

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/2478

11 October 1965

Limited Distribution

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

### Note by the Secretariat on Meeting of September 1965

1. The Working Party held its second meeting from 13 September to 1 October 1965. It had before it, inter alia, the Australian request for a waiver (L/2443, Corrigenda 1 and 2 and Addendum 1) and a note on discussions held at its previous meeting (L/2457). At the present meeting of the Working Party the representative of Australia first provided further information on his Government's proposal. Members of the Working Party asked for additional clarifications of various points in the proposal. Finally, the Working Party took up the examination of the substantive issues raised by the Australian request.

### Statement by the representative of Australia

2. The representative of Australia informed the Working Party that on 24 August 1965 two Bills had been introduced into the Australian Parliament designed to give effect to the scheme for preferences. (The texts of these Bills and of speeches made by the Australian Deputy Prime Minister when introducing these measures are contained in L/2471.) The first of these Bills set out the proposed scheme for preferences. The second was a complementary measure dealing mainly with rules of origin.

3. The representative of Australia emphasized that the introduction of these Bills should not be considered as in any way prejudging the outcome of the deliberations of the Working Party. The proposed legislation would not become law until it had been debated and passed by Parliament, and, even when enacted as law, would not come into effect until a date to be fixed by proclamation. In introducing the Bills the Australian Deputy Prime Minister had recalled that Australia's application for a waiver was now before the CONTRACTING PARTIES. In requesting the Parliament to pass the necessary legislation he had explained that the Australian Government wished to be in a position to bring the preferences into operation as soon as the waiver was granted. The representative of Australia went on to point out that the decision to introduce the legislation demonstrated the good faith of his Government in taking the necessary steps to implement its previously announced decision to establish preferences in favour of less-developed countries, and underlined its intention to press for the waiver necessary to implement the scheme. It was also the feeling of his delegation that the Bills themselves would assist the Working Party to obtain a better understanding of the Australian Government's proposals. In reply to questions, the representative of Australia said that the text of the speeches by the Australian Deputy Prime Minister which had been circulated explained in non-legal language the contents of the Bills.

4. The representative of Australia informed the Working Party that the proposed legislation incorporated two changes in the list of items on which preferences were to be granted annexed to L/2443. These modifications were notified to contracting parties in L/2443/Corr.1. During the course of the meeting of the Working Party the representative of Australia also announced that, in response to requests which had been made by several less-developed countries (L/2457, paragraph 26), his Government was prepared, subject to agreement by the Working Party, to include handicraft products within the scope of the scheme. A list of these handicraft products is set out in L/2443/Add.1. While the present rates of duty on these products were generally high, the proposed preferential rate was free and there would be no quota limitation to the preference. He explained that his Government had experienced some difficulty in seeing any basis of competitive need in relation to these products since they were, in most cases, exported only by less-developed countries. His Government, however, recognized the real benefits which would accrue to less-developed countries from increased exports of these products and was therefore prepared to make an exception to their general rule to provide a practical solution to a particular problem.

5. The representative of Australia referred to requests made during the first meeting of the Working Party for additional statistical information (L/2457, paragraph 15). Detailed statistics showing the countries from which Australia at present imports the items on which it proposes to grant preferences had been supplied for the latest available year (L/2463) and for a series of years (L/2463/Add.1). L/2463 also provided details of the correspondence between tariff items as shown in the Australian request which are in terms of the Brussels Nomenclature, and the former Australian tariff, and indicated as well the countries which had notified, either Committee III or the Trade Negotiations Committee, of their export interest in the items contained in the Australian request.

6. The representative of Australia recalled that his delegation had also been requested to supply statistics of domestic production in respect of these items. His delegation felt that such information was not of direct relevance to the matter under discussion but he said that, in the light of the views which had been restated by other members of the Working Party, such figures as were available would be circulated (these are contained in L/2463/Add.2). He explained that complete production statistics were not available largely because these were not compiled on the same detailed basis as import statistics. Moreover, in the not infrequent cases where the domestic industry consisted of a few firms, it was an established rule in Australia that production figures which were obtained on a confidential basis could not be revealed. He estimated, however, that nearly all of the items on which it was proposed to grant preferences would cover goods produced in Australia and it could not be said that no domestic sacrifices were envisaged under the scheme. The benefits to less-developed countries from the proposals would not be gained solely at the expense of other suppliers.

