This draft waiver formed the basis of the Working Party's further study. Changes were made in the draft to meet the objections of members of the Working Party. The final form of the waiver as agreed by the Working Party and as now recommended to the CONTRACTING PARTIES for acceptance in accordance with the procedures of Article XXV of the General Agreement is given in Annex I.

## II. COMMENTS AND RECOMMENDATIONS

### (1) Objectives of the waiver

5. The basic objective of the waiver is to enable the United Kingdom to fulfil, in a manner consistent with the political aims of its Colonial policy and the economic relationship existing between it and the dependent overseas territories, and with the broad objectives of the General Agreement, its responsibilities for the economic and social well-being of the dependent overseas territories for whose international relations it is responsible. A list of these dependent overseas territories is given in Annex II. This list includes Colonies, Protectorates and Trust Territories. The proposed waiver is designed to cover a limited range of problems which arise in the trade field because of the dependence of certain territories on the United Kingdom market for their exports;

and the general concept behind it is that the United Kingdom should be enabled to find a solution of these problems by according to the trades concerned measures of protection and assistance of a kind similar to those which it can, consistent with its obligations under the General Agreement, provide to industry and agriculture in the United Kingdom itself. The United Kingdom representative explained that, while the provisions of Article XVIII are available to dependent territories to promote the establishment of industries to serve their own domestic markets, the United Kingdom could not have recourse to that article to give special assistance to an industry in such territories in relation to the metropolitan market.

(2) General criteria governing the use of the waiver

6.. The Working Party, having accepted this broad objective in principle, considered carefully whether it could be so defined in the waiver itself as to limit the use of the action proposed to specified territories and specified products. In the end, however, it accepted the explanation of the United Kingdom that there were both constitutional and practical difficulties which made such a definition impossible and proceeded on the alternative basis of introducing into the waiver strict criteria and detailed procedures which would ensure that action under it by the United Kingdom was restricted to a defined field of trade problems and was brought under the close supervision of the CONTRACTING PARTIES. In particular, limitations were introduced in paragraph 2 of the waiver to ensure that action under it would be confined to colonial products which depend wholly or in large measure upon the United Kingdom as a market and that no benefit from action under the waiver could be derived either by United Kingdom industries or exports or by countries other than the United Kingdom dependent overseas territories. In addition, and in recognition of the fact that the problems to be dealt with are in large measure transitional, the Working Party agrees that the application of the waiver should be confined to industries which are at the present time dependent on the United Kingdom market.

7. In a further effort to limit the extent to which the waiver may be applied in relation to the provisions of the General Agreement, paragraph 1 of the draft refers to specified Articles of the Agreement and to specified Decisions of the CONTRACTING PARTIES. The effect of this paragraph is that the procedures of these Articles and Decisions will apply to all action taken under the waiver as if the colonial industry receiving the facilities were a domestic industry of the United Kingdom. Additional procedures for notification, consultation and, in the case of Article I prior concurrence, are included in paragraphs 3 and 4 and provision is made in paragraph 5 for annual reports to the CONTRACTING PARTIES.

8. Later paragraphs of this report describe the range of action permitted to the United Kingdom under the waiver and the procedures in accordance with which such action will be taken. The following paragraphs record further clarifications and assurances provided by the United Kingdom

in respect of the definition of certain terms used in the preamble and in paragraphs 1 and 2 of the draft waiver.

"Industries or branches of agriculture"

9.. The Working Party sought for closer definition of this expression but accepted the view of the United Kingdom that it would not be possible to provide such a closer definition in the text of the waiver itself. The United Kingdom did, however, explain that the expression, taken in conjunction with the limitation of action under the waiver to established industries and applied to the existing pattern of production and trade in the dependent overseas territories, meant in fact no more than a range of primary products, mostly tropical or sub-tropical in character, and processed goods based on local supplies of these primary products.

"Wholly or in very large measure dependent on the United Kingdom as a market"

10. As already stated, the Working Party accepted the view that it was not possible to provide a comprehensive list of products to be covered by the waiver. It agreed instead to refer in this report to statements made by the United Kingdom in Plenary Session and in meetings of the Working Party to the effect that the special facilities provided for in the waiver would not be available for those colonial products which find outlets to any substantial degree in markets other than in the United Kingdom and hence would not apply to the major products which enter into international trade such as rubber, tin and cocoa. Nor was it the intention to apply the facilities to such commodities as sugar, in respect of which special marketing arrangements between the Colonies and the United Kingdom are already in force. The words "in large measure" in the preamble are intended to limit action by the United Kingdom to products of which the exports from the dependent territories to the United Kingdom comprise the predominant or major part of their total exports.

