

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## WORKING PARTY ON AUSTRALIAN REQUEST TO GRANT TARIFF PREFERENCES FOR LESS-DEVELOPED COUNTRIES

### Note by the Secretariat on Meeting of 23-24 June

1. The Working Party, established by the Council to consider the request from the Government of Australia for a waiver under the terms of Article XXV:5 of the General Agreement to cover the introduction by the Australian Government of preferential rates of duty on imports of manufactured and semi-manufactured products produced in less-developed countries, met on 23-24 June 1965.
2. The discussions at this first session of the Working Party were preliminary in nature and were designed to clarify the issues raised by the Australian request. This note provides a record of the main points raised during the meeting.

### Opening statement by the representative of Australia

3. The representative of Australia stated that the Australian request was contained in L/2443 and Corr.1. This document provided a comprehensive statement of the background against which the request had been made and details of the Australian proposal. He recalled that the Australian representative at the Second Special Session had pointed out the difficulties caused for a country in the position of Australia by the form of the Articles in the new Part IV of the GATT. Australia was in the process of industrial development and could not take commitments more appropriate to the circumstances of the highly industrialized countries. Australia made selective and flexible use of the tariff to foster her industrial development and accordingly was not in a position to take a blanket commitment across the whole of the tariff. It was also stressed that there was no provision in the General Agreement enabling Australia to accord tariff benefits to less-developed countries without giving them in such a form that the industrialized countries would obtain most of the benefit. Australia had now accepted the new Part IV of the GATT on the understanding that the provisions of Article XXXVII would be applied to the fullest extent possible consistent with Australia's development needs and policies and responsibilities. It was against this background that the present application must be viewed. The Australian Government accepted the objectives referred to in paragraph 17 of the report of the Special Committee on Preferences of the UNCTAD. The Australian proposal was designed as a contribution, consistent with Australia's own stage of economic development, to the solution of the problems facing less-developed countries in the trade field.

4. He went on to point out that Australia was already a large market for the exports of less-developed countries. Almost three quarters of these goods entered Australia duty free. These imports from less-developed countries were mainly primary products. It was the conviction of his Government that if the trade position of the less-developed countries was to be improved they must export increasing amounts of semi-manufactured and manufactured goods. Australia was now proposing to introduce preferences on about sixty manufactured and semi-manufactured products of export interest to less-developed countries. These items were taken from the list of products submitted to Committee III and the lists notified in connexion with the Kennedy Round of tariff negotiations by less-developed countries.
5. He pointed out that in no case would the most-favoured-nation rate be raised to allow the granting of preferences. In the great majority of cases the new preferential rate would be below the existing British preferential rate. In nearly all cases the new preferential rate represented a tariff reduction of more than 50 per cent, the working hypothesis of the Kennedy Round. Australia was not seeking reciprocity from the less-developed countries.
6. The proposal contained safeguards for the trade of existing suppliers. His Government also considered that the rôle of the CONTRACTING PARTIES in ensuring the satisfactory and equitable application of these arrangements was of critical importance.
7. As to the recipients of the preferences, he said that his Government wished to extend the preferences without discrimination to all less-developed countries which needed such assistance in respect of the products concerned. The list of less-developed countries annexed to their request was indicative or illustrative and his Government would prefer to act on an internationally agreed list. The Australian Government would therefore welcome the guidance of the CONTRACTING PARTIES on this question.
8. In conclusion he said that the Australian request contained a specific proposal which should be considered separately from the general question of preferences for less-developed countries. While the Australian request took the form of an application for a waiver under Article XXV of the General Agreement, it was only in a very technical sense that it could be described as seeking a release from an obligation since the proposal would confer no benefits on Australia.

#### Discussion

9. The representatives of Brazil and Peru said that their delegations supported the Australian request for a waiver. The representatives of Argentina, Cuba, Czechoslovakia, India, Nigeria and Turkey said that their delegations also welcomed the Australian initiative, subject to certain reservations on points dealt with in subsequent paragraphs of this note. The representative of Ceylon said that his Government was still studying the matter but he had no doubt that they would welcome the Australian proposal. The representatives of Argentina, Denmark, Canada, European Economic Community, Ivory Coast, Jamaica, Japan, Switzerland, United Kingdom and the United States, felt that a thorough analysis of the Australian proposal and its possible effects should be carried out; only then would their governments be able to take a position on the request.

