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AN ANALYSIS OF THE GENERAL
AGREEMENT ON TARIFFS AND TRADE

by

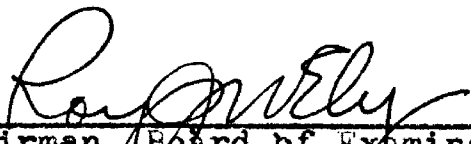
HARRY L. KIRKHAM

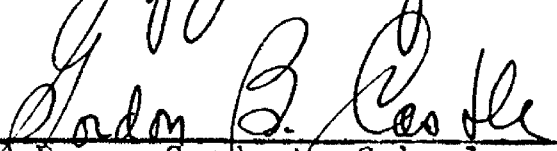
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CHAPTER I

THE STATUS OF WORLD TRADE--1919-1947

Efforts to Reconstruct World Trade Between 1919-1938.

With the end of World War I one of the many sought after objectives was the removal of barriers to world trade. One of the first evidences of an attempt to guard against the use of protectionist devices was expressed by President Wilson in the third of his fourteen points. In this point he called for "the removal, as far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance."¹

Another early attempt at elimination of prospective protectionist tendencies was an effort to place in the Covenant of the League of Nations a clause guaranteeing "equality of trade conditions." As finally placed in the Covenant this clause was toned down to a pledge of "equitable treatment" of commerce of other members of the League, to be accorded "subject to and in accordance with the provisions of international conventions existing or thereafter agreed upon by members of the League."²

¹W. A. Brown, Jr., The United States and the Restoration of World Trade, p. 29.

²Ibid., p. 29.

In addition to these early attempts to create a desirable atmosphere for world trade there followed between 1920 and 1929 a series of four major conferences devoted to a study of international economic problems. Through these conferences it was hoped there would be progress along the following general lines: (1) improvement of the legal and administrative basis of international commercial relations; (2) reduction or elimination of prohibitions and quantitative restrictions on imports and exports; (3) rehabilitation and generalization of the principle of unconditional most-favored-nation treatment; and (4) reduction of the general level of tariffs.³

The four major conferences mentioned were the Brussels Financial Conference of 1920, the Genoa Conference of 1922, the Geneva World Economic Conference of May 1927, and the Geneva Conference of October 1927. Although these conferences were devoted to attempting to solve economic problems of the times they have been characterized as producing a backward looking attitude.⁴ That the efforts to restore, reconstruct and rebuild upon the old plan of international cooperation might not be compatible with existing conditions did not seem to be taken into consideration to the degree that might have been expected. What actually was achieved

³Ibid., p. 30.

⁴J. B. Condliffe, The Commerce of Nations, pp. 439-440.

in the 1920's was the restoration of private enterprise within the national boundaries of those countries that had escaped the worst ravages of war, not the restoration of the international marketing process.⁵

At least one reason for the failure of nations to adopt policies that would have led to greater economic interdependence was the fact that there were warning voices in every nation which were directed against the strategic dangers of such interdependence.⁶ Another analysis of the root causes of the failure of international trade negotiations is presented by Sir Arthur Salter. This analysis covers the period of the 1920's and contrasts markedly with the views of those who attributed the persistence of protectionism primarily to national rivalries and hatreds. Sir Arthur has this to say:⁷

Each official was the prisoner of his own national system, each item of which represented a protection to some home industry which was supported by those who had secured its adoption. He was responsible to ministers who were the prisoners of the groups of organized interests in their respective parliaments. Each national representative therefore, while urging that others should change their policies, felt bound to defend his own and had no authority to agree to change it. The greatest of all the difficulties in these negotiations was not that of a real conflict between divergent national interests and national policies, but that there was

⁵Ibid., p. 440.

⁶Ibid., p. 483.

⁷Sir Arthur Salter, World Trade and Its Future, p. 39.

no genuine national policies conceived as a whole but only a series of national systems devised under pressure. And neither ministers nor officials were effectively masters of the national system so constructed. Always, as the negotiations proceeded, one felt that the dominant consideration in the mind of each national representative was not a conception of his nation's interests as a whole mistaken or not, but a calculation of the pressures to which the national government would be subjected by organized interests in the respective parliaments.

Thus the first wave of protectionism during the inter-war years was caused by the pressure upon national parliaments of those local interests which had been sheltered by war time conditions and were threatened by import competition as soon as world trade began to revive. In fact J. B. Condliffe asserts that the pressure of the local interests was the major cause of this first protectionist tendency.⁸

However, in spite of these tendencies, there was a period of nearly two years after the Geneva Conference of 1927 in which the general rise in tariffs was substantially checked, but with no important reductions being achieved. Work was begun by the League of Nations on a standard classification of tariff nomenclature which was later adopted by a number of countries, and unsuccessful attempts were made to reach a clear interpretation of the most-favored-nation clause. But all these efforts were overshadowed by discussions in the United States for a radical upward revision of the American tariff.⁹ In addition to these discussions

⁸The Commerce of Nations, p. 484.

⁹Brown, op. cit., p. 37.

there followed close upon the close of the 1927 conference the ever strengthening effects of the world crisis in agriculture which signaled the collapse of the efforts to reconstruct world trade on a multilateral basis. Within two years the financial crises that brought on the great depression put an end to all hope of freer trade.¹⁰

In spite of the failure to successfully develop multilateral commercial relations in the decade following World War I, the basic conception of such a trading system was not challenged. However, the foundations of multilateral non-discriminatory world trading system were undermined by the effects of the depression.¹¹

The second postwar decade was ushered in by the depression of 1929-1933. During this period governments fashioned trade into an instrument of economic warfare.¹² Such devices as import quotas, exchange control, and bilateral clearing all came into use although at the time they were intended as emergency devices rather than as a permanent system.

During the period of the 1930's there developed out of what had been attempts at international cooperation a highly systematic economic nationalism. At the outset it was not a deliberate creation. In the early stages of the

¹⁰Condliffe, op. cit., p. 482.

¹¹Brown, op. cit., p. 13.

¹²Condliffe, op. cit., p. 487.

depression great efforts had been made to save as much as possible from the wreck of cooperation--efforts which culminated in calling the Monetary and Economic Conference at London in the summer of 1933. After the breakdown of this conference most governments concentrated upon attempts to work out by national action means to insulate their peoples from the panic which still engulfed international markets.¹³

The basic reason for the complete failure of the London Conference can be traced to the fact that there was no readiness in any country to take the necessary steps to stabilize currencies, reduce tariffs, and get rid of the quantitative restrictions on world trade. It is also true that the basic issues of the conference were never very clear. Currency rather than trade policy occupied the center of discussion. While the overt disagreements at the conference were largely on matters of monetary theory, the real disagreements were actually rooted in the domestic pressures on the governments.¹⁴

With failure admitted at London in 1933, every nation tried to safeguard its own economic stability and its own strategic security. After this time the general course of events in the field of commercial policy could be described by the four words, regionalism, discrimination, bilateralism,

¹³Ibid., p. 498.

¹⁴Ibid., pp. 500-501.

and instability.¹⁵ In this atmosphere of thinking and activity there developed the formation of trading blocs led by the great powers. These trading blocs were probably the most significant economic development of the years preceding the second World War.¹⁶ The trade drives put on by the totalitarian states of Japan, Germany, and Italy were probably the most aggressive manifestations of the trading bloc idea.

Though the United States in June, 1934, passed the Reciprocal Trade Agreements Act designed to negotiate reductions in tariff barriers, the use made of this Act was not an effective counterpoise to the totalitarian trading drives. The great potentialities of the method of bilateral negotiation to achieve an expansion of multilateral trade were demonstrated in a series of agreements with Latin America and some of the smaller western European countries. However, the great proportion of world trade conducted by the sterling area made it necessary to reach agreement with Britain if world trade was to be restored. No such agreement could be reached until 1938 and by this time the approach of World War II made it too late, even if the agreement had been more far-reaching than it was.¹⁷

¹⁵Brown, op. cit., p. 45.

¹⁶Condliffe, op. cit., p. 502.

¹⁷Ibid., p. 503.

Plans Developed During World War II for Fostering World Multilateral Trade upon Cessation of Hostilities. With the advent of the second World War all efforts toward setting up world trade on a multilateral basis were forced into the background. Even though this was so it had become evident by the time of the war that unless the world wished to permanently adopt all the many types of trade restrictions, a resolute attempt would have to be made to re-establish a pattern of multilateral trading between nations. The General Agreement on Tariffs and Trade is today the major result of the efforts made to that end.¹⁸

The story starts in the Atlantic Charter and in the Lend-Lease Agreements whereby the wartime allies bound themselves to seek together a world trading system based on non-discrimination and aimed at higher standards of living 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 and the United Kingdom discussed the establishment of international organizations to tackle the postwar problems of currency, investment and trade.¹⁹ The two countries also agreed to mutual action directed to the expansion of production, employment and the exchange and consumption of goods, to the elimination of all forms of

¹⁸"For Co-operation in World Trade," United Nations Bulletin, XVI No. 6 (March 15, 1954), p. 238.

¹⁹Ibid., p. 238.

discriminatory treatment in international commerce, and to the reduction of trade barriers and tariffs.²⁰ This program was not intended to be exclusive as of between the two countries but was open to participation of all countries that agreed with the idea set forth.

A summary of the developments during the period of the second World War would have to include an agreed basis for the discussions which later took place at Bretton Woods, steps taken for the establishment of the Food and Agricultural Organization of the United Nations, and consultations in the field of commercial policy.

With respect to commercial policy the United States and the United Kingdom conducted formal negotiations between September and December 1945 which produced a common program for action. The agreement on commercial policy took the form of a Joint Statement in which the United Kingdom Government stated that it was in full accord with all the important points included in a document made public at the close of conversations under the title "Proposals for Consideration by an International Conference on Trade and Employment."²¹ The "Proposals" dealt with such matters as unconditional-most-favored nation treatment, rules of

²⁰Brown, op. cit., p. 48 citing the text of the Mutual Aid Agreement, pp. 235-237.

²¹The full text of this document is contained in Department of State publication 2411, Commercial Policy Series 79 (November, 1945).

conduct in technical matters, prohibition of quantitative restrictions, subsidies, state trading, exchange, international cooperation in employment matters, and the constitution of a proposed International Trade Organization.²²

When Secretary of State Byrnes made the "Proposals" public he stated that United States representatives in the United Nations would urge that an International Conference on Trade and Employment should be sponsored by the United Nations. He also announced that the United States and the United Kingdom were committed as between themselves to start negotiations to carry out the "Proposals" including definitive measures for relaxation of trade barriers of all kinds.²³

At the first meeting of the Economic and Social Council of the United Nations a resolution was introduced calling for an International Conference on Trade and Employment. It was decided to call this conference in the latter part of 1946. At the same time a Preparatory Committee was constituted to draw up an agenda for the Conference.

