

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Sixteenth Session

RHODESIA AND NYASALAND/SOUTH AFRICA TRADE RELATIONS

Draft Report of the Working Party

1. In accordance with its terms of reference the Working Party examined the trade agreement between the Union of South Africa and the Federation of Rhodesia and Nyasaland, which is to enter into force on 1 July 1960 and a draft of which was submitted to the CONTRACTING PARTIES at the present session. The Working Party considered the new Agreement in the light of the Agreement at present in force between the two countries, which is the subject of the Decision of the CONTRACTING PARTIES of 3 December 1955. The Working Party also took into consideration the report of the Tokyo Working Party (L/1110) as approved by the CONTRACTING PARTIES.

2. The Working Party found that the new Agreements provided a considerable overall narrowing of preferences as compared with the 1955 Agreement. It was noted in particular that under the new Agreement South Africa would be surrendering effective tariff preferences in the Federation on commodities which in 1958 accounted for exports from South Africa to the Federation to the value of some £20 million; whilst the Federation, for its part, would be surrendering effective preferences in the South African market on commodities which in the same year accounted for Federal exports to the Union to a value of some £2½ million. Members of the Working Party expressed satisfaction with the effort that had been made in this sense by the two Governments.

3. The Working Party therefore devoted its attention to the following questions which the new Agreement raised for the CONTRACTING PARTIES:

- (i) the level of margins of preference provided for individual products included in both the 1955 Agreement and in the new Agreement;
- (ii) the inclusion of items in the new Agreement in respect of which no preferential tariff treatment is provided for under the 1955 Agreement;
- (iii) the reciprocal exemption by the two countries of each other's products from balance-of-payments import restrictions;
- (iv) possible future incidental increases in the margins of some preferences which would result from increases in most-favoured-nation rates in the case of products subject to preferential duty-free treatment or to preferential treatment constituting a percentage of the most-favoured-nation rate.

4. With respect to the first problem, namely the level of preferences in respect of products included in both the 1955 Agreement and the new Agreement, the representatives of the Union and the Federation stated that there were no preferences provided for in the new Agreement which exceeded those relating to the same product contained in the present Agreement.

5. Secondly, the Draft Agreement lists a certain number of products not covered by the 1955 Agreement which are to benefit from a special preferential tariff treatment under the new Agreement. The Working Party noted that the delegations of the Union and of the Federation had notified these proposed increases in preference margins to the CONTRACTING PARTIES as constituting permissible adjustments in preference margins authorized by the Decision of 3 December 1955 (see SECRET/115/Add. 2 and 3) and had expressed their Governments' readiness to consult in terms of that Decision with any contracting party claiming that its interests would be substantially affected by these adjustments. Recalling that the 1955 Decision provides that notifications of adjustments shall be made at least sixty days before they are to become effective, unless the contracting parties concerned agree to a shorter period, and bearing in mind that the new Agreement is intended to become effective, upon the termination of the present Agreement, on 1 July 1960, the Working Party suggests that the CONTRACTING PARTIES recommend to the contracting parties concerned that they agree to conduct any consultations provided for in the Waiver within the shorter period ending 30 June 1960.

6. The representatives of the Union and the Federation pointed out that the new Agreement, as well as the 1955 Agreement, provides for reciprocal exemptions from balance-of-payments import restrictions. The view had then been expressed by members of the Committee that "the Decision taken by the CONTRACTING PARTIES in 1955 included no indication of express approval of a preferred position with respect to quantitative restrictions on trade between the two countries; it was intended merely to deal with the customs preferential arrangements". However, the representative of South Africa had disagreed with this view on the grounds that the CONTRACTING PARTIES "took note of the Agreement which covered not only tariffs but all 'trade relations' between South Africa and the Federation".