10. The representative of Jamaica said that his delegation had doubt as to the legality of authorizing a departure from the provisions of Article I, an amendment to which required unanimity, by a waiver under Article XXV:5, which could be granted by a two-thirds majority. The representative of Australia saw no legal difficulty in this. The question had been raised in the past and thoroughly examined. There were many precedents for the use of Article XXV:5 in the granting of waivers from the provisions of Part I.
11. The representative of India said that in many important respects, particularly its discriminatory aspects, the Australian scheme differed from the proposal unanimously submitted by less-developed countries in UNCTAD for the accordance by the developed countries of general non-discriminatory preferences in their favour. He expressed the hope that such differences would be removed from the Australian scheme.
12. It was noted that the Australian initiative contained the first concrete proposal for the granting of new preferences to the less-developed countries and the question was raised as to whether this proposal would be considered as a precedent when a general scheme for such preference was under discussion. The representatives of Czechoslovakia, Denmark, India, Peru, United Kingdom and Yugoslavia emphasized their support for a general non-discriminatory system of preferences. The representatives of Brazil, India and Yugoslavia also felt that preferences granted by industrialized countries should be applied on a linear basis subject to a limited number of exceptions. The representatives of Argentina and the Ivory Coast were of the opinion that certain features of the Australian proposal should not be used as a precedent in any general scheme for new preferences. In answer to a question by the representative of Nigeria as to whether the Australian Government had in mind making any necessary changes in its proposal to bring it into line with a general scheme of preferences when this was adopted, the representative of Australia said that this was a question which could be discussed if and when any such general plan was adopted.
13. Asked by the representative of the European Economic Community whether the present waiver request would affect the Australian offer in the Kennedy Round, the representative of Australia felt that this was not a question which fell to be dealt with in the present Working Party but pointed out that the scope or size of the Australian offer in the Kennedy Round would be directly related to the benefits which Australia expected to receive. If the results of the Kennedy Round were to affect the new preferential margin, this question could be taken up again.
14. Members of the Working Party went on to address questions to the representative of Australia on the various aspects of the proposal as set out in L/2443 and Corr.1.
15. It was emphasized that only when additional statistics were available would it be possible to make an assessment of the trade effects of the proposed preferences or to form a judgment on the countries most likely to benefit and on existing suppliers most likely to be affected. The representatives of several countries requested detailed import statistics showing the countries, both developed and

less-developed, at present exporting the items on which it was proposed to grant preferences. The representative of Nigeria asked the Australian delegation to supply import figures for the last five years for each of these items. The representatives of India and the United States asked for figures of Australian domestic production of the items concerned. The representative of Australia undertook to supply these figures where available and, during subsequent discussions in the Working Party he also agreed to provide information on the correspondence between the tariff items as shown in the Australian request, which were on the Brussels nomenclature, and the items of the old Australian tariff nomenclature, and on the ad valorem equivalent of specific duties on these items. In reply to a question, he said that there would be no primage duties additional to the proposed preferential rates on products in the list when imported from less-developed countries.

16. The question of the countries to receive preferences was discussed. The representative of Argentina, referring to the list of countries annexed to L/2443, noted that reference was made to the "Falkland Islands". He did not intend to restate once again the position of his Government on this matter but felt that a revised list should be issued. The representative of Australia said that the designation "Falkland Islands" had been taken from the list of countries and territories to which the GATT was applied contained in the Twelfth Supplement to the Basic Instruments and Selected Documents but his Government would be ready to accept an internationally agreed designation of these territories.

