ARTICLE XXIV OF GATT

DRAFTING HISTORY OF THE PARAGRAPHS RELATING TO CUSTOMS UNIONS AND FREE-TRADE AREAS

(Notes prepared by the secretariat)

1. United States Proposals for an Expansion of World Trade and Employment November 1945

Section H 2(b) stated that the provisions of Chapter III (General Commercial Policy) should not prevent any Member:

"from joining a customs union, provided that such a customs union meets certain agreed criteria. Members proposing to join a customs union should consult with the Organization and should make available to it such information as would enable it to make appropriate reports and recommendations."

2. United States - Suggested Charter for an ITO

The latter proposals were elaborated in Article 33 of the United States Charter with the effect of introducing the "certain agreed criteria". The provisions of Chapter IV (General Commercial Policy) were not to be construed to prevent:

2(b) "the union for customs purposes of any customs territory of any Member country and any other customs territory; Provided that the duties and other regulations of commerce imposed by any such union in respect of trade with other Member countries shall not on the whole be higher or more stringent than the average level of duties and regulations of commerce applicable in the constituent territories prior to the formation of such union."

Paragraph 3 contained the obligation to report to the Organization and Paragraph 4 the definition of a customs union. The phraseology of these two paragraphs was somewhat similar to the related provisions in Article XXIV as it now stands.
3. First Session of the Preparatory Committee - London, October-November 1946

EPCT/C. 11/FV/7: The United States representative (Mr. Hawkins) in explaining Article 33 of the United States draft stated that paragraph 2 set out the basic exceptions "which were practical standard exceptions in commercial treaties and agreements".

The representative of the Netherlands enquired as to the method to be employed in calculating the average tariff level and whether it would mean splitting the difference between individual rates of duty. He also referred to the problems of principle connected with the relationship of his Government with its overseas territories and asked whether an interim period could be provided for in the formation of a customs union.

Mr. Shackle (United Kingdom) suggested that consideration could be given to the use of a weighted average in calculating the average tariff level. The weighted average would take into account the relative shares of trade of the constituent territories.

Mr. Hawkins (United States) replying to the Netherlands representative (Mr. Shackles' point, apparently, was taken no further) said that what was sought was a rough average of the tariff level. This would not yield to mathematical treatment of the kind mentioned by the Netherlands representative. With respect to the proposal for an interim period he stated that as long as the working out of the details is actually in progress it seemed to him that there should be no rigid application of the most-favoured-nation clause.

EPCT/C. 11/38: The Chairman stated that most of the problems concerning Article 33 were technical and arose from the complexity of the political relationships that existed at the time (Netherlands, France, United Kingdom with their overseas territories and India with Kashmir). It was thought that the provisions of Article 33 were reasonable but that they should be drafted to take into consideration their effect on these political relationships. There were also further requests by delegations for a transitional period in the formation of a customs union.

EPCT/C. 11/PV/12: Article 33 of the United States Draft Charter became Article 38, the following changes having been made:

(i) Paragraph 2(b) now provided for "the formation of a union for customs purposes", thus permitting measures which in fact represent a transitional stage towards a customs union.

(ii) A new paragraph 4 (paragraph 4, the definition of a customs union then became paragraph 5) was added which recognized that new preferential arrangements (for example, those of a regional character) may be justified in exceptional circumstances. They could be authorized by a two-thirds vote of Members.

Lebanon and Brazil reserved their position on the voting procedures for such arrangements.

EPCT/C. 6/34: The representative of Chile suggested amending (G.6/W.38) sub-paragraph 2(b) to begin with the words "the formation, including its transitional stage, of a union for customs purposes".

Mr. Leddy (United States) opposed the amendment on the grounds that it could enable two or more countries to grant each other preferences without definitely committing themselves to the conclusion of a customs union. He stressed that the declaration of intention to form a customs union was not sufficient to ensure the application of sub-paragraph 2(b).

EPCT/C. 6/48: The Chilean amendment was not accepted. After a review the London text of Article 38 was approved.

Lebanon and Brazil re-affirmed their London reservations and the delegate of Chile associated himself with them. The Australian representative referred to a suggestion made by his delegation at London that provisions should be made in paragraph 3 (report to the Organization) so as to allow continuation of his country's special arrangements with dependent overseas territories.


(a) **Charter**

EPCTA/SR/13: The Chilean representative proposed that some additional wording be inserted in paragraph 2 so as to indicate the procedure to be followed in achieving a customs union. The purpose of this was to bridge the gap that existed so as to provide a means of bringing about a customs union. During the discussion that ensued some delegates expressed the opinion that the Chilean proposal was linked more closely with paragraph 4 (new preferential arrangements in special circumstances).

EPCTA/SR/35: Article 38 of the Draft Charter after some re-drafting now became Article 42. The following sub-paragraphs were added to paragraph 3:

"(b) No Member shall institute or maintain any interim agreement under the provisions of paragraph 2(b) of this Article if, after a study of the plan and schedule proposed in such an agreement, the Organization finds that such agreement is not likely to result in such a customs union within a reasonable length of time.

(c) The plan or schedule shall not be substantially altered without consultation with the Organization."
It was stated that the additions were made to enable a Member to maintain transitional arrangements for the purpose of establishing a customs union with another Member.

