

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

L/4571

14 October 1977

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REPORT OF THE WORKING PARTY ON THE AUSTRALIA/PAPUA NEW GUINEA TRADE AND COMMERCIAL RELATIONS AGREEMENT

1. The Working Party was established by the GATT Council of Representatives at its meeting on 2 March 1977, to examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement on Trade and Commercial Relations between Australia and Papua New Guinea, and to report to the Council.

2. The Working Party met on 6 and 7 October 1977, under the Chairmanship of Mr. P.R. Barthel Rosa (Brazil). The composition of the Working Party was as follows:

Australia	Indonesia
Canada	Jamaica
European Communities and their member States	Japan
Finland	Malaysia
Ghana	New Zealand
	United States

At the invitation of the Council, Papua New Guinea was also represented at the meeting.

3. The Working Party had before it, as background material, a communication from the Permanent Mission of Australia (L/4451) transmitting the text of the Agreement on Trade and Commercial Relations between Australia and Papua New Guinea (L/4451/Add.1) and the questions put by a number of contracting parties and answers thereto provided by the Australian authorities (L/4519).

4. In introducing the Agreement on Trade and Commercial Relations between Australia and Papua New Guinea (PATCRA) to the Working Party, the representative of Australia stated that it established a free-trade area between the two parties to the Agreement and had replaced the December 1973 Memorandum of Understanding applied to trade and commercial relations between Australia and Papua New Guinea prior to Papua New Guinea's independence. Its objectives included furtherance of the area's development through the expansion and diversification of trade between the member States and the development and use of area resources. Commercial, industrial, administrative and technical co-operation as well as direct investment policies and priorities would be continued and facilitated.

5. Trade was an important feature of the special relationship which existed between Papua New Guinea and Australia. In October 1953, in accordance with Article XXV of the General Agreement, the CONTRACTING PARTIES had granted a waiver to Australia to enable preferential treatment to be given to imports from the then territory of Papua New Guinea for the purpose of promoting economic development in the territory, while Papua New Guinea gave Australian products the m.f.n. treatment accorded to third countries. PATCRA ensured that Papua New Guinea would not be placed in a less advantageous position in relation to its trade with Australia than that enjoyed prior to independence. It was anticipated that formal action to disinvoke the 1953 waiver would be taken shortly.

6. In 1974-75 and 1975-76 more than 95 per cent of Australian imports from Papua New Guinea were duty free and it was estimated that in 1977 more than 99 per cent of Papua New Guinea exports to Australia would be admitted free of duty. In 1974-75, almost 82 per cent of total two-way trade between Australia and Papua New Guinea was duty free. Consequently, the parties to the Agreement considered that PATCRA conformed fully to the provisions of Article XXIV of the General Agreement in that it was a full free-trade area in GATT terms from the time it came into operation.

7. The representative of Australia stated that although Papua New Guinea would not be extending any reverse preferences to Australia under the Agreement, trade statistics showed that substantially all the trade was covered within the meaning of Article XXIV:8(b). It was pointed out in this connexion that Article XXIV did not contain any specific provision with respect to reverse preferences. The absence of reverse preferences in favour of Australia did not, in the view of his authorities, affect the free-trade area status of the Agreement.

8. The representative of Australia also noted that for revenue purposes, Papua New Guinea was imposing non-discriminatory import and export taxes at rates which, in the view of his authorities, could not be considered as being restrictive of trade. In the light of the objectives of expansion and diversification of trade between the member States, a review of the products currently listed in the PATCRA schedules would be carried out in the course of annual consultations with a view to making such amendments as may be feasible and appropriate in the light of the prevailing conditions.

9. The representative of Papua New Guinea outlined the development objectives of the Papua New Guinea Government and the implications of PATCRA for the achievement of these objectives. Papua New Guinea was located in the southern-hemisphere tropics and comprised the eastern half of a main island together with numerous islands scattered along the Bismarck Archipelago. The terrain was rugged and mountainous. Out of the population of three million people, approximately

75 per cent were dependent on subsistence agriculture while another 10 per cent were rural dwellers with some involvement in the cash economy. Geography severely hampered the Government's development efforts. There were no road links between the capital, Port Moresby, and any of the other major centres in the country. The bulk of internal trade was carried by coastal shipping and expensive air services. Papua New Guinea was extremely dependent on imports. To enable Papua New Guinea to pay for its import bill, export oriented industries had been actively encouraged. Recalling that the first chapter of the GATT secretariat report "International Trade 1976/77" recognized that, if international financial stability was to be maintained, developing countries carrying large amounts of foreign debt needed additional export earnings and that capital flows were deferred trade flows, Papua New Guinea felt that free access to the Australian market was fundamental for the economic development and stability of the country. Papua New Guinea also felt that PATCRA was fully consistent with the objectives of the General Agreement. The Government of Papua New Guinea further believed that the introduction of this Agreement at a time when protectionism was gathering strength highlighted the important and continuing rôle that GATT was playing as an instrument for the promotion of free international trade.