17. The representatives of Cuba, Ivory Coast, Greece and Turkey, informed the Working Party that, in their opinion, their countries should be added to the list annexed to the Australian request. In view of these statements, the representative of Israel stressed that the Australian list, as originally drawn up, could no longer be considered as appropriate. He also referred to the requirements of the procedure adopted by the CONTRACTING PARTIES on 1 November 1956 concerning waivers from Part I of the General Agreement. The representative of Greece, referring to the statement made by the representative of Australia that the list was indicative or illustrative and requesting the guidance of the CONTRACTING PARTIES, requested the Chairman to establish a procedure enabling countries which were not on the list, to be added thereto. The Chairman said that the terms of reference of the Working Party prevented it from going into the general question of the definition of less-developed countries and that at this stage it was, in his view, for the Australian delegation to take a decision on this question. The best course of action might be for countries feeling that they should be added to the list drawn up by the Government of Australia to bring the matter to the attention of the Australian delegation. It was pointed out that this question also affected countries not contracting parties to the General Agreement. The representative of Australia in agreeing that it might not be for the Working Party to settle any general definition of less-developed countries for all purposes, recalled his opening remarks on this question and pointed out that the waiver requested by his Government would have to be related to a specific list of countries.

18. After discussion, the Working Party agreed that initially a procedure was needed to allow countries not included in the list, but considering themselves to be less-developed countries, to state their positions. The Working Party agreed to revert to the substantive question of the list of countries at a later meeting and agreed that meanwhile countries considering that they should also be included within the scope of the scheme should be invited to notify this fact to the Working Party, through the secretariat, and to the Australian Government. This procedure was without prejudice to the way in which the Working Party would deal with this matter. The representative of Australia said that, while he had no objection to this procedure, he would expect the final list of countries to be settled in the light of discussion in the Working Party.

19. The representatives of some less-developed countries members of the Working Party emphasized that in their view the Australian proposal should be implemented in such a way as to benefit less-developed countries as a whole. The representative of Nigeria said that it was the position of his Government that any scheme for new preferences in favour of less-developed countries should take into account the differing stages of development of these countries and recalled that this position had been made clear in other discussions on the preference issue. He asked whether the Government of Australia was prepared to amend their proposal to take this factor into account. The representative of the Ivory Coast also expressed the view that any proposal for the granting of new preferences must take into account the differing stages of development of the less-developed countries. The representative of Ceylon expressed the hope that the list of products should be so distributed as to take into account the interests of all developing countries in a satisfactory and equitable way and said that consideration should be given to the different stages of development of less-developed countries. He further suggested that at the annual review Australia should give special consideration to the case of those individual less-developed countries who did not appear to be benefiting from the preferences. The representatives of India, Indonesia and Nigeria proposed that the Australian Government should consider the possibility of granting preferences on primary products. The representative of Nigeria enquired whether semi-processed products were included in the term "manufactured and semi-manufactured products" and requested that tropical vegetable oils should be added to the list of items on which the preferences would be granted. Other delegations suggested that the quotas provided for in the Australian proposal might be administered in such a way as to distribute the benefit of the proposed preferences, the representative of Pakistan proposing that quotas should be allocated between less-developed countries to ensure the equitable distribution of imports, and the representative of Brazil suggesting that the particular problem of new exporters should be met by the creation of supplementary quotas for these countries.

20. The representative of Australia said that the views expressed would be communicated to his Government. He recalled that his Government had never been in favour of dividing contracting parties into only two groups of countries which failed to take account of the different stages of development of contracting parties. He pointed out that, while they had not tried to introduce special quotas for "least developed" countries into their proposal, if, for instance, one

less-developed country were to take up the whole or the lion's share of a preferential tariff quota, it would probably be judged competitive and adjustments would therefore be made. With regard to the products on which preferences would be granted, he said that the scope of the waiver request had been limited to manufactured and semi-manufactured products for the reasons set out in his opening statement. In general less-developed countries were already efficient suppliers of primary products. Moreover, the great majority of Australian imports of primary products from less-developed countries already entered duty free. He recognized that there could be a problem regarding semi-processed products when those were being exported in competition with similar products from non-less-developed countries.

21. A number of questions were raised on the concept of "competitive need" referred to in paragraphs 6 and 8 of L/2443. The representative of Brazil welcomed the non-discriminatory character of the Australian proposal. He thought that where a less-developed country accounted for a reasonable percentage of imports of a particular product in a particular market on a regular basis, it could be assumed that it was competitive. It did not follow from this, however, that the country was competitive in that market with respect to other products or that it was competitive with respect to that product in other markets. The decision whether a country was sufficiently competitive for a preference to be withdrawn from it should be made after consultation and the preference should be amended gradually. As a general rule, the termination of a preference for a particular product of a less-developed country in a particular market should not affect the maintenance of preferences for the same product of the same country in other markets, or for other products of the same country in the same market.

