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GENERAL AGREEMENT ON TARIFFS AND TRADE

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1960-61 TARIFF CONFERENCE

WORKING PARTY ON THE EXAMINATION OF THE COMMON TARIFF OF THE EUROPEAN ECONOMIC COMMUNITY UNDER ARTICLE XXIV:5(a)

Draft Report

1. The Working Party was set up by the Tariff Negotiations Committee on 7 December 1960 (TN.60/SR.6) "to examine the Common Tariff of the European Economic Community in the light of the provisions of paragraph 5(a) of Article XXIV and to report to the Tariff Negotiations Committee". This followed a request made by the CONTRACTING PARTIES at the seventeenth session to the Tariff Negotiations Committee "to carry out the actual examination of the Common Tariff pursuant to Article XXIV:5(a) and to report to the CONTRACTING PARTIES". Representatives of sixteen contracting parties and the Commission of the EEC took part in drawing up the Working Party's report.

2. Paragraph 5(a) of Article XXIV requires that:

> "with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;"

3. Before reporting on the examination of the Common Tariff it had carried out under Article XXIV:5(a), the Working Party thought that two preliminary points might usefully be made:

> (a) The task which was entrusted to the Working Party was limited, by the terms of reference, to an examination of the general incidence of the Common Tariff and therefore excluded an examination of the general incidence of the other regulations of commerce mentioned in paragraph 5(a).

(b) Paragraph 5(a) requires that the duties imposed at the institution of a customs union shall not "on the whole" be higher than the general incidence of previous national duties. This does not mean that the Common Tariff of the EEC should not be higher than the general incidence of previous national tariffs of its Member States on exports of each of the contracting parties; what is relevant is the general incidence of the Common Tariff on imports into the EEC of all commodities from all contracting parties.

Construction of the Common Tariff

4. In the examination of the Common Tariff in accordance with Article XXIV:5(a) the Working Party had available explanations furnished by the representatives of the Commission of the EEC on how the Common Tariff had been constructed. These explanations are set out in Annex A.

Weighted versus arithmetical averages

5. The Working Party considered whether the use of the arithmetical average of national tariffs in the construction of the Common Tariff was in accordance with Article XXIV:5(a). The Working Party noted that this question had been discussed in detail in the report of sub-group A on the provisions of the Treaty of Rome relating to the establishment of a common tariff (adopted by the twelfth session in November 1957) (BISD, Sixth Supplement, pages 71 and 72). The division of opinion between contracting parties there apparent has not been resolved. Several delegations, other than those of the Commission of the EEC and the Member States of the Community, considered that the use of the arithmetical average could not be endorsed as a principle. They drew attention to the drafting history of Article XXIV:5(a) according to which the term "general incidence of the duties" was used with the intention "that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account". In their view, while not always a true indication in relation to individual products, the weighted average provided valuable evidence of the overall incidence of a tariff.

6. The Commission of the EEC, however, continued to consider that the provisions of Article XXIV:5(a) did not exclude any method of calculation for the preparation of a common tariff, provided that the duty rates applied as a result of the establishment of a customs union are not, on the whole, higher than the general incidence of the duties which they replace. The Community had based its calculation on the arithmetical average method which was strictly in conformation with the provisions of paragraph 5 of Article XXIV. With a view to arriving at a still lower tariff level, the Community furthermore in its calculations used the rates actually applied on 1 January 1957, subject to the exceptions as provided for in Article 19 of the Treaty, and not the legal and contractual rates which the Community had, in its view, the right to apply under the provisions of paragraph 5 of Article XXIV. To the same effect, the Community had provided ceiling rates

for a great number of products which were applied even in instances where the arithmetical average would have led to higher rates. The Commission considered that the Community had gone further than required by the obligations of the General Agreement since, as appeared from the tabular statement it had submitted and which took account of the volume of trade, the application of these rules had led to a common tariff, the level of which was lower than that authorized under the provisions of paragraph 5(a) of Article XXIV.

Basis of comparison between the Common Tariff and previous national tariffs

7. The Working Party then sought to compare, on a mathematical basis, the general incidence of the Common Tariff with the general incidence of the duties of the Member States of the EEC before its formation. In the course of this it became apparent that there was a division of opinion in the Working Party on the interpretation of the word "applicable" in paragraph 5(a). The European Economic Community held, on the basis of the text itself of paragraph 5 of Article XXIV, that the expression "applicable" must be read, in contrast to the term "imposed" used elsewhere in Article XXIV, as referring to a rule of law which is applied or capable of being applied, and that it is for each contracting party constituting a customs union or a free-trade area to interpret its own legislation with regard to the duties which should be regarded as being applicable. According to the national legislation of the Member States of the EEC, the term "applicable" can only refer to conventional (bound) and legal customs duties. Several members of the Working Party, on the other hand, held that "applicable" must in this context mean rates actually applied since the purpose of Article XXIV:5(a) was to prevent the institution of a customs union being used as an opportunity to increase the protective duties actually encountered by exporters. In particular it was held by several delegations that the use as a basis for the computation of the Common Tariff of tariffs which were in fact never levied (i.e. the Italian tariff) did not give a true indication of the protective regime existing before the formation of the customs union.

