

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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## TRADE NEGOTIATIONS AMONG DEVELOPING COUNTRIES

### Note by the Director-General

In my capacity as Chairman of the Trade Negotiations Committee of Developing Countries I have been asked to transmit the following communication to contracting parties:

"Developing countries have, over a period of time, been engaged in trade negotiations for the exchange of concessions on tariff and non-tariff barriers and open to all developing countries whether contracting parties to the GATT or not.

"The negotiations have taken place within the framework of the Trade Negotiations Committee of Developing Countries which, on 15 October 1971, with the unanimous approval of members present, agreed to the presentation to the CONTRACTING PARTIES of the text of a Protocol relating to trade negotiations among developing countries. The Protocol, a text of which is attached, will be open to accession by all developing countries.

"The CONTRACTING PARTIES have been kept informed from time to time of the progress made in these negotiations. It may be recalled that the CONTRACTING PARTIES have agreed that the establishment of preferences among developing countries, appropriately administered and subject to the necessary safeguards, could make an important contribution to the trade among developing countries, and that such arrangements should be looked at in a constructive and forward-looking spirit.

"Accordingly, the delegations of Brazil, Chile, Egypt, Greece, India, Israel, Korea, Pakistan, Peru, Spain, Tunisia, Turkey, Uruguay and Yugoslavia, who have exchanged concessions in these negotiations amongst themselves as well as with the delegations of Mexico and the Philippines, are herewith submitting a formal application to the CONTRACTING PARTIES for a decision permitting the implementation of the Protocol and of the preferential arrangements embodied therein.

"It would be appreciated if the Director-General could make arrangements for the preparation of the text of a draft decision to be submitted to the CONTRACTING PARTIES at their twenty-seventh session."

The text of the Protocol mentioned above is annexed hereto.

DRAFT PROTOCOL

relating to

TRADE NEGOTIATIONS AMONG DEVELOPING COUNTRIES

Determined to contribute to the development of their economies and to promote a sustained increase in their standards of living through efforts based on their mutual co-operation;

Recognizing the need for strengthening their respective economies through the opportunities for expanding production and achieving benefits of specialization and economies of scale that might be provided by the growth of their mutual trade exchanges;

Noting the importance of expanding access on more favourable terms for their goods to one another's markets and of developing arrangements which foster the rational and outward-looking expansion of production and trade;

Resolved to take appropriate action to this end and to reduce or eliminate tariff and non-tariff barriers that affect existing trade flows or inhibit development of new trading possibilities, through negotiations based on the principle of mutual benefit and open to all developing countries alike irrespective of whether or not they are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT");

Mindful at the same time of the need to take into account the development, financial and trade needs of individual developing countries;

Recalling that trade expansion, economic co-operation and economic integration among developing countries have been accepted as important elements of an international development strategy and as making an essential contribution to the economic development of developing countries;

Noting that the CONTRACTING PARTIES to the GATT have agreed that the establishment of preferences among developing countries, appropriately administered and subject to the necessary safeguards, could make an important contribution to the trade among developing countries, and that such arrangements should be looked at in a constructive and forward-looking spirit;

The governments which have, through their representatives, accepted this Protocol, have agreed as follows:

1. Application of concessions. The concessions exchanged pursuant to this Protocol shall be applicable to all the developing countries which are parties hereto (hereinafter referred to as the "participating countries").
2. Schedules of concessions. The concessions referred to above are and shall be embodied in schedules to be annexed as integral parts of this Protocol.
3. Maintenance of the value of concessions. Subject to terms, conditions or qualifications that might be set out in the schedules containing the concessions granted, a participating country shall not diminish or nullify these concessions after the entry into force of this Protocol through the application of any charge or measure restricting commerce other than those existing prior thereto, except where such charge corresponds to an internal tax imposed on a like domestic product, an anti-dumping or countervailing duty, or fees commensurate with the cost of services rendered, and except any measures authorized under paragraph 11 or applied pursuant to paragraph 13.
4. Committee of participating countries. A committee of participating countries (hereinafter referred to as the "Committee") is hereby established, consisting of the representatives of the governments of the participating countries. The Committee shall meet from time to time for the purpose of giving effect to those provisions of this Protocol which involve joint action and, generally, with a

view to facilitating the operation and furthering the objectives of this Protocol, and shall collect the statistical and other information necessary for the discharge of its functions. The Committee shall adopt such rules of procedure as may be necessary. Decisions shall be taken by a majority of the votes cast except in the case of modification or termination of the arrangements under this Protocol, and except in the case of accession to this Protocol, when a two-thirds majority shall be required, and unless otherwise specified. Any modification of the arrangements under this Protocol shall become effective in respect of those participating countries which accept it and thereafter for each other participating country upon acceptance by it.

5. Review. The Committee shall keep under review the arrangements under this Protocol taking into account the objectives set out in the Preamble hereto. Not later than the end of the fifth year from the entry into force of this Protocol the Committee shall undertake a major review of those arrangements to determine whether they should be modified, enlarged or terminated.

