

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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DRAFT REPORT OF THE WORKING PARTY ON THE ACCESSION OF THAILAND

1. At its meeting on 22 February 1982, the Council appointed a Working Party to examine the application of the Government of Thailand to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which might include a draft Protocol of Accession.
2. The Working Party met on 19 and 20 April 1982 under the Chairmanship of H.E. Mr. T. O'Brien (New Zealand).¹
3. The Working Party had before it, to serve as a basis for its discussions, a Supplementary Memorandum on the Foreign Trade Regime of Thailand (L/5291) as well as the Memorandum on the Foreign Trade Regime of Thailand (L/4803) submitted in connexion with Thailand's earlier application for provisional accession. The Working Party also had before it the questions put by contracting parties on the Thai trade regime and the replies of the Thai authorities thereto (L/5300). In addition, the representative of Thailand made available to the Working Party the following material:
 - (a) the Customs Tariff of Thailand;
 - (b) Thai Customs Laws;
 - (c) the Export and Import Act B.E. 2522 (1979);

¹ The membership of the Working Party is set out in L/5297/Rev.1.

- (d) the Investment Promotion Act B.E. 2520 (1977);
- (e) Industrial Development in Thailand and Industrial Development Policy 1982-1986; and
- (f) an Information Handbook on Taxation in Thailand.

4. In an introductory statement, the representative of Thailand recalled that Thailand had taken a keen interest in GATT activities and had participated actively in various fields of international economic co-operation. He said that the Thai Government had always been conscious of its responsibility, along with that of all other trading nations, to collaborate in international efforts to maintain, strengthen and further liberalize the international trading system, particularly with a view to facilitating the developmental efforts of developing countries. With this in mind, Thailand had been closely involved in a number of GATT activities, for example, participation in the Tokyo Round and in the MFA as well as in various regular GATT bodies as an observer. Thailand hoped that as a contracting party, it would be able to co-operate more effectively with its fellow ASEAN member States and other contracting parties in contributing towards the improvement of the international trading system.

5. He said that the Thai economy was heavily dependent on external trade, the value of its total international trade being equivalent to 48 per cent of its gross national product. Thailand had trade relations with over 100 countries which included a great majority of the contracting parties to the General Agreement. The most recently available trade statistics showed that the great bulk of Thai foreign trade was carried out with GATT contracting parties. While the aggregate value of Thai foreign trade had been increasing, the trade balance had remained unfavourable and had rapidly worsened in recent years, resulting in a trade deficit which had increased from US\$1,835 million in 1979 to US\$3,080 million in 1981.

6. He said that the question of accession to GATT and its implications for Thailand had been thoroughly examined and debated in Thailand over the past two decades. Many arguments pro and con had been put forward and several problems in the economic and financial fields had prolonged a decision until now. The decision of the Government of Thailand to seek full membership of GATT in December 1981 reflected the continued urging and encouragements of many friendly countries and trading partners. His Government was confident that the Protocol of Accession to be drafted by this Working Party and the results of the tariff negotiations would result in terms of accession containing a proper balance of rights and obligations that fully took into account Thailand's position as a developing country and its trade, development and financial needs. Noting that the Thai economy and its development depended largely on its external trade and that its exports were heavily concentrated on a certain number of products, in particular primary commodities, he said his Government believed that accession to the GATT would provide more secure and predictable conditions for Thai exports.

7. The representative of Thailand said that, in preparing the documentation that had been put before the Working Party describing Thailand's trade regime, it had been the intention of the Thai Government to provide a full and candid picture of Thailand's trade practices. While Thailand's trade regime remained essentially as described in the original Memorandum, document L/4803, presented in May 1979, advantage had been taken of the opportunity to forward a Supplementary Memorandum (L/5291) to provide updated information. From studying the documentation provided, he was of the view that it emerged clearly that Thailand's trade regime was based on the principles of the General Agreement. Despite massive trade

deficits, regularly exceeding 5 per cent of GDP, Thailand had on the whole maintained an open trade regime characterized by moderate tariffs and a general absence of quantitative controls.

8. Referring to document L/5295 of 4 March 1982 in which Thailand had expressed its readiness to enter into tariff negotiations relating to its accession with interested contracting parties, he said that an initial round of bilateral negotiations was scheduled to take place after the meeting of the Working Party. He added that it would be very helpful to his delegation if any contracting party wishing to engage in tariff negotiations with Thailand, would inform his delegation of their interest as soon as possible. He expressed the hope that the tariff negotiations would be concluded in time to enable Thailand to become a full member of GATT before the GATT Ministerial Meeting in November 1982. In conclusion, he said that in the present international atmosphere in which there appeared to be a growing tendency to look inwards and to strengthen protectionist measures, the decision of his Government to seek full accession to the General Agreement reflected fully its faith in the multilateral economic system.

