

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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REPORT OF THE WORKING PARTY ON THE AGREEMENT ON ASEAN PREFERENTIAL TRADING ARRANGEMENTS

1. The Working Party was established by the GATT Council of Representatives at its meeting on 11 November 1977, to examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement on ASEAN Preferential Trading Arrangements and to report to the Council.
2. The Working Party met on 23 and 24 November 1978, under the chairmanship of Mr. E. Selmer (Norway). The composition of the Working Party was as follows:

Australia	Philippines
Canada	New Zealand
European Communities and their member States	Nigeria
India	Singapore
Indonesia	Sweden
Japan	Switzerland
Korea, Rep. of	Turkey
Malaysia	United States
	Yugoslavia

Thailand was also represented at the meeting.

3. The Working Party had before it, as background material, a communication from the Secretariat of the Association of South-East Asian Nations (ASEAN) transmitting the text of the Agreement on ASEAN Preferential Trading Arrangements (L/4581), the questions put by a number of contracting parties and the replies thereto provided by the ASEAN Secretariat (L/4668), and additional lists of trade preferences exchanged among ASEAN countries (L/4732).
4. In introducing the Agreement on ASEAN Preferential Trading Arrangements, the spokesman for the ASEAN countries recalled that the Declaration of ASEAN Concord, enunciated by the Heads of Government of ASEAN countries at Bali on 24 February 1976, provided for ASEAN member States to take co-operative action in

their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies. The Agreement represented a concerted effort and was a reflection of collective political will towards regional economic co-operation. Its purpose was to contribute to political and economic stability in the region as well as to provide a promising cornerstone for the prosperity and growth of the member States.

5. The ASEAN Agreement on Preferential Trading Arrangements, which was signed on 24 February 1977, had among its objectives the promotion of economic development through a continuous process of trade expansion among member countries and through the adoption of mutually beneficial trade liberalization measures consistent with the respective present and future development and trade needs of the participants. It was not an instrument to restrict trade with third countries but rather an instrument which was an essential part of an effort to promote and develop the national economies of the member States which would, among other things, bring about increased trade not only among ASEAN countries but also between ASEAN and the other countries.

6. To this end, a system of preferential trading arrangements had been adopted with the following components: long-term quantity contracts; purchase finance support at preferential interest rates; preference in procurement by government entities; extension of tariff preferences; liberalization of non-tariff measures; and other measures. Details and mechanics of these components were contained in the Agreement and further explained in replies to the series of questions submitted by contracting parties. A flexible approach had been adopted with a view to exchanging preferences under any or all of the five instruments of preferential trading arrangements. Since the signing of the Agreement, the ASEAN countries had been negotiating and exchanging trade preferences among themselves, resulting in two batches of trade concessions: the first, on seventy-one items, had been put into force on 1 January 1978, and the second, on a further 755 items, had become effective on 1 September 1978, thus bringing the total to 826 items. The spokesman added that it was the firm belief of the ASEAN countries that the Agreement, which was a reflection of their conviction that there should be regional self-reliance and mutual co-operation, was in conformity with the provisions of the General Agreement on Tariffs and Trade as well as with the aims and objectives of economic co-operation among developing countries, and that a successful implementation of the Agreement would bring about a greater quantum of trade with other countries.

7. Many members of the Working Party expressed their support and understanding for the efforts being made by the ASEAN countries to reinforce economic co-operation among themselves and promote their economic development through the expansion of their mutual trade as well as their trade with third countries. Some of these members welcomed in particular

the contribution that ASEAN was making to the political and economic stability of the region and noted that the Agreement was expected to act as a stimulus to the strengthening of national and ASEAN economic resilience and the development of the national economies of the participating States by expanding investment and production opportunities, and trade and foreign exchange earnings. Some members noted that the Agreement was in line with a number of recommendations and resolutions concerning the expansion of trade among developing countries adopted in the United Nations General Assembly and by the CONTRACTING PARTIES.

8. Some members, while welcoming the assurances that the Agreement was not intended to hamper trade between ASEAN and non-ASEAN countries, expressed their concern that certain provisions in the Agreement, in particular those relating to preferences on non-tariff measures, could have this effect. They expressed the hope that preferential trading arrangements would be evolved under the Agreement in such a way as to avoid restricting trade with third countries. Some members of the Working Party, representing developing countries, stated that it was their hope that the Agreement would pave the way for increased economic and trade co-operation between ASEAN countries and other developing countries, both at the regional and global levels.