Before the Preparatory Committee met the United States government formed its "Proposals," as negotiated with the United Kingdom, into detailed Charter language in the form of a "Suggested Charter" for an International Trade Organiza-

²²Brown, op. cit., p. 56.

²³Ibid., p. 58.

tion of the United Nations.²⁴ This "Suggested Charter" was made the basis for the discussions of the Preparatory Committee at its first session in London which began October 15 and ended on November 22, 1946. Just before the end of the session on November 9, 1946, the acting Secretary of State gave notice of an intention to begin tariff negotiations with the eighteen countries in attendance at the Preparatory Committee session.²⁵

At the end of the London session the Committee adopted a resolution pertaining to the negotiation of a multilateral trade agreement embodying tariff concessions. The resolution recommended that the members of the Preparatory Committee hold the meeting under the sponsorship of the Committee in connection with, and as part of the second session of the Committee. The negotiations were carried out and embodied in a document entitled "Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment." The wording was chosen to indicate that the text contained in the "Final Act" was a completely independent recommendation of the representatives of governments that happened to be preparing at the same time an agenda for the coming Conference on Trade and Employment.

This distinction was practical in the sense that it

²⁴Ibid., p. 60.

²⁵Ibid., p. 61.

made it possible to negotiate the General Agreement on Tariffs and Trade in conjunction with the Charter, for an International Trade Organization, as part of a broad effort under United Nations sponsorship to make possible a more rational system of world trading relations. At the same time the character of the General Agreement would be preserved as an independent instrument. If this had not been the case with respect to the General Agreement on Tariffs and Trade, it could not have been negotiated and adhered to by the executive branch of the United States government and the Trade Agreements Act of 1934.

At its second session, in Geneva on April 10, 1947, the Preparatory Committee accomplished the actual negotiation of the General Agreement.²⁶ Twenty-three countries were involved in the negotiations that culminated in the signing of the General Agreement by them on October 30, 1947.²⁷ Of the twenty-three countries Australia, Belgium, Canada, France, Luxemburg, the Netherlands, the United Kingdom, and the United States gave provisional application to the Agreement on January 1, 1948.²⁸

²⁶Ibid., pp. 62-63.

²⁷The twenty-three countries were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxemburg, The Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom and the United States.

²⁸"Protocol of Provisional Application of the General Agreement on Tariffs and Trade," United Nations General Agreement on Tariffs and Trade, United Nations Economic and Social Council Preparatory Committee of the International Conference Trade and Employment, Vol. 4 (1947).

The participating countries conducted 123 tariff negotiations which were consolidated into twenty schedules of concessions involving duty reductions or bindings on long lists of products important in their trade with each other. The Agreement, which is provisionally in effect, represents the most comprehensive undertaking for reducing trade barriers ever consummated. Subsequent tariff negotiations at Annecy, France in 1949 and at Torquay, England in 1951 have further enlarged the General Agreement so that it now has thirty-four countries which are contracting parties. These countries account for some four-fifths of the world trade and the tariff concessions negotiated apply to products which account for more than two-thirds of the import trade of this group of countries and more than one-half of the import trade of the world.²⁹

The present contracting parties to the Agreement are: Australia, Austria, Belgium, Brazil, Burma, Canada, Ceylon, Chile, Cuba, Czechoslovakia, Denmark, Dominican Republic, Federal Republic of Germany, Finland, France, Greece, Haiti, India, Indonesia, Italy, Luxemburg, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Southern Rhodesia, Sweden, Turkey, Union of South Africa, United Kingdom, the United States and Uruguay.

Liberia withdrew, June 13, 1953; Syria, August 6,

²⁹"International Trade Policy Issues," Chamber of Commerce of the United States, Washington, D.C., (February, 1953).

1951; Lebanon, February 25, 1951; and the Republic of China,
May 5, 1950.³⁰

³⁰"The GATT and Its Origin," The Congressional Digest,
Vol. 33, No. 1 (January 1954), p. 6.

CHAPTER II

PROCEDURES AND POLICIES DESIGNED TO FACILITATE WORLD TRADE

In establishing the organization of the General Agreement on Tariffs and Trade¹ the contracting parties voiced certain general aims as well as specific procedures by which the aims were to be realized. The general goals as stated were:

Conducting relations in the field of trade and economic endeavor with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods. It was felt by these contracting parties that contributions toward these objectives could be made by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.²

Under the existing provisional application of the general provisions of the GATT, the contracting parties are not required to amend existing domestic legislation or to draw up and enact new legislation in order to adhere to the

¹To be referred to in the following passages as GATT.

²The General Agreement on Tariffs and Trade, Department of State Publication 3758, Commercial Policy Series 124, released February, 1950, p. 1.

GATT. They are, however, required to refrain from enacting new legislation inconsistent with the GATT.³

General Provisions of GATT. General provisions under GATT are divided into three parts:⁴

Part I gives legal effect to the tariff concessions set out in the Schedules of the Agreement and, in addition, lays down the basic rule of nondiscrimination in tariff and customs matters generally.

Part II deals with barriers to trade other than tariffs, such as quotas, protective excise taxes, restrictive customs formalities and the like. The provisions of Part II are intended to prevent the value of tariff concessions from being impaired by the use of other devices. It also is intended to bring about the general relaxation of non-tariff trade barriers, thus assuring a further "quid pro quo" for the action taken with respect to tariffs.

Part III deals with procedural matters, and with other questions relevant to the Agreement as a whole. Included in Part III are: provisions defining the relationship between the Agreement and the proposed Charter for an International Trade Organization, provisions establishing the administration of the Agreement; and provisions for its entry

³"The GATT and Its Origin," The Congressional Digest, XXXIII (January, 1954), p. 6.

⁴The Department of State Bulletin, "Analysis of General Agreement on Tariffs and Trade," XVII (November 30, 1947), p. 1045.

into force, amendment and termination.

Tariff Concessions. Under GATT, initial negotiations for tariff concessions are conducted bilaterally on a product by product basis at conferences sponsored by the contracting parties. Ordinarily, each participating country negotiates on the basis of the principal-supplier rule, negotiating on any given import commodity with the country that has been, or gives promise of becoming, the principal supplier of that commodity. The understandings reached in the bilateral negotiations are then combined to form the respective schedules of tariff concessions that are set forth in the General Agreement.⁵

Any agreement reached in these bilateral negotiations between contracting parties to the GATT must immediately and unconditionally be extended to all other contracting members, where like products are concerned. This is the most-favored-nation clause and its purpose is to make certain that the tariffs applied by each party to GATT to products imported from the other parties will not be higher than the tariffs applied to the same products when imported from any other country. This clause is also to be applied with respect to "customs duties, 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,

⁵The Congressional Digest, op. cit., p. 6.

to the method of buying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation."⁶

Trade Preference Provisions. The GATT does not require the elimination immediately of established trade preferences. Examples of such preferences that were allowed to stand are the preferences in force exclusively between territories participating in the British Imperial and Colonial Preference System, the territories of the French Union, the United States and Cuba, and those between the colonial and metropolitan territories of the Belgian-Luxembourg-Netherlands Customs Union.⁷

Further handling of preferences by the contracting parties resulted in the amendment of the Agreement to provide an exception to the rule of most-favored-nation treatment in favor of preferences between countries formerly part of the Ottoman Empire and detached from it on July 24, 1923. The preferences in question here, however, must be approved by the contracting parties in accordance with the procedures provided for waiver of obligations in exceptional circumstances.

With respect to exceptional circumstance, "The contracting parties may waive an obligation imposed upon a

⁶Dept. State Publication 3758, op. cit., p. 2.

⁷W. A. Brown, Jr., The United States and the Restoration of World Trade, p. 251.

contracting party by the agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The contracting parties also by such a vote define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations."⁸

In addition to defining the area of permitted preferences, the GATT fixes maximum margins of preference that can be exceeded only through resort to the escape clause⁹ or through a waiver of obligations granted by the contracting parties acting jointly. This is accomplished partly by setting forth this maximum for certain products in the schedules themselves. In all other cases it is fixed by the following general formula:

The margin of preference on any product in respect of which preference is permitted. . . . shall not exceed:

(a) in respect of duties or charges on any product described in such schedule, the difference between the most-favored-nation rate and

⁸Dept. State Publication 3758, op. cit., pp. 57-58.

⁹The escape clause provides that concessions may be withdrawn or obligations suspended, if in view of unforeseen developments, they result in increased imports so substantial as to cause or threaten serious injury to home producers. There must, however, be consultation with the other affected countries either before or immediately after withdrawing the concession with a view to reaching agreement. If agreement is not reached, and the action is taken, the other parties affected by the action can then withdraw equivalent concessions. Article XIX, Emergency Action on Imports of Particular Products, The Dept. of State Bulletin, "Analysis of General Agreement on Tariffs and Trade," XVII (November 30, 1947), p. 1050.

preferential rates provided for therein; if no preferential rate is provided for the preferential rate shall . . . be taken to be that in force on April 10, 1947, and, if no most-favored-nation rate is provided for, the margin shall not exceed the difference between the most-favored-nation and preferential rates existing on April 10, 1947.

(b) in respect of duties or charges on any product not described in the appropriate schedule, the difference between the most-favored-nation and preferential rates existing on April 10, 1947.¹⁰

Earlier dates, agreed upon during the tariff negotiations, replace April 10, 1947 in the case of Australia, Canada, France, Syro-Lebanese Customs Union, South Africa, and Southern Rhodesia.

Sub-paragraph (b) of this formula is a fundamental feature of the Agreement. It is a customs commitment over and above those contained in the schedule. It binds against increase of all preferences granted by any contracting party and therefore in effect greatly expands the scope of the schedules so far as preferences are concerned.¹¹

The Schedule as Part of the Agreement. The schedules themselves are lists of tariff and preference concessions which are incorporated in the Agreement, one for each signatory. These schedules do not show the country with which any particular concession was initially negotiated. They represent the entire preference and tariff negotiations in their final outcome and list the sum total of the

¹⁰Dept. of State Publication 3758, op. cit., p. 3.

¹¹Brown, op. cit., p. 252.

concessions that the country to which the schedule applied granted to all the others.¹²

William A. Brown, Jr., to whom reference has previously been made, states that "the most important and central provision of the General Agreement (Article II, 1(a))" is involved in the annexed list of schedules. This provision reads as follows: "Each contracting party shall accord to the commerce of the other contracting parties treatment no less favorable than that provided for in the appropriate schedule annexed to this Agreement."¹³ This has the effect of putting the schedules into force. Under this provision "each party to the Agreement is contractually entitled, in its own right, and independently of the most-favored-nation clause, to enjoy each of the concessions in the schedules of the other negotiating countries."¹⁴

Article II which incorporates, as a legal and integral part of the Agreement, the tariff concessions set forth in the schedules, also makes certain other rather general provisions which specify that products listed in the schedules will not be subject to any ordinary customs duties higher than those specified in the schedules, and in addition will not be subject to any supplementary charges on importations

¹²Brown, op. cit., p. 243.

