THIRD COMMITTEE: COMMERCIAL POLICY

ARTICLES 16, 42, 42A AND 42B AS
ADOPTED BY COMMITTEE III

Article 16

General Most-favoured-nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters within the scope of paragraphs 2 and 4 of Article 18, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively.

2. The provisions of paragraph 1 of this Article shall not require the elimination, except as provided in Article 17, of any preferences in respect of import duties or charges which do not exceed the margins provided for in paragraph 3 of this Article and which fall within the following descriptions:

(a) preferences in force exclusively between two or more of the territories listed in Annex A to this Charter, subject to the conditions set forth therein;
(b) preferences in force exclusively between two or more territories which on 1 July 1939 were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C, D and E of this Charter, subject to the conditions set forth therein;
(c) preferences in force exclusively between the United States of America and the Republic of Cuba;
(d) preferences in force exclusively between the Republic of the Philippines and the United States of America, including the dependent territories of the latter;
(e) preferences
(e) preferences in force exclusively between neighbouring countries listed in Annexes F, G, G, I and J of this Charter.

3. The provisions of paragraph 1 of this Article shall not apply to preferences between countries named in Annex K of this Charter, provided such preferences fulfill the applicable requirements of Article 15.

4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article shall not exceed (a) the maximum margin provided for under the General Agreement on Tariffs and Trade or any subsequent operative agreement resulting from negotiations under Article 17, or (b) if not provided for under such agreements, the margin existing either on 10 April 1947 or on such earlier date as may have been established for a Member as a basis for negotiating the General Agreement on Tariffs and Trade, at the option of such Member.

5. The imposition of a margin of tariff preference not in excess of the amount necessary to compensate for the elimination of a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories in respect of which preferential import duties or charges are permitted under paragraph 2 of this Article shall not be deemed to be contrary to the provisions of this Article, it being understood that any such margin of tariff preference shall be subject to the provisions of Article 17.

Interpretative Note

Article 16

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates.

As examples:

1. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were 24 per cent ad valorem, the margin of preference would be 12 per cent ad valorem, and not one-third of the most-favoured-nation rate;

2. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent ad valorem;

3. If the most-favoured-nation rate were 2 francs per kilogram and the preferential rate were 1.50 francs per kilogram, the margin of preference would be 0.50 francs per kilogram.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

(1) the
(1) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10 April 1947; and

(ii) the classification of a particular product under a tariff item other than that under which importations of that product were classified on 10 April 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

ANNEXES PERTAINING TO PARAGRAPH 2 OF ARTICLE 16

ANNEX A

List of Territories Referred to in Paragraph 2 (a) of Article 16

United Kingdom of Great Britain and Northern Ireland
Dependent territories of the United Kingdom of Great Britain and Northern Ireland
Canada
Commonwealth of Australia
Dependent territories of the Commonwealth of Australia
New Zealand
Dependent territories of New Zealand
Union of South Africa including South West Africa
Ireland
India (as at 10 April 1947)
Newfoundland
Southern Rhodesia
Burma
Ceylon

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other Members which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

The preferential arrangements referred to in paragraph 5 (b) of Article 23 are those existing in the United Kingdom on 10 April 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled /and frozen
and frozen pork, and bacon. Without prejudice to any action taken under
sub-paragraph (a) (x) of paragraph 1 of Article 43, negotiations shall be
entered into when practicable among the countries substantially concerned or
involved, in the manner provided for in Article 17, for the elimination of
these arrangements or their replacement by tariff preferences. If after such
negotiations have taken place a tariff preference is created or an existing
tariff preference is increased to replace these arrangements such action shall
not be considered to contravene Article 16 or Article 17.

The film hire tax in force in New Zealand on 10 April 1947 shall, for the
purpose of this Charter, be treated as a customs duty falling within
Articles 16 and 17. The renters’ film quota in force in New Zealand on
10 April 1947, shall for the purposes of this Charter, be treated as a screen
quota falling within Article 19.

The Dominions of India and Pakistan have not been mentioned separately
in the above list since they had not come into existence as such on the base
date of 10 April 1947.

ANNEX B

List of Territories of the French Union Referred to in Paragraph 2 (b)
of Article 16

France
French Equatorial Africa (Treaty Basin of the Congo* and other
territories)
French West Africa
Cameroons under French Mandate*
French Somali Coast and Dependencies
French Establishments in India*
French Establishments in Oceania
French Establishments in the Condominium of the New Hebrides*
Guadeloupe and Dependencies
French Guiana
Indo-China
Madagascar and Dependencies
Morocco (French zone)*
Martinique
New Caledonia and Dependencies
Reunion
Saint-Pierre and Miquelon
Togo under French Mandate*
Tunisia

* For imports into Metropolitan France and territories of the French Union.

ANNEX C
ANNEX C

List of Territories of the Customs Union of Belgium, Luxembourg and The Netherlands Referred to in Paragraph 2 (b) of Article 16

The Economic Union of Belgium and Luxembourg
Belgian Congo
Ruanda Urundi
The Netherlands
Netherlands Indies
Surinam
Curacao

(For imports into the metropolitan territories of the Customs Union.)

