Chapter 4

TARIFF NEGOTIATIONS

The contracting parties recognise that tariffs are, often, an important obstacle to trade. (1) They are, therefore, authorised to occasionally sponsor negotiations for the substantial reduction of tariffs and other charges on imports and exports, especially for the reduction of such high tariffs as discourage the importation of even minimum quantities. The negotiations are to be conducted on a reciprocal and mutually advantageous basis paying due consideration to the objectives of the Agreement and the varying needs of individual contracting parties.

Negotiations are to afford adequate opportunity to take into consideration:

1) the needs of individual contracting parties and individual industries;

2) the needs of less developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and

3) all other relevant circumstances, including the fiscal, developmental, strategic and other needs of the contracting parties concerned. (2)

The contracting parties recognise the need of the under-developed countries for a flexible use of tariff protection and for the use of tariffs as a source of revenue. During the transitional period of development, the needs for tariff protection

(1) Article XXVIII, bis, 1.
(2) Article XXVIII, bis, 3.
change constantly and rapidly. To avoid any hinderance to the development process, the tariff structure must be sufficiently flexible to cope with the changing needs for tariff protection. Tariffs are an important source of revenue for the underdeveloped countries. A very important reason for this is that the administrative apparatus for taxing domestic production, profits and income is not so well developed as that for taxing foreign trade. Producers being illiterate cannot keep accounts in the modern form which is very essential for taxation of production, profits and income.

**Important Rules relating to Tariff Negotiations**

**Reciprocity and Mutuality.** Reductions in tariffs are to be negotiated on a reciprocal and mutually advantageous basis. The Agreement does not require any party to make unilateral reductions in tariffs.

**Binding of Low Tariffs.** The negotiations shall be directed either towards the reduction of tariffs, or the binding of low tariffs, or the undertakings that tariffs shall not exceed specified levels. The binding against increase of low duties or duty-free treatment shall, in principle, be recognised as a concession equivalent in value to the reduction of high duties. (3) This provision was introduced to safeguard the interests of the low-tariff countries which had nothing to offer in negotiations. Binding of low tariffs has the advantage that the traders are assured of the continuance of low tariffs and can execute plans.

(3) Article XXVIII, bis, 2a.
for the expansion of production without any risk of a rise in tariffs.

**Preferential Rates and the Margin of Preference.** The margin of preference is measured by the absolute differences between the most favoured nation rate and the preferential rate of duty for the like product and not the proportionate relation between those two rates. Thus if the most favoured nation rate is reduced, the margin of preference will be reduced automatically. If the preferential rate is reduced, a corresponding reduction will have to be made in the most favoured nation rate, too, because an increase in the margin of preference is forbidden. If the parties agree to reduce both the preferential and the most favoured nation rates, the reduction in each will be according to rates agreed between the parties to the negotiation.

**Bound and Unbound Rates.** The new level of tariffs which a contracting party has agreed to maintain in negotiations with other contracting parties will be incorporated in its schedule. Once a certain level of tariff is incorporated in the schedule, it becomes bound against increase. Items on which the level of tariffs is not agreed by the contracting party in negotiations with other contracting parties remain outside the schedule. Items outside the schedule are unbound. Tariffs on unbound items can be increased subject to the condition that the increased rates apply uniformly to all contracting parties and no discrimination is practised against any party. It may be mentioned that the margin of preference cannot be increased even in case of unbound items.

**Rule Against the 'Bargaining Tariff.'** The Agreement expects each contracting party to work in good faith and not to enhance its
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While negotiating the ITO Charter, the countries explored two alternatives of reducing tariffs through international negotiations viz. 1) bilateral negotiations between pairs of countries and 2) multilateral reduction of tariffs according to some set principles. Multilateral agreement held out the hope of speedy reduction of tariffs. This hope, however, did not materialise because no formula acceptable to all could be found. (4) The high-tariff countries proposed the fixation of a maximum limit on all tariffs. This would have been favourable to high-tariff countries and unfavourable to low-tariff countries. Low-tariff countries, on the other hand, proposed the reduction of all duties by a fixed percentage. This would have discriminated against the high-tariff countries and in favour of the low-tariff countries. Bilateral negotiations have the great advantage of being highly flexible. (5) Tariffs can be reduced on a selective product-by-product basis. These can be reduced substantially on some products and moderately on others. Tariffs on certain products may not be reduced at all. Bilateral negotiations, however, suffer from several defects discussed later in this Chapter. The General Agreement combined the two alternatives and introduced a new method of negotiating the reduction in tariffs which is known as the bilateral-multilateral technique.


(5) Ibid., 63.
It provided a good compromise between the opposing schools of bilateralism and multilateralism. It was a new experiment in world trade. It was bilateral because the negotiations were carried on a nation-and-nation basis. The contracting parties formed pairs among themselves. Each pair conducted negotiations on a selective product-by-product basis. It was also multilateral because the concessions agreed within different pairs of negotiating countries were generalised to all contracting parties by virtue of the most favoured nation clause. Each contracting party obtained, in addition to direct benefits from the bilateral negotiations in which it had participated, indirect benefits from the generalisation of the concessions agreed between other pairs of the negotiating contracting parties. Indirect benefits arise not only from the generalisation of concessions through the most favoured nation clause but also from the increased prosperity of other contracting parties resulting from the expansion of their trade. Expansion of trade raises incomes and a part of this additional income is spent on imports from abroad. Therefore, a contracting party while giving a concession weighed not only the direct but also the indirect concessions which it received from the Agreement. This induced the contracting parties to offer larger concessions as compared with those which they would have offered in the absence of indirect benefits. The net result of this was a greater reduction in tariffs.