#### Discussion

7. During its last meeting the Working Party had been informed that, while Australia granted Commonwealth preference 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 (L/2457, paragraph 25). Asked whether this fact reflected a deliberate policy,

the representative of Australia said that a few items of little significance in trade on which certain less-developed members of the Commonwealth were already entitled to preferences had been excluded from the list since it was thought that any benefit that might have resulted from the inclusion of these items would have been disproportionate to the damage that might have been caused to those less-developed countries of the Commonwealth at present enjoying a preference on those items in the Australian market.

8. Asked about the administration of the preference quotas, the representative of Australia said that importers who applied for quotas would be allocated a certificate; they could then be certain that the goods covered by that certificate would be eligible for the preferential tariff treatment at the time of their importations into Australia. Precise details of the way in which certificates would be allocated would be circulated when these were elaborated.

9. In reply to questions, the representative of Australia recalled that the preliminary thinking of his delegation on the rules of origin to be used in connexion with the new preferences had been outlined at the previous meeting of the Working Party (L/2457, paragraph 32). More detailed provisions were contained in Section 20A of the Customs Tariff Bill and Section 151(3) of the Customs Bill (L/2471, pages 4 and 12). These provisions were summarized in the text of the Minister's speech which had been circulated (L/2471, page 22). By and large the rules of origin adopted were not dissimilar in principle from those of the British preferential system. Their main purpose was to ensure as far as possible that the benefits of the scheme would accrue to less-developed countries.

10. In reply to questions on the relationship which would exist between the By-Law System and the proposed preferences and whether the operation of this system would not reduce the actual benefits to less-developed countries from the preferences which Australia hoped to establish, the representative of Australia explained that under the By-Law System certain categories of imports of an essential nature which were not available from Australian production could be brought in at rates of duty below the most-favoured-nation rate. The By-Law System would continue to operate, in these cases, in parallel to the system of preferences. If less-developed countries were in a position to supply these essential imports, the By-Law System could apply to them. In any event, the effect of the By-Law System on the trade of less-developed countries in the items covered by the preference scheme would be negligible.

11. It was recalled that notifications from certain countries not included in the indicative list attached to the Australian request for a waiver but wishing to be included within the scope of the scheme had been distributed in accordance with the procedures established at the last meeting of the Working Party (L/2457, paragraph 18). Some members suggested that it would be useful to have as a working document a consolidated list consisting of the countries and territories mentioned in the list annexed to the Australian request (L/2443 and Corr.1) and the countries and territories appearing in the notifications (L/2464 and Add.1-3) arranged in alphabetical order. This list was therefore circulated to members of the Working Party in Spec(65)83. In this connexion some members of the Working Party indicated that thought would have to be given to the list of countries and territories to which the proposed preferences might be extended.

12. Members of the Working Party further discussed the principle of "competitive need" for preferences contained in the Australian proposal, to which reference had been made at the last meeting of the Working Party (L/2457, paragraphs 21 to 24). One member of the Working Party quoted examples which he considered showed that this principle had not been applied consistently, and that the products of interest to different less-developed countries had been treated quite differently. For example, imports from one less-developed country were to be excluded from the quotas on four items (cotton, linen or ramie fabrics of huckaback or Honeycomb weave; other textile articles; chairs and lounges of wicker, bamboo and cane; and other furniture). In these cases, the principle would be applied. In two other cases (coir matting and handmade carpets) one less-developed country supplied the bulk of Australian imports but would not be excluded from the quotas. In these cases, the principle would not be applied. Finally, there was one item (matt-woven fabrics of jute) in the original scheme, imports of which are obtained almost entirely from one less-developed country which was to be excluded from the quota. This item was now being withdrawn from the scheme, thus avoiding the application of the principle of competitive need entirely. He suggested that it would be necessary to evolve consistent and rational criteria to enable countries to predict the way in which the principle was to be applied; otherwise the Australian system might take on a very selective and arbitrary character. He enquired whether the Australian Government had drawn up such criteria and asked whether the principle of competitive need would apply as between developed countries now benefiting from preferential access to the Australian market and less-developed countries which would be accorded preferences under the Australian proposal. Some other members of the Working Party expressed apprehension that the operation of the principle could lead to discrimination against individual countries.