9. Some members doubted whether certain features of the Agreement were fully consistent with certain provisions of the General Agreement such as, for example, Articles I, XIII and XVII. Concern was also expressed about the implications that certain provisions of the Agreement might have for some codes under negotiation in the MTN. Some members stated that, in their view, Part IV of the General Agreement could not be regarded as overriding the requirements of other GATT Articles. It was noted that the parties to the Agreement were not claiming that it constituted a free-trade area or an interim agreement leading to the formation of a free-trade area. However, these members stated that, in view of the general support expressed for the objectives of the Agreement by members of the Working Party, some way should be found to accommodate the Agreement, having regard to the provisions of the General Agreement.

10. In the course of the examination, members raised a number of questions seeking clarification and elaboration of the replies to questions reproduced in document L/4668.

11. In response to a question concerning the effect that the Agreement might have on the ability of ASEAN countries to reduce tariffs on an MFN basis, the spokesman for the ASEAN countries, after reaffirming the reply given to question 3 in L/4668, recalled that the ASEAN countries had been participating actively in the MTN and stated that no action was contemplated by member States which would adversely affect tariff concessions to be negotiated and bound in the context of the multilateral trade negotiations. He further stated that no provision in the Agreement, including Article 8:3,

required an ASEAN country to grant compensatory concessions to other ASEAN countries when MFN concessions, which had the effect of reducing preferential margins under the Agreement, were made.

12. Replying to a question concerning the compatibility of the Agreement with Article XXIV of the GATT, the spokesman for the parties to the Agreement stated that the ASEAN countries were now in the process of evolving arrangements for the expansion of trade among developing countries, starting at the sub-regional level. It was not possible to state at this time whether in the future a customs union or free-trade area among ASEAN countries might eventually be formed.

13. In response to a further question, the spokesman for the ASEAN countries stated that up to the present no preferences on non-tariff measures had been or were being negotiated among ASEAN countries, other than those on government procurement which were reflected in the Agreement itself.

14. Commenting on a number of questions in relation to the provisions in the Agreement on government procurement, the spokesman for the ASEAN countries recalled that in the view of the members of ASEAN the provisions of the General Agreement did not cover government procurement. It would also be premature at this time to discuss the relevant provisions of the ASEAN Agreement in relation to an eventual code on government procurement as such a code was still under negotiation. He stated that no ASEAN preferences on government procurement additional to the 2.5 per cent preference specified in the Agreement had been established and that previous national legislation on this subject had in effect been superseded by the provisions of the Agreement.

15. Providing information in response to a question on plans for the further exchange of tariff concessions under the Agreement, the spokesman for the ASEAN countries stated that at future meetings of the Trade Preferences Negotiating Group of the ASEAN Committee on Trade and Tourism, which were held quarterly, it was intended that each ASEAN country would offer preferences on a further 100 items. Efforts would be made to ensure that these concessions did not cover items on which duties had been bound under GATT. One member of the Working Party, welcoming the response to the question he had raised, noted in this connexion that should a bound GATT concession be impaired or nullified as a result of developments under the ASEAN Agreement, a contracting party might find it necessary to utilize the relevant provisions of the General Agreement to redress the situation.

16. In response to a request for an elaboration of the reply to question 30 in L/4668, the spokesman for the ASEAN countries stated that it was difficult at this time to state how preferences envisaged for ASEAN industrial projects under Article 10 of the Agreement might differ from tariff preferences provided for under Article 8 because, although feasibility studies were being undertaken, it was too early to say what type of projects might be implemented. One member of the Working Party, referring to the willingness of parties to the Agreement to notify developments in the future, stated that as the GATT had had little experience with the implementation of certain types of non-tariff measures on a preferential basis, contracting parties would no doubt wish to follow such actions in the light of any implications they might have for the General Agreement.

17. Responding to a question on why the non-originating value provision under the rules of origin for goods not wholly produced or obtained domestically was 40 per cent for preferential imports into Indonesia compared to 50 per cent for other ASEAN countries, a spokesman for the ASEAN countries stated that this resulted from a compromise to deal with a situation arising among member States during the negotiations on the Agreement.