¹³Dept. of State Publication 3758, op. cit., p. 4.

¹⁴United States Dept. of State, "Analysis of General Agreement on Tariffs and Trade," Publication 2983, Commercial Policy Series 109 (November 1947), p. 2.

higher than those in force on October 30, 1947.

Article II also safeguards the tariff concessions against adverse changes in method of tariff valuation or currency conversion; against changes in tariff classifications; and against unwarranted increases in rates of specific duties in the event of currency depreciation.¹⁵

National Treatment of Imported Products. As a further means of fostering the development of international trade the contracting parties to the Agreement provided in Article III that members are to accord national treatment, as well as most-favored-nation treatment, in matters governing the sale or distribution of imported products. That is, they are under obligation not to impose internal taxes or internal charges of any kind on the imported products of any other member in excess of those applied directly or indirectly to the like products of national origin. Members to the Agreement also must allow imported products to be sold, offered for sale, produced, and transported under laws and regulations as favorable as those applying to like domestic products. Two exceptions to this rule are: (1) The Agreement states that it does not apply to products purchased for government use which are not for commercial resale and (2) it does not operate to prevent the payment of subsidies to

¹⁵The Department of State Bulletin, XVII, (November 30, 1947), p. 1046.

domestic producers.¹⁶

Valuation of Products for Customs Purposes. The GATT recognizes that definitions of value for customs purposes should be standardized and that it is desirable to have uniform procedures for customs valuation purposes. To achieve uniformity in valuation Article VII sets forth four principles: (1) The value for customs purposes of imported products should be based on actual value.¹⁷ (2) The price to be considered for customs purposes should be related to comparable quantities whenever the price of merchandise is governed by the quantity in a particular transaction. (3) The bases and methods for determining the value of products should be stable and publicly known. (4) The rates of exchange used in connection with customs valuation should as a general rule be those established by the International Monetary Fund. Where no par value has been established between currencies under the Articles of Agreement of the International Monetary Fund, the conversion rate is supposed to effectively reflect the current value of such currency in commercial transactions.¹⁸

¹⁶Brown, op. cit., p. 252.

¹⁷"Actual value" is defined as "the price at which, at a time and place determined by the legislation of the country of importation and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. Dept. of State Publication 3758, op. cit., p. 16.

¹⁸Ibid., p. 17.

Elimination of Quantitative Restrictions. Another major consideration of the contracting parties dealt with facilitating commercial transactions through the elimination of quantitative restrictions. With this end in view Article XI of the Agreement contains the general prohibitions against quotas and sets forth certain permanent exceptions. The most important of these exceptions would permit the imposition of an import quota on a foreign agricultural product if the production or consumption of the like domestic product is also subject to restriction in equal degree. The purpose of this exception is to allow the establishment or continuation of governmental controls over agricultural production which are necessary to prevent heavy surpluses of farm products and drastic price declines.

Other permanent exceptions permit quantitative restrictions which are necessary to enforce standards and grades, to relieve critical shortages of foodstuffs, such as are caused by famines, and to assist in surplus disposal programs having a relief character.¹⁹

In relation to this provision on the general elimination of quantitative restrictions the Agreement takes account of the situation whereby a country does not possess enough foreign exchange to pay for all of the imported goods that its population would normally purchase and consume.

¹⁹The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1047.

Recognition is made that such a country may have to limit the overall volume of imports by means of quantitative restrictions, thus conserving foreign exchange for the purchase of imported goods which are most essential to the economy.

Balance of Payments Problems and Quantitative Restrictions. Rules are laid down to assure that quantitative restrictions permissible for balance of payments reasons will not be used for other purposes or under other circumstances. The basic rule is that restrictions may not be resorted to unless necessary "to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves."²⁰

Balance of payment restrictions maintained at the time the GATT went into force must be gradually relaxed as the country's reserve position improves and must be completely eliminated when the reserve position no longer justifies their maintenance.²¹

If any party to the Agreement considers that another party is applying balance-of-payments restrictions contrary to the rules, it may file a complaint with all of the parties to the Agreement acting in their joint capacity. If the complaint is justified, in the eyes of the contracting

²⁰Dept. of State Publication 3758, op. cit., pp. 23-24.

²¹The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1048.

parties, they may recommend the relaxation of the restrictions or their removal. If this recommendation is not complied with in sixty days the contracting parties may authorize any party to withdraw tariff or other concessions from the party maintaining the restrictions contrary to the rules.

Countries not applying balance-of-payments restrictions but which are considering the need to do so are required to consult the contracting parties either before or immediately after taking such action. The purpose of the consultation is to discover the nature of the balance-of-payments problem, to see whether some measure other than trade restrictions might solve the difficulty, and to estimate the effect of the restrictions on the economies of other parties to the Agreement. The contracting parties acting jointly may give their advance approval to restrictions applied under specified circumstances and conditions.²²

The members of the Agreement also recognize that premature disclosure of the prospective application, withdrawal or modification of any restriction, with respect to safeguarding balance-of-payments, might stimulate speculative trade and financial movements which would tend to defeat the purpose of the prospective action. With this possibility in view the signers of the Agreement agreed that there should be observance of the utmost secrecy in the conduct of any

²²Ibid., p. 1048.

consultation.²³

Discriminatory Use of Quantitative Restrictions. Further consideration of the use of quantitative restrictions was dealt with by the contracting parties in the light of attempting to make certain that such restrictions were not applied in a discriminatory manner. The Agreement requires that any restrictions applied to imports from, or exports to, any party to the Agreement must also apply to imports from or exports to, all other countries. Whenever restrictions are applied, they should preferably take the form of published quotas specifying the amount or value of the particular products involved which will be permitted to be imported during a specified future period. If this is not practicable, import licenses or permits without a quota may be used. These licenses may not require or provide that the goods be imported from a particular country or source. If a quota is allocated among foreign countries or sources of supply, the allocation is to be made so as to reflect the shares which the various parties to the Agreement would probably have supplied if the quota had not been allocated. With this end in view, the country applying the quota may either (a) seek agreement among all the parties to the Agreement which are suppliers of the commodity as to the fair allocation of the quota, or (b) allocate the quota on the basis of

²³Dept. of State Publication 3758, op. cit., p. 27.

imports during a previous representative period prior to the establishment of the quota.²⁴

One clause in the Agreement dealing with non-discriminatory administration of quantitative restrictions, which has not been put into force for all contracting parties, states that the provisions relating to this topic are to apply to any tariff quota instituted or maintained by any contracting party and insofar as applicable the principles are also to extend to export restrictions.²⁵

Safeguards Against Discrimination. Even though the Agreement places emphasis on the non-discrimination rule, recognition is given to the fact that a country in balance-of-payments difficulties may sometimes be able to conserve its monetary reserves, by purchasing more than the normal share of imports from particular foreign countries.

The contracting parties to the Agreement feel that departures from the rule of non-discrimination, though they may be justified to some extent, are dangerous in practice. They can conceivably lead to bilateral deals designed to obtain preferential markets rather than solve financial problems. The Agreement therefore sets out the following safeguards to keep discrimination within bounds and eventually to place trading on a fully multilateral,

²⁴The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1048.

²⁵Dept. of State Publication 3758, op. cit., p. 30.

non-discriminatory basis.²⁶

1. Discriminations based on financial considerations must result in larger imports, and cannot be employed merely to divert trade from one source of supply to another.

2. The prices paid for goods imported under discriminatory restrictions cannot be substantially higher than the prices of like goods available from other sources. This limits the scope of discrimination and minimizes its harmful effects.

3. The discrimination cannot be part of any arrangement which would reduce the country's supply of gold or convertible currencies. This is aimed at bilateral barter deals having preferential rather than monetary ends in view.

4. Import programs involving discrimination must ultimately be directed to the goal of eliminating balance-of-payment difficulties and achieving the full convertibility of currencies.

5. Countries practicing discrimination must keep the contracting parties regularly informed of what they are doing and, after March 1, 1952, must obtain the approval of the contracting parties if they are to continue the practice.

6. The contracting parties can at any time require a country to remove discriminations which do not meet the criteria set out above.

²⁶The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., pp. 1048-1049.

7. If the contracting parties consider at any time that there is no longer a widespread disequilibrium in international trade, they may completely suspend the operation of this exception to the general rule against discrimination.

In addition to the above provisions there are certain other exceptions to the rule of non-discrimination. Some of these are technical, being necessary to carry out the provisions under Article XIV of the Articles of Agreement of the International Monetary Fund.²⁷ Other provisions involve temporary arrangements permitting the maintenance of preferential import quotas by the United Kingdom on several specific products pending their complete elimination by negotiation or their replacement by tariff preferences.²⁸

Rules Governing Exchange Restrictions. Still further consideration of restrictions by the contracting parties was

²⁷Article XIV of the Articles of Agreement of the International Monetary Fund recognizes that in post-war transitional period members of the Fund may have to use restrictions on payments and transfers for current international transactions. These measures are, however, to be abandoned as soon as possible with the goal in view being that of exchange stability. Three years after the Fund begins operations, and annually thereafter, the Fund is to report on restrictions still in force. Five years after operations start, and annually thereafter consultations with any member maintaining restrictions are provided for. The Fund may also make representations to any member concerning the withdrawal of any particular restriction or the general abandonment of restrictions. George N. Halm, International Monetary Cooperation, pp. 290-291.

²⁸The Dept. of State Bulletin, XVII, (November 30, 1947), op. cit., p. 1049.

taken into account by rules, formulated under Article XV, designed to make sure that countries will not circumvent rules regarding quantitative restrictions by resorting to exchange controls having the same effect on trade. With this end in view it is provided that parties to the GATT shall either become members of the International Monetary Fund (which lays down agreed international rules governing the use of exchange controls and techniques) or else enter into a special exchange agreement with the contracting parties containing mainly the same safeguards as the Fund Agreement. In any case contracting parties are not supposed to "frustrate the intent of the provisions" of the Agreement by exchange action nor the intent of the provisions of the Articles of Agreement of the International Monetary Fund by trade action. At the same time the Agreement also states that:²⁹

- (a) Nothing in this Agreement shall preclude: the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with the contracting party's special exchange agreement with the contracting parties, or
- (b) the use by a contracting party of restrictions or controls on imports or exports, the sole effect of which. . . ., is to make effective such exchange controls or exchange restrictions.