The bilateral-multilateral technique of tariff negotiations was continued till the opening of the Kennedy round, on 4 May 1964, under which negotiations are going on for linear across-the-board
cuts in tariffs. As the bilateral multilateral technique has been in use for quite a long period and has been responsible for substantial cuts in tariffs, it would be of interest to examine its shortcomings.

**Bilateral-Multilateral Technique.** Two principles stand out very clearly in the bilateral-multilateral technique of tariff reduction viz. 1) reductions in tariffs are made by mutual bargaining within different pairs of countries; 2) tariff reductions agreed to as a result of bargaining within pairs of countries are generalised to all the contracting parties through the most favoured nation clause.

To begin with the first principle, it is fair enough if all countries are economically as well as politically of equal strength. Bargaining cannot ensure justice and equity if the various partners are of unequal strength. In fact, the importance of foreign trade varies to different countries. There are some countries which are more or less self-sufficient. A developed country like the United States, well endowed with almost all natural resources, can go without foreign trade without any substantial loss. On the other hand, there are countries which considerably depend on foreign trade. If the reduction in tariffs is based on the principle of bargaining, countries which are less dependent on foreign trade can exact more favourable terms from countries whose dependence on trade is vital. Most of the underdeveloped countries belong to the latter category. Their development depends to a large extent on their capacity to import machinery, technical know-how, and essential raw materials from developed countries. Bargaining power of the underdeveloped countries is further weakened by the fact that, they primarily
depend on the export of the two or three main products. (6)

A few agricultural and industrial raw materials and food products dominate exports from Asia. ... rice has recently accounted for about 80 per cent of the value of exports from Burma. 90 per cent of exports from Pakistan have consisted of jute, cotton, tea, wool, hides and skins. Exports from the Federation of Malaya consisted almost exclusively of rubber and tin. 76 per cent of Indonesia's exports have been petroleum, rubber and tin. Over 80 per cent of Philippine exports are covered by sugar, copra and vegetable oils and abaca. Tea, rubber, copra and oil form about 90 per cent of the entire exports of Ceylon, while Thailand's rice, rubber and tin exports account for 81 per cent of total exports. (7)

Naturally, therefore, industrialised countries can exact more favourable terms from underdeveloped countries if the reduction of tariffs is based on the principle of bargaining. In order to ensure justice to all countries, tariff reduction should be on certain definite principles of justice and equity rather than on the principle of bargaining.

This technique of negotiation for reduction of tariffs creates uncertainty and instability in the tariff structure of various countries. Tariff reductions agreed at various negotiations often depend on the whims and immediate needs of the negotiating countries. Advantages of specialisation cannot be reaped until and unless there is some certainty that the low tariff rates will continue for a fairly long period. For illustration, suppose India has a comparative advantage in the production of commodity A and the United States in that of commodity B. India cannot destroy its industry B and invest more resources in industry A unless it is sure that the United States will maintain low tariffs on the import


of A for a very long period. If there is a possibility of the restoration of high tariffs by the United States after some time, it will be unwise for India to destroy its industry B and to divert resources to industry A as the loss from a shift from B to A and again in the reverse direction after some time will far outweigh the gain from specialisation.

This technique has been highly unjust to low-tariff countries. Countries with low tariffs have a very weak bargaining strength as they have little to offer in exchange for obtaining concessions from other countries in tariff negotiations. No doubt binding against increase of low tariffs is considered equivalent to a reduction in tariffs by the Articles of the General Agreement, (8) yet experience shows that an offer to bind tariffs at a low level is not as effective as the offer of an actual reduction in tariffs for securing tariff concessions from other countries. The fact that a country has maintained tariffs at a low level shows that low tariffs are in the national interest of the country and threat of raising (or not binding) these cannot be very effective in inducing other countries to make tariff concessions. Even if binding of low tariffs is considered to be equivalent to an actual reduction in tariffs, once the low tariffs have been bound against increase, nothing is left for further bargaining with high-tariff countries for further reduction in their tariffs at subsequent rounds.

Principle of reciprocal negotiation will be just only if all the parties start from a uniform level of tariffs.

Bilateral negotiations cannot be used for reducing tariffs where the trade is triangular or multiangular. For illustration,

(8) Article XXVIII, bis, 2a.
suppose country A exports to country B, B to C and C to A and A does not import from B, B from C and C from A. In this extreme example of triangular trade as no two countries have any mutual trade (i.e. they do not import from or export to each other), there can be no direct negotiation for the reduction of tariffs. Thus, present technique is not suitable for encouraging triangular and multilateral trade and stimulates trade into bilateral channels with all the disadvantages inherent in bilateral trade.

This method of reducing tariffs is very slow. This is one of the reasons why the achievements made during a long period of fourteen years are not very encouraging. Each successive round of tariff negotiations has been able to achieve a lesser and lesser reduction in the general level of tariffs.

The uncertainty that prevails during the long protracted period of negotiation of tariffs is highly injurious to world trade and production.

The effect of the second principle, namely, the generalisation of agreed concessions to all the contracting parties through the most favoured nation clause, has already been discussed at length in the last chapter and will not be repeated here.