7. With respect to the South African exemptions it was recalled that this question had been raised in the course of the consultations with the Union in May 1959 conducted by the Committee on Balance-of-Payments Restrictions. In regard to this matter the representative of the Union stated that his Government was prepared to undertake to eliminate the preferential situation enjoyed by products of the Federation from the Union's balance-of-payments restrictions through a general liberalization of South Africa's restrictions as rapidly as its balance-of-payments and reserve positions permit, giving priority to products for which preferential treatment is meaningful to the trade of the Federation. With respect to the Federation's restrictions, the Working Party recalls the statement contained in the Tokyo report that "the problem of the exemption of South African goods was a part of a more general problem relating to the relations between the Federation and other parts of

the sterling area rather than a particular one relating to its relations with South Africa". In any event, the Federation hoped to eliminate its controls for balance-of-payments reasons in the near future. In relation to the agricultural imports listed in Annex A to the new Agreement at the request of one member of the Working Party, the representative of the Federation gave assurances that his Government would not use the machinery of restriction to favour the importation of Union products to the detriment of imports from other contracting parties. He explained that in actual fact the demand and price situation was such that this was not likely to happen because, whereas the Union produced exactly the same type of products which were produced in the Federation, these were virtually different products quality-wise from those which under the same or similar name came from other contracting parties.

8. The Working Party also noted the provisions of Article 11 of the proposed new Agreement and wished to make it clear that nothing in this Report should be taken to affect the position with respect to the obligations of the two countries under the General Agreement in relation to quantitative restrictions on imports and exports.

9. On the fourth point the South African representative indicated that, after the expiration on 30 June 1960 of the period for making adjustments in preference under the 1955 Decision, his Government might wish to increase the most-favoured-nation rates of duty on certain products originating from the Federation which are to be admitted into the Union of South Africa duty free or at preferential rates of duty which are expressed as percentage rebates from the most-favoured-nation rate. Such increases in the most-favoured-nation rates would result in increases in margins of preference above those existing on the base date for such preferences. He asked the Working Party to recommend that the CONTRACTING PARTIES recognized the right of the Union to increase such most-favoured-nation rates without prior notification or consultation or without obligation to negotiate with a view to granting compensation to affected contracting parties. This question had been previously examined by the Tokyo Working Party when most of the members had expressed doubts as to whether their governments would agree to permit future preference increases which departed from precedents established in earlier decisions granting waivers from the provisions of Article I. These waivers had in fact stipulated rigid procedures involving notification, consultation, and if necessary negotiation, before the margin of preference could be increased.

10. This attitude of principle was maintained by the majority of the members of the present Working Party. The Working Party, however, considers after a full examination of all the elements of the case presented by the representative of the Union that some departure might be made in the present instance. Taking into account the substantial narrowing down of preferences in the new Agreement as compared with the 1955 Agreement and in view of the assurances given by the South African representative that action in the sense proposed is only likely in a strictly limited number of cases, it recommends that a waiver from the provisions of Article I be granted to the Government of the Union, provided the following procedures are complied with.

11. In the case of items for which duty-free treatment or a preference expressed as a rebate from the most-favoured-nation rate is provided for imports from the Federation into the Union under the new Agreement, and if the product in question is not specified in Schedule XVIII, the Union Government shall notify by cable the CONTRACTING PARTIES of any contracting party which it considers to have an interest in the trade in that product, indicating its intention to increase the most-favoured-nation rate of duty. This notification shall be made as soon as a report is received by the South African Government from the Board of Trade and Industries. The Working Party recommends that contracting parties, which consider that such action is likely to cause material damage to their commercial interests, request consultations with the South African Government without delay.

12. The representative of South Africa informed the Working Party that a number of most-favoured-nation rates relating to products covered by the waiver are bound in Part I of Schedule XVIII. In such cases before any action can be taken under the waiver it will be necessary for the Government of the Union to comply with the procedures of consultation and negotiation provided for in the applicable provisions of the General Agreement (normally Article XXVIII) in order that effect might be given to the proposed duty increase. The Working Party suggests that, subject to the convenience of interested contracting parties, such consultations and negotiations should be carried out simultaneously with the consultations envisaged in paragraph 2 of the waiver.