In all cases where the members of the Agreement are called upon to handle balance-of-payments restrictions, they

²⁹Dept. of State Publication 3758, op. cit., p. 36.

are required to consult with the International Monetary Fund. They must also accept the determination of the Fund as to what constitutes a "serious decline" in a country's monetary reserves, a "very low level" of monetary reserves, or a "reasonable rate of increase" in monetary reserves. These are the basic criteria for determining whether a country is entitled to use import restrictions to safeguard its balance-of-payments.³⁰

Additional Exceptions to Nondiscriminatory Trade Measures. While the Agreement sets up the various rules and regulations applying to quota, quantitative, exchange, and balance of payment restrictions, it recognizes, too, that the state of a country's economy or at least certain industries in the country may be cause for further exceptions to the use of nondiscriminatory trade measures.

If a member of GATT wishes to adopt a nondiscriminatory trade measure, otherwise forbidden by the Agreement, pertaining to a product in the country's schedule of tariff concessions, it must enter into and reach substantial agreement with all interested contracting parties. The appropriate Schedules to the Agreement will then be amended in accordance with any agreement reached. The member seeking the change may in the event of failure to reach agreement apply to the contracting parties acting as a group for

³⁰The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1049.

direction or the member may institute initial proceedings in this manner if it is deemed desirable. It is the responsibility of the members as a group, if so appealed to, to determine the member or members affected by the proposed action and to sponsor negotiations between these members and the party seeking the change. When and if the negotiations reach agreement the party seeking the change may be released by the contracting parties to the Agreement from its previous commitment.

In the event it is deemed necessary for a member to adopt a nondiscriminatory measure which conflicts with the provisions of the Agreement other than those negotiated under the Schedules of tariff concessions, the member desiring the change must present a written statement to all other members supporting the necessity for such change and the period of time for its proposed use.

If permission is granted for use of the proposed measure over a certain period of time, with regard to the applicant's economic need for development or reconstruction, it must be established that the measure:³¹

- (1) is designed to protect a particular industry established between January 1, 1939 and March 24, 1948, which was protected during that period of its development by abnormal conditions arising out of the war; or
- (2) is designed to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity,

³¹Dept. of State Publication 3758, op. cit., pp. 41-42.

when the external sales of such commodity have been materially reduced as a result of new or increased restrictions imposed abroad; or (3) is necessary. . . to promote the establishment or development of a particular industry, for the processing of an indigenous primary commodity, or for the processing of a by-product of such industry, which would otherwise be wasted, in order to achieve a fuller and more economic use of, the applicant contracting party's natural resources and manpower and, in the long run to raise the standard of living within the territory of the applicant contracting party. . . . (4) is unlikely to be more restrictive of international trade than any other. . . measure permitted under this Agreement. . . and is the one most suitable for the purpose having regard to the economics of the industry or branch of agriculture concerned and to the applicant contracting party's need for economic development or reconstruction.

With the application of any measure restricting imports under the above stipulations it is required that the country applying the restriction must do so in such a way as to avoid unnecessary damages to the commercial or economic interests of any other members of the Agreement.

Restrictions Related to Economic Development. Stipulations concerned with restrictions made in connection with economic development state that countries which had particular measures of economic development in operation on September 1, 1947 may continue them pending their examination by the members of the Agreement, subject to three main conditions. First, no such measure may continue in respect of any product listed in the appropriate Schedule of tariff concessions. Second, the measure concerned must have been

revealed to all of the prospective parties to the Agreement prior to October 10, 1947. In addition, each product on which the measure is to be applied must be listed along with the exact nature and purpose of the measure. Third, all such measures must again be submitted to members for their consideration with the purpose of either approving or disapproving within one year from the day the country in question becomes a party to the Agreement.³²

Trade Control Measures Pertaining to National Security. In addition to trade control measures adopted to provide adjustments in line with economic development, the Agreement recognizes that there may be need for certain trade control measures in line with maintaining national or international security.

In essence any member of the Agreement is permitted to withhold furnishing or publicizing any information the disclosure of which would be considered contrary to essential security interests. Any party may also take action which it considers necessary for the protection of security interests relating to fissionable materials, to the traffic in arms, ammunition and implements of war, or taken in time of war or other emergency in international relations. Neither is anything in the Agreement to be construed as preventing any contracting party from taking any action in

³²Ibid., p. 45.

carrying out its obligations for the maintenance of international peace and security under the United Nations Charter.³³

Nullification, Impairment, and Withdrawal Procedures.

With the explicit provisions mentioned in the previous material the contracting parties to the Agreement have apparently tried to cover what could probably be classed as things that are considered basic in international commercial relations. Having attempted to set down a basic set of rules for effective functioning of international trade, as nearly as possible on a multilateral basis, they also realized they could not hope to provide specifically for every contingency that might arise. With this realization in mind the members have provided, in Articles XXII and XXIII, for consultation between the parties to the Agreement. This consultation is to be carried on with respect to "all matters affecting the operation of the Agreement and for procedures to be followed in the event that any measure should be taken, even though not prohibited by the Agreement, or any situation should arise, which would have the effect of nullifying or impairing the benefits or objectives of GATT."³⁴ In the case of measures or developments tending to nullify or impair the Agreement, any member may require

³³Ibid., p. 50.

³⁴The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1050.

the other parties concerned to consult with it with a view to reaching a satisfactory adjustment. If an agreement cannot be reached the problem may be referred to the entire membership of GATT. The entire group may, if deemed necessary, consult with the members concerned over the developments in question and, in addition, they may consult with the Economic and Social Council of the United Nations or with any appropriate inter-governmental organization.³⁵ If the circumstances seem serious enough to warrant the action, the contracting parties may authorize a particular party to suspend the application of any provision of the Agreement, either generally or in respect of particular countries. If an obligation or concession is suspended, any party affected by such action is free, "not later than sixty days after such action is taken, to advise the Secretary-General of the United Nations in writing of its intention to withdraw from the Agreement and such withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of such withdrawal is received by him."³⁶

In addition to the previously mentioned procedure regarding action of a party affected by withdrawal of concessions the Agreement provides methods of procedure related to such things as application of the Agreement to customs territories, periodic meetings by the members, acceptance

³⁵Dept. of State Publication 3758, op. cit., p. 51.

³⁶Ibid., pp. 51-52.

and adherence to GATT, withholdings and withdrawing of concessions, modification of Tariff Schedules, amendment of the Agreement, and procedure for withdrawal.

Customs Territories Under the Agreement. A customs territory is defined as "any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories."³⁷ The Agreement applies to the metropolitan customs territories of the contracting parties and to any other territories for which the parties as individuals may have international responsibility. However, provision is made that any government accepting the Agreement may specifically state that its acceptance does not apply to the separate territory for which it has responsibility and that the area in question has full autonomy in its commercial relations. On the other hand, if any territory on behalf of which a contracting party has accepted the Agreement, acquires full autonomy it may become a contracting party upon sponsorship through a declaration by the responsible member establishing the autonomous position.³⁸

Consideration is also given to customs matters by making it possible within the provisions of the Agreement to develop customs unions and free trade areas. Permission

³⁷Ibid., p. 53.

³⁸Ibid., p. 97.

for such developments is restricted to the extent that duties and other regulations imposed by unions and free trade areas are not higher or more restrictive, on the whole, than the duties or commercial regulations that were applied by the members prior to the formation of the union or free trade area. In the event an interim agreement is established between governments for the purpose of forming a customs union or free trade area, the Agreement provides that this interim instrument shall include a plan and schedule for the formation of the union or free trade area within a reasonable length of time.³⁹ Provision is made that any contracting party deciding to enter into a customs union or free trade area, or an interim agreement leading to such a formation, must immediately notify the contracting parties to the Agreement and give them such information as will enable them to consider the proposed union or area for purposes of making reports and recommendations that seem appropriate.

Arrangements for Periodic Meetings. With the realization that joint action on many problems will be necessary the Agreement provides for periodic meetings to be arranged in order to facilitate the operation of the Agreement in its entirety and in particular to give effect to provisions involving joint action. At these meetings each member is allowed one vote and unless otherwise specified in the

³⁹Ibid., p. 53.

Agreement decisions are made by a majority of the votes cast. Where exceptional circumstances arise that are not covered elsewhere under the GATT, the members may waive an obligation imposed on another member by a two-thirds majority of the votes cast in favor of the decision. However, the majority must make up more than half of the contracting parties to GATT. Such a vote as that just described may also define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations.⁴⁰

Acceptance and Adherence to GATT. To carry out action within the framework of GATT or to be subject to action carried out within the Agreement a government accepting the provisions, as set down, must deposit a formal instrument of acceptance with the Secretary-General of the United Nations. The Secretary-General is supposed to inform all interested governments of the date of deposit of each instrument of acceptance. This indication of acceptance is effective on the thirtieth day following the day on which it was deposited.

Withholding and Withdrawing Concessions. If a government should accept the Agreement and then withdraw, any other contracting party to GATT is free to withhold or withdraw in whole or in part any concession provided for in the

⁴⁰Ibid., pp. 57-58.

Schedule of tariff concessions which was initially negotiated with the government that has withdrawn. The same stipulation holds true in the event certain concessions have been negotiated with a government which never did become a contracting party to GATT. Correct procedure also requires that the member withholding or withdrawing a concession must give notice to all other contracting parties that have a substantial interest in the products or product concerned.⁴¹

Modification of Concessions. Somewhat in line with the withholding and withdrawing of concessions under the Tariff Schedules is the procedure related to the modification of concessions negotiated under these same Schedules. This provision relating to modification of the Schedules was "designed to introduce a measure of flexibility so as to facilitate any needed adjustments of tariff rates after an initial period of three years."⁴² After January 1, 1951, any party which has granted a concession on a product is allowed to modify that concession by obtaining the agreement, not of all the parties, but only of that party with which the initial negotiation was made. Other parties deemed to have a substantial interest in the proceedings must also be consulted. The determination as to which countries have a substantial interest is to be made by contracting parties

⁴¹Ibid., p. 60.

⁴²The Dept. of State Bulletin, XVII (November 30, 1947), op. cit., p. 1051.

to the Agreement acting in their group capacity. If agreement on the proposed change cannot be reached, the country wishing to make the change may proceed to do so. In this event the government with which the concession was initially negotiated, and such other parties as have an interest, may withdraw equivalent concessions initially negotiated with the member taking the action.

For the protection of countries not entitled to claim that they were initial negotiators of a concession, provision is made that if such a contracting party is dissatisfied with a modification or withdrawal it may withdraw substantially equivalent concessions initially negotiated with the country taking such action.⁴³

In any event the retaliatory withdrawal of concessions taken against a party initiating modifications must be taken within six months after the modification. The retaliatory withdrawals become effective upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the members of the Agreement.⁴⁴

If there is no disagreement in regard to the proposed change in a concession the parties concerned are supposed to "endeavor to maintain a general level of reciprocal and mutually advantageous concessions not less favorable to trade than that provided for in the present

⁴³Ibid., p. 1051.