**French Plan.** At Torquay, the low tariffs countries were not in a position to offer significant tariff concessions in exchange for concessions from the high tariff countries. They, therefore, felt that renewed binding of their low tariffs should be considered equivalent to further reductions in the higher tariffs of other countries. At the commencement of the negotiations, however, they found that high tariff countries were not prepared to make concessions merely in return for rebinding of their low tariffs.
This led the low tariff countries to think of some alternative method of reducing tariffs.

In the circumstances described above, the French delegate, M. Pflimbin came forward, at the Sixth Session in September 1951, with a proposal contemplating a general across-the-board lowering of tariffs by 30 per cent. The French proposal was further refined and improved through a series of discussions by the contracting parties and various committees and sub-committees. Below is briefly discussed the French plan in the form finalised by the Contracting Parties. (9)

The Plan envisages a thirty per cent reduction in the average incidence of tariffs from a certain base year by all countries in three successive years, a ten per cent reduction in each stage. For this purpose, products are divided into various sectors and a thirty per cent reduction is required in each sector. This provides some flexibility to the countries as they are free within certain limits to choose the items on which to make the reductions. At the same time it ensures that all supplying countries are benefited since the reduction is spread over the whole tariff and not concentrated on any particular part of it. The average incidence of the tariff in each sector is defined as the percentage of the value of imports collected by the customs.

Countries having comparatively low duties will be required to reduce tariffs by less than thirty per cent. To achieve this a demarcation line and, below that, a floor have been fixed for every sector. Countries whose average duty incidence in any sector is

below the demarcation line will be required to make a reduction of less than thirty per cent and no reduction will be required if the incidence is below the floor. For example, if a country's average incidence in any particular sector stands half way between the demarcation and the floor line, it will be required to make a reduction of only one-half of the prescribed rate (i.e. fifteen per cent).

Countries having high duties in any sector exceeding a certain upper limit will have to reduce these to the level of the ceiling during the first three years. These reductions can be counted towards the reduction of the average incidence for that sector, but will have to be made even if the average incidence for that sector is below the floor and no reduction is required under the thirty per cent rule. This provision is to ensure that high duties which prevent (or reduce drastically) imports, and are, therefore, not counted (or counted inadequately) in the average incidence, are also reduced.

Reduced rates of duty and the reduced average incidences in various sectors would remain bound for five years. A country can, however, modify a reduced duty under an escape clause with the favourable vote of the contracting parties in case the maintenance of the bound rate involves serious economic or social dangers. In such cases, the modification would have to be compensated by a reduction in duty on other items in order to keep the average incidence for the sector as a whole at the bound level. A country may also be authorised to maintain a duty above the ceiling under exceptional circumstances.

The Plan, also, proposes certain concessions for the under-developed countries. Firstly, no reduction in duty would be required
on products included in their development programmes for a fixed period of time. This concession is, however, limited to products included in the development programmes on which the work was started before the Plan came into operation. Secondly, for these countries the average incidence of duties will be calculated on the tariff as a whole and not separately for each sector. This will enable underdeveloped countries to exclude certain industries from tariff reduction which they want to develop within their own countries.

Certain other items are, also, omitted from the operation of the Plan. Firstly, fiscal duties which are levied with the objective of raising revenue rather than for protection will be excluded. This is particularly important for the underdeveloped countries. Secondly, duties on products which are imported mainly from countries not participating in the Plan will also be excluded. The provision is meant to exclude countries other than the contracting parties from benefits flowing from the operation of the Plan.

While under the bilateral-multilateral technique negotiating countries can pay due attention to balancing the benefits and costs of tariff concessions received and given respectively, the French Plan requires all countries to reduce their tariff walls according to set principles without having the opportunity of balancing the benefits and costs. The Plan assumes that an equal reduction in tariffs of all countries would equally cost and benefit all countries. This, however, is not likely to happen in actual practice. As the following analysis shows, a reduction in tariffs of all countries by a fixed percentage will be more beneficial and less costly to developed than to underdeveloped countries.
Let us first consider the benefit side. In view of the nature of income and price elasticities of demand for primary and manufactured goods, a reduction in tariffs by a certain fixed percentage is likely to increase the demand for exports of developed countries more than for those of underdeveloped countries. On the other hand, the supply of industrial goods is more elastic than that of raw materials and foodstuffs. Even if the demand for exports of the underdeveloped countries is increased to some extent, these countries may not be able to take advantage of the increased demand if the supply is limited and cannot be increased easily. In contrast, the supply of industrial goods being more elastic, the developed countries can reap greater advantage of the increased demand for their exports. No doubt, the nature of the elasticity of supply of the exports of underdeveloped countries will tend to improve the terms of trade of these countries. The gain on this ground, however, is not likely to be appreciable because of the nature of demand for their exports. In the limiting case, if the demand for the exports of underdeveloped countries is perfectly inelastic, there will occur no improvement in their terms of trade.

To turn to the cost side, the cost of a certain percentage reduction in tariffs is much more to underdeveloped countries than to advanced countries. High tariffs are very essential for protecting the infant industries of the underdeveloped countries. Lowering of tariffs by underdeveloped countries, therefore, is equivalent to sacrificing the development of their industries. On the other hand, lowering of tariffs by advanced countries will not much affect their position vis-a-vis the underdeveloped countries.
The above analysis leads to the conclusion that in order to equalise costs and benefits to advanced as well as to underdeveloped countries the required percentage reduction in the average incidence of tariffs should be much smaller for underdeveloped countries than for advanced countries. Though it is difficult to exactly measure the costs and benefits, yet a fair estimate of these can be had in any actual situation without much difficulty.