6. Additions or enlargements to the schedules of concessions. The Committee shall keep under review the possibility of promoting negotiations for additions or enlargements to the schedules of concessions and may at any time sponsor such negotiations.

7. Provision for periodic renegotiation of concessions. It shall be open for a participating country during a period of three months immediately preceding the end of every three-year period from the entry into force of this Protocol, upon notification to the Committee, to enter into renegotiations for the withdrawal or modification of any concessions in accordance with the provisions of paragraph 9.

8. Special circumstances. The Committee may at any time authorize the renegotiation of a concession in accordance with paragraph 9 in special circumstances including those relating to the development, financial or trade situation of a participating country which shall have granted such concession.

9. Renegotiation for the withdrawal or modification of concessions. In any renegotiation for the withdrawal or modification of a concession the participating countries concerned shall endeavour to maintain a general level of concessions no less favourable to their mutual trade than that existing prior to such renegotiations. For this purpose the participating country seeking to modify or withdraw a concession shall enter into renegotiations with the participating country or countries with which the concession was originally negotiated, or with any other country which has a substantial trade interest in the product or products affected as determined by the Committee. If agreement cannot be reached between the participating countries concerned within six months from the end of the three-year period referred to in paragraph 7 or from the date on which the authorization pursuant to paragraph 8 has been granted, as may be the case, the participating country seeking renegotiation shall nevertheless be free within ninety days therefrom, upon notification to the Committee, to modify or withdraw the subject concession. In such event the other participating country or countries concerned shall likewise be free before expiry of ninety days from the date on which written notice of such notification or withdrawal is received by the Committee to modify or withdraw from the participating country seeking renegotiation concessions which are substantially equivalent in the opinion of the Committee.
10. Rules of origin. The application of rules of origin with respect to the concessions embodied in the schedules annexed to this Protocol shall be governed by the provisions set out in Annex A.
11. Balance-of-payments measures. Without prejudice to existing international obligations a participating country which finds it necessary to institute or intensify quantitative restrictions or other measures limiting imports with a view to forestalling the threat of or stopping a serious decline in its monetary reserves or to achieve a reasonable rate of increase in its reserves shall endeavour to do so in a manner which safeguards the value of the concessions embodied in the schedules annexed hereto. Where, however, restrictions are instituted or intensified

with respect to products covered by concessions, immediate notice of such action must be given to the Committee and such action may be the subject of consultations as provided for in paragraph 12.

12. Consultations. Each participating country shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another participating country with respect to any matter affecting the operation of this Protocol. The Committee may, at the request of a participating country, consult with any participating country or countries in respect of any matter for which it has not been possible to find a satisfactory solution through such consultation.

In addition, if any participating country should consider that another participating country has altered the value of a concession embodied in its schedule or that any benefit accruing to it directly or indirectly under this Protocol is being nullified or impaired as the result of the failure of another participating country to carry out any of its obligations under this Protocol or as the result of any other circumstance relevant to the operation of this Protocol, the former may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other participating country or countries which it considers to be concerned, which thus approached shall give sympathetic consideration to the representations or proposals made by it.

If no satisfactory adjustment is effected between the participating countries concerned within 120 days from the date on which such representation or request for consultation was made, the matter may be referred to the Committee who shall consult with the participating countries concerned and make appropriate recommendations. Where the circumstances are serious enough, the Committee may authorize a participating country to suspend the application to any other participating country or countries of such concessions as the Committee deems appropriate in the circumstances.

13. Emergency action on imports of particular products. If, as a result of unforeseen developments and of the effect of concessions embodied in the schedules annex to this Protocol, any product is being imported into the territory of a participating country in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the importing country shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the concession. Before taking action pursuant to the foregoing it shall give notice in writing to the Committee as far in advance as may be practicable and shall afford the Committee and the participating countries having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. In critical circumstances, where delay would cause damage which would be difficult to repair, action may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action. If agreement among the participating countries concerned with respect to the action is not reached, the importing country which proposes to take or continue the action shall, upon notification to the Committee, nevertheless, be free to do so; and if such action is taken or continued the affected countries shall then be free to suspend, not later than ninety days after notice of such action is received by the Committee, and upon the expiration of thirty days from the date of receipt of such notice, the application to the trade of the country taking such action, of such substantially equivalent concessions, the suspension of which the Committee does not disapprove. Nonetheless, where action is taken without prior consultation and causes or threatens serious injury in the territory of a country to the domestic producers of products affected by the action, that country shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

14. Accession of a developing country not a signatory to this Protocol. This Protocol shall be open for accession to all developing countries. A developing country wishing to accede to the Protocol should make application in writing to

the Committee. The Committee shall take the necessary steps to facilitate the accession of a developing country to this Protocol on terms consistent with the latter's present and future development, financial and trade needs as well as past trade developments, and shall make arrangements for any negotiations for the exchange of concessions which a participating country may wish to carry out with the developing country seeking accession. Participating countries shall also take these needs and developments into account in entering into or carrying out such negotiations. In the light of such negotiations the applicant country may accede on terms agreed with the Committee.