13. The representative of Australia said that his Government would not apply the principle lightly or capriciously. Principle less-developed suppliers would be excluded from preferences on particular items only where there were reasons clearly justifying such action. These reasons were spelled out in the Minister's speech in introducing the Bills (see page 17 of L/2471). The first group of products referred to in paragraph 12 came from two particularly sensitive industries - textiles and furniture - which had a long history of damaging competition from low-cost imports. In the circumstances it was not possible to extend a preference to a country already competing strongly in the Australian market. Rather than deny all other less-developed countries the benefit of preferences on these items it was decided to exclude the country concerned from the preferences proposed.<sup>1</sup> As for the other two items - hand-made carpets and coir matting - there was no history of damaging competition with Australian production. Accordingly, it was decided that the establishment of quotas would be an adequate safeguard to the Australian floor covering industry. Since imports within these two groups did not compete on price alone but on the degree of consumer appeal related to their traditional national designs, etc., there did not appear sufficient justification

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<sup>1</sup>The United Kingdom delegation pointed out that they had already drawn attention to the danger that an exclusion of a particular country from preference in respect of a particular item could divert trade from one source to another among less-developed countries.

for excluding any particular supplier. His Government felt that a pragmatic approach based on the situation of the Australian market was desirable. The use of a set of rigid criteria would inevitably result in the creation of anomalies. Turning to the other points made on this subject, he said that if it would make the scheme generally acceptable, his Government was prepared to consider including in their proposal provision for consultations within the GATT to be held before preferences were withdrawn from any country on any particular item.

14. One member of the Working Party asked how the Australian Government had selected the items contained in its initial list of products and pointed out that most items of particular interest to less-developed countries had been omitted from the list. The representative of Australia said that the considerations which had weighed with the Australian Government were set out in the speech of the Deputy Prime Minister which had been circulated (L/2471, pages 16 and 17). In this speech it was stated in particular that the products had been selected after careful examination of the lists of products which the less-developed countries had themselves nominated to the GATT as being of special export interest to them. Australia's continuing need to be able to use the tariff to protect its industries and to foster its own development which was comparatively recent and still incomplete had also to be borne in mind. This had influenced the list of products contained in the proposal.

15. It was recalled that Australia wished to be able to add to this list from time to time and had therefore requested that a waiver should be granted to cover all manufactured and semi-manufactured products. In reply to questions, the representative of Australia, referring to his statement on this subject at the last meeting of the Working Party (L/2457, paragraph 31), said that his delegation continued to feel that it was not necessary to define the expression "manufactured and semi-manufactured products" as the products initially to be the subject of the preferences were set out in the application for a waiver, while any proposed additions to the list would be notified to contracting parties and would be the subject of consultations. Asked whether he considered it technically possible to define the term, the representative of Australia said that, if it were thought necessary to adopt a definition, his delegation would be in favour of saying that "manufactured and semi-manufactured products" were all products other than "primary products" as defined in Note 2 to Section B of Article XVI of the General Agreement.

16. Some members of the Working Party had expressed disappointment that the list of products in respect of which the Australian Government was seeking authority to grant preferences could not have been drawn up to benefit a larger number of less-developed countries and expressed the hope that further items would be added to the list. In this connexion, they welcomed the announcement by the representative of Australia that his Government was prepared to add handicraft products to the list. The representative of Australia confirmed that his Government envisaged that further products would be added to the list from time to time and emphasized that after the present scheme was established his Government would be willing to consider specific proposals for the addition of further items to the list of products on which the preferences were granted.

17. One member of the Working Party referred to twenty-three items on the Australian list where the proposed preferential rate would be at the same level as the existing British preferential rate yet, in addition, imports from less-developed countries under the new preferential rate would be limited by quota. He suggested that where this occurred the quotas should be removed. It was also the view of his delegation that in granting preferences to less-developed countries the criterion should be that of the infant economy and not that of the infant industry. He also suggested that the list of products should be increased by the granting of the British preferential rates across the board to less-developed countries and that in addition, whenever possible, the new preferential rates should be set at a level below the British preferential rates in order to afford a genuine preference to less-developed countries vis-à-vis developed countries.

18. The representative of Australia said in reply that in all but five cases the proposed new preferential rate was either below the British preferential rate or provided for duty-free entry, the maximum offer that could be made. He emphasized that the proposed preferential scheme cut across many of Australia's long-standing contractual treaty obligations with traditional trading partners and that these long-standing commitments could not be completely dismantled overnight. The fact that only five preferential rates, other than duty-free rates, were maintained at the level of the British preferential tariff indicated that most of these difficulties had been overcome by Australia in consultation with Commonwealth trading partners. He recalled that his Government had explained in its initial request for a waiver (L/2443, paragraph 10) that the quota limitations on the preferential rates had been designed as a safeguard for domestic industry and Australia's existing suppliers; his Government continued to regard this as an essential element of the scheme. Referring to the suggestion that the British preferential rate should be granted to less-developed countries across the board, the representative of Australia repeated that these preferences stemmed from contractual obligations and that any modification would require further consultation. In the case of a number of items the most-favoured-nation rate in fact was the protective rate and in some cases was measured against a less-developed supplier. Also, the question of competitive need would have to be considered for these items. The detailed examination required by this proposal which involved some thousands of items would be extremely time consuming. In addition it should be remembered that Australia was currently engaged in a comprehensive tariff negotiation and it would not be physically possible to conduct two such operations in parallel.