⁴⁴Dept. of State Publication 3758, op. cit., p. 61.

Agreement."⁴⁵

Amendment of GATT. Where no specific modification procedure, as that just described, governs action the Agreement does provide a generalized approach for amending its text. The procedure specified states that amendments to Part I of the Agreement, relating to Tariff Schedules, may not be made effective until accepted by all the contracting parties. Other amendments become effective for those members that accept them, when they have been approved by two-thirds of the contracting parties.

Any contracting party that accepts an amendment to the Agreement is required to deposit an instrument of acceptance with the Secretary-General of the United Nations. This instrument must be deposited within a certain specified period which will be determined by the entire membership of GATT. The members acting in their joint capacity, may decide that any amendment made effective under this generalized approach to amendment is of such a nature that any member not accepting it within a certain period of time, specified by the contracting parties, will be free to withdraw from the Agreement.⁴⁶ However, the party not accepting the amendment may remain a contracting party with the special consent of the other members of the Agreement.

⁴⁵Ibid., p. 61.

⁴⁶Ibid., p. 63.

Withdrawal Procedure. The specific provision dealing with withdrawal from the Agreement provides that any member may, on or after January 1, 1951, withdraw on its own behalf or on behalf of any customs territory for which it has international responsibility and which possess full autonomy in its external commercial dealings. The withdrawal takes effect after the expiration of six months from the day on which written notice of the intention is received by the Secretary-General of the United Nations.⁴⁷

Accession to GATT. A government that wishes to accede to GATT in its own right, or on behalf of a separate customs territory having autonomy in its external commercial relations, may do so on the basis of terms agreed to between the government and the contracting parties. Under these circumstances decisions of the contracting parties are made by a two-thirds majority.⁴⁸

In connection with the provision regarding accession it has been pointed out that the contracting parties as a group retain "the right to be the judges as to whether or not the results of future tariff negotiations which they carry out with other governments are to be considered sufficiently comprehensive to meet the standards set in the Geneva negotiation and to justify the adherence of these

⁴⁷Ibid., p. 63.

⁴⁸Ibid., p. 64.

governments to the General Agreement."⁴⁹

These provisions governing accession were first applied in practice at the Annecy negotiations.⁵⁰ Here it was agreed that each contracting party should sign a protocol or a series of protocols indicating willingness to accept each acceding government as a new member to GATT. The acceptance was conditional on the acceptance by acceding governments of the tariff commitments negotiated at Annecy and of the obligations of the General Agreement. When sixteen contracting parties had signed the protocol affecting one of the acceding governments, a two-thirds vote would have, in effect, been cast in favor of admitting it to the GATT. It was also arranged that each acceding government should sign a protocol containing its own schedule as negotiated at Annecy and a commitment accepting the General Agreement as amended and all terms of the Geneva Protocol of Provisional Application. The final step in the procedures as outlined at Annecy, involved notification of the Secretary-General of the United Nations, by the contracting parties, that they had added to their own schedules the items they had negotiated with the acceding governments.

With these steps completed, the new schedules and the additions to old schedules would become part of Article II of the GATT, and the acceding governments would become

⁴⁹Brown, op. cit., p. 260.

⁵⁰Referred to in Chapter I, p. 13.

contracting parties. All contracting parties, old and new, would be on the same footing except in cases where some old contracting parties had not accepted some of the amendments to the Agreement.⁵¹

Thus with the establishing of these provisions for accession, at Annecy, certain procedural precedents were set up to serve as a guide for taking in future prospective members.

⁵¹Brown, op. cit., pp. 260-261.

CHAPTER III

AN APPRAISAL OF THE GENERAL AGREEMENT ON
TARIFFS AND TRADE

In attempting to analyze the impact of GATT on World trade one of the most important areas for consideration is that involving the field concerned with tariff negotiations.

The GATT countries have met a number of times and initiated tariff negotiations which were gradually promoted from a bilateral to a multilateral level.¹ This effort to put tariff concessions on a multilateral basis is regarded by those in favor of freer world trade as an important step forward in the fight for reduction of trade barriers. According to a report of the Interim Committee for the International Trade Organization, multilateral tariff bargaining "has produced a technique whereby governments in determining the concessions they are prepared to offer, are able to take into account the indirect benefits they may expect to gain as a result of simultaneous negotiations between other countries, and whereby world tariffs may be scaled down

¹GATT meetings for the purpose of tariff negotiations have been held at Geneva, Switzerland from April 10, 1947, to October 30, 1947; Annecy, France, from April to August 1949; and Torquay, England, from September 28, 1950 to April 21, 1951.

within a remarkably short time."²

Bargaining proceeded on a selective basis, product-by-product, between pairs of exporting and importing countries and 123 negotiations during the period April 10, 1947 to October 30, 1947. The reductions and bindings of customs duties are contained in twenty schedules with some 45,000 tariff items relating to about one-half of world trade. These schedules are an integral part of GATT.

At Annecy, France, the negotiations that were held from April to August of 1949 produced 150 new tariff agreements and added eleven new schedules to previous ones. Another conference was opened at Torquay, England, in September 1950 at which 147 successful bilateral negotiations took place and about 8,800 tariff concessions were granted. The consolidated schedules of all three conferences apply to some 58,800 classifications of items entering into the trade of some thirty-eight countries which among them account for over 80 per cent of world imports and exports. Much greater results would have been achieved had it been possible to overcome the tariff conflict between the United States and the British Commonwealth. The United States asked for larger reductions in Imperial Preferences than the Commonwealth countries were prepared to grant while the latter asked for

²Charles H. Alexandrowicz, International Economic Organizations, p. 171, referring to a publication entitled The Attack on Trade Barriers published by the Interim Committee for the International Trade Organization at Geneva, August, 1949.

larger cuts in American tariffs than the United States Administration, for fear of Congress, dared to concede. However, all the participating countries declared that they would abide by the agreements signed at Geneva, Annecy, and Torquay until January 1, 1954 which is "a remarkable contribution to tariff and trade stability for a period of three years."³

With the approach of the January 1, 1954 deadline the contracting parties at their eighth session in Geneva in the fall of 1953, agreed to a proposal to extend for eighteen months beyond January 1, 1954, a provision that binds tariff concessions made by member countries, except in cases involving individual withdrawals under the escape clause.⁴

The New Plan for 30 Per Cent Reduction of Tariffs. In spite of the gains made toward reducing tariff barriers through bilateral negotiation extended on a multilateral basis, there was some feeling, even as far back as the Torquay Conference that this method of negotiating tariff reductions had yielded its best results and that the time had come to search for new techniques.⁵

Plans for a new method to reduce tariffs by 30 per cent over a period of three years are outlined in a recent publication issued by the contracting parties to GATT under

³Ibid., pp. 171-172.

⁴Strength at Home, The American Tariff League, Inc., Publication No. 135, March, 1954, p. 17.

⁵"Scheme for 30 Per Cent Cut in Customs Tariffs," United Nations Bulletin, Vol. XVI (February 15, 1954), p. 169.

the title "A Proposal for the Reduction of Customs Tariffs."

One of the principal reasons for the need to find a new approach to tariff reductions lay in the weak negotiating position of the countries with relatively low tariffs. Some countries had entered the first round at Geneva in 1947 with a low tariff level. At Geneva and at Annecy these countries held constant a large number of their rates against increases. This was in accordance with the accepted rule that the binding of a low duty or duty-free treatment would be recognized as a concession equivalent in value to the substantial reduction of a high duty.⁶ At Torquay these countries considered that the renewed binding of their tariffs should be accepted as a concession equivalent to further reductions in the higher tariffs of other countries.

When they came to negotiate, however, they found that the high-tariff countries were not prepared to make further reductions merely in return for a rebinding of low rates. Since the low-tariff countries could not offer sufficient concessions to induce other countries to make reductions in high rates of duty on items of particular interest to them, the negotiating procedures offered no prospect of obtaining reductions in the duties which were a serious obstacle to their exports. Efforts have accordingly been made since the close of the Torquay Conference to find new methods of reducing tariffs by collective action under the

⁶Ibid., pp. 169-170.

General Agreement.

The new plan for an agreement among governments to reduce their tariff levels by 30 per cent in three years is the outcome of a French proposal. At the eighth session of the Contracting Parties in October, 1953, the plan was further elaborated by a committee of experts and was presented as technically possible.⁷

Under the new plan, in place of bilateral negotiations between countries on a product-by-product basis aimed at a strict balance of concessions, there would be an obligation on all participating governments to reduce the protective incidence of their tariffs in accordance with a common standard.

The new plan still embodies the idea of mutual advantage. The balance of any particular country is measured not by setting off specific concessions obtained against specific concessions granted, but by setting of the overall reductions made by it under the common standard against the overall reductions made by others under the same standard.⁸

Another feature of the plan is that it requires efforts proportionate to each country's tariff level. Finally, it provides an additional obligation to reduce individual rates of duty which exceed given levels.

Belgium, Denmark, France, the Federal Republic of

⁷Ibid., pp. 169-170.

⁸Ibid., p. 170.

Germany, and the Netherlands have indicated their support of the plan in principle. However, it is realized that this plan cannot be brought into operation unless all the main trading countries of Europe and North America accept the idea. It has been submitted to governments for study in an attempt to get them to state their views during 1954. The contracting parties to the Agreement will then decide whether the plan provides an acceptable basis for agreement.

The Operation of the Tariff Plan. Operation of the plan would require each participating government to undertake to reduce the average incidence of its customs tariffs in a base year by 30 per cent, in stages of 10 per cent in each of three successive years.⁹

Governments, however, would not be required to reduce every tariff rate by this amount, for within certain limits they would be free to choose the items on which to make reductions. The reductions, however, would have to be reduced throughout the tariff and concentrated in no particular part of it. This would ensure that the benefits would accrue to all supplying countries, even to one whose interest might be limited to products of a certain class. To achieve that object, the tariff would be divided into sectors covering broad categories of related products, such as primary foods, products of the chemical industry, etc., and the 30 per cent

⁹Ibid., p. 170.

reduction would be applied to each sector.

A reduction of less than 30 per cent would be required of countries with comparatively low duties. Each participating government would undertake the further obligation to reduce all duties which exceed certain upper limits.

Governments would also be free to select the items in each sector of goods on which to make reductions and to determine the degree of reduction for each item. The method of effecting the reductions would be left to the discretion of each government. Finally, no government would be obliged to make reductions on the same items in each of the three years; that is, a rate of duty which is reduced in the first year would not need to be further reduced.¹⁰

The plan also acknowledges the need of less advanced economies to grant tariff protection to newly-established industries. Governments of under-developed countries which elect to be governed by special rules would not be required to make duty reductions on products included in their development programs. The right to exclude any particular product from the operation of the plan would be granted for a fixed period of time. For these countries the average incidence of duties would be computed on the tariff as a whole instead of by sectors so that they would have ample freedom in the selection of items for the application of the percentage reduction. The same advantages would be available to over-

¹⁰Ibid., p. 170.

seas customs territories of industrialized countries which are recognized as being in the process of economic development.