The Committee may agree that an applicant country may accede to the Protocol without such negotiations on terms agreed with the Committee.

15. Non-application of this Protocol between particular countries. This Protocol shall not apply as between any countries accepting this Protocol if they have not entered into direct negotiations with each other and if either of them, at the time either accepts this Protocol, does not consent to such application.

16. Temporary suspension of rights and obligations. In exceptional circumstances, upon request to the Committee, a participating country may be authorized by the Committee by a two-thirds majority comprising at least half of the participating countries to suspend temporarily its obligations under this Protocol, subject to such conditions and for such specified period as the Committee shall prescribe. During the period of suspension, other participating countries may, if they so wish, upon notification to the Committee, refrain from extending concessions in their schedules to the country concerned.

17. bis Withdrawal from this Protocol. Any participating country may withdraw from this Protocol, such withdrawal to take effect six months from the day on which written notice thereof is received by the Director-General to the CONTRACTING PARTIES to the GATT.

18. Withholding or withdrawal of concessions. A participating country shall at any time be free to withhold or to withdraw in whole or in part any item in its schedule of concessions in respect of which such participating country determines that it was initially negotiated with a country which has not become, or has ceased



to be, a participating country. A participating country taking such action shall notify the Committee and, upon request, consult with countries which have a substantial interest in the product concerned.

19. Opening for acceptance. This Protocol shall be open for acceptance by signature or otherwise by the countries which shall have made offers of concessions in the Negotiations.

20. Entry into force. This Protocol shall enter into force, as among the governments which have accepted it, on the thirtieth day after one half of the countries which shall have exchanged concessions in the Negotiations have accepted this Protocol, and for each government which accepts thereafter on the thirtieth day following the date of such acceptance.

21. Deposit. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES to the GATT, who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof, pursuant to paragraph 20 above, or of each accession thereto, pursuant to paragraph 14 above, to each participating country.

22. Registration. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this [date] in a single copy, in the [languages], except as otherwise specified with respect to the schedules annexed hereto, each text being authentic.

Draft Declaration

Taking into account the objectives set out in the Preamble, the parties to this Protocol are agreed that the implementation of commitments under customs unions or free-trade areas among developing countries shall not be affected by the provisions of paragraph 12 of this Protocol. Where, however, in implementing these commitments a party to this Protocol increases a rate of duty bound in the schedules annexed to this Protocol, the provisions of paragraphs 8 and 9 shall apply.

It is the intention of parties to this Protocol which participate in such custom unions or free-trade areas to use their best endeavours to ensure that such agreements shall not, by virtue of their provisions governing treatment applicable in respect of third countries, prevent the implementation of the provisions of this Protocol and the attainment of its objectives.

ANNEX A

Draft Provisions Governing the Application of Rules of Origin

In connexion with the preferential concessions embodied in the schedules annexed to the Protocol, participating countries are agreed that subject to the provisions of paragraph (5) below, they will provisionally apply rules of origin in accordance with the following principles:

(1) The participating countries shall co-operate with the Committee of Participating Countries and shall make available to it the latest information with respect to their rules of origin, procedures and documentation applied in connexion with the determination of origin.

(2) A participating country which uses primarily a value-added criterion or a process criterion normally involving a change in tariff classification for the purpose of certifying the origin of products other than those wholly produced in the exporting country, may, on the basis of information furnished to the other participating countries, continue to apply such rules with necessary adaptations as may have been notified. A participating country not employing rules of origin based on the above criteria shall establish such rules prior to the coming into force of concessions which it may accord, and shall provide necessary details thereof to other participating countries.

(3) The authorities of each participating country shall take the necessary steps to facilitate the application of rules of origin to products for which preferential treatment is accorded. To this end the participating countries shall endeavour to establish appropriate collaboration between their competent authorities, particularly concerning certification and control. The participating countries shall as soon as possible adopt a standard form for the certification of origin.

(4) Without prejudice to the provisions for consultations contained in paragraph 12 of the Protocol, the Committee may, at the request of a participating country, examine any instances of a lack of uniformity in the application of rules of origin as regards particular products or groups of

products, or any other problems related to rules of origin, including those arising out of modifications thereof, that may affect substantively the conditions of importation of products covered by the concessions under the arrangements or that may affect the equitable operation thereof.

(5) Not later than one year after the entry into force of the arrangements the Committee shall, on the basis of experience with the working thereof and of proposals put forward by governments, and in the light of the objectives set out for these arrangements, undertake a review of the rules of origin applied by the participating countries with a view to improving or harmonizing these rules or their application to products accorded preferential treatment, or for establishing common rules of origin, including provisions for treatment of imported components.

ANNEX B

Schedules of Concessions

(to be inserted here when the Protocol is open for acceptance)