BACKGROUND PAPER

THE GENERAL AGREEMENT ON TARIFFS AND TRADE
(GATT)

WHAT IT IS AND WHAT IT HAS DONE

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Origin and Background

The world-wide depression of the nineteen-thirties was accompanied and followed by the intensification of all forms of trade restrictions: high tariff protection, import and export quotas, exchange controls, clearing agreements and barter deals. It became evident during the Second World War that these restrictions might become permanently fastened upon the world unless a resolute attempt was made to re-establish as soon as possible the pre-depression pattern of multilateral trading between nations. The General Agreement is one of the results of the efforts which have been made in this direction.

The starting point of the story is in the Atlantic Charter and in the Lend-Lease Agreements in which the wartime allies bound themselves to seek together a world trading system based on non-discrimination and aimed at higher standards of living to be achieved through fair, full and free exchange of goods and services. In pursuit of this aim, even before the end of the war the United States, the United Kingdom and other important trading countries among the United Nations discussed the setting up of international organisations to tackle the post-war problems of currency, investment and trade. The Articles of Agreement of the International Monetary Fund and the International Bank for Reconstruction and Development were drawn up at Bretton Woods before the end of the war. But the Charter for the International Trade Organisation - for various reasons, including its wide range and its complexity - was not completed until March 1948.

While the Charter for the ITO was being worked out, the Preparatory Committee, which had been appointed by the Economic and Social Council of the United Nations to draft the Charter, agreed to sponsor negotiations aimed at lowering tariffs and reducing other trade restrictions among its own members without waiting for the Trade Organisation itself to come into being.
This was encouraging evidence of the seriousness of purpose of the countries engaged in drafting the ITO Charter and an important step towards carrying out one of its main purposes. Thus the first tariff negotiations were held at Geneva in 1947, side by side with the labours of the Committee which was preparing the ITO Charter. The tariff concessions resulting from these negotiations were embodied in the multilateral trade agreement which is called the General Agreement on Tariffs and Trade, or GATT. It was signed on October 30, 1947 at Geneva.

By the end of 1950 it became clear that no acceptances of the Charter for the ITO - the Havana Charter - could be expected until the position of the United States towards the establishment of the ITO was made clear. With the indication in December 1950 that the Charter would not be submitted again to the U.S. Congress, the establishment of ITO was indefinitely postponed.

The reasons for the failure of the Havana Charter to secure acceptance were not a denial of the need for the completion of an international structure to deal with questions of commercial policy. The part that the GATT has played in fulfilling this role is demonstrated in the paragraphs which follow.

The Structure of the GATT

The tariff concessions, as we have said, resulting from the 1947 Geneva negotiations were embodied in the GATT. But it would be a mistake to think of GATT only in terms of tariffs. It is an agreement on tariffs and trade.

First of all there are the Articles dealing directly with tariffs - Article I with the Most-Favoured-Nation obligation and Article II, the basic tariff Article incorporating the schedules of tariff concessions resulting from the three major tariff conferences, the Geneva Conference in 1947, the Annecy Conference in 1949 and the Torquay Conference in 1950-1951. Some 55,000 tariff rates have been reduced or stabilized among countries representing four-fifths of world trade.
Article III provides a detailed series of agreed rules regarding the application of internal taxes and guaranteeing that foreign goods will be given equal treatment with domestic products. Articles IV to X — known as the technical articles — are general rules and principles relating to transit trade, to antidumping duties, to customs valuation, customs formalities, and marks of origin. Articles XI to XV deal with quantitative restrictions on imports and exports and are referred to in more detail below. Article XI formally outlaws quantitative restrictions; the remainder of these articles are qualifications to this general rule where balance of payment difficulties make necessary such departures. The facts relating to the balance and monetary reserves are determined by the International Monetary Fund which the GATT countries are bound to consult when balance of payments questions arise in the GATT. Article XIII applies the rule of non-discrimination in the administration by governments of balance of payments restrictions. Article XIV deals with departures from the general rule and, in effect, during the so-called transitional period largely makes the International Monetary Fund responsible for supervision and control.

There are further Articles on state trading, subsidies and on economic development. There is an Escape Clause and, finally, there are provisions for joint discussion and settlement of differences arising out of the administration of the GATT. The obligations accepted by the governments which have become contracting parties to the GATT thus provide an agreed set of rules governing their commercial relations, and the sessions attended by their representatives provide a forum for the discussion and settlement of complaints and other problems in the commercial field.

