

WAIVER TO THE UNITED KINGDOM IN CONNECTION WITH ITEMS  
TRADITIONALLY ADMITTED FREE OF DUTY FROM  
COUNTRIES OF THE COMMONWEALTH

*Decision of 24 October 1953*

*Having received* from the Government of the United Kingdom of Great Britain and Northern Ireland a request for facilities, consistent with the objectives of the General Agreement, to relieve them of the requirements prescribed in paragraph 4 (b) of Article I of the Agreement as regards maximum margins of preference when they have occasion hereafter to impose or increase a most-favoured-nation rate of protective duty in respect of any class or description of goods, which has traditionally been admissible free of protective duty when imported into the United Kingdom from the territories listed in Annex A to the General Agreement,

*Apprehending* that the establishment or increase of a margin of preference incidental to the imposition or increase of a most-favoured-nation rate of protective duty in respect of a class or description of goods might have the effect of increasing imports into the United Kingdom of such goods from the territories listed in Annex A at the expense of imports of such goods from other sources so as to constitute a substantial diversion of trade; and that such diversion would be contrary to the objectives of Article I and would therefore constitute a nullification or impairment of benefits due to accrue to other contracting parties under that Article,

*Considering*, however, the explanations given by the Government of the United Kingdom regarding the circumstances which prevent them from resolving their difficulties by a general modification of existing tariff legislation to enable them to impose protective duties on products imported into the United Kingdom from the territories listed in Annex A,

*Taking note*, moreover, of the assurance of the Government of the United Kingdom that it is not their intention to use the aforesaid facilities in order to increase the advantage enjoyed in the United Kingdom market by products imported from the territories listed in Annex A over products imported from other sources, and of the declaration of the Government of the United Kingdom that they remain desirous of contributing to the objectives of the General Agreement through arrangements directed to the reduction of trade

barriers including tariffs and that the grant of the facilities sought by them will not affect their continued readiness to participate in action by the CONTRACTING PARTIES to secure further reduction of tariffs,

*Noting*, furthermore, the assurances given by the Government of the United Kingdom with regard to the procedures for consultation to be followed before using the aforesaid facilities, as approved concurrently with, and as an integral part of, the present decision, and their agreement to make annual reports to the CONTRACTING PARTIES of all action taken by them in the use of these facilities,

The CONTRACTING PARTIES, pursuant to paragraph 5 (a) of Article XXV of the General Agreement, and in consideration of the assurances recorded above,

*Decide* that the provisions of paragraph 4 (b) of Article I shall not be so applied that, when the Government of the United Kingdom impose or increase a most-favoured-nation rate of protective duty in respect of a given class or description of goods for which they have not as of this date negotiated tariff concessions, they shall be required to impose a duty on goods of that class or description when imported from any of the territories listed in Annex A to the General Agreement; provided that the incidental establishment or increase of a margin of preference is not likely to lead to a substantial increase of imports of goods of that class or description from the aforesaid territories at the expense of imports from other sources; and provided further that protective duty has at no time since 1 January 1939 been chargeable in respect of that class or description of goods when imported into the United Kingdom from the aforesaid territories; and

*Declare* that, in deciding as aforesaid, it is not their intention to impede the attainment of the objectives of Article I of the General Agreement and that in no circumstances shall the present Decision be construed as impairing the principles of that Article.

#### PROCEDURES

(a) The United Kingdom, before taking action under the waiver, will simultaneously, in strict confidence, notify (i) contracting parties which appear to the United Kingdom likely to have a substantial interest in the trade in the item in question and (ii) the GATT secretariat of their desire to act under the waiver in respect of that item. The United Kingdom will give figures for past trade in the product and, in the case of seasonal duties, will state the period in which it has been decided that the increased duty should operate. The GATT secretariat will immediately pass this information to all contracting parties, so that any contracting party not directly approached by the United Kingdom which might claim a substantial interest in the trade in the item may know what is proposed.

(b) The United Kingdom will enter into consultations with any contracting party which requests consultation within 30 days of notification under (a) on the grounds both (i) that it has a substantial interest in the trade in an item and (ii) that

the increase in the margin of preference incidental to an increase in the most-favoured-nation rate of duty would involve likelihood of substantial diversion of trade in that item from the aforesaid contracting party to suppliers within the preferential area as defined in Annex A. In the absence of any such request for consultation, the waiver shall apply after the expiry of thirty days from the date of notification under (a).

(c) Consultations under (b) shall, if the United Kingdom or one or more of the countries with which it is consulting so requests, take place at meetings organized and serviced by the GATT secretariat.

(d) In the event that a contracting party requests consultations on grounds which do not appear to the United Kingdom to satisfy the terms of (b) above, it shall be open to the United Kingdom to seek a speedy determination on the matter from the CONTRACTING PARTIES, through appropriate intersessional machinery if the case arises while the CONTRACTING PARTIES are not in session.

(e) If the United Kingdom enters into consultation under paragraph (b) above with any contracting party, or if the CONTRACTING PARTIES determine under paragraph (d) above that the grounds on which consultation is requested by any contracting party satisfy the terms of paragraph (b) above, the United Kingdom will inform, in strict confidence, such contracting party of the proposed rate of duty.

(f) If in consultation in accordance with paragraph (b) above it is agreed that there is no likelihood of substantial diversion of trade in the sense defined in that paragraph, the waiver shall apply.

(g) Failing such agreement, it shall be open to the United Kingdom to seek arbitration by the CONTRACTING PARTIES (through appropriate intersessional machinery if the matter should arise while the CONTRACTING PARTIES are not in session) as to the likelihood of substantial diversion.

(h) The CONTRACTING PARTIES or the appropriate intersessional body may reach one of the following three decisions:

- (i) that there is no likelihood of substantial diversion,
- (ii) that there is likelihood of substantial diversion, or
- (iii) that the evidence is not sufficient for them to determine whether or not there is likelihood of substantial diversion.

In case (i) the waiver shall apply. In case (ii) the waiver shall not apply. In case (iii) the waiver shall apply conditionally; that is to say, the waiver shall apply, but if the CONTRACTING PARTIES should determine, upon the representation of a contracting party affected, after a reasonable period of time (and not less than one year), that the increase in the margin of preference had in fact led to a substantial diversion of trade, the waiver shall cease to apply.

(i) It is recognized to be essential that there should be no disclosure of a proposed modification of duty before such modification is publicly announced by the United Kingdom. Accordingly, the CONTRACTING PARTIES agree to make provision for the observance of the utmost secrecy at every stage of the procedure set forth above.