Provision is made, too, for excluding certain items from the operation of the plan. Governments would be permitted to exclude duties which are imposed for the purpose of raising revenue rather than to afford protection to domestic production. In addition, they could exclude duties on goods imported mainly from countries which do not participate in the plan.

It is proposed that the plan should operate in the first instance for a period of five years. Reductions would remain in force until the end of that period. There is, though, an escape clause under which certain exceptions to this rule could be allowed.

If this plan appears to be acceptable as a basis for action, it will be referred to a governmental conference.¹¹

A Summary of GATT's Handling of Tariff Problems. In summarizing the accomplishments of GATT with respect to tariffs, it must be acknowledged that tariffs have been lowered significantly. The number of items covered by tariff negotiations is impressive. Large scale reduction in tariffs that occurred from 1947 to 1951 can be attributed to the

¹¹Ibid., p. 170.

following factors:¹² (1) The existence of the sellers' market in internationally traded goods made it easier to gain consent to the reductions in duties. The sellers' market was created by the war-deferred demand for goods coupled with the shortage of adequate production facilities. (2) Many duties were high enough so that substantial reductions could be granted without seriously impairing their protective effect.

By the time of the Torquay sessions, increased seller competition accounted for reduced enthusiasm for tariff cuts and bindings as compared with Geneva. In the Torquay conference some representatives argued successfully that a low tariff bound for three years was an important concession and should be matched by reductions in higher duties.¹³ Although the percentage of world trade handled by GATT signatories leaves only about 20 per cent to non-GATT countries, the contracting parties themselves reported after the Torquay meetings that, "the achievement of the General Agreement in the field of trade must be considered modest so far."¹⁴ The

¹²Wytze Gorter, "GATT After Six Years: An Appraisal," International Organization, VIII (February, 1954), 12.

¹³Ibid., p. 12, citing Interim Commission for the International Trade Organization at the request of the Contracting Parties to GATT, Liberating World Trade, Second report on the Operation of the GATT (Geneva: June, 1950), p. 9.

¹⁴Ibid., p. 12 citing the Interim Commission for the International Trade Organization at the request of the General Agreement on Tariffs and Trade, GATT in Action, Third Report on the GATT (Geneva: January, 1952), p. 8.

Korean war was blamed for the slowing down of progress made by the Agreement in the field of trade. The contracting parties felt that previous to this conflict much headway had been made.

As has been previously mentioned, attempts to reduce duties further also floundered due to preferential tariff systems. A good example of such a system is the one applying to the British Commonwealth. Tariff arrangements of this kind seem particularly difficult to eliminate not only because of the special interests that have been created by the protection thus afforded, but because these preferences often encourage trade between soft-currency countries while discouraging their trade with hard currency nations.¹⁵ Another factor for consideration on this point is that with a persistent dollar shortage troubling many nations, there is a natural reluctance to adopt any measure that threatens to increase the drain on international financial reserves.

However, the contracting parties to GATT have made some progress in dealing with the elimination of tariff preferences. They have agreed that no new, or increase in existing preferences shall be permitted.¹⁶ There are also rules

¹⁵Ibid., p. 13.

¹⁶Ibid., p. 13. This agreement was modified at the latest session of the signatories. The United Kingdom received approval of its proposal for permission to increase unbound duties on imports from foreign countries while continuing to permit their free entry from Commonwealth countries. This will increase the margin of preferences only if the increase in duty on foreign imports will not ". . . cause substantial diversion of trade from foreign to commonwealth suppliers. . . ." and may not increase preferential margins in this

to the effect that a reduction in a most-favored-nation rate having the effect of reducing the margin in favor of a preferential rate cannot be considered as constituting discrimination against the country enjoying the preferential rate.

The problem of reducing tariffs has probably been made somewhat easier by a tendency in recent years of various governments to replace tariffs with exchange controls and quantitative restrictions as devices used in national economic planning. In addition, the doctrine of the advocates of free trade, especially in the United States, seems to have had some effect now that many of the large mass-production industries in the United States have found foreign sales hampered by lack of dollar exchange. In addition, the extensive discussions of the "dollar shortage" coupled with the federal expenditures on foreign aid have given the exporters valuable allies from the ranks of those favoring lower government expenditures and taxes. In spite of these indications in favor of lower tariffs, protectionist sentiment remains strong in some regions and industries. There is a strong belief by many observers that the political appeal of tariff protection is sufficiently great to thwart any legislation to reduce tariffs sharply or quickly.¹⁷

manner if the imports from the Commonwealth countries are not already entering the United Kingdom duty-free. International Trade News Bulletin, Vol. III, No. 10 (October, 1953), p. 408.

¹⁷Ibid., pp. 16-17.

If the United States was to lower its tariffs the situation undoubtedly would be welcomed by the rest of the world which is still troubled with a balance of payments, disequilibria, particularly with the dollar area. Though this might not solve the "dollar shortage" it would certainly help.

However, if the United States should sharply reduce its tariff the rest of the world would require at least two assurances before reducing barriers such as duties and quantitative restrictions.¹⁸ It would need assurance that (1) the tariff reductions would not be cancelled and replaced by higher duties. (2) If the first assurance were given, there would have to be further guarantees that the United States was bound to a policy of maintaining a high level of income and employment and hence only a small range of business fluctuations. Any indications that the economy of the United States would be unstable would make any nation reluctant to make its economy the least bit dependent on that of this country. If these two assurances were forthcoming there would be a reasonable expectation that at least the western block of nations could be integrated into a trading community such as that visualized by the United States at the Havana conference of the International Trade Organization and at the several meetings of the contracting parties to

¹⁸Ibid., p. 17.

GATT.¹⁹

Problems Pertaining to Quantitative Restrictions. In spite of the fact that the contracting parties to GATT still face problems concerning tariffs, an essential part of their work has arisen from the continued use of quantitative restrictions by governments to safeguard their balance-of-payments and monetary reserves and with the discriminatory application of these restrictions.²⁰ GATT, while admitting the use of quantitative restrictions for these reasons, in certain circumstances requires countries resorting to the discriminatory applications of the restrictions to consult from time to time with the contracting parties and also whenever restrictions are substantially increased.

In the course of their consultations the members of the Agreement have been very much concerned with the incidental protective effects of import restrictions. Governments applying restrictions have acknowledged that the protective effects should be reduced 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, therefore, an ever-present danger that the protectionist factor may become a guiding consideration in determining which products are to be subject

¹⁹Ibid., p. 17.

²⁰"For Co-operation in World Trade," United Nations Bulletin, Vol. XVI, No. 6 (March 15, 1954), p. 239.

to import restrictions.²¹

The failure of GATT to bring about a significant reduction in quantitative restrictions in operations since the end of World War II has been one of the major criticisms leveled against the organization. Critics of the Agreement contend that reductions in tariff duties have been nullified by failure to halt the use of quantitative restrictions. The point is also made that even at present levels of duties world trade would rise if quota regulations were eliminated.²²

The latest report of the contracting parties on quantitative restrictions states that "at the time of writing this report in October, 1952, twenty-one of the thirty-four contracting parties to the Agreement have stated that they maintain restrictions on imports to safeguard their balance of payments and are exercising some degree of discrimination between sources of supply."²³ Two other contracting parties also reported the use of quantitative restrictions for balance of payments reasons but stated that the restrictions were not used in a discriminatory manner. Of the remaining eleven signatories, nine reported that they were not restricting imports for balance of payments reasons.

According to their "Third Report on the Discriminatory

²¹Ibid., p. 239.

²²Gorter, op. cit., p. 13.

²³Ibid., p. 14, citing Contracting Parties to the General Agreement on Tariffs and Trade, Third Report on the Discriminatory Application of Import Restrictions, (Geneva 1952), pp. 5-6.

Application of Import Restrictions," in September and October of 1951 the members of GATT declared they had been able to make much progress in the removal of quantitative restrictions imposed to protect international reserves. During 1952, however, the balance of payments position of several countries deteriorated and import restrictions were reimposed.²⁴ This indicates that unless adequate reserves of foreign exchange can be acquired and maintained, quantitative restrictions will remain entrenched as a tool in foreign trade policies. The problem here seems to be one of determining and, if possible, alleviating the circumstances surrounding conditions and policies which cause inadequate financial reserves rather than directing an attack primarily against quantitative restrictions.

Though the "Third Report on the Discriminatory Application of Import Restrictions," indicated as of November, 1952, there had been a reimposition of many quantitative controls, conditions changed rapidly thereafter, and in March 1953, the United Kingdom relaxed its restrictions upon imports from western Europe.²⁵ Even with this relaxation, 42 per cent of Britain's imports from western Europe remained under restriction.²⁶ In January 1953, the

²⁴Ibid., p. 14.

²⁵Ibid., p. 14.

²⁶Ibid., p. 14, citing The Times (London), March 24, 1953, Press Notice, Board of Trade, March 23, 1953, as cited in International Trade News Bulletin, Vol. III, No. 3 (March, 1953), pp. 86-87.

Organization for European Economic Co-operation announced that 66 per cent of all private international trade between OEEC countries had been freed from quantitative restrictions. The range of freedom was from 46 to 99 per cent by country.²⁷ Although the above developments are encouraging, there is still a great deal of international commerce that is hampered by restrictions. In addition to restrictions on private trade there are discriminatory sales and purchases made by governmental agencies through state trading, which has grown steadily since 1938.²⁸

While the reports issued by the members of the Agreement often point up what has been accomplished in consultations concerning quantitative restrictions probably the psychological influence of keeping the problem of quantitative restrictions before the parties is just as great as the actual results accomplished.²⁹ The reports indicate that at least the character of the restrictions has been revealed by the requirement that the signatories to the Agreement must report annually the existence of quantitative restrictions and defend continued use of them. Probably the greatest service rendered by GATT has been the exposure of these restrictions and their subjection to discussion

²⁷Ibid., p. 15, citing International Trade News Bulletin, Vol. III, No. 1 (January, 1953), p. 19.

²⁸Ibid., p. 15.

²⁹United Nations Bulletin, op. cit., p. 239.

and analysis.³⁰

Other Problems Subjected to Consultative Consideration. In addition to consultation on quantitative restrictions numerous other problems relating to international trade have come before the contracting parties for consideration. However, it is also true that not all complaints have been heard by the members to the agreement acting in their group capacity because some of these problems have been settled through direct consultation between the parties concerned or through diplomatic channels. Some inducement to governments to reach agreements among themselves might be attributed to the desire to avoid the publicity which follows when complaints are subjected to a general airing before the contracting parties acting jointly.