9. Members of the Working Party welcomed and expressed support for the application of Thailand for full accession to the General Agreement. They believed that the Thai application was a sign of confidence by trading nations in the GATT and the multilateral trading system, despite current problems. The accession of Thailand could be expected to improve Thailand's trading situation and also reinforce the trading system. In this respect, many of these members referred to the forthcoming GATT Ministerial Meeting, and undertook to cooperate fully with a view to finalizing the accession process as expeditiously as possible so that

Thailand might be able to participate in that meeting as a full contracting party. The ASEAN member States already GATT contracting parties as well as other members of the Working Party emphasized the importance of Thai accession as completing the participation of the ASEAN countries in GATT and thereby reinforcing the role that ASEAN could play in GATT and the world trading system at large.

10. A number of members, expressing the view that the Thai trade regime was relatively liberal and broadly in accordance with GATT principles, said that they felt that there should be no obstacles to the rapid completion of the Working Party's work. Some of these members, however, expressed the hope that Thailand would keep its trade regime, especially its import restrictions and also its special import fees, under constant review and liberalize it in accordance with the GATT where possible. A member expressed the expectation that, in following its national economic and social development plans, Thailand would adopt measures compatible with the General Agreement. Another member expressed the hope that Thailand would give serious consideration to joining the various codes negotiated in the Multilateral Trade Negotiations. Some members, noting that to gain fully from GATT membership it was necessary to participate actively in GATT, indicated the willingness of their governments to assist Thailand with familiarizing itself with GATT provisions and procedures.

11. A number of delegations referred to the trade links that their countries had with Thailand and expressed the expectation that the accession of Thailand to the GATT would have further mutually advantageous consequences for those trade relations. Recalling that tariff negotiations were required for accession to the General Agreement under Article XXXIII, some of these delegations indicated that they had been in touch with the

Thai delegation with a view to entering into negotiations bilaterally. One member, referring to the schedule of concessions that his country had negotiated with the Government of Thailand in the context of the Multilateral Trade Negotiations, said that, while his delegation at present had no further proposals in this connexion, it felt that the Thai schedule should be comparable with that of other developing countries at a similar stage of development that had acceded to the GATT, and would follow the tariff negotiations closely.

12. The Chairman noted that Thailand had invited, as of 4 March 1982, contracting parties wishing to enter into tariff negotiations to contact the Thai delegation (document L/5295). He invited any interested contracting party, which had not yet done so, to get in touch with the Thai delegation in the immediate future.

13. The Working Party carried out an examination of various points concerning Thailand's trade regime. During the examination in the Working Party, the Thai delegation supplied additional information on the Thai Government's economic and commercial policy. The main points brought out in the discussion in the Working Party are set out hereunder in paragraphs 14 to 22.

14. A member of the Working Party noted the importance accorded to the Investment Promotion Act of 1977 as a means of achieving certain economic objectives. He said that his government interpreted Section 20 of the Act as not being mandatory in its application, and as giving discretionary authority to the Thai Government in relation to the selection of promoted industries and any conditions they might have to meet. Commenting on this observation, the representative of Thailand said that the Investment Promotion Act was an instrument to promote industrial investment in

Thailand, both foreign and Thai, with a view to furthering Thailand's industrial development and raising the standard of living of its people.

The Board of Investment specified the necessary conditions under Section 20 of the Act that an industry had to fulfil in order to qualify for promotional privileges. The conditions which had to be met depended on the type of industry requesting promotion. He said that Section 20 was mandatory to the extent that the Board of Investment was obliged to specify conditions for each type of industry which requested promotional privileges.

15. A number of members noted that the Investment Promotion Act provided considerable scope for taking measures limiting imports, including prohibiting them in certain cases, and expressed concern that the Act should not be applied in a way that would prejudice the interests of contracting parties and be inconsistent with Thailand's obligations under the GATT after accession. They also expressed concern that the special import fees applied under the Act (document L/5291, paragraph 24) could in fact become discriminatory in nature, depending on the criteria for their application. They expressed the hope that the Thai Government would not employ such measures in a way that was not in conformity with the GATT. The representative of Thailand said that the fact that the fees were imposed for a period of not more than one year at a time reflected the concern of the Thai Government that they should not become permanent. A decision to extend such fees from one year to the next was only taken if special reasons warranted it. It was not the intention of the Thai Government to employ such measures in a way inconsistent with GATT provisions.