ANNEX D

List of Territories of the United States of America Referred to in Paragraph 2 (b) of Article 16

United States of America (customs territory)
Dependent territories of the United States of America

ANNEX E

List of Portuguese Territories Referred to in Paragraph 2 (b) of Article 16

Portugal and the Archipelagoes of Madeira and the Azores
Archipelago of Cape Verde
Guinea
St. Tome and Principe and Dependencies
S. Joao Batista de Ajuda
Cabinda
Angola
Mozambique
State of India and Dependencies
Macao and Dependencies
Timor and Dependencies

ANNEX F

List of Territories Covered by Preferential Arrangements Between Chile and Neighbouring Countries Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between, on the one hand,
Chile
and, on the other hand,
1. Argentina
   2. Bolivia
2. Bolivia
3. Peru,
respectively.

ANNEX G

List of Territories Covered by Preferential Arrangements Between the Syro-Lebanese Customs Union and Neighbouring Countries Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between, on the one hand,
The Syro-Lebanese Customs Union
and, on the other hand,
1. Palestine
2. Transjordan,
respectively.

ANNEX H

List of Territories Covered by Preferential Arrangements Among Colombia, Ecuador and Venezuela Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between two or more of the following countries:
Colombia
Ecuador
Venezuela

Notwithstanding the provisions of Article 16, Venezuela may provisionally maintain the special surcharges which on 21 November 1947 were levied on products imported via certain territories, provided that such surcharges shall not be increased above the level in effect on that date and shall be eliminated not later than five years from the date of this Charter.

ANNEX I

List of Territories Covered by Preferential Arrangements Among the Republics of Central America Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between two or more of the following countries:
Costa Rica
El Salvador
Guatemala
Honduras
Nicaragua
ANNEX J

List of Territories Covered by Preferential Arrangements between Argentina and neighbouring countries referred to in Paragraph 2(e) of Article 16

Preferences in force exclusively between, on the one hand, Argentina

and, on the other hand,

1. Bolivia
2. Chile
3. Paraguay

respectively.

ANNEX K

Preferences between the countries formerly a part of the Ottoman Empire and detached from it on 24 July 1923.

(The list of countries will be inserted later).
ARTICLE 42

(As adopted provisionally by Committee III pending the reports of Working Party 8 on paragraph 2 of Article 42 and Working Party 9 or paragraph 5 of Article 42B)

Article 42

Territorial Application of Chapter IV

1. The rights and obligations arising under this Chapter shall be deemed to be in force between each and every customs territory in respect of which this Charter has been accepted by a Member in accordance with Article 99.

2. For the purposes of this Chapter a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of substantially all the trade of such territory with other territories.

Article 42A

Frontier Traffic

The provisions of this Chapter shall not be construed to prevent:
(a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or
(b) advantages accorded to the trade with the free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace.

Article 42B

Customs Unions and Free-Trade Areas

1. Members recognize the desirability of increasing freedom of trade by the development, through voluntary agreements of closer integration between the economies of participants. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the parties to it and not to raise obstacles to the trade of other Members with such parties.

2. The provisions of this Chapter shall not therefore be construed to prevent as between the territories of Members the formation of a customs union or the establishment of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or a free-trade area; Provided, that:

/(a) with respect
(a) with respect to a customs union, or an interim agreement leading to the establishment of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with Members of the Organization shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) with respect to a free-trade area, or an interim agreement leading to the establishment of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the establishment of such free-trade area; or the adoption of such interim agreement, to the trade of Members not participating in the arrangement shall not be higher or more restrictive than the corresponding tariffs and other regulations of commerce existing in the same constituent territory prior to the establishment of the free-trade area, or interim agreement, as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) above shall include a plan and schedule for the attainment of such a customs union or the establishment of such a free-trade area within a reasonable length of time.

3. (a) Any Member deciding to enter into a customs union or a free-trade area, or an interim agreement leading to the formation of such a union or free-trade area, shall promptly notify the Organization and shall make available to it such information regarding the proposed union or free-trade area as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) If, after having studied the plans and schedules provided for in an interim agreement under paragraph 2, in consultation with the parties to that agreement and taking due account of the information made available in accordance with the terms of sub-paragraph (a), the Organization finds that such agreement is not likely to result in a customs union or in the establishment of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the Organization shall make recommendations to the parties to the agreement. If the parties are not prepared to modify the agreement in accordance with such recommendations they shall not maintain it in force or institute such agreement if it has not yet been concluded.

/(c) Any
(c) Any substantial change in the plan or schedule shall be notified to the Organization which may request the Members concerned to consult with it if the change seems likely to jeopardize or delay unduly the achievement of the customs union or the free-trade area.

4. For the purposes of this Charter:
   (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
      (i) tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 143) are eliminated on substantially all the trade between the constituent territories of the union or at least on substantially all the trade in products originating in such territories and
      (ii) 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, subject to the provisions of paragraph 5;
   (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 143) between such territories are eliminated on substantially all the trade in products originating in constituent territories of the free-trade area.

5. The preferences referred to in paragraph 2 of Article 16 shall not be affected by the constitution of a customs union or a free-trade area but may be eliminated or adjusted by means of negotiations with Members affected. This procedure of negotiations with affected Members shall in particular apply to the elimination of preferences required to conform with the provisions of sub-paragraphs (a) (i) and (b) of paragraph 4.

6. The Organization may by a two-thirds majority of the Members present and voting approve proposals which do not fully comply with the requirements of the preceding paragraphs, Provided that they lead to the establishment of a Customs Union or a free-trade area in the sense of this Article.

INTERPRETATIVE NOTE

Paragraph 5

It is understood that the provisions of Article 16 would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty and is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and the most-favoured-nation rate.