10. The Working Party noted that the Agreement was basically designed to foster the economic development of Papua New Guinea and expressed support for this objective. The Working Party noted also that the Agreement represented a continuation of the close traditional trade ties between Australia and Papua New Guinea and recognized the special historical circumstances behind it.

11. Some members expressed doubts about the conformity of the Agreement with the provisions of Article XXIV, since it appeared that no reciprocal reduction of duties or elimination of other restrictive regulations of commerce by Papua New Guinea had been required. In addition, the Agreement did not provide for a significant further liberalization of trade between the parties to it, but rather a continuation for the most part of the prior situation, for which waivers had been granted by the CONTRACTING PARTIES. One member in expressing doubts about the compatibility of the Agreement in its present form with Article XXIV, noted that it did not provide for a plan and schedule leading to the formation of a full free-trade area as was required by Article XXIV. This same member of the Working Party also stated that he did not share the view expressed by the representative of Australia that, in the light of the fact that Article XXIV made no mention of reverse preferences, reciprocity was not required between the partners to free-trade area agreements.

12. Another member of the Working Party stated that his Government took the view that the Agreement was unlikely to result in trade deflection in the near future although there appeared to be potential for such a possibility. His Government welcomed the fact that the Agreement required no reverse preferences on the part of Papua New Guinea and also the assurances given by the parties to it that this would remain a basic feature of the Agreement. His authorities also welcomed the fact that the rules of origin were straightforward and easy to understand, being based on a simple 50 per cent value-added criterion. He expressed the hope that such rules could be emulated in other preferential agreements. These views on the question of the rules of origin were supported by another member of the Working Party. One member of the Working Party stated that in the opinion of his delegation origin rules should meet the economic and trade requirements of a specific context.

13. One member stated that in the view of his authorities, the Agreement constituted a free-trade area in accordance with the provisions of Article XXIV, since substantially all the trade between the contracting parties to it was free of duties and other restrictive regulations of commerce.

14. Some members of the Working Party stated that reports on the operation of the Agreement should be submitted biennially in accordance with the usual procedures relating to matters of this nature. One member noted that if any contracting party experienced difficulties arising out of the operation of the Agreement it was to be expected that consultations could take place in order to seek appropriate solutions. Another member expressed the view that any changes to the Agreement should be notified to the CONTRACTING PARTIES as and when they were made.

15. The representative of Australia, in responding to the points raised, stated that, since the Agreement, in the view of his authorities, already constituted a free-trade area fully in accordance with Article XXIV, the question of reporting on further progress in this respect did not arise. Furthermore, he stated that, in accordance with Article X of the General Agreement, changes in the trade provisions of the Agreement would be available in publications available to contracting parties in advance of their implementation. It would be open to contracting parties to raise any questions through the normal channels. In the event of specific difficulties, the consultation procedures of Article XXII would be available. He noted that reporting requirements had been accepted for most other free-trade area agreements examined in GATT because they had been notified as interim agreements and included plans and schedules leading to the formation of full free-trade areas.

16. In reply to a question concerning the possibility that, because of the safeguard clauses in the Agreement, the percentage of duty-free trade under the Agreement might fall in the future, the representative of Australia provided figures, based on Australian trade statistics, to show that in recent years trade coverage had increased. Total two-way trade between Australia and Papua New Guinea had been \$A 228 million in 1974/75, \$A 211 million in 1975/76, and \$A 270 million in 1976/77, representing an increase of 28 per cent between the latter two years. The percentage of Australian imports of goods from Papua New Guinea admitted free of duty had risen from 97.7 per cent in 1974/75 and 96.8 per cent in 1975/76 to 99.4 per cent in 1976/77.

17. In reply to a further question, the representative of Australia stated that no changes to the Agreement, including the schedules of excepted goods, had resulted from the first periodic consultations provided for in the Agreement.

Conclusions

18. There was strong support and understanding in the Working Party with respect to the objectives and purposes of the Agreement, particularly in regard to the objective of promoting economic development in Papua New Guinea and contributing to the raising of the standard of living of its people. The parties to the Agreement, supported by some members of the Working Party, were of the opinion that the Agreement established a free-trade area in accordance with the provisions of Article XXIV. Some other members in recalling certain of the points they had raised in the general discussions were of the view that it was doubtful that the Agreement was fully compatible with the provisions of Article XXIV.

19. The Australian and Papua New Guinea representatives pointed out that because, in the view of their authorities, PATCRA conformed with the provisions of Article XXIV:3(b) at the inception of the Agreement, there was no GATT obligation to report on the subsequent operation of the Agreement. However, because of concerns expressed by some members of the Working Party, they agreed, without prejudice to the status of PATCRA under the provisions of the GATT, to report on its operation for the information of the CONTRACTING PARTIES within a period of two years. Some members of the Working Party expressed the view that, in the light of the decision of the CONTRACTING PARTIES concerning reporting on regional agreements (BISD, Eighteenth Supplement, page 38), as well as past GATT practices in this regard, a regular biennial reporting procedure should be adopted. They indicated they would wish to revert to this matter in the Council. It was understood that the Agreement would in no way be considered as affecting the legal rights of contracting parties under the General Agreement.