To illustrate some of the problems that have come up for consideration several instances can be mentioned.

One of the examples of action against internal, discriminatory taxation recently taken by the contracting parties was a case involving Brazil. Brazil had employed certain internal, discriminatory taxes against specified French, United Kingdom, and United States exports. As a result, at Torquay, the contracting parties were asked to examine a Brazilian draft law modifying the legislation on consumption taxes which had been prepared and submitted to

³⁰Gorter, op. cit., p. 15.

the Brazilian parliament and to advise on the conformity of the draft law with the relevant provisions of GATT. After due consideration by a working group appointed by the contracting parties a report was made to the Conference that the draft law (with certain reservations) removed the internal tax discrimination and brought Brazil's legislation on consumption tax into conformity with the GATT. However, the draft law is subject to the approval of the Brazilian parliament and if approval is not forthcoming the matter will have to be resubmitted to the consideration of the contracting parties.³¹

In 1950 a complaint was made to the members of GATT that the British system of purchase tax so operated as to discriminate in favor of domestic products and against similar imported goods.³² The United Kingdom Government admitted that the tax did have this discriminatory effect, though unintentionally. It 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 obligation of the United Kingdom under the Agreement. In 1952 this pledge was fulfilled.³³

³¹Alexandrowicz, op. cit., p. 174.

³²After 1941 the "Utility" system had been in force in the United Kingdom for a wide range of durable consumer goods. Goods classified as "utility" were not for the most part liable to purchase tax. However, goods purchased from abroad of comparable quality and price were not as a general rule exempt from purchase tax. Alexandrowicz, op. cit., pp. 174-175.

³³United Nations Bulletin, op. cit., p. 239.

The United States and Canada complained that Belgium was imposing discriminatory import restrictions aimed against imports requiring payment in dollars, although Belgium was not in balance-of-payment difficulties. Belgium undertook progressively to eliminate this discrimination and 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 India to Pakistan. The two governments were invited to consult together in an effort to find a solution to their problems. These consultations were concluded successfully when the two nations signed a long term trade pact and agreed to drop the discriminatory levies in question.

More recently, a French tax on imports and exports which was intended to provide a social insurance fund for agricultural workers, was the subject of complaint as an infringement of GATT. At the eighth session of GATT the French Government undertook to remove the tax from the 1954

budget.³⁴

In spite of these indications of success with respect to consultative procedure within the framework of GATT, not all disputes have been resolved successfully. One of the most serious complaints is that directed against the United States by a number of countries pertaining to its import restrictions on dairy products. The members of the Agreement have stated on several occasions that these are in violation of GATT. The United States administration has agreed that this is so, but its efforts to remove the restrictions by legislation have been unsuccessful. For two years in succession the contracting parties have authorized one affected country, the Netherlands, to limit imports of United States flour by way of compensation. There is realization on the part of all members, however, that retaliation is no solution to a problem of this kind. The contracting parties are agreed that if GATT is unable to count upon compliance with its agreed rules from the larger trading powers, its authority will be substantially reduced.³⁵

The purpose of these consultations on discriminatory restrictions, which are held at each annual session of GATT, is to provide an opportunity for the exchange of views on the problems facing the countries following these practices and the difficulties which are thus created for exporting

³⁴Ibid., p. 239.

³⁵Ibid., p. 239.

countries. The members of the Agreement accept the findings of the International Monetary Fund on the financial basis for the restrictions and discuss the policy and administration of the restrictions.

Efforts to Deal with Administrative Problems of Trade.

For the past several years the members of GATT have been tackling customs formalities and various administrative barriers to trade.

One particular piece of legislation dealing with customs simplification was passed in the United States in 1953. This act known as the Customs Simplification Act conforms to the spirit of GATT and deals with such measures as appraising merchandise, marking requirements, countervailing duties, undervaluation penalties, converting foreign currencies, and relief from minor unintentional legal infractions. Although this act falls short of expectations it is an important step forward.³⁶ In addition to this new law, customs procedures have been simplified within the limitations of current law. As an example, prospective importers or foreign exporters may now obtain the classification and approximate duty, with respect to tariffs, of a proposed import in advance of shipment thus eliminating duty uncertainties and financial risks.³⁷

³⁶Paul V. Horn, International Trade Principles and Practices, p. 162.

³⁷Ibid., p. 672 referring to Department of Commerce, World Trade News, November 13, 1950.

In addition to developments with respect to customs simplification, in 1950 the contracting parties drew up a code of standard practices for the administration, by governments, of import and export restrictions and exchange controls. In 1952 they adopted a code of standard practices for documents which are required for importation and they made several recommendations which aim at the elimination of consular visas and formalities as soon as possible.

They also drew up and opened for signature (in February, 1953) the "International Convention to Facilitate the Importation of Samples and Advertising Material." The broad purpose of this instrument is to minimize the costs and reduce the formalities and delays which traders and merchants have to face in sending samples and advertising materials from one country to another.³⁸

The contracting parties have also initiated studies on valuation and nationality of imported goods and will continue these studies in the future.

The Desire for Freer Trade. In attempting to appraise GATT and the effectiveness of its work one approach quite definitely would be to attempt to assess whether there is a genuine desire for freer trade and, if so, how is such a desire manifesting itself. GATT itself must be viewed as an expression of a belief that the world in general would be

³⁸United Nations Bulletin, op. cit., p. 239.

better off with less restrictions on international trade. However, the action of various nations, many of whom belong to GATT, tends at times to raise questions as to the sincerity of those who prefer a desire to see restrictions on world trade reduced to a minimum or eliminated. That there are members of the Agreement who are greatly interested in their individual interests is evidenced by the fact that at GATT's last session in October of 1953, it was agreed that there should be a review of GATT machinery at the next session so that members who find certain provisions irksome of their interests may have a better chance to move for alteration of those things which are not agreeable to them. In fact, one observer has stated that, "there is probably not one member country which would not like to see some relaxations" of conditions set forth under the Agreement.³⁹ At the same time this source goes on to say that "taking the meeting (the eighth session of GATT at Geneva in October of 1953) as a whole, there was a strong impression that they are all in favor of the principles of the General Agreement, that they all want GATT to go on, and that some of them would like to see it strengthened."⁴⁰

Two examples of what might be construed as a general desire for freer world trade can be cited. One is the official communique issued at the close of the British

³⁹The Spectator, October 30, 1953, p. 471.

⁴⁰Ibid., p. 471.

Commonwealth Finance Ministers' meeting in Sydney, Australia, while the other is the report of the Randall Commission on the foreign economic policy of the United States which was submitted to the President and Congress on January 23, 1954. Though both of these documents represented efforts by a group of men who could not reach agreement among themselves they both showed a desire to move in the direction of freer trade.

The Ministers at Sydney reaffirmed their aim "to establish with other countries a wider and freer system of trade and finance in which the convertibility of sterling is an essential part."⁴¹ The Randall Commission managed to get majority agreement to the proposition that the United States Government can contribute toward greater stability of world prices by "measures tending to relax or remove impediments to United States foreign trade and to encourage other countries to move in the same direction."⁴² The Spectator goes on to say that as far as the Randall Report is concerned there were a number of indications in it that the members of the commission recognized that America would probably move in the direction of freer trade. Two particularly pertinent suggestions of the Randall Commission as an aid to freer trade involved fuller use of the resources of the International Monetary Fund in the approach to currency

⁴¹The Spectator, January 29, 1954, pp. 116-117 citing the communique issued at the close of the Commonwealth Finance Ministers' Meeting in Sydney.

⁴²Ibid., pp. 116-117 citing the report of the Randall Commission.

convertibility and the amendment of the Buy American Act⁴³ in favor of countries which do not discriminate against foreign bidders for contracts.⁴⁴

The fact that the Finance Ministers at Sydney were willing to work towards currency convertibility is another encouraging sign for freer world trade. The British seem to feel that with the aid of the International Monetary Fund, with possible credits from the American Federal Reserve System (which the Randall Commission tentatively suggested) and with increased production they can make substantial progress toward freeing their exchange.⁴⁵

Necessity of Co-operation Between the United States and the British Commonwealth. The point that the United States and the British Commonwealth occupy such predominant positions in world trade does make any effort to move toward unrestricted international trade, on the part of either or both, a very significant influence. Both the United States and the Commonwealth apparently face parallel sets of problems, relating to trade, in that both areas face problems which are a mixture of technical and practical effects

⁴³The Buy American Act has in general been interpreted as requiring procurement officers of the United States Government to purchase domestic goods unless their prices exceed those charged abroad by more than 25 per cent. Clair Wilcox, "Trade Policy for the Fifties," American Economic Review, Vol. XLIII (May, 1953), pp. 62-63.

⁴⁴"The Randall Report Reviewed," ATL Topics, The American Tariff League Inc., January, 1954.

⁴⁵The Spectator, op. cit., pp. 116-117.

combined with emotional attitudes. Before criticizing each other it seems highly essential that both should make an effort to understand the difficulties with which each area is faced. The Commonwealth faces such problems as the fact that even within its own boundaries it is difficult to achieve freedom of trade and exchange and unity of policy towards the dollar area. The United States has such difficulties as simplification of customs procedure and promises of protection to farm interests which must be kept by some other means, if not through tariff.⁴⁶

In any event, with mutual policies aimed at attempting to solve their own dilemmas and understand each other as to the situations being faced it seems as though the United States and the British Commonwealth can give much impetus to the movement for freer world trade.

The Attitude of the United States and Its Influence on World Trade. Probably no other single nation has such an opportunity to carry out the spirit of world multilateral trade as exemplified by GATT, as has the United States. Because of the dominant position of the United States in world affairs and because this country provided the initial driving force behind the organization of GATT, it is only natural that other nations will observe closely the sincerity of the United States as judged by its actions in comparison

⁴⁶Ibid., pp. 116-117.

with its stated desire for international trade on a multi-lateral basis.

That there is a divergence of opinion between the Eisenhower administration and the Congress is a disconcerting situation to those nations of the world who feel that the move for freer trade, initiated by the United States, should be backed by something more than a display of unharmonious opinions and actions upon the part of the legislative and executive branches of our government.

The President's message to Congress on foreign economic policy, while supporting the position of expanded international trade, follows almost exactly the cautious report of the Randall Commission.⁴⁷ As a result of this restraint, whether or not the recommendations will encourage as great an expansion of international trade as the interest of the United States and its allies requires, they at least do not ask more legislation that it is feasible for Congress to undertake during the present session. Much of what the President proposes can be done by executive action; other suggestions are still being considered by Congress. The President has pointed out that his program dealing with international trade is closely inter-related and that if any part is dropped, then those who criticize it as inadequate will be justified, and the United States will have failed

⁴⁷The Economist, April 3, 1954, p. 25.

to give the world the lead that is essential.⁴⁸

Specifically, the President's program falls into four parts: (1) The curtailment of foreign aid; (2) The encouragement of investment abroad; (3) The facilitation of currency convertibility; (4) The expansion of international trade.