(b) GATT (1947 Text)

In the New York Draft of GATT, Article XXI contained the provisions on customs unions as set out in Article 38 of the New York Draft Charter. At Geneva the draft GATT was revised to take account of changes made by the Second Session of the Preparatory Committee.

EPCT/TAC/PV/11: The representative of Czechoslovakia sought deletion of the paragraphs dealing with customs unions on the grounds that such arrangements may have political influences and that, as such, were outside the terms of reference of the Committee. The representative of France said that the establishment of a customs union meant a derogation from the most-favoured-nation clause and, as such, must be inserted in the Charter. A customs union, once formed, can be considered from both the political and economic viewpoints. With respect to the political considerations, however, Members should take action in other appropriate international organizations.

The representative of Czechoslovakia replied that he had no objections to customs unions but thought that the power to approve or disapprove of them was being given to some Tariff Committee. Mr. Winthrop Brown (United States) replied that there was no question of the CONTRACTING PARTIES having any power to approve or disapprove of a customs union:

"what paragraph 3 [Customs unions] contemplates is simply that if a country which is a Member of this Agreement enters into an arrangement with another country, be it a Member or a non-Member, which involves preferential arrangements which are not consistent with its obligations under Article I, and justifies that departure from its obligations on the grounds that it is a step towards a customs union, then the contracting parties should have a chance to have a look at these proposals and see whether they are in fact as represented. And if the [CONTRACTING PARTIES] find that the proposals ... will in fact lead towards a customs union in some reasonable period of time, why they must approve it. They have no power to object."

The provisions on customs unions became a part of Article XXIV in the 1947 GATT.


The discussions were based principally on Article 42 of the Geneva Draft and the amendments proposed by various delegations in E/CONF.2/C.3/1 and addenda and the French proposal in E/CONF.2/C.3/11. The principal changes were as follows:
Paragraph 1 (paragraph 4 in present GATT text) was new. The first sentence resulted from a decision that a redraft of paragraph 5 of Article 1 (Purpose and Objectives) could best be done by inserting this wording here. The second sentence was inserted by the working party.

Paragraph 2 (paragraph 5 in present GATT text) was based on paragraph 2(b) of the Geneva Draft. Important additions, however, were the new provisions relating to the establishment of free-trade areas. This resulted from a proposal for an additional sub-paragraph to the effect that the provisions of this chapter shall not be construed to prevent:

"the formation of a free-trade area by the conclusion of a free-trade agreement involving the substantial elimination of tariffs and other restrictive regulations of commerce between Members belonging to the same economic region".

The words "at the institution of" at the end of the third line of sub-paragraph 5(a) of the present text were inserted at the request of the United Kingdom. Presumably the same principle motivated the drafting of the words "at the formation of" with respect to free-trade areas in sub-paragraph 5(b).

In the preamble to the paragraph the words "as between the territories of Members" were inserted. It was the view of the Members who supported these words, that this Article, including the new paragraph 6 (present paragraph 10) would not prevent the formation of customs unions and free-trade areas of which one or more parties were non-Members but would give the Organization an essential degree of control.

In sub-paragraph (a) it was recommended that the words "average level of the duties" be replaced by "general incidence of the duties". The intention was that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account.

Paragraph 3 (paragraph 7 in present GATT text) was based on paragraph 3 of the Geneva Draft. Sub-paragraph (a) incorporated the substance of a proposal by the Italian delegation that any Member proposing to enter into a customs union "shall inform the Organization and give any ..." and it was felt that the revised texts of sub-paragraphs went some way to meet the views of Argentina, Chile and Italy who had proposed the deletion of these sub-paragraphs in the Geneva text which had been more mandatory (e.g. "No Member shall institute or maintain an interim agreement ... if" etc.).

Paragraph 4 (paragraph 8 in present GATT text). The definition of a customs union, contained in the second sentence of paragraph 4 of the Geneva Draft, was amended and a definition of a free-trade area was added.
The definition of a customs union in the Geneva Draft read as follows:

"A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of Members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the Members of the union to the trade of territories not included in the union."

Paragraph 5 (paragraph 9 in GATT text). This was a new paragraph which was intended to cover problems which would arise in cases where there were preferential rates of duty in force between a country entering a customs union or a free-trade area and a country remaining outside.


E/CONF.2/C.3/90: The Australian proposal was not favoured by the working party that had been established to examine it. Mr. Royer stating that "It could not be concluded that the establishment of a customs union between two countries created any obligation of compensation to a third country".

Paragraph 6 (paragraph 10 in GATT text). A new paragraph to cover proposals which do not fully comply with the requirements of the Article provided they lead to the establishment of a customs union or a free-trade area in the sense of the Article. It was the understanding of the Committee that this new paragraph would enable the Organization to approve the establishment of customs unions and free-trade areas which include non-Members.

7. First Session of the CONTRACTING PARTIES - Havana 1948

SR/5: A working party was set up and in its report (GATT/1/21) drew up a Draft Protocol. In addition, attention was drawn to the question of increases in bound rates of duty which arose from the provision that "the duties imposed at the institution of a customs union are not to be on the whole higher than the general incidence, etc.". This question was referred to the delegates of France and the United States who were to submit recommendations. Their report (GATT/1/41) recommended an addition to paragraph 5(a) which in fact became paragraph 6 of the present text.