19. Reference was made to certain features of the Australian proposal which were designed to safeguard the interests of existing suppliers of the products on which preferences were to be granted and in this context the rôle of the quota limitation on the preferences was noted. Some members suggested that consideration would have to be given to the establishment of appropriate procedures for consultations between all the parties concerned in respect of any additions or amendments to the list of products. One member also enquired as to the rights of third countries in such consultation and asked whether this consultation would be in the nature of a negotiation, in which case the question of compensation could arise, or whether the establishment of an arbitration body, which would apply agreed principles, might be envisaged. Some delegations also felt that the question of the review of the operation of the system and of the effects of the preferences on trade should be given careful consideration.

20. The representative of Australia said that it was the position of his Government that there should be no unnecessary or undue disruption of the trade of existing suppliers and that there must be international control of, and consultations on, any new preferences that were granted. This would necessitate machinery for prior consultations on any modifications of the scheme and for review of its operation. The Australian proposal made specific reference to this. As to the rights of contracting parties in the consultations, it was the expectation of his delegation that these would be specified in the waiver decision. The Government of Australia would be prepared to accept a consultation procedure to deal with specific points of difficulty arising in respect of a proposed preference and allow the CONTRACTING PARTIES authority to take a decision on these matters and to make appropriate recommendations. The Australian representative said that these points were illustrated in their draft of a possible waiver decision which had been circulated on an informal basis to members of the Working Party.

21. Some members of the Working Party stated that in their opinion the trade benefits of the scheme were likely to be very small. One member noted that total 1963-64 imports from less-developed countries of the items to be included initially amounted to less than A\$1 million, or less than 2 per cent of total Australian imports of these items from all sources. He noted also that imports of these items were, for the most part, obtained from two or three countries in Asia. Moreover, some two thirds of present Australian imports from less-developed countries of the products under the scheme were in two items, handmade carpets and coir matting. He pointed out that there were no significant exports of these products by developed countries and suggested, therefore, that virtually all the benefits which Australia was seeking to grant less-developed countries by the use of preferences on these products could be granted by tariff reductions on a most-favoured-nation basis. In this he was supported by certain other members of the Working Party.

22. His delegation had also examined the proposed tariff quotas in order to gain an impression of the potential benefits offered by the Australian Plan and referred in detail to the five products on which the largest quotas were to be opened. He pointed out that some of the products on which Australia proposed to grant preference were not at present exported in any appreciable quantities by less-developed countries. In some instances the margin of preference over most-favoured-nation countries was very small, and in four of the five cases exports of less-developed countries would have to compete on a basis of equality with suppliers from developed countries already receiving preferences. He asked if the Australian Government expected the quotas to be opened on these products to be filled.

23. The representative of Australia agreed that the actual and potential trade benefits of his Government's proposal might appear small from the point of view of a large highly industrialized country; however, these benefits could not be considered small in relation to the Australian market. He was prepared to accept the judgement of the beneficiaries of the scheme, the less-developed countries, with respect to the benefits to be expected. The proposal was designed to bring about an increase in the exports of the less-developed countries and it was therefore quite unrealistic to draw conclusions from the present level of trade.

He emphasized that the quotas provided for a five-fold increase in trade. As to which less-developed countries were expected to benefit from the preferences on items not at present imported by Australia from these countries, he pointed out that the details circulated in L/2463, Annex II indicated that a large number of these countries were interested in items on the Australian list. Enquiries about the scheme had already been received from Australian importers. It was not, however, to be expected that every less-developed country would press for, and expect to receive, a share of the trade under every quota and he emphasized that the proposal should be examined as a whole rather than piecemeal. Even in a completely generalized scheme, it would inevitably be found that different degrees of benefit would accrue on particular products to individual beneficiaries. If one less-developed country were to take the major part of any quota it might be concluded that that country was competitive and that it did not therefore need a preference on that item. If, on the other hand, quotas were not filled his Government would expect that the less-developed countries would wish to nominate other products for inclusion in the scheme. In answer to the suggestion that assistance to less-developed countries, in respect of certain products where their trade was now significant, could be better granted by reductions in the duties on most-favoured-nation basis, the representative of Australia emphasized that the preference scheme, as put forward, had been accepted by Australian domestic manufacturers on the basis that they would be safeguarded by the quotas established. The preference on floor coverings was offered despite the existence of a large Australian floor covering industry. It would not be practicable, at this stage, to reduce or remove the most-favoured-nation duties on these goods.