Such is the structure of the GATT. In fact, all its provisions are linked to and stem from the tariff concessions, because these tariff concessions would be of doubtful value if the parties to the Agreement were to have their hands free in all other fields of commercial policy; for, given such freedom, it would be possible entirely to nullify the benefits accruing from concessions made in tariff rates. The result has been to create a code of commercial policy rules generally accepted and generally binding. It is therefore not surprising that the periodic sessions of the governments which are contracting parties to the GATT have become an important piece of international machinery for the discussion of commercial policy.
Sessions of the Contracting Parties: Settlement of Complaints

Seven sessions of the Contracting Parties have been held so far and the eighth is due to convene in Geneva in September this year. What kind of problems come before these regular sessions? Pride of place must be given to the trade disputes which have been brought before the Contracting Parties under the Article providing for the consideration of complaints that benefits under the Agreement are being nullified or impaired. (A contracting party which considers that a benefit which should accrue to it is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded may seek consultations with the parties concerned. If, after consultations, no satisfactory adjustment is reached a complaint may be lodged and the Contracting Parties are then required to carry out prompt investigations, to make recommendations or to give rulings.)

Many differences of view or interpretation have in fact been settled "out of court" by consultations and through diplomatic channels. No doubt an inducement to governments to reach agreement among themselves is the desire to avoid the publicity which follows when complaints are considered by the Contracting Parties.

Great and small countries have been involved in these applications, both as complainants and as defendants. For example, some time ago a complaint was made to the Contracting Parties that the British system of Purchase Tax so operated as to discriminate in favour of domestic products and against similar imported goods. The United Kingdom Government admitted that the tax did have this discriminatory effect, though unintentionally. They agreed to amend the system so as to eliminate the element of discrimination and thus bring the operation of the tax into conformity with the obligations of the United Kingdom under the Agreement. In 1952 this pledge was fulfilled.

The United States and Canada have complained that Belgium was imposing discriminatory import restrictions aimed against dollar imports, although not being in balance of payment difficulties. Belgium, at the last GATT session, undertook progressively to eliminate this discrimination and since the session has reported substantial progress in doing so. Complaints by Chile against Australia, by Norway against Germany, by the United Kingdom and France against Greece have been successfully dealt with. In 1952 India brought before the Contracting Parties
a complaint against Pakistan about the levying of discriminatory taxes on exports of jute to India. The Contracting Parties felt that this question might be more easily resolved if it were considered together with other trading difficulties between the two Governments, including the conditions under which coal was supplied by Pakistan to India. Therefore they invited the two Governments to consult together with a view to finding a solution along these lines. These consultations were recently concluded successfully when the two Governments signed a long-term trade agreement and agreed to drop the discriminatory levies in question.

There have of course been failures to resolve disputes through the GATT machinery; most serious is the complaint by a number of countries against the United States import restrictions on dairy products. Although the Contracting Parties have stated clearly that these are a violation of the Agreement, the United States administration has been unsuccessful, so far, in persuading the U.S. Congress to repeal the legislation under which they are imposed. This failure has already led to retaliation, by one affected country, namely the Netherlands, but the Contracting Parties all recognize that retaliation is no solution to a problem of this kind. It is clear that if the GATT is unable to count upon compliance with its agreed rules from the larger trading powers, its authority will be gravely impaired.

The function of settlement of differences has come to be one of the important activities of the Contracting Parties. It provides machinery for the settlement and adjustment of disputes with the aid of an impartial body of friendly assessors operating on the basis of agreed and objective criteria. The judicial and objective character of the approach of the Contracting Parties to this question was underlined at the last Session when they entrusted the actual investigation of the complaints to a Panel of representatives of five or six of the smaller powers who report their findings 'based upon hearing the complainants and a study of the facts'. This machinery offers important opportunities for the trading community, operating through governments, to make sure that their difficulties and grievances in international trade are openly and frankly discussed and not lost sight of in the intricate maze of so-called diplomatic channels.
The Removal of Quantitative Restrictions

A substantial part of the work of the Contracting Parties arises from the continued use of quantitative restrictions by governments to safeguard their balances of payments and monetary reserves and with the discriminatory application of these restrictions. The Agreement, while admitting the use of quantitative restrictions for these reasons, and subject to defined criteria, requires countries resorting to this device to consult from time to time with the Contracting Parties and also whenever restrictions are substantially intensified. Twenty-three of the GATT member countries today are using such restrictions and all but two resort to discrimination in applying them.

It must be admitted that these consultations have not produced any substantial practical results, except in isolated cases. But it would be premature to conclude that this failure is due to any fundamental weakness in the Agreement. In the first place, during the so-called transitional period, the question of justification for balance of payments Q.R's is in fact very largely in the hands of the Monetary Fund. Before contracting parties enter into consultation under the GATT they first consult with the Fund whose findings on the state of the balance-of-payments of the country in question are binding. Financial conditions of the transitional period have been such that the Fund has, in almost every case, had to find that the degree of restrictions practiced did not go beyond the financial necessities of the case. In the face of such findings there was little the GATT could do. What it might have done, perhaps, was to have given more careful consideration to the practical trade effects of quantitative restrictions on imports and the way in which restrictions were administered, so as to ensure that all avoidable damage to trading interests was, in fact, being avoided. At their last Session the Contracting Parties decided to address themselves in future more to the trade aspects of import restrictions than the financial aspects.

The incidental protective effects of import restrictions were an important subject of questioning in the 1952 consultations. Governments applying restrictions have acknowledged that it is desirable to reduce these protective effects to a minimum, but in fact most quantitative restrictions, whether intentionally or not,
are performing two functions, one financial and the other protective. There is an ever present danger that the protectionist factor may become a guiding one in determining which products are to be put under import licence. In some countries there are numerous enterprises which have not had to compete with imported products in substantial quantities for fourteen years or more, and many young industries which have grown up during or since the Second World War have never been in free competition with similar products from other countries. The consultations under the Agreement have thus had a valuable psychological influence in that they keep constantly in the foreground the fact that quantitative restriction on imports are not permanent and that the incidental protection they offer to domestic industry is also not permanent.

The Reduction of Tariffs

The reduction of tariffs is laid down in the General Agreement as one of the principal means of attaining its broad objectives. In the three tariff negotiations conferences in 1947, 1949 and 1951 the tariff rates for some 55,000 items were reduced or bound against increase. These represent about three quarters of the United States tariff, three quarters of the French tariff and half the United Kingdom tariff. About 80 per cent of the United States import trade is today covered by rates of duty bound under the GATT, and it has been estimated that if the GATT bindings were withdrawn the increase in rates of U.S. duties on such items would average at least 65 per cent. The GATT is in effect the most comprehensive undertaking for reducing trade barriers ever undertaken.

The Assured Life of the Tariff Concessions. The original schedules of tariff concessions annexed to the General Agreement entered into force in 1948 with an assured life until the end of 1950, and after that time a contracting party could modify any concession by negotiation and agreement with the government with which it had been negotiated. Governments involved in such negotiations were to endeavour to maintain a level of concessions not less favourable to trade than those originally provided for in the schedules. If no agreement could be reached on compensatory adjustments on other products, the contracting party would, nevertheless, be free to modify or withdraw the concession and, in that event, the other contracting party could withdraw equivalent concessions.
Thus, there has always been the possibility that after the period of binding extensive renegotiation and possibly withdrawal of items might ensue with the danger of a gradual or even speedy unravelling of the network of concessions. To prevent this eventuality, the assured life of the schedules was extended for a second period of three years until the end of 1953. At the next session, the Contracting Parties will have to decide either to prolong the life of the schedules for a further fixed period or to allow the procedure of renegotiation or withdrawal to operate as and when contracting parties wish to make changes in their lists of concessions.

The Application of Japan to accede. The General Agreement has been accepted by countries which together are responsible for more than 80 per cent of the world's international trade. The nation with the largest external trade among those remaining outside the Agreement is Japan. The Japanese Government requested to be able to accede to the Agreement in 1952. This application was examined in the light of memories of pre-war experiences when Japanese products were sold, it was alleged, at prices below cost of production or at depressed costs due to the low standard of living of the Japanese people. Other difficulties encountered in trade with Japan before the War were not forgotten: disregard of patents, trade marks and copyright and the use of false marks of origin. The Japanese Government, in the discussions which ensued showed that they were determined to prevent a revival of these practices.

Japan's application was discussed at the Seventh Session and again by the Intersessional Committee in February 1953. An examination of the Agreement revealed that there was no provision which would provide a safeguard against the possibility of renewed disruption of markets. The possibility of amending the Agreement was considered, but an alternative suggestion received more support. It is now proposed that the provision for consultations and the suspension of obligations or concessions when benefits accruing under the Agreement are being nullified or when the attainment of the objectives of the Agreement is being impeded should be given an agreed interpretation recognizing that contracting parties might have recourse to these remedies in the event that a violent disruption of trading condition
conditions of the type under consideration should occur. The circumstances in which recourse might be had to such action, and provision for post, instead of prior, consultation in the event of emergency, were worked out in detail and have been referred to the Contracting Parties for consideration. If these proposals are accepted the principal obstacle to the completion of arrangements for negotiations between the present contracting parties and the Japanese Government will have been eliminated.

New Techniques for reducing Tariffs. Much time and energy is being given to the search for new methods of tariff reduction, because many governments have come to the conclusion that if tariff reduction is to continue to contribute towards the solution of current economic difficulties the techniques so far employed - which are based on strict reciprocity - will require some modification. It is not realistic today to think of changes in tariff policy except against the background of the acute shortage of dollar currencies. Endeavours in the tariff field and elsewhere must be bent towards restoring equilibrium in international financial relations. Tariff reductions which as a result of the rigid application of the principal of reciprocal advantage merely resulted in the expansion of trade between creditor and deficit countries in more or less equal degree would not contribute to the removal of disequilibrium, however desirable the increase in the volume of trade might be in itself. It is therefore desirable to consider whether there are not other techniques which while contributing to the expansion of international trade also serve the vital purpose of promoting the restoration of international economic equilibrium.

The second reason for the search for new methods lies in the unwillingness of countries with relatively low tariffs to make further concessions and, on the other hand, the unwillingness of countries with relatively high tariffs to accept the continued binding of low rates as compensation for further reductions on their part. The rules of negotiation employed by the Contracting Parties provide that the binding of a low duty or of duty-free treatment is to be recognized as equivalent in value to the reduction of a high duty, but this rule is difficult to apply in practice. As many of the duties of the low-tariff countries
have already been bound against increase in the GATT schedules, they consider that they have no further concessions to offer. Therefore, these countries argue, if a further reduction in tariffs is to be brought about, some new basis for negotiation or some automatic formula will have to be found.

The main discussions between governments under the GATT have been concentrated on the possibility of adopting some automatic formula whereby countries would reduce the duties in selected or specified parts of their tariffs. In 1951 two such suggestions were put forward: the Benelux proposal for the reduction of high tariff rates, so as to reduce the disparity of tariff levels in Europe, and the French plan for the reduction of the incidence of each national tariff by 30 per cent in three annual stages of 10 per cent. This plan is still under technical examination by the Contracting Parties. At the Eighth Session in September 1953 there will undoubtedly be further discussion of these and of other important tariff questions referred to in this section.

**Customs Unions and Free Trade Areas.** Although one of the objectives of the General Agreement is "the elimination of discriminatory treatment in international commerce", the Agreement is designed not to prevent the formation of economic or customs unions involving the removal of tariffs and other trade barriers between participating countries. Therefore, if a project for union, though establishing an interim preferential régime, is expected to lead to the removal of all barriers between the participating countries - i.e. to a customs union or free trade area - it can be condoned and even encouraged. The Benelux Customs Union, uniting the Netherlands with the Economic Union of Belgium and Luxemburg, was formed, and the common Benelux tariff was established prior to the negotiation of the General Agreement, and these three Governments became contracting parties with one tariff and one schedule of concessions. Other special arrangements of the kind, made since the Agreement was established, are the customs union agreement of 1949 between South Africa and Southern Rhodesia, and the free trade area between Nicaragua and El Salvador.
While the Agreement contains elaborate provision for interim agreements leading to the formation of customs unions and free-trade areas, no provision is made for the formation of partial unions such as the Coal and Steel Community in Western Europe. Therefore the plans of the Governments of Benelux, France, Germany and Italy to create a single market throughout their territories for coal and steel had to be submitted to the Contracting Parties as a request for a waiver of obligations. At the 1952 Session the Contracting Parties examined the Treaty, constituting the European Coal and Steel Community, and its annexed Convention and found that the objectives of the Community were broadly consistent with those of the General Agreement. They also concluded that nothing in the Agreement would prevent them, if they so desired, from granting a waiver to enable the members of the Community to set up the common market. In November 1952 the Contracting Parties granted the required waiver on the understanding that the six governments would eliminate within the Community all import and export duties and quantitative restrictions and would prevent any restrictive or discriminatory practices which might impede normal competition in coal and steel products; further, the waiver was granted on the understanding that the Community would take account of the interests of third countries both as consumers and as suppliers and would further the development of international trade. The member states undertook to harmonise their customs duties and other trade regulations on coal and steel on a basis lower and less restrictive than their existing duties and regulations.

The Reduction of Barriers to Trade

The thirteenth Congress of the International Chamber of Commerce, held in Lisbon in June 1951, passed a series of resolutions directed towards reducing barriers to trade. These resolutions, which dealt with Valuation of Goods for Customs, Nationality of Manufactured Goods, Documentary Requirements, Consular Formalities, Formalities connected with Quantitative Restrictions and Customs Treatment of Samples and Advertising Parties were referred to the Contracting Parties to GATT.

Following detailed study and in consultation with representatives of the ICC the Contracting Parties in 1952 adopted the text of an International Convention to facilitate the Importation of Commercial Samples and Advertising Material. This
was opened for signature by governments in February 1953. The Contracting Parties also adopted a Code of Standard Practices relating to Documentary Requirements for the Importation of Goods, and they recommended that Consular Invoices and Consular Visas for commercial invoices should be abolished as soon as possible. The Contracting Parties have initiated studies on Valuation and Nationality of Imported Goods and will continue these studies in the future.