16. In response to a question concerning the justification under GATT of the import and export restrictions applied by Thailand as listed in Annex I and II of L/5300, the representative of Thailand said that a large proportion of the restrictions were applied for reasons covered by GATT Articles XX and XXI. For example, certain of the import and export restrictions were imposed on grounds of public morals, preservation of fauna and flora, plant or animal health, or national security. A number of export restrictions were applied in order to ensure fulfilment of Thailand's obligations under international agreements, such as on sugar and textiles. Other export restrictions were designed to ensure essential supplies to domestic industry, to deal with shortages, or to facilitate the application of classification, grading or marketing requirements, in accordance with GATT Articles XI:2(a) and (b) and XX(i) and (j). He said that the limited number of restrictions not covered by the above provisions were applied in a manner that would be consistent with Thailand's obligations as a country acceding to the General Agreement and were related to balance-of-payments or economic development questions. A number of members of the Working Party stressed the importance that they attached to more detailed information on the GATT Articles under which various restrictions were imposed, in particular those restrictions which fell under Articles XX and XXI. They suggested that the Thai authorities might wish to examine this matter, with the assistance of the secretariat if required, and provide fuller information in due course. The Thai delegation indicated that it expected to be in a position to provide such information as a contracting party.

17. Referring to question 3 of the Questions and Replies (L/5300), a member requested additional information on the import substitution policy in Thailand. The representative of Thailand said that this policy had not yet been implemented and at present no list of products to which it might relate existed. The member of the Working Party who had requested information on this matter noted that following Thailand's accession, any measures to be applied under this policy would need to be in accordance with the GATT.

18. Replying to a question concerning the criteria for the distribution of import licences, in particular the provision made for new importers to obtain licences, the representative of Thailand said that there was no restriction on the right of individuals to set up enterprises under existing law, engage in importing and be eligible for obtaining import licences without being limited by the criterium of past performance. A number of members, referring to the reply to question 19(e) of document L/5300, which indicates that before granting a licence for certain commodities the Ministry of Commerce may consult with the Government authority concerned, asked whether such a system might create unnecessary arbitrariness and uncertainties for traders. In response, the representative of Thailand said that such consultations with other government authorities were undertaken in order to obtain the information necessary to decide on the allocation of licences, not with a view to delaying unnecessarily the process of approval.

19. A number of members expressed concern about the apparent complexity and lack of transparency of certain Thai import and customs valuation procedures and asked whether the Thai Government was considering the simplification of such procedures in accordance with Article VIII of the

GATT and contemplating accession to the Customs Valuation Code. The representative of Thailand said that the Government of Thailand had established a committee to investigate ways of streamlining export and import procedures. Import and customs valuation procedures were being progressively overhauled on the basis of what could be learnt from best practices around the world in these areas. Imports at present were normally cleared at the port of Bangkok in one day. Thailand followed closely the development of relevant international conventions and had recently become a member of the Customs Cooperation Council. The definition of customs valuation, which had been essentially based on an English definition of 1926, had been progressively modified so that in practice the Brussels Definition of Value was now mainly followed. The Thai customs were presently accepting the declared value in respect of some 92.7 per cent of import transactions. He said that the Thai authorities were studying the Customs Valuation Code and would give the question of eventual participation close consideration after Thailand's accession to the GATT. He added that the GATT secretariat had been requested to send an expert to Bangkok to provide necessary technical assistance in connexion with the MTN Codes.

20. In response to a question concerning the temporariness of the import surcharge of 0.5 per cent referred to in paragraph 25 of document L/5291, the representative of Thailand said that the surcharge, which was being levied for the purpose of establishing an export promotion fund, would not be applied in such a way as to impair any tariff binding that Thailand might enter into. He added that the present intention of the Thai authorities was to levy the surcharge for a period of about one year.

21. A number of members, noting that in certain cases the business and excise taxes were levied at different rates according to whether the goods in question were domestically produced or imported, enquired whether Thailand would be prepared to phase out any element of discrimination against imports. One member expressed concern about the complexity and multiplicity of taxes that might be charged on imports and hoped that the tax system would be simplified and made more transparent. The representative of Thailand said that the business and excise taxes were levied only for revenue purposes, and not with a view to protecting local industry or discriminating against imports. There were a few products on which the rates of business tax applied on domestic goods and imported goods differed. However, on many of those products, the rate levied on domestic goods was higher than that on the like imported goods. He said that the basic cause of the difference in rates arose from the complexity of the tax structure which, under certain circumstances, created double or even triple taxation of locally manufactured goods, as the tax was levied at all stages of production. The total potential tax burden for locally produced goods was in some cases much higher than that on imported goods. The rate for locally produced goods was, therefore, reduced in order to equalize the overall tax burden between domestically produced and imported goods. Likewise, the rate on some imported goods was also reduced to a lower level than that on similar locally-produced goods in order to attain the same equalizing effect. In regard to the excise tax, he said that the system for imposing this tax also placed additional burdens on local producers. The fact that the rate of excise tax on some locally produced goods was lower than that on imports was not intended to discriminate

against imports, but instead to reflect the difference in nature between imported and domestic goods, and also the extra burdens already borne by local producers.