The plan by providing that the bound rates of duty and average incidences in various sectors remain bound for a period of five years will fail to remove the instability and uncertainty pervading the tariff structures of various countries under the bilateral-multilateral technique of tariff reduction. As discussed earlier, the advantages of specialisation cannot be reaped until and unless there is some certainty that the low tariff rates will continue for a fairly long period. In other words, the most important source of gain from international trade, i.e., reallocation of resources, will not be fully tapped. It will be tapped only for those industries for which the obsolescence period is five years or less than that. In order to reap the benefits from reallocation of resources, the period for which the rates of tariffs are bound should be long enough or, still better, no period may be specified. But while adopting a very long period, care should be taken that enough flexibility is imparted lest the system breaks down soon owing to its rigidity. Modification of bound rates of duty should be permitted whenever these seem to involve economic or social danger to the economy of the country due to changed circumstances. The importance of the permission for modifications in the bound rates cannot be overemphasized in a rapidly changing world. A
continuous and flexible agreement will be better than a new agreement after every five years.

Different countries having varying average duty incidences above the demarcation line are required to reduce the average duty incidence by the same thirty per cent irrespective of the height of their average duty incidences. This is not fair. Countries having tariff walls of different heights above the demarcation line should be required to lower their tariffs by different percentages. It will be more just if the problem is approached from the opposite side i.e. the average incidence of duty that the contracting parties are permitted rather than the percentage by which they should reduce their tariffs. The contracting parties should be left free to have a tariff wall lower than the permitted one but not higher than that.

Even if a formula could be found which can achieve equality among the contracting parties in respect of tariffs, the usefulness of such a formula will be very much limited so long as almost all the contracting parties continue regulating imports also through instruments other than tariffs viz. quotas, exchange control, state trading and a number of other practices which may be combined under the term "invisible tariffs." Restriction of imports through instruments other than tariffs is permitted under several escape clauses of the Articles of Agreement. What should be aimed at is equality among the contracting parties not in respect of only tariffs but in respect of obstruction of imports through all means taken together.

Another objection that may be raised against the French Plan is that it restricts the freedom of the contracting parties. Under the bilateral-multilateral technique of tariff reduction, the contracting parties are absolutely free to reduce the rate of tariff
on any product by any amount. A contracting party cannot be compelled by any other contracting party to reduce its tariff rate on any particular product by any particular amount. Under the French Plan every country will have to reduce its tariffs by a certain percentage. As regards the particular products, though some freedom is given within the various specified sectors yet reduction in tariffs has to be spread over the whole tariff system and not to be concentrated at certain points. If, however, the GATT is to contribute substantially towards liberating the world trade, the freedom of individual countries will have to be restrained to some extent. The French Plan was accepted in principle by Belgium, Denmark, France, Germany and Netherlands. The United Kingdom received it coolly. It, however, could not come into existence because it was unacceptable to the United States.

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The General Agreement does not include rules on the procedures which should be employed in tariff negotiations. The rules under which tariff conferences have been held so far were formulated beforehand by ad hoc committees consisting of those contracting parties which were expected to participate in the negotiations. Thus the Agreement merely provides the framework under which tariff negotiations are carried out and gives effect to the results of such negotiations once they have been concluded. During the Review Session in 1955, several delegations proposed that certain rules for negotiations, such as those in Article 17 of the Havana Charter, be included in the General Agreement. (10) But the proposal was not

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adopted because it was considered that, as in previous tariff negotiations, the procedures for each tariff conference should be determined at the time the holding of negotiations was under consideration. Any contracting party which was not satisfied with the procedures adopted would be free not to participate in the negotiations.

The first round of tariff negotiations, held at Geneva from 10 April to 30 October 1947, was a part of the establishment of the General Agreement. Just before the end of the first session of the Preparatory Committee, it was decided that the members of the Preparatory Committee should hold negotiations, at the second session to be held at Geneva in 1947, aimed at substantial reduction of tariffs and other barriers to trade on a mutually advantageous basis. In addition to the members of the Preparatory Committee, Pakistan, Syria, Burma, Ceylon and Southern Rhodesia also participated in the tariff negotiations. The concessions exchanged in the negotiations took the form of 1) the complete elimination of certain duties and preferences, 2) the reduction of duty preference, 3) the binding of duties at existing levels, and 4) the binding of duty free treatment. The participating countries completed one hundred and twenty three sets of bilateral negotiations covering two-thirds of the import trade of the concerned countries.

The second conference for the negotiation of tariffs was held at Annecy in 1949. The conference was called primarily to facilitate the extension of GATT to countries which could not participate in the Geneva Conference. At this conference, ten new countries joined the GATT increasing the strength of the contracting parties from twenty-three to thirty-three. World trade affected by concessions
increased from 66 per cent to 80 per cent. One hundred and forty seven sets of bilateral negotiations covering over 500 items were completed between the new and the original contracting parties.