22. The representatives of India and Yugoslavia felt that less-developed countries should not be deprived of the preference on a given product when they became competitive exporters of that product. The main aim of preferences should be to increase the export earnings of less-developed countries; it was the infant economy justification of preferences which was of relevance in this context, rather than an adaptation of the infant industry argument. The representatives of both India and Yugoslavia said that the concept of competitive need might lead to discrimination and they went on to urge that this aspect of the scheme should be withdrawn.

23. The representatives of Canada, Switzerland, the United Kingdom and the United States also stressed the importance of clarifying the concepts contained in paragraphs 6 and 8 of the Australian proposal. The representative of Canada asked on what basis had the Australian Government decided that there was a "demonstrable need" for preferences on the products listed. It was suggested that it would be extremely difficult to determine objectively when a less-developed country had become a competitive exporter of a given product. It was also pointed out that the proposed system for the extension and withdrawal of preferential treatment would add a new element of uncertainty and instability to international trade.

24. The representative of Australia said that the object of his Government's proposal was to help less-developed countries to overcome their initial non-competitiveness in the field of semi-manufactured and manufactured goods. They had not, however, felt it necessary to elaborate a set of criteria to be used in determining when a less-developed country became competitive on the Australian market. It had nevertheless been felt reasonable to conclude that, if a less-developed country supplied a significant percentage of imports of a particular product, it was competitive, at least as far as that product was concerned. It was the aim of his Government to help all less-developed countries. He pointed out that in only five out of the sixty product groups covered by the Australian proposal had individual less-developed countries been considered competitive. In one of these cases the less-developed country concerned supplied 99.9 per cent of imports in 1963/64. In the other cases the less-developed countries in question accounted for a large proportion of imports.

25. In reply to questions from the representatives of the EEC, Jamaica and Nigeria on the relationship between the new preferences and existing preferences granted to members of the Commonwealth, the representative of Australia said that, while his country already granted Commonwealth preferences on certain items to some less-developed members of the Commonwealth, no less-developed country was entitled to the British preferential rate on the items enumerated in the Australian proposal. The representatives of Jamaica and India pointed out that where the British preferential rate already provided for free entry the new preferential rate would merely place less-developed countries on an equal footing with certain developed countries. Furthermore, because the new preferential imports would be subject to quota restrictions, the less-developed countries would be in a less favourable position than those developed countries as the latter countries' exports would not be subject to quota restrictions. The same was true where less-developed countries had been excluded from the preferential scheme in respect of certain so-called competitive items. Thus, in addition to the serious drawback of the scheme that it led to discrimination among the less-developed countries, it also failed to provide equality of treatment for the less-developed countries vis-à-vis those developed countries which enjoyed preferences in the Australian market.

26. Referring to the periodic review of the preferential duties mentioned in paragraph 8 of L/2443, representatives of some less-developed countries expressed the hope that this would permit consultations with less-developed countries on any proposed variations in the list and additions to it on which preferences were granted and emphasized the importance which they attached to this. The representative of India also expressed the hope that, in view of the proposal made by the Australian Government in paragraph 13 of L/2443 with which he agreed in principle, the coverage of the Australian scheme would soon be enlarged by the addition of many more items to the list, including products with social implications, such as handloom products. The representative of Nigeria suggested that this review might also permit consultation on the type of special treatment which might be accorded to the less-developed of the less-developed countries. The representative of Australia recalled that his Government had requested that the waiver cover all manufactured and semi-manufactured products and said that they were fully prepared

to discuss with interested less-developed countries the addition of further items to the list of those on which preferences were granted. It would be open to less-developed countries to address requests to the Australian Government which would, however, in considering them have to take into account the interests of third countries and all domestic producers. The Government had not at this stage, however, elaborated proposals as to the mechanism which would be needed to deal with such cases.