Concluding remarks

18. The Working Party noted that the ASEAN member States expected the preferential trading arrangements to stimulate and strengthen the growth and stability of their economies at both the national and the sub-regional levels by expanding investment and production opportunities and increasing trade and foreign exchange earnings. Members expressed full support and understanding for these objectives. Members of the Committee also noted that, while pursuing these arrangements, the ASEAN member States intended to continue to foster the growth of trade and economic relations with third countries including, in particular, other developing countries.

19. A number of members of the Working Party stated their belief that some form of GATT cover should be provided for the Agreement, since in their view it was not fully consistent with the provisions of the General Agreement. While some of these members believed that an Article XXV:5 waiver would be most appropriate, they were prepared to recommend a decision by the CONTRACTING PARTIES. The spokesman for the parties to the Agreement stated that in the view of the ASEAN countries the Agreement followed the letter and spirit of the provisions of the GATT, especially those in Part IV. However, in the light of previous developments in GATT with regard to the examination of economic groupings among developing countries, the ASEAN countries would be prepared to accept a decision.

20. The Working Party prepared the draft Decision annexed to this report, which it recommends to the Council for adoption.

21. The United States delegate stated his delegation's understanding that the draft Decision was intended to meet the waiver requirements of Article XXV:5.

22. With reference to operative paragraph (c) of the draft Decision it was the Working Party's understanding that the CONTRACTING PARTIES would make such arrangements for the reviews of developments under the Agreement falling within the competence of GATT as would be appropriate.

23. It was also understood that the Agreement would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.

ANNEX

AGREEMENT ON ASEAN PREFERENTIAL
TRADING ARRANGEMENTS

Draft Decision

The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade,

Considering that the Governments of the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand (hereinafter referred to as the "participating States"), member States of the Association of South-East Asian Nations (hereinafter referred to as "ASEAN") have notified the CONTRACTING PARTIES that they have concluded an Agreement on ASEAN Preferential Trading Arrangements (hereinafter referred to as the "Agreement") dated 24 February 1977, and have initiated the exchange of tariff and trade concessions within the framework of that Agreement;

Noting that the Agreement and the preferential trading arrangements concluded thereunder are intended to promote economic development through a continuous process of trade expansion among countries members of ASEAN, without raising barriers to the trade of other contracting parties;

Bearing in mind that developing contracting parties have agreed under Article XXXVII:4 of the General Agreement to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other developing contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs, taking into account past trade developments as well as the trade interests of developing contracting parties as a whole;

Noting that the participating States are prepared, on the basis of progress in their co-operative efforts, to consider the possibility of participating in mutually beneficial trading arrangements with other developing countries;

Recognizing that the Agreement should not constitute an impediment to the reduction or elimination of tariffs and other trade barriers on a most-favoured-nation basis;

Decide that:

Notwithstanding the provisions of Article I of the General Agreement the participating contracting parties may implement the Agreement in accordance with the conditions and procedures set out hereunder

Provided that any preferential treatment under the Agreement shall be designed to facilitate trade between the participating States and not to raise barriers to the trade of other contracting parties;

- (a) any preferential concessions or arrangements or any similar measures introduced or modified pursuant to the Agreement shall be notified to the CONTRACTING PARTIES and all useful information relating to the actions taken shall be provided to them by the participating States;
- (b) each participating contracting party shall afford adequate opportunity for consultations at the request of any other contracting party which considers that any benefit accruing to it under the General Agreement may be or is being impaired unduly as a result of the Agreement. If such consultations have proved unsatisfactory, the contracting party concerned may bring the matter before the CONTRACTING PARTIES, who will examine it promptly and will formulate any recommendations that they consider appropriate;
- (c) on the basis of reports by the participating States on developments under the Agreement, the operation of this Decision shall be reviewed biennially by the CONTRACTING PARTIES in the light of the provisions of the General Agreement and of the objectives stated above. The CONTRACTING PARTIES may, in the course of the reviews, make such recommendations to the participating contracting parties as may be appropriate, including any arising out of any consultations held in regard to the effects of the Agreement on the trade of contracting parties. The CONTRACTING PARTIES may also in the course of the reviews, take such decisions regarding the operation of this Decision as may be appropriate in the light of developments at that time.