The third tariff negotiations conference was called at Torquay in 1950-51. Six new countries participated in this conference. This conference was not very successful. Only 147 out of the expected 400 agreements could be concluded. At the previous two conferences most of the tariff reductions were offered by the United States. The United States, therefore, was not in a position to offer any more concessions. Similarly, the tariffs of other important trading countries, particularly those of the UK and other Commonwealth countries, had reached the level considered to be essential by the concerned countries. The success of this conference lay more in widening the membership of the CATT than in the reduction of tariffs.

West Germany, Australia, Peru, Philippines and Uruguay conducted negotiations for the first time. The increase in the number of contracting parties substantially broadened and strengthened the multilateral trading system.

The fourth tariff negotiations conference was called in Geneva in the year 1956. Pessimism pervaded this round of tariff negotiations. The Chairman of the Contracting Parties in his opening statement declared that "some of us have felt disappointment that the scope of the new authority [of the US President] (11) does not permit reductions in individual tariff rates as substantial as those which the United States granted on many commodities during

(11) Words within parenthesis added.
earlier negotiations. (12) The Australian Representative speculated "It could well be that the results of the present negotiations may not be as spectacular as those achieved at our three earlier conferences." (13) Speaking for Belgium, Mr. P.J. Forthorma remarked "... the procedure followed at Geneva, Torquay and Annecy cannot yield any further satisfactory results." (14) The Representative of the Netherlands added, "... substantial progress could only be made if other methods than bilateral negotiations were applied. ... It is not very encouraging to notice that five years of continuous pleading for the good cause of the low-tariff countries has yielded such limited results." (15)

The results of the Geneva negotiations confirmed these speculations. Excepting the United States, which went almost to the limit of her negotiating power and granted concessions on imports valued at about $900 million and obtained concessions on exports valued at about $400 million, no country felt satisfied. Several countries withdrew from the negotiations owing to inadequate negotiating leeway; others had very little to offer and therefore obtained very little in exchange. The representatives of the continental countries returned home with a sense of frustration.

France did not participate in the tariffs negotiations Conference but, within the framework of general negotiations, conducted


negotiations with the United States, Austria and the High Authority of the European Coal and Steel Community. The French delegation, explaining its position, stated that it felt that the contracting parties had "in fact exhausted almost completely the possibilities of exchanging balanced mutual concessions" and that "only industrialised countries with high tariffs still have a certain margin for negotiations." (16) The French representative added that:

... if the forthcoming negotiations are to take place under the rules and procedures of previous negotiations, these countries (i.e. the industrialised countries) would not be able to grant concessions unless they received counterparts which other countries are not in a position to offer. It is true that in our rules and procedure we have reaffirmed the principle that the binding of a low rate of duty is to be considered as equivalent to a positive concession. But I do not think that the strict implementation of this principle will be sufficient to obviate the structural disequilibrium which affects these negotiations. (17)

During the Conference, in view of the difficulties raised by the insistence on the strict application of the principal-supplier rule, the Tariff Negotiation Committee was entitled to arrange negotiations on a triangular or multilateral basis in order to enlarge the scope of concessions. But the efforts to carry out triangular or multilateral negotiations were unsuccessful because most countries avoided negotiations if the principal supplier was not present, even when two or more countries negotiating jointly were in a position to claim such interest in a particular product. (18)


(18) U.N. Conference on Trade and Development, n. 10, 53.
The fifth tariff negotiations Conference was held in Geneva in 1960-61. There were three separate elements in this Conference. The first phase was concerned with the renegotiation which under the provisions of Article XXIV of the GATT had to be undertaken in relation to the bound items which had been modified by the States member of the European Economic Community in order to bring their national tariffs in line with the common external tariff of the community. The objective of these negotiations was to compensate the contracting parties affected by such modifications by according tariff reductions on other items of common tariff. The second phase of the Conference covered the fifth round (or "Dillon Round") (19) proposed by the United States delegation in pursuance of the authority granted by Congress under the Trade Agreements Extension Act of 1958 for the negotiation of a 20 per cent reduction in the United States tariff on the basis of reciprocity. Thirdly, the Conference included negotiations arising out of the accession of a number of countries which had applied for membership. As the current period of "firm validity" of the tariff schedules ended on 31 December 1960, the contracting parties were also allowed to carry out negotiations.

In the 1960-61 Tariff Conference, the developing countries pointed out that the strict application of the principle of reciprocity in previous negotiations had practically exhausted their bargaining capacity and that, on the other hand, industrialised

(19) The fifth round is known as "Dillon Round" because the original proposal for the tariff Conference was made by Mr. Douglas Dillon, Under-Secretary of State.
countries had avoided negotiations on products of vital interest for less developed countries by invoking the rule whereby a country can refuse to negotiate on any product. They stressed that the Conference could be successful only if the industrialised countries were prepared to grant unilateral tariff concessions. They also pointed out the detrimental effects of the principle of 'principal supplier.' Since the developing countries were rarely principal suppliers of manufactured products, they were effectively precluded from seeking concessions on such products. The representative of Pakistan to the 1961 Ministerial Meeting illustrated this situation by stating that "it is like asking a person who has no income to produce evidence of his earnings if he wants to earn more."