(3) Field of action permitted by the waiver

11. In order to explain the types of action permitted to the United Kingdom (within the field defined in paragraph 2 of the waiver and commented on in the preceding paragraphs), the various methods of assistance foreseen in paragraph 1 of the waiver are set out in this paragraph. Assistance to a colonial industry or branch of agriculture could be provided

(i) by affording protection for products imported into the United Kingdom market through increases in margins of preference beyond the limits permitted by the provisions of the General Agreement;

(ii) by providing, or assisting in the provision of, subsidies for products exported to the United Kingdom market as if such subsidies were provided for a domestic product of the United Kingdom;

- (iii) by employing countervailing and anti-dumping duties to protect production for the United Kingdom market under the same conditions as apply to the employment of such duties to protect domestic production in the United Kingdom;
- (iv) by taking emergency action, in the interests of exports to the United Kingdom in the same manner and to the same extent as such action may be taken in the interests of domestic production of the United Kingdom; and
- (v) by continuing, within the terms and under the procedures of the Decision of , quantitative restrictions on imports from other countries into the United Kingdom market of products imported into that market from the dependent overseas territories.

(4) Conditions and procedures for action under the waiver

In the following paragraphs each of these types of assistance is examined in relation to the conditions to be observed and the procedures to be followed in giving effect to them.

12. (1) Increases in margins of preference. The original United Kingdom request was that the waiver should provide for action under it leading to an increase in a margin of preference for the benefit of the dependent overseas territories to be subject to post-facto notification to, and consultation with, the contracting parties affected, with appropriate provisions for the CONTRACTING PARTIES to determine, if necessary, adequate compensation. The United Kingdom representative pointed out that there were severe practical limitations implied in such a request. In the first place, as most United Kingdom tariff items of interest to the Colonies are bound, it would be necessary in practically all cases for the United Kingdom to negotiate an increase in a tariff under the relevant provisions of the Agreement before it could give an increased tariff preference to a colonial industry. In the second place, the Ottawa Agreements provide for duty-free entry of these items from the independent Commonwealth countries. Thus the United Kingdom would be compelled to limit the items selected for this form of assistance to items in which there was no material Commonwealth interest; otherwise independent Commonwealth countries would benefit from the action, contrary to the provisions of paragraph 2 of the waiver. On this latter point, the reference in paragraph 1 of the draft waiver to the Decisions of 24 . October, 1953, and of March 1955, is included so as to enable the United Kingdom, in introducing a new margin of preference for a colonial industry to maintain duty-free entry for all Annex A countries where no diversion of trade is thereby involved.

13. The Working Party, while recognizing the practical limitations imposed by the terms of the waiver itself and by the other factors referred to in the preceding paragraph, considered that any waiver which provided in general terms for deviation from the provisions of Article I of the General Agreement should provide for action under it to be subject to the prior concurrence

of the CONTRACTING PARTIES in each case. In consequence, paragraph 3(1) of the waiver as now recommended contains this provision. In addition, it contains procedures for consultation with a view to arriving at a mutually satisfactory settlement or compensatory adjustment with contracting parties suffering damage and makes action on bound items subject to the procedures of the Agreement governing the withdrawal or modification of tariff concessions. One member of the Working Party opposed the inclusion of provision for action under Article I and proposed that if it were included such action should not be permissible unless approved by two-thirds of the contracting parties. Other members considered that the requirement of prior concurrence met most of their objections and therefore the proposal that the waiver should not allow increases in preferences was rejected. Notification of the intention of the Government of the United Kingdom to take action under paragraph 3 of the waiver will be submitted to the Executive Secretary who will inform all contracting parties. A time limit of thirty days is provided for a contracting party which considers that its interests are likely to suffer damage to seek consultation with the United Kingdom. If no request for consultation is received, the United Kingdom Government will be free to take the action proposed. Further, it is provided that if no settlement or adjustment is agreed upon in such consultation and the matter is referred to the CONTRACTING PARTIES, they will deal with the matter within sixty days.

14. (ii) Subsidies. The effect of the waiver, so far as subsidies are concerned, is to classify as domestic subsidies under the provisions of Article XVI any subsidies paid in accordance with the terms of the waiver on exports of a Colonial product to the United Kingdom market. The United Kingdom representative assured the Working Party that to the extent that any subsidy were paid in such a way as to affect exports of a Colonial product to third countries, the subsidy would be regarded to the same extent as an export subsidy and would fall within the appropriate procedures of Article XVI.

15. (iii) Countervailing and anti-dumping duties. The Working Party noted that under the terms of Article VI of the General Agreement as they now stand provision is made for the waiving of obligations to the extent necessary to permit a contracting party to impose countervailing or anti-dumping duties for the benefit of imports into its territory from a third country and took note of the amendment of the Article being recommended to the CONTRACTING PARTIES by Working Party III. In these circumstances the Working Party concluded that the procedures for ex-post-facto notification and for consultation in the case of serious damage as contained in the waiver give adequate protection to the interests of all contracting parties.