The desire on the part of the President to curtail foreign aid is at least one objective in which Congress will readily concur. The action of Congress in this respect will probably be even stronger than the President desires when continuation of the Mutual Security program is brought up for consideration.

A start toward the encouragement of foreign investment has been made in the tax reform bill which has passed the House of Representatives and which gives substantial tax concessions to those who invest abroad. Congress is also asked to consider the broadening of the existing guarantees under the Mutual Security Program against losses on new overseas investment. The application of the anti-trust laws to foreign investment is to be clarified and other countries are to be told what they have to do to attract private American capital. The President also stated that the Export-Import Bank would once more be allowed to take an interest in applications for economically sound development

⁴⁸Ibid., p. 26.

loans.⁴⁹

In matters pertaining to currency convertibility, the President promised to support the use of the reserves of the International Monetary Fund to strengthen the currencies of countries which are ready for convertibility. The possibility of stand-by credits from the Federal Reserve System is also being studied.

While expansion of international trade seems to have the support in general of most members of Congress, yet when "it comes to pinning it down with the hard political facts of tariff reduction. . . they think of the miners and watch-makers and dairy farmers whose votes they would like to have, and they decide that it may be safer to trust the figures of the protectionists, who contend that 15 million American workers would suffer if tariffs were lowered."⁵⁰ This figure is in contrast to the calculations of Randall Commission experts who claim that only 200,000 jobs would be lost if all American tariffs were removed.⁵¹

In addition to this four point program just described, the President wants a three year extension of the Reciprocal Trade Agreements Act, with extra bargaining power added to it. He has asked for permission to reduce tariffs by five per cent a year even in cases where the full fifty per cent

⁴⁹Ibid., p. 26.

⁵⁰Ibid., p. 26.

⁵¹Ibid., p. 26.

reduction allowed under the present Act has been negotiated, as it has been for many of Europe's leading exports. In addition, the President would like, over the three year period, to reduce by one-half, tariffs on articles that are not now being imported and those that show only a very small flow into the country. He also would like to cut ad valorem duties that are in excess of 50 per cent to 50 per cent. Mr. Eisenhower agrees that the escape clause and peril point provisions should continue, but reasserts his right to ignore the Tariff Commission's recommendations if the national welfare requires it.⁵²

Another important concession that the President wants from Congress is authority to exempt from the restrictions of the Buy American legislation foreign bids for American government contracts which come from countries that in turn treat American and domestic bids alike. In the meantime there is supposed to be clarification and limitation of this Act.⁵³

The Administration also wants further improvements in customs administration and procedure and an increase in the value of purchases that returning tourists are allowed to

⁵²The principle of the "escape clause" provides that any tariff concession granted through a trade treaty, may be suspended at such time as it may be deemed to be doing harm to a domestic industry. Advance notice of suspension is usually required. The "peril point" is a level of tariff cuts pre-determined by the Tariff Commission. These are the maximum cuts that can be made without probability of injury.

⁵³The Economist, op. cit., p. 26.

bring in duty free. Foreign travel is also to be facilitated in other ways that do not require legislation.

In return for all these concessions, Congress is to be rewarded by being given a chance to consider the General Agreement on Tariffs and Trade, if after negotiation, the other signatories agree to changes in it which would confine the functions of the contracting parties to sponsoring trade negotiations, recommending trade policies and helping to settle trade disputes.⁵⁴

Any consideration of GATT by Congress could face some extremely strong opposition to the entire Agreement. The attitude of Congress is significantly portrayed by the following words written into the Trade Agreements Extension Act of 1951: "The enactment of this Act shall not be construed to determine or indicate the approval or disapproval of the Executive Agreement known as the General Agreement on Tariffs and Trade."⁵⁵ Another indication of the general difficulties facing GATT can be found in the opposition to lowering tariffs by representatives Reed and Simpson of the Randall Commission who vigorously dissented from the majority report of the Commissioners.⁵⁶ If, upon consideration by Congress, GATT should be denounced it is claimed that the tariff in America would immediately rise, on the average, by

⁵⁴Ibid., p. 26.

⁵⁵Wilcox, op. cit., pp. 64-65.

⁵⁶The Economist, op. cit., p. 26.

40 per cent.⁵⁷ Of course, any such action by the United States would deal a heavy blow to future attempts at further freeing of international trade. In fact, it seems safe to say at the present time that the uncertainty in many other countries as just what to do about foreign trade policy stems to a great extent from the lack of a clear-cut foreign economic policy on the part of the United States. With the executive branch of our government giving expression to a desire for more trade hindered by fewer restrictions while Congress manifests many indications for continued use of protectionist devices, the United States is placed in a rather awkward position in attempting to champion freer world trade.

Summary of Accomplishments Under GATT. Probably the most outstanding contributions of the Agreement to world trade have been the very substantial lowering of tariffs and the provision of an agency through which information related to international trade policy can be easily disseminated.

As far as tariffs are concerned reduction seems to have been somewhat easier than the fight to reduce the more direct controls on international trade, such as quantitative restrictions and exchange controls. Gorter states that he believes tariffs have been more easily handled because

⁵⁷Wilcox, op. cit., pp. 64-65.

governments have become less devoted to the use of tariffs and the doctrine of the free traders has gained more adherents, especially in the United States where certain mass production industries have found foreign sales hindered by lack of dollar exchange.⁵⁸ He goes on to state that the extensive consideration of the so-called "dollar shortage" coupled with United States Government expenditures on foreign aid have given the exporters allies from the group favoring lower government expenditures and taxes.

Though tariffs have been reduced there does seem to be room for more reductions as is evidenced by the continued search for means to still further lower tariffs.⁵⁹ A United States with still lower tariffs would probably be one of the most welcome situations for the rest of the world which is now plagued by balance of payment difficulties with the dollar area.⁶⁰

If the United States should agree to additional reductions in its tariffs the rest of the world, or at least the western bloc of nations, probably would require some sort of assurance that such a policy would not suddenly be reversed and an additional assurance that the United States would maintain a domestic policy devoted to the development of a high level of income and employment. Any such statement

⁵⁸Gorter, op. cit., p. 17.

⁵⁹See, The New Plan for 30 Per Cent Reduction of Tariffs, at the beginning of this chapter.

⁶⁰Gorter, op. cit., p. 17.

of assurances, however, does not seem to be immediately forthcoming from the United States and that is probably so largely because there is a divergence of attitude on foreign economic policy between administration spokesmen and some strong protectionist elements in Congress. As long as this uncertainty exists in the United States with respect to trade policy there will remain in other nations a tendency to maintain protectionist devices irrespective of the efforts of GATT to eliminate such devices. A statement of assurances in the nature of those previously mentioned or at the very least a definite United States policy dealing with foreign trade would go a long way toward clearing the atmosphere to show whether the world is to move toward freer trade or whether a protectionist attitude is to be fostered.

Though tariffs are still a problem in international trade they do not seem to be as difficult to handle as the more direct types of trade control exemplified by quantitative restrictions and exchange controls. Progress toward removal of direct controls has not been too great even with the efforts sponsored by GATT. Such restrictions become necessary in the absence of adequate monetary and fiscal controls.

Three reasons have been given by one observer as to why there cannot be much optimism about the removal of quantitative restrictions under present economic

conditions.⁶¹

First, many countries have been unwilling to invoke deflationary monetary and fiscal measures. Under conditions of this nature any attempt to relax or eliminate quantitative trade restrictions has met with strong opposition.

If, for example, quantitative restrictions are removed under these circumstances, exchange rates will rise and imports will become more expensive. Manufacturers of high import-content goods will be subjected to a cost pressure necessitating a rise in price, imported food prices will rise, and workers will demand higher wages. Faced with this type of problem governments have chosen to retain trade controls rather than subject their respective economies to open inflation as opposed to suppressed inflation.

The second reason for the difficulty in removing quantitative restrictions is due to the necessity for quotas in governmental planning schemes. Planning is easier if accurate forecasts of quantities to be imported and exported can be made. Such forecasts become plans under a system of quota regulations.

The third reason why not much hope is held out for the removal of quantitative restrictions centers on the fact that if the economy of a nation is subjected to open inflation caused by the removal of import restrictions, the temper of the electorate becomes a force to be reckoned with. No

⁶¹Ibid., p. 16.

government likes to be placed in the position of being accused of destroying the economy of a nation and the destructive effects of inflation are well known from past historical instances.

In following up these three reasons, the comment is made that it is a:⁶²

. . . well known fact that all governments stand ready to resort to inflation to perpetuate full employment at home. Inflation offers an easy, temporary way out and, at times, is most certainly to be desired. So far, however, there is little evidence indicating that international financial stability accompanied by even a modest amount of unemployment will be chosen in preference to inflation, international financial instability, and full or even over-full employment. Most democratic governments cannot resist the political pressures favoring the latter over the former alternative. And acceptance of the latter almost inevitably means quantitative controls on international trade.

The fact that GATT has not been a complete success is probably best illustrated by the preceding references to the continued difficulties with quantitative restrictions and to a lesser extent with tariff problems. In spite of such observations it does not seem fair to characterize the effort portrayed by GATT as a complete failure. GATT has been successful, as previously mentioned, in causing a vast number of tariff reductions and bindings and probably just as important has been its function as an agency devoted to the discussion and consideration of problems pertaining to international trade. The organization has in some degree

⁶²Ibid., p. 16.

caused all countries to examine their basic commercial policies and also to consider such underlying domestic economic policies as may be causing them to employ methods in international trade which are not conducive to good trade relations. If such nationalistic policies are allowed to go unchallenged the more difficult it becomes to uproot them so that in the long run it seems as though national self-sufficiency is attempted at the expense of continuing fiscal and monetary crises along with a poor allocation of economic resources. Since GATT has caused many nationalistic policies to be aired in the light of their influence on international trading difficulties of the parties concerned, its contribution from this point alone seems to have made the organization a worth while venture.

The contracting parties to GATT have agreed to a general review of both the operation and provisions of the Agreement at their annual sessions in 1954. From this review will undoubtedly come some indication as to the future possibilities for GATT. To judge from the views expressed both officially and unofficially in some of the countries which are most concerned with GATT, this review may provide the occasion for a direct struggle between two schools of thought: "one which seems to prefer a loose and narrow agreement, while the other favors a firmer and wider convention."⁶³

⁶³The Times Weekly Review, (October 29, 1953), p. 23.

In any event it is to be hoped that the General Agreement on Tariffs and Trade will continue to exist in some form rather than risk a potential blow to freer world trade by abandoning the one existing organization devoted primarily to that end.

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