In Committee I for the 1960-61 Conference, the discussions regarding the regulations to be used for tariff negotiations centred on the negotiability of non-tariff measures. The less developed countries pointed out that benefits which would have accrued to them from past tariff negotiations have been nullified by the widespread application of non-tariff devices like revenue duties, internal charges, subsidies and quantitative restrictions. They emphasized that further negotiations would have no value if these did not cover non-tariff measures. These views were strongly supported by the Haberler Report which stressed the importance of mitigating agricultural protectionism and reducing non-tariff barriers to exports of primary products and also recommended that the Havana Charter's rule for the negotiation of revenue duties should be made applicable to the GATT tariff negotiations procedure.
The delegations of Australia and India submitted a number of concrete proposals designed to include in the negotiation rules the negotiability of non-tariff measures like quotas, subsidies and internal taxes. The proposals were accepted after long discussions and the regulations adopted by Committee for the 1960-61 Conference included the negotiability of the following measures: 1) the protection afforded through the operation of import monopolies; ii) internal quantitative regulations as provided in paragraph 7 of Article III (mixing regulations); iii) the level of screen quotas as provided in Article IV; iv) import restrictions as provided in paragraph 2(c) of Article XI (i.e. quotas on agricultural products necessary to the enforcement of governmental measures which operate to restrict the quantities of the like domestic product permitted to be marketed or produced); v) the level of subsidy which operates directly or indirectly to reduce imports; and vi) internal taxes. But since the "freedom of action" rule, under which any country can refuse to negotiate on any product or protectionist measure, was retained, the practical effect of the provision depended upon the willingness of the participating countries to negotiate on such measures. Some industrial countries, including the members of the European Economic Community, declared before the beginning of the Conference their intention not to enter into negotiations in respect of non-tariff measures and no agreement of this kind came out of the Conference.

The negotiations with the European Economic Community proved to be extremely complicated and long. In May 1961, the representatives of the EEC declared that they considered the negotiations as over, in spite of the fact that agreements for compensation
arising from the establishment of a common tariff had not been
reached with a number of countries. Some delegations expressed
their dissatisfaction with the compensation offered and in the case
of Uruguay, the Community admitted the validity of such complaints.

Only a few developing countries, namely Cambodia, Chile,
Haiti, India, Israel, Nigeria, Pakistan and Peru, participated in
the Conference. The concessions negotiated at the tariff Conference,
as a whole, totalled at about 4,400. Out of these only 160
concessions were on items of interest to less developed countries
and thus a large number of products of special importance for these
countries remained excluded from negotiations.

Professor Staffon B. Linder, of the Stockholm School of
Economics, has made an interesting study of the tariff negotiations
conducted by different contracting parties at the various tariff
conferences. (20) The study reveals that the participation of
underdeveloped countries at tariff conferences has been very
spasmodic. Twenty underdeveloped countries have concluded agreements,
but no country, barring Chile, has concluded agreements at each of
the five conferences. Only Haiti, India and Pakistan have concluded
agreements at four of the conferences. Further, the participation
of underdeveloped countries has been declining.

Another important feature is that very few agreements have
been made among underdeveloped countries. The number of such
agreements has also been declining and faster than the number of
total agreements. Professor Linder is, of course, well aware of the

(20) Professor Staffon B. Linder, The Significance of GATT
for Underdeveloped Countries, U.N. Conference on Trade and Development
limitations of his analysis.

The number of agreements is, of course, no perfect indicator of the extent of participation and the usefulness of such participation, since it reveals nothing about the scope of the agreements concluded. One agreement with a substantial importer covering a single highly interesting commodity could, self-evidently, be of more significance than wide range of agreements covering a number of products of little or no export significance. Unfortunately, such an investigation into the quality of individual agreements could not be undertaken in the preparation of this report. The quantity of agreements must therefore be used as the best available indicator of the qualitative value of tariff negotiations. (21)

Not only the underdeveloped countries have concluded few agreements but also the scope of the agreements concluded by them is limited in comparison with the agreements concluded among the industrial countries.

The inadequate participation of the underdeveloped countries in tariff conferences is because of a number of reasons. Many raw materials exported by underdeveloped countries do not face tariffs in industrialised countries. Where the exports of underdeveloped countries encounter trade barriers, tariffs as well as other kinds of obstacles, these have proved hard to negotiate either because the trade barrier is such as is not negotiable in principle (e.g. obstacles imposed for balance of payments reasons or under waivers) or because the trade barrier is non-negotiable in practice. There can be two reasons for the non-negotiability of the trade barriers viz. the importing country may believe that it needs the import obstacle for revenue purposes (e.g. fiscal charge on coffee in Germany), or 2) the importing country needs to maintain the obstacle for unusually strong domestic political reasons. In some industrial

(21) Ibid., 18.
countries, for instance, there has been strong resistance to the elimination of trade barriers against the import of agricultural products and semi-manufactures.

In regard to manufactures, the underdeveloped countries are rarely in a position to be principal suppliers or even to claim a "substantial interest" and are, therefore, unable to initiate negotiations.

The markets of the underdeveloped countries being small, the principle of reciprocity would mean large concessions at home for obtaining a concession in an important industrial country market.

The need for shutting out the import of non-essential goods in the underdeveloped countries narrows the scope for concessions. The scope is further narrowed because the industrial countries may not show much interest in seeking concessions on essential items because they know that the underdeveloped countries would import these under all circumstances.

As the tariff reductions have to be generalised to all countries and a general liberalisation of the import of non-essential goods is not possible, there is no scope for the exchange of tariff concessions between the underdeveloped countries. The tariff negotiation machinery is too complicated, time-consuming and expensive to be attractive to the underdeveloped countries.