24. Most less-developed countries represented on the Working Party, while reiterating their support for a general non-discriminatory scheme for preferences and their feeling that the Australian scheme could be improved on in certain respects, indicated their governments' intention to support the Australian request. They recalled their earlier expression of support for the Australian initiative at the July meeting of the Working Party. Several of these representatives pointed out that the trade benefits offered by the scheme had to be viewed in relation to the continued need of less-developed countries to make use of all possibilities for an increase in their export earnings until they reached self-sustaining growth. They also underlined the significance of the Australian proposal as the first practical step by a developed country towards meeting the needs of the less-developed countries, a step which, it was hoped, would be followed by the presentation of proposals by other developed countries for the granting of general non-discriminatory preferences to all less-developed countries. This did not mean that in all aspects the Australian scheme should be accepted as a precedent.

25. The member of the Working Party whose views are set out in paragraph 17 said that his delegation supported a generalized scheme for preferences by all developed countries to all less-developed countries; if one country were to introduce a scheme for preferences independently the scheme should have a wide coverage and should benefit all less-developed countries. He said that unless it were modified now his delegation would not be able to support the Australian proposal.

26. Other members of the Working Party stressed the importance which they attached to the question of precedent precisely because they were concerned that acceptance of the Australian proposal might be considered to constitute a precedent in the context of discussions or a general scheme of preferences. It would be unfortunate, for instance, if a general scheme of preferences discriminated between less-developed countries. Some members of the Working Party recalled that, when presenting its request for a waiver, the Australian Government had emphasized that certain aspects of its proposal were a product of Australia's individual economic circumstances and might not, therefore, be considered appropriate to the circumstances of other countries or to any generalized system of preferences. It was suggested that, if this were so, the fears which had been expressed on the question of precedent would be groundless. One member of the Working Party stated, however, that the relevance of the Australian claim that special circumstances prevailed in its case remained to be established. In reply to a question, the representative of Australia stated that the position of his Government on this matter remained unchanged and that the proposal was not intended to be a precedent for other schemes of preferences. Certain basic principles contained in the proposal were, however, essential to any scheme. These were that reciprocity should not be expected from the less-developed countries, that preferences if established should not unduly disrupt the trade of third countries and that there must be international control of, and consultations on, preferences.

27. Some members of the Working Party emphasized their attachment to the most-favoured-nation principle and stated that in their opinion the maintenance of this principle to the extent possible was in the interest of the economically weaker countries. Certain members also emphasized that the benefits to be gained from any scheme for preferences should at least compensate for the disadvantages and dangers of a departure from the most-favoured-nation clause as embodied in the GATT. Any such scheme should, for example, lead to the creation of additional trade rather than to trade diversion. Certain members of the Working Party stated that the examination of the Australian proposal which had been carried out thus far had not convinced them that such a departure would be justified in the present case. In this connexion it was suggested that the overall effect of preferences on world trade should be studied and piecemeal decisions should be avoided. Some members of the Working Party were of the opinion that a pause for reflection would be useful to enable governments to assess the full implications of the Australian proposal.

28. The member of the Working Party whose views are set out in paragraphs 14 and 25 expressed great surprise at the views contained in paragraph 27 bearing in mind the fact that some of the members expressing those views were members of a free trade area which dispensed preferences amongst themselves vis-à-vis third countries.

29. The Working Party agreed that the material supplied by the Australian delegation had aided contracting parties to assess the scheme in some detail. It was also agreed that the discussions which had taken place last July and at the present meeting had enabled the Working Party to pass from the fact-finding stage to consideration of the substantive issues raised by the Australian request and of consideration of how the Working Party could best arrive at a consensus on the action it could recommend to the CONTRACTING PARTIES in respect of the Australian request. The Working Party agreed that time should now be given for reflection by governments on the issues involved; it therefore agreed to hold its next meeting during the month of November, the exact date of this meeting to be fixed by the Chairman in consultation with the delegations principally concerned and with the secretariat.