22. The Working Party agreed, in particular, on paragraph 3 of the draft Protocol of Accession of Thailand appended to this report. The Working Party noted that it was the intention of Thailand, in reviewing its internal tax system, consistently with its development, financial and trade needs, to ensure that its tax system was in line with the provisions of the General Agreement. The Working Party concluded that the review mentioned in paragraph 3 of the draft Protocol would provide the occasion, if necessary, for the CONTRACTING PARTIES to review the situation in this regard.

23. Having carried out the examination of the foreign trade regime of Thailand and in the light of the explanations and assurances given by the Thai representatives, the Working Party reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Thailand should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this report. It is proposed that these texts be approved by the Council when it adopts the report. When the tariff negotiations between Thailand and contracting parties in connexion with accession have been concluded, the resulting Schedule of Thailand and the concessions granted by contracting parties as a result of negotiations with Thailand would be annexed to the Protocol. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. When the Decision is adopted, the Protocol of Accession would be open for acceptance and Thailand would become a contracting party thirty days after it accepts the said Protocol.

APPENDIX

ACCESSION OF THAILAND

Draft Decision

The CONTRACTING PARTIES,

Having regard to the results of the negotiations directed towards the accession of the Government of Thailand to the General Agreement on Tariffs and Trade and having prepared a Protocol for the accession of Thailand,

Decide, in accordance with Article XXXIII of the General Agreement, that the Government of Thailand may accede to the General Agreement on the terms set out in the said Protocol.

DRAFT PROTOCOL FOR THE ACCESSION OF THAILAND
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "contracting parties" and "the General Agreement", respectively), the European Economic Community and the Government of Thailand (hereinafter referred to as "Thailand"),

Having regard to the results of the negotiations directed towards the accession of Thailand to the General Agreement,

Have through their representatives agreed as follows:

Part I - General

1. Thailand shall, upon entry into force of this Protocol pursuant to paragraph 8, become a contracting party to the General Agreement, as defined in Article XXXII thereof, and shall apply to contracting parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.

2. (a) The provisions of the General Agreement to be applied to contracting parties by Thailand shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act

of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which Thailand becomes a contracting party.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of Thailand shall be the date of this Protocol.

3. Thailand intends to bring into line with Article III of the General Agreement, the business and excise taxes with respect to items on which the incidence of these taxes varies according to whether the items are locally produced or imported, and will endeavour to do so as soon as possible in the light of the provisions of Part IV, and in particular Thailand's development, financial and trade needs. If by [30 June 1987], the incidence of the above-mentioned taxes still varies as between locally produced and imported items, the matter will be reviewed by the CONTRACTING PARTIES.

Part II - Schedule

4. The schedule in Annex A shall, upon the entry into force of this Protocol, become a Schedule to the General Agreement relating to Thailand.

5. [The schedule in Annex B relating to any contracting party or the European Economic Community shall become a schedule to the General Agreement relating to that contracting party or the European Economic Community on the thirtieth day following the day upon which this Protocol shall have been accepted, by signature or otherwise, by that contracting party or the European Economic Community, or on such earlier date following such acceptance as may be notified to the Director-General in writing at

the time of such acceptance; Provided that the date on which such schedule becomes a schedule to the General Agreement shall not be earlier than the date of the entry into force of this Protocol pursuant to paragraph 8.]¹

6. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of the Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the schedule(s) annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the schedule(s) annexed to this Protocol shall be the date of this Protocol.

Part III - Final Provisions

7. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for signature by Thailand until [31 December 1982]. It shall also be open for signature by contracting parties and by the European Economic Community.

8. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been signed by Thailand.

9. Thailand, having become a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the

¹This paragraph would be retained if there was an Annex B.

deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.

10. Thailand may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 9 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.

11. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each signature thereto, pursuant to paragraph 7, [and of any notification under paragraph 5,] to each contracting party, to the European Economic Community, to Thailand and to each government which shall have acceded provisionally to the General Agreement.

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

Done at Geneva this day of one thousand nine hundred and eighty-two in a single copy, in the English and French languages, except as otherwise specified with respect to the Schedule(s) annexed hereto, both texts being authentic.

ANNEX A

SCHEDULE LXXIX - THAILAND

(Text to be supplied later)

ANNEX B

SCHEDULES OF TARIFF CONCESSIONS
OF PRESENT CONTRACTING PARTIES

(Text to be supplied later)