Kennedy Round of Trade Negotiations (22)

In the conclusions drawn up at the end of a Ministerial

(22) The negotiations are called "Kennedy Round" because these have been made possible by the US Trade Expansion Act of 11 October 1962 proposed by the late President Kennedy. Under this Act, the President got unprecedented powers to reduce, on a reciprocal basis, almost the entire range of US tariffs by 50 per cent, spread over a period of five years. The most important element in this Act was that the President was authorised to avoid item-by-item negotiations by broad categories of goods.
Meeting of the contracting parties, adopted on 30 November 1961, it was agreed that "the reduction of tariff barriers on a most favoured nation basis in accordance with the terms of the General Agreement should be continued" (23) but recognised that "traditional GATT techniques for tariff negotiations on a commodity-by-commodity and country-by-country basis ... were no longer adequate to meet the changing conditions of world trade." (24) The Ministers agreed, therefore, that consideration should be given to "the adoption of new techniques, in particular some form of linear tariff reduction." (25) This consideration should be undertaken "in the light of the views and proposals put forward during the Ministers' discussions." (26)

In the course of these discussions it was stated that the basic principles on which the GATT was based should not be ignored in the search for a new approach. In particular, it was pointed out that the most favoured nation clause should not be abandoned. It was emphasized that the successful application of linear tariff reductions within the European Economic Community and the European Free Trade Area had demonstrated the practicability of this approach provided all participating Governments possessed adequate negotiating powers.

The Ministers recognised that "full account would have to be taken of the differing characteristics of the trade, tariff

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(24) Ibid.

(25) Ibid.

(26) Ibid.
levels, and economic structure of contracting parties and the problems which arose for countries exporting only a few commodities." (27) They also reiterated the principle that "a more flexible attitude should be taken with respect to the degree of reciprocity" (28) to be expected from the less developed countries.

During the discussions in the meeting of the Working Party, appointed to study ways and means of implementing the Ministerial Conclusions, different views were expressed by different delegations. Most of the delegations agreed that linear approach had great advantages over the traditional method. But the representatives of the developing countries and of countries depending upon a limited range of exports emphasized that the plan would cause some difficulties to them because they required a high tariff protection for their infant industries and also because it may not secure a fair balance between their own reductions of tariffs covering their whole range of imports and the reductions by their negotiating partners on a limited number of products of interest to them.

The resolution adopted by the Ministers on 21 May 1963 at the Ministerial meeting, held in May 1963, laid down the basic principles which should guide the next tariff conference. The principles are: (29)

1. That a significant liberalization of world trade is desirable, and that, for this purpose, comprehensive trade negotiations, to be conducted on a most-favoured

(27) Ibid., 218-19.
(28) Ibid., 219.
nation basis and on the principle of reciprocity, shall begin at Geneva on 4 May 1964, with the widest possible participation.

2. That the trade negotiations shall cover all classes of products, industrial and non-industrial, including agricultural and primary products.

3. That the trade negotiations shall deal not only with tariffs but also with non-tariff barriers.

4. That, in view of the limited results obtained in recent years from item-by-item negotiations, the tariff negotiations, subject to the provisions of paragraph B3 (i.e. those relating to special situations), (30) shall be based upon a plan of substantial linear tariff reductions with a bare minimum of exceptions which shall be subject to confrontation and justification. The linear reductions shall be equal. In those cases where there are significant disparities in tariff levels, the tariff reductions will be based upon special rules of general and automatic application.

5. That in trade negotiations it shall be open to each country to request additional trade concessions or to modify its own offers where this is necessary to obtain a balance of advantages between it and the other participating countries. It shall be a matter of joint endeavour by all participating countries to negotiate for a sufficient basis of reciprocity to maintain the fullest measure of trade concessions.

6. That during the trade negotiations a problem of reciprocity could arise in the case of countries the general incidence of whose tariffs is unquestionably lower than that of other participating countries.

7. That, in view of the importance of agriculture in world trade, the trade negotiations shall provide for acceptable conditions of access to world markets for agricultural products.

8. That in the trade negotiations every effort shall be made to reduce barriers to exports of the less developed countries, but that the developed countries cannot expect to receive reciprocity from the less developed countries.

The Ministers also decided to set up a Trade Negotiations Committee for studying the procedural rules for the tariff conference. The issues and special situations with which the Committee was to

(30) Words in parenthesis added.
deal included, (31) inter alia, the depth of the tariff reductions, and the rules for exceptions; the criteria for determining significant disparities in tariff levels and special rules applicable for tariff reductions in these cases; the problem of countries with a very low average level of tariffs or with a special economic or trade structure such that equal linear tariff reductions may not provide an adequate balance of advantages; the rules to govern, and the methods to be employed in, the creation of acceptable conditions of access to world markets for agricultural products including, inter alia, discriminatory treatment applied to products of certain countries and the means of assuring that the value of tariff reductions will not be impaired or nullified by non-tariff barriers. In this connection, the resolution states that "Consideration shall be given to the possible need to review the application of certain provisions of the General Agreement, in particular Articles XIX and XXVII, or the procedures thereunder, with a view to maintaining, to the largest extent possible, trade liberalization and the stability of tariff concessions." (32)

On 6 May 1964, the Trade Negotiations Committee, which consists of all the countries desirous of participating in the negotiations and which supervises the conduct of the Kennedy round, met at ministerial level and formally opened the trade negotiations. In a Resolution (33) adopted on that date, the Committee gave greater