13. In view of a strict Parliamentary requirement that the South African Government take prompt action in respect of recommendations by the Board of Trade and Industries, the Government of South Africa shall be free on a date twenty-one days after the date of its notification to the CONTRACTING PARTIES to give effect to the increase in the most-favoured-nation rate of duty, even if by that time consultations have not resulted in agreement with the interested party or parties. This action by the Government of the Union shall not prevent the continuation of the consultations with a view to reaching agreement. Should the parties fail to arrive at agreement in these consultations the affected contracting parties may bring the matter before the CONTRACTING PARTIES. The South African Government undertakes to report annually on action taken under the Decision.

14. A draft decision is attached to this report.

15. The 1955 Decision of the CONTRACTING PARTIES provides that the CONTRACTING PARTIES, in agreement with the Federation, the Union and Australia, will "take the necessary steps to amend the relevant base date applicable in each case so as to reflect the situation existing upon the completion of the adjustments" under that waiver. The Working Party was not in a position to recommend immediate action on this point, but felt that this would be an appropriate matter to take up at the next session when adjustments under the procedures of the 1955 Decision had been completed.

ANNEXSOUTH AFRICA / FEDERATION OF RHODESIA AND
NYASALAND TRADE AGREEMENTDraft Decision

CONSIDERING that the Government of South Africa proposes to sign a trade agreement with the Federation of Rhodesia and Nyasaland which provides inter alia that certain products originating in and imported from the Federation shall be admitted into the Union of South Africa free of duty, or at preferential rates of duty, which are expressed as percentage rebates from the most-favoured-nation rates applicable from time to time,

CONSIDERING that after the expiration on 30 June 1960 of the period, under the Decision of the CONTRACTING PARTIES of 3 December 1955, for making adjustments of preferences affecting the trade between the Federation and the Union of South Africa, the Government of South Africa may wish to increase the most-favoured-nation rates of duty on such products, which would result in increases in the margins of preference above those existing on the base date for such preferences,

CONSIDERING the assurances given by the representative of the Union of South Africa that action by his Government under the authority granted by this Decision would be confined to a strictly limited number of cases,

The CONTRACTING PARTIES, acting pursuant to the provisions of paragraph 5 of Article XXV:5(a) of the General Agreement and in accordance with the procedures adopted by them on 1 November 1956,

DECIDE that:

1. subject to the provisions of paragraphs 2, 3 and 4 of this Decision, the provisions of paragraphs 1 and 4 of Article I of the General Agreement shall be waived to the extent necessary to permit the Government of South Africa to increase most-favoured-nation rates of duty on products which, in terms of the proposed Agreement between the Union of South Africa and the Federation of Rhodesia and Nyasaland will, upon their importation into the Union from the Federation be subject to duty-free treatment or to preferences expressed as percentage rebates of the most-favoured-nation rates applicable from time to time, while continuing to grant either duty-free treatment, or to grant the same percentage rebate to products originating in the Federation.
2. Before taking any action under paragraph 1 of this Decision, the Government of South Africa shall notify, by cable, the CONTRACTING PARTIES and any contracting party which it considers to have an interest in the product concerned, and shall consult with any

contracting party which considers that such action is likely to cause material damage to its commercial interests, with a view to arriving at a mutually satisfactory settlement or compensatory adjustment. Any such consultations should be requested and conducted with the least possible delay. Should no agreement be reached in such consultations within twenty-one days of the date of the notification by the Union of South Africa of its intention, the Government of the Union of South Africa may increase the most-favoured-nation rate concerned as proposed; the consultations shall, however, continue. If, after the proposed action has been taken by the Government of the Union of South Africa, and after further consultation, there is still no agreement between the parties concerned, the contracting party affected may refer the matter to the CONTRACTING PARTIES which shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party, or contracting parties, to suspend the application to the Government of the Union of South Africa of such concessions or other obligations under the General Agreement as they determine to be appropriate in the circumstances,

3. This Waiver shall be valid from 1 July 1960 to 30 June 1965, the initial period of validity of the proposed new agreement, after which date the CONTRACTING PARTIES shall review the operation of this Decision,
4. The Government of the Union of South Africa shall report annually to the CONTRACTING PARTIES on the measures taken and on the facts of such measures on the imports of the Union of South Africa from all sources.