27. The representative of Japan asked whether the preferences would be granted for a specific time period and whether the Australian Government would agree to bind the margin of preference. The representatives of India, Pakistan and Yugoslavia, referring to the possibility of adjustment and elimination of preferences mentioned in paragraph 8 of L/2443, said that preferences should be granted for a fixed period and an initial period of ten years with provision for further extensions was suggested in this context. They added that in the absence of any fixed initial period, the exporters in the less-developed countries would be more concerned with the uncertainty caused by the provision of periodic reviews and would not make serious efforts to take the maximum possible advantage of the scheme. The representative of Australia said that consideration had been given to the introduction of a fixed period for the granting of the preferences but that it had been considered preferable to rely on the flexible use of consultations; if there was a fixed period this would give rise to pressure to remove the preferences at the end of it, even though the less-developed countries might, at that stage, still be subject to competitive disability.

28. Questions were addressed to the representative of Australia on paragraphs 10 and 11 of L/2443 dealing with the interests of third countries. It was noted that the quota limitation on imports at the new preferential rate had been introduced as a safeguard for third suppliers and domestic producers. The representative of Japan asked whether the Australian Government would agree not to enlarge the quotas initially proposed. The representative of the United States asked how the quotas had been set and the representative of Nigeria enquired whether the level of the quotas was in some way related to the level of economic activity in the less-developed countries. The representatives of Jamaica and the United States noted that the quotas on most items were small, especially in relation to the number of less-developed countries. The representative of Pakistan said that, because of this, the benefits that could be expected to flow from the proposed preference would be modest. Figures were quoted to illustrate these points. The representatives of Jamaica and Nigeria doubted whether the quotas would be large enough to stimulate the interest of new exporters or to enable less-developed countries to become competitive. The representative of India felt that the quota limitation was unnecessary and that safeguard measures should not be introduced until the need for them arose. Quota limitations as well as the periodic reviews which had been provided for in the scheme added up to what might be called a double hindrance to the export promotional efforts of the less-developed countries. These safeguards were unnecessary, at least in the beginning, because the expected increase in the imports from the less-developed countries could not be really disruptive in the foreseeable future. The representative of Pakistan suggested that the quota limitation might be introduced only after an initial period. If this were not acceptable quotas should be enlarged or a growth provision introduced.

The representative of Brazil said that one could envisage a later phase in the application of preferences which would start when the global quotas proved insufficient for all less-developed countries exporting the same products. In that case, individual quotas might be set up which would take into account the participation of each country in each quota as regards time, volume of exports and actual degree of competitiveness. These would provide a safeguard for new exporters.

29. The representative of Australia said that the quotas had been fixed at a level which the Australian authorities felt would be high enough to enable less-developed countries to secure a foothold on the Australian market. While some quotas might not appear to be very large, they were nevertheless of significance in relation to the Australian market for imports of the products in question. The sum of the quotas was more than five times the present level of imports of those products from the less-developed countries. He took note of the other suggestions which had been made.

30. The representative of the United States asked what rights interested third countries would have in the consultations mentioned in paragraph 11 of L/2443. The representative of Australia said that detailed proposals had not yet been formulated; at this stage he would not add anything to what was set out in that paragraph.

31. Referring to paragraph 13 of L/2443 request on the scope of the waiver, the representative of Japan noted that an open-ended waiver was being requested to cover "all manufactured and semi-manufactured products". He asked what definition of this term the Government of Australia would use. The representative of Australia said that it had not been felt necessary to define this expression which appeared to have, judging by its use, a generally accepted connotation, and suggested that a pragmatic approach might be used.

32. Several specific questions were asked on the way in which the preferences would be administered, including the way in which licences would be issued. The representative of Australia said that at the present stage detailed proposals had not yet been drawn up. He outlined present thinking on certain administrative aspects of the scheme. In reply to question on rules of origin, he said that these had not yet been elaborated but would closely follow existing rules developed in connexion with Commonwealth preference. Their main purpose would simply be to prevent developed countries from taking advantage of the preferences by shipping their goods via less-developed countries.

33. At the present meeting members of the Working Party had had the opportunity to obtain additional clarification of points arising from the proposal submitted by the Government of Australia. The meeting had also afforded the opportunity for a useful exchange of views. The Working Party agreed to recommend to the Council that it should hold a further meeting to continue its examination of the proposal before it in the near future and suggested that early September might be a suitable date.