8. The Working Party did not consider itself competent to pronounce on this question of the interpretation of the General Agreement. It proceeded therefore to make a comparison between the incidence of the Common Tariff and that of the national tariffs of the Member States of the EEC on the two bases discussed.

Comparison of the incidence of the Common Tariff and national tariffs on the basis of legal or bound rates

9. The Working Party had before it a statement produced by the Commission of the EEC (Annex B) setting out a comparison of the incidence of the Common Tariff and national tariffs of the Member States of the EEC "applicable" on 1 January 1957 on the basis of imports from third countries in 1958 and broken down by countries and by ten groups of tariff headings.

10. These figures show that the general incidence of legal or bound tariff rates in Member States on 1 January 1957 was 10.2 per cent. The incidence of the Common Tariff on these imports would be 9.1 per cent.

11. In considering the tabular statement at Annex B, the Working Party noted that this lower incidence of the Common Tariff compared with the general incidence of legal or bound rates in Member States was mainly accounted for by Italy (the incidence of the Common Tariff on imports into Italy from third countries in 1958 would be 7.4 per cent compared with 13 per cent in the case of the legal or bound rates "applicable" on 1 January 1957. This would mean a reduction of $85.1 million in customs receipts under the Common Tariff compared with customs receipts which would have been paid if legal or bound duties had been fully applied on 1 January 1957); this change together with smaller decreases in the case of France (8.0 per cent against 10.5 per cent (a decrease of $46.8 million)) and Germany (9.5 per cent against 11.3 per cent ($53.8 million)) more than outweighted an increase in the case of Benelux (to 10.7 per cent from 7 per cent (an increase of $86.7 million)).

12. Several delegations pointed out that any comparison of these figures of the incidence of national tariffs and the Common Tariff would not be statistically complete without taking into account the elimination of fiscal duties in the Common Tariff and their replacement in several cases by domestic charges which would have very much the same effect on certain overseas exporters. In the case of coffee, the German tariff of 26 per cent ad valorem incidence on 1 January 1957 has already been reduced to the Common Tariff level of 16 per cent (involving a total reduction of $7 million in customs receipts on the basis of 1958 figures) but at the same time /in order to make good the loss of revenue which would otherwise be involved/ the internal consumption tax had been increased by 10 per cent. In the case of mineral oil (27.09) the German tariff on 1 January 1957 included a substantial revenue duty (customs receipts according to the Commission's statistics above of $32 million in 1958). The Common Tariff on 27.09 is zero. To this extent there would seem to be a marked fall in the incidence of the Common Tariff. But this does not take account of the possibility of this revenue duty being replaced by a domestic tax. The representative of the Commission, however, considered that the provisions of paragraph 5(a) of Article XXIV did not make any distinction between the protective element of a duty and the fiscal element. Moreover, in almost all cases where duties of the Member States included fiscal charges, these had not in fact been replaced by internal taxes.

13. Given its view that the conventional (bound) and legal duties of the Member States prior to the institution of the customs union constituted the only valid basis for conducting the examination of the Common Tariff pursuant to the provisions of paragraph 5(a) of Article XXIV, the Commission of the EEC did not consider that duties actually charged were relevant and did not accordingly think it necessary or desirable to supply information on them. Several members of the Working Party regretted that despite their assurance to the Commission that its submission of data based on applied rates would be made without prejudice to the known views of the Community in this

matter, the Commission was not prepared to provide information on applied rates. The Working Party had before it however:

(a) calculations put forward by a number of delegations on the incidence on their exports to the EEC of rates applied there before the EEC's formation; (Annex C)

(b) a table prepared by the secretariat at the request of delegations showing on the basis of published figures of customs receipts and national imports the general incidence of applied rates in the Member States of the EEC compared with the general incidence of the Common Tariff. (Annex D)

14. The views expressed below by the Working Party on the statistics in Annex C excluded those of the representatives of the Commission of the EEC and its Member States, who refrained from comment on the grounds that they did not consider rates actually charged on 1 January 1957 relevant to the examination of the Common Tariff in accordance with Article XXIV:5(a). The Working Party noted that according to the statistics supplied by certain delegations in Annex C the incidence of the Common Tariff compared with tariffs actually applied in Member States in January 1957 represented in several cases considerable increases. In examining these figures, however, it has to be borne in mind that the statistics in Annex C cover only per cent of imports into the EEC from third countries. Insofar as the statistics on the general incidence of applied rates in the Member States in the EEC (on the basis of published figures of customs receipts and national imports) were concerned, the Working Party noted that the general incidence of the former was 6 per cent compared with a figure of 9.1 per cent for the Common Tariff. It should, however, be borne in mind that in default of any more precise information from the Commission of the EEC the table at Annex D includes imports from all countries (i.e. intra-EEC trade which should be excluded), and in particular intra-EEC trade in ECSC products and imports into France from the franc zone. But while these factors, which for the reason given cannot be quantified, would increase somewhat the figure of 6 per cent for the incidence of applied rates, the Working Party considered that the table showed that the general incidence of the Common Tariff was appreciably above that of rates actually applied in Member States on 1 January 1957.

15. Conclusions