(31) GATT, n. 29, 45-9.
(32) Ibid., 49.
precision to the rules and objectives applicable to the various aspects of the negotiations. Under the terms of the Resolution, the Trade Negotiations Committee agreed that a rate of 50 per cent should be used as a working hypothesis for the general rate of the linear reduction of tariffs on non-agricultural products by the industrialised countries; even this was conditioned by solutions of the other outstanding problems. There should be a bare minimum of exceptions which should be subject to "confrontation and justification." It was later agreed that exception lists should be tabled by 16 November 1964. On that date the exception lists were tables by the European Economic Community, Finland, Japan, United Kingdom and United States, Austria, Czechoslovakia, Denmark, Norway, Sweden and Switzerland indicated that, subject to obtaining reciprocity from their negotiating partners, they were tabling lists of exceptions.

Under the terms of the Resolution, it was agreed that the negotiations should provide for acceptable conditions of access to world markets for agricultural products in furtherance of a significant development and expansion of trade in such products. On 18 March 1965, the Trade Negotiations Committee adopted procedures for the negotiations on agriculture. (34) These procedures were formulated by the Committee on Agriculture. The method proposed by the Committee on Agriculture would be to proceed by means of specific offers on individual products. For this purpose, the following procedures would be applied:

a) Negotiations on grains would be resumed in the Cereals Group in May 1965 on the basis of specific proposals, including

concrete offers, by participating governments. On 17 May governments which are members of the Group exchanged their proposals on grains, and on 10 June the Group opened negotiations.

b) Proposals and offers in regard to meat and dairy products should be tabled not later than 16 September 1965.

c) In regard to all other products, concrete and specific offers on individual products relating to all relevant elements of agricultural support or protection or to the total effect of these elements should be tabled by 16 September 1965.

d) With regard to products referred to in paragraph c) above, discussions should commence on 3 May 1965 with a view, inter alia, both to seeking to identifying the relevant elements of support or protection which could enter into the negotiation and to exploring the views of the participating countries regarding the type and content of offers required to achieve the objectives referred to above.

It was agreed that the negotiations should relate not only to tariffs but also to non-tariff barriers. Countries participating in the trade negotiations have identified certain non-tariff barriers on which they wish to negotiate. Groups on administrative and technical regulations, anti-dumping policies, assessment of duties, government procurement policies, internal taxes, quantitative restrictions and state trading have been established and initial discussions on these questions have been held.

The Trade Negotiations Committee agreed that Canada, Australia, New Zealand and South Africa fell into the category of countries with a special economic or trade structure such that equal linear reductions would not provide an adequate balance of advantages in
the trade negotiations, and that the objective in the case of these countries should be the negotiation of a balance of advantages based on trade concessions by them of equivalent value. These countries are therefore to make a positive offer on specified products rather than a linear reduction with certain exceptions.

It was agreed that in the negotiations every effort should be made to reduce barriers to exports of less developed countries without expecting reciprocity from them. The objective of reducing barriers to the export of the developing countries should be borne particularly in mind in the approach to the question of exceptions to the rule of the across-the-board reduction in tariffs by the industrialised countries. The contribution of the less developed countries to the overall objective of trade liberalization should be considered in the light of the development and trade needs of those countries.

The Sub-Committee on the Participation of the Less-Developed Countries has been set up to deal with any problems arising in the negotiations which are of special interest to the developing countries. This Sub-Committee has established a procedure under which individual less developed countries have indicated products whose exclusion from the exceptions lists of the industrialised countries they regard as being of special importance to them, and those products where they wish to secure tariff concessions of more than 50 per cent.

Under the procedure for the participation of the less developed countries in the negotiations, adopted by the Trade Negotiations Committee on 18 March 1964, the less developed countries intending to participate in the negotiations would receive details
of exceptions on items of particular interest to them before they themselves indicate the contribution which they would be making to the objectives of the negotiations. A large number of less developed countries have indicated their intention to participate in the negotiations.

**Modifications of Schedules**

The provision for the modification of schedules is very essential if undue rigidity in the Agreement is to be avoided. At the Review Session, underdeveloped countries argued for greater flexibility in tariffs to afford protection to their newly developing industries. If the tariff concessions once agreed cannot be modified or withdrawn, the contracting parties will think twice before committing any concession. On the other hand, if the Agreement is flexible, they will be liberal in exchanging concessions. Provision for flexibility, of course, impairs the stability of tariffs which is very important for the expansion of world trade. A judicious balance has to be struck between rigidity and flexibility.

On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period that may be specified by the contracting parties by two-thirds of the votes cast) any contracting party is free to modify or withdraw any concession included in its schedule subject to the following conditions: (35)

a) It has negotiated and reached an agreement with the contracting party with which such concession was initially negotiated and with any other contracting party determined by the Contracting

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(35) Article XXVIII, 1.
Parties to have a principal supplying interest. The contracting parties of these two categories together with the contracting party making an application for the modification or the withdrawal of the concession shall be known as the "contracting parties primarily concerned."

b) It has consulted with any other contracting party determined by the Contracting Parties to have a substantial interest in such concession.

This provision has the benefit that the assured life of the tariff schedules will be automatically extended by periods of three years. The provision relating to the participation in negotiations of any contracting party with a principal supplying interