PREFERENTIAL TARIFF TREATMENT FOR DEVELOPING COUNTRIES

Technical Note by the Secretariat

In view of discussions under way on the subject of preferential tariff treatment for developing countries and the interest of the CONTRACTING PARTIES in the legal aspects of this subject, the secretariat has prepared the attached Note in the hope that it will facilitate consideration of the matter by the CONTRACTING PARTIES at the appropriate time.
Technical Note

As long ago as 1963 the CONTRACTING PARTIES provided for the study of (a) "the granting of preferences on selected products by industrialized countries to less-developed countries as a whole", and (b) "the granting of preferences on selected products by less-developed countries to all other less-developed countries" (Twelfth Supplement, page 44). More recently, a "generalized, non-reciprocal, non-discriminatory system of preferences" has been the subject of a New Delhi UNCTAD Resolution; negotiations among the industrialized countries are in progress, and at the 25th session the CONTRACTING PARTIES affirmed their readiness "to take appropriate action when the scheme has been negotiated". Further, a number of developing contracting parties, together with some countries that are not contracting parties, are engaged in negotiations on preferential treatment, and at the 25th session the CONTRACTING PARTIES declared their intention "to look at the results in a constructive and forward-looking spirit".

Progress has been made in the two sets of negotiations, but the CONTRACTING PARTIES have not yet considered the problem of how to legalize the resulting preferences as derogations from the rule of most-favoured-nation treatment. Without attempting to anticipate the outcome of the negotiations, this Note poses the problem of how the results, when submitted to the GATT, could be accommodated in the context of the obligations of contracting parties under the GATT. Clearly, the establishment of new preferences would be contrary to the rule of Article I and it was recognized when the text of Part IV was approved by the CONTRACTING PARTIES, in November 1964, that it did not contain provisions relating to preferences (2SS/SR.4, page 26). In the past, a contracting party proposing to grant tariff preferences has applied for a waiver under paragraph 5 of Article XXV, and it has been suggested that this waiver procedure would serve for authorizing the preferential arrangements now contemplated. Another method would be to amend the provisions of the GATT by action under Article XXX. There are certain objections to both the amendment and the waiver procedure. However, a third possibility could be considered: that is, a unanimously accepted declaration that such preferences may be accorded.

Whichever method were adopted, it should be based upon certain accepted principles and should be subject to certain procedures.

General principles

An amendment of the GATT, a waiver under Article XXV:5 or a declaration by the CONTRACTING PARTIES should be based upon principles which are basic to the spirit of the GATT and to the traditional practices of the CONTRACTING PARTIES. The following are suggested:

(a) The action should be related to the objectives of the GATT, in particular to those set out in Article XXXVI.
(b) The establishment of preferential rates of duty should not involve the raising of duties on imports from other contracting parties.

(c) The preferences should not constitute obstacles to future trade liberalization on the basis of the most-favoured-nation provisions of the GATT.

(d) Contracting parties should not be deprived of their rights under Article XXIII in the event of nullification or impairment of GATT benefits.

(e) Preferential margins should not be bound against decrease.

(f) The preferences granted by industrialized countries, and also those by developing countries to other developing countries, should be extended to all developing countries in the GATT, and their extension to developing non-contracting parties should be permitted.

(g) Contracting parties granting preferences and also those benefiting from preferences should report periodically on the development of trade in the products concerned.

(h) The authority should be of limited duration and, therefore, should be subject to review after a certain period.

The choice of three methods

These principles could be incorporated in an amendment of the provisions of the GATT, but it may be doubted whether it would be appropriate to amend the Agreement in order to authorize measures which would be of limited duration. A second difficulty in proceeding by amendment would be the delay which, as experience has shown, would inevitably occur before the amendment entered into force because of the necessity of obtaining sufficient signatures to the protocol of amendment.

The principles could also be incorporated in a waiver under Article XXV:5, but it may be doubted whether it would be wise for the CONTRACTING PARTIES to use the waiver procedure for such broad and general derogations from the rules of the GATT. The limiting phraseology in which that paragraph is couched - "in exceptional circumstances... may waive an obligation imposed upon a contracting party..." calls in question the suitability of this method. It might be a dangerous stretching of the intent of this provision to use it for authorizing the arrangements now contemplated.

A third possibility, which has been examined by the secretariat, would be a declaration that, notwithstanding the provisions of Article I, the CONTRACTING PARTIES will allow new preferences of a temporary nature which accord with the general principles suggested above. If such a declaration were to require signatures there would undoubtedly be a long delay, as with an amendment, before
it became effective. However, such a declaration could be adopted at a session of the CONTRACTING PARTIES. It would have to be adopted without opposition. The logic of this method is that the CONTRACTING PARTIES are masters in their own house, and can agree that they will concur in temporary derogations from Article I in order to promote the objectives set out in Article XXXVI. The adoption of a declaration at a session of the CONTRACTING PARTIES would be a positive and constructive act in the interests of the developing countries, in contrast to the rather negative aspect of a waiver.

Procedures

The CONTRACTING PARTIES would probably wish to incorporate in a declaration certain procedures for its implementation. If action under Article XXV:5 were preferred, the waiver could incorporate the same procedures; and if it were agreed to amend the GATT, the CONTRACTING PARTIES could adopt a decision providing the procedures necessary for its implementation.

The following procedures might be envisaged:

(a) A contracting party proposing to grant preferential tariff treatment should notify the CONTRACTING PARTIES and provide information to enable them to determine that the proposal conforms with the established principles.

(b) The notifying contracting party should undertake to engage in consultations with any other contracting party which considers that its trade interests might be adversely affected.

(c) If the proposal is found to conform with the principles, the concurrence of the CONTRACTING PARTIES should be given, but if not it could be submitted to a vote.

(d) A contracting party intending to reduce or withdraw a preference should, if requested, consult with contracting parties whose trade would be affected.

(e) The CONTRACTING PARTIES might authorize the Council to take all necessary action under the procedures.

Draft declaration

For illustrative purposes a draft declaration is attached. This is intended merely to indicate the possible shape and content of such a declaration.
Draft Declaration

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

RECALLING that the contracting parties have recognized, in Article XXXVI of the General Agreement, that individual and joint action is essential to further the development of the economies of developing countries and that international trade as a means of achieving economic and social advancement should be governed by rules and procedures that are consistent with this objective;

DESIRING to assist developing countries to achieve an expansion and diversification of their economies, and thus to avoid an excessive dependence on the export of primary products, and to this end to assure them of increased access to markets for processed and manufactured products;

CONSIDERING that preferential tariff treatment granted by developed countries for goods exported by developing countries could facilitate their efforts to diversify their economies, strengthen their export capacity and increase their earnings from overseas sales; that a number of developed contracting parties are at present engaged in discussion of a generalized, non-reciprocal, non-discriminatory system of preferences in favour of developing countries; and having affirmed their readiness to take appropriate action when a scheme has been negotiated;

CONSIDERING that the establishment of preferences among developing countries, appropriately administered and subject to the necessary safeguards, could make an important contribution to the expansion of trade among these countries and to the attainment of objectives of the General Agreement; that a number of developing countries are at present engaged in negotiations for the exchange of tariff concessions on a preferential basis; and having agreed to look at the results of these negotiations in a constructive and forward-looking spirit;

HEREBY DECLARE:

(a) that, notwithstanding the provisions of Article I of the General Agreement, contracting parties shall be free, subject to the conditions and procedures set out hereunder, to grant temporary preferential tariff treatment for imports into their territories of goods originating in developing countries PROVIDED THAT any such preferential tariff arrangement:

(i) shall be designed to facilitate trade from developing countries and not to raise barriers to the trade of other contracting parties;
shall be applied, except as provided in sub-paragraph (iii), equally and without discrimination, to goods imported from developing contracting parties, from dependent territories of contracting parties, from developing countries having provisionally acceded to the General Agreement and from developing countries applying the General Agreement on a de facto basis pursuant to the Decision of 11 November 1967;

(iii) may depart from the requirements of sub-paragraph (ii) by extending such preferential tariff treatment initially only to certain of such countries and territories, on the condition that the arrangement expressly provides for the possible adherence to it of all other such countries and territories on terms not inconsistent with their development, financial and trade needs; and upon the assurance of the countries parties to the Arrangement that it is not their intention to frustrate any such adherence;

(iv) shall not preclude any contracting party which considers that its trade interests are adversely affected from having recourse to Article XXIII of the General Agreement;

(v) shall not constitute an obstacle to future efforts of the CONTRACTING PARTIES in the field of trade liberalization.

(b) that they will keep under review the contribution of all preferential tariff treatment to the trade and economic needs of developing countries and the impact on international trade generally, on the basis of reports on the development of trade in the products concerned to be submitted annually by contracting parties granting preferential treatment.

(c) that in 1975 and every third year thereafter they will review the operation of this Declaration with a view to deciding whether it should be continued, modified or terminated.

PROCEDURES

1. Any contracting party proposing to grant preferential tariff treatment in terms of this Declaration shall so notify the CONTRACTING PARTIES and shall make available to them all the information they may consider necessary for a determination whether the proposed preferential treatment meets the conditions laid down in this Declaration.

2. Within one month following the receipt of any such notification the CONTRACTING PARTIES shall, upon request by any contracting party, arrange a consultation between the notifying contracting party and the contracting parties which consider that any benefit accruing to them under the General Agreement
may be impaired as a result of the proposed arrangement. In the light of the results of any such consultation, the CONTRACTING PARTIES shall satisfy themselves that the legitimate interests of all contracting parties have been adequately safeguarded.

3. Within one month following the conclusion of any consultation under paragraph 2 above, and in any case within sixty days after receipt of the notification, the CONTRACTING PARTIES shall determine whether the proposed preferential arrangement meets the conditions laid down in this Declaration. If there is disagreement whether these conditions have been met, the matter shall be put to a vote within sixty days after receipt of the notification; and the proposed arrangement shall be approved if it is supported by a two-thirds majority of the votes cast, provided that such majority shall comprise more than half of the contracting parties.

4. Except in cases when the CONTRACTING PARTIES have agreed that other rules shall apply, a contracting party intending to reduce or withdraw a preference (other than as an incidental consequence of a reduction in the most-favoured-nation rate of duty) shall give sixty days notice and, if so requested, shall consult with contracting parties whose interests would be affected by the reduction or withdrawal.

5. The CONTRACTING PARTIES hereby formally authorize the Council of Representatives to take on their behalf all necessary action under these Procedures.