16. (iv) Emergency action. Article XIX of the Agreement sets out the conditions under which emergency action may be taken by a contracting party in the interests of its domestic production and lays down procedures for retaliatory action by other contracting parties. The effect of the waiver is to enable the United Kingdom to apply the procedures of paragraph 1(a) of

Article XIX for the benefit of a colonial industry dependent on the United Kingdom market. The Working Party considers that the limitations imposed by Article XIX itself and the procedures for retaliatory action contained in that Article provide adequate safeguards for the interests of third countries.

17. (v) Quantitative restrictions. One effect of the waiver is to extend the application of [ the Decision dealing with the problems raised for contracting parties in eliminating import restrictions applied for balance-of-payments-reasons ] so as to enable the United Kingdom to continue, within the terms and procedures of the latter, quantitative restrictions on imports from third countries in order to give protection to a colonial industry. Having regard to the detailed conditions and procedures contained in that Decision, the Working party reached the conclusion that there was no need to specify additional procedures in the waiver submitted herewith.

18. The Working party draws attention to two general points which emerge from the description in the preceding paragraphs of the types of action permitted under the draft waiver and the procedures pertaining thereto. In the first place, it is clear that the draft waiver preserves intact the conditions and procedures of the relevant Articles of the General Agreement and of the Decision referred to above. All it seeks to do is to enable the United Kingdom to apply the provisions of the relevant Articles and of that Decision to colonial industries dependent on the United Kingdom market as if these industries were domestic industries of the United Kingdom. It follows from this that the provisions of paragraph 4 of the draft waiver now being recommended are additional to and not in substitution for the procedures of the relevant Articles of the Agreement and of the Decision referred to.

19. Secondly, it will be seen that some of the action foreseen by the draft waiver is of a type already foreseen in the General Agreement itself or involves de minimis changes in these Articles. The Working Party draws this fact to the attention of the contracting parties in order to demonstrate the limited field of deviation involved by the draft waiver from some of the provisions of the General Agreement.

20. Under paragraph 5 the United Kingdom will be required to submit an annual report to enable the CONTRACTING PARTIES to review all action taken under the Decision.

21. It is provided in paragraph 6 of the Decision that the right of contracting parties affected by action by the United Kingdom Government pursuant to the decision of recourse to Article 23 is not prejudiced.

22. The provisions of the Decision will relate to Articles I, VI, XVI, XIX and XXIII as they stand in the Agreement at present and to the amended texts of those Articles after the amendments enter into force for the United Kingdom.

ANNEX I

DECISION CONCERNING SPECIAL PROBLEMS  
OF DEPENDENT OVERSEAS TERRITORIES OF THE UNITED KINGDOM

HAVING RECEIVED from the Government of the United Kingdom of Great Britain and Northern Ireland a request for certain facilities to assist them, in pursuit of the objectives of the General Agreement, in fulfilling their special responsibilities to promote the economic development and social well-being of the overseas territories for whose international relations they are responsible (hereinafter referred to as the dependent overseas territories),

HAVING NOTED the explanation of the Government of the United Kingdom that the sole purpose of the facilities sought is to enable them to assist and safeguard, in cases of special need, industries or branches of agriculture in the dependent overseas territories which depend wholly or in large measure upon the United Kingdom as a market for the export of their products,

HAVING FURTHER NOTED the assurance given by the Government of the United Kingdom that they will, in the use of these facilities, safeguard the interests of other contracting parties to the General Agreement,

RECOGNIZING that, whilst the dependent overseas territories have access to the facilities of Article XVIII of the General Agreement for purposes of economic development, additional facilities may in special cases, and in the light of the special relations existing between the United Kingdom and the dependent overseas territories, be needed in order to assure an outlet for certain of their products in the United Kingdom market,

The CONTRACTING PARTIES, acting pursuant to paragraph 5(a) of Article XXV of the General Agreement, and in consideration of the explanation and assurance recorded above,

DECIDE that:

1. Subject to the provisions of the following paragraphs of this Decision,
  - (a) the obligations of Article I shall be waived to the extent necessary to permit the Government of the United Kingdom to accord preferential tariff treatment to imports from the dependent overseas territories outside the limits permitted by the provisions of paragraph 4 of that Article; and

- (b) the provisions of the General Agreement shall be waived to the extent necessary to permit the Government of the United Kingdom to take such action to assist an industry or branch of agriculture in the dependent overseas territories as they can, without breach of their obligations under the General Agreement, take to assist a domestic industry or branch of agriculture under the provisions of Articles VI, XVI and XIX and of the Decision of March 1955 Dealing with the Problems raised for Contracting Parties in Eliminating Import Restrictions Applied for Balance-of-Payments Reasons and the Decision of 24 October 1953 as Amended Granting a Waiver to the United Kingdom from Article I.

2. The provisions of this Decision shall not apply in respect of any action taken by the Government of the United Kingdom which,

- (a) would assist an industry or branch of agriculture in the dependent overseas territories which is not wholly or in large measure dependent on the United Kingdom as a market for the export of its product, or
- (b) would also afford material benefit, either in the domestic or in export markets, to industries or branches of agriculture of the United Kingdom or of any territory other than the dependent overseas territories.

3. (1) No action shall be taken by the Government of the United Kingdom in virtue of paragraph 1 of this Decision which has the effect of introducing or increasing a margin of preference outside the limits permitted by the provision of Article I of the General Agreement without the prior concurrence of the CONTRACTING PARTIES. Furthermore, the Government of the United Kingdom shall, upon request at any time, promptly enter into consultations, with a view to arriving at a mutually satisfactory settlement or compensatory adjustment, with any contracting party which considers that such action is causing, or is likely to cause, material damage to its commercial interests and, if these consultations do not result in a mutually satisfactory settlement or adjustment, the contracting party or parties affected may refer the matter to the CONTRACTING PARTIES.

(2) No action under sub-paragraph (1) which involves an increase in a bound tariff shall be taken except in accordance with the provisions of the Agreement or of the Declaration of March 1955 on the Continued Application of Schedules to the General Agreement and of the Decision of March 1955 on Exceptional Authority to Renegotiate Concessions.

4. Whenever the Government of the United Kingdom take any action in virtue of the provisions of paragraph 1(b) they

- (a) shall conform to the conditions and follow the procedures laid down in the Articles and Decisions specified therein and
- (b) where not already provided for in (a) above, shall forthwith furnish to the contracting parties which appear to them to have a substantial interest in the trade in the product or products affected by the action, and to the CONTRACTING PARTIES, full particulars (including relevant statistical information) as to (i) the dependent territory or territories in respect of which action is being taken and the circumstances making the action necessary; and (ii) the nature of the action and the product or products to which it applies.

Thereafter, any contracting party which considers that serious prejudice to its interests is caused or threatened thereby may request consultation and the Government of the United Kingdom shall promptly enter into discussions with the contracting party or parties concerned as to the possibility of limiting or modifying the action. If agreement is not reached in such consultations, the contracting party or parties which requested the consultations may refer the matter to the CONTRACTING PARTIES for such action as may be appropriate having regard to the relevant provisions of the General Agreement.

5. The Government of the United Kingdom shall report annually not later than eight weeks before each annual session, on all action taken in virtue of the provisions of this Decision; and

DECLARE that this Decision shall not preclude the right of contracting parties to have recourse to the appropriate provisions of Article XXIII.

ANNEX IIDEPENDENT OVERSEAS TERRITORIES OF THE UNITED KINGDOMEAST AND CENTRAL AFRICA

Somaliland Protectorate  
 Kenya  
 Uganda  
 Tanganyika  
 Zanzibar and Pemba

High Commission Territories

EASTERN GROUP

Federation of Malaya  
 Singapore  
     Christmas Island  
     Coso-Keeling Islands  
 Brunei  
 North Borneo  
 Sarawak  
 Hong Kong

WEST INDIES GROUP

Barbados  
 British Guiana  
 British Honduras  
 Jamaica  
     Cayman Islands  
 Turks and Caicos Islands  
 Leeward Islands:  
     Antigua  
     Montserrat  
     St. Christopher Nevis and  
                             Anguilla  
     Virgin Islands  
 Trinidad and Tobago  
 Windward Islands  
     Dominica  
     Grenada  
     St. Lucia  
     St. Vincent

ATLANTIC AND INDIAN OCEAN

Bahamas  
 Bermuda  
 Falkland Islands  
 St. Helena  
     Ascension  
     Tristan da Cunha  
 Aden Colony and Perin  
 Aden Protectorate  
 Mauritius and Dependencies  
 Seychelles

WEST AFRICA

Gambia  
 Gold Coast (excluding  
                     Togoland)  
     Togoland  
 Nigeria (excluding  
                     Cameroons)  
     Cameroons  
 Sierra Leone

MEDITERRANEAN

Cyprus  
 Gibraltar  
 Malta and Gozo

WESTERN PACIFIC GROUP

Fiji  
 British Solomon Islands  
 Gilbert and Ellice Islands  
 New Hebrides  
 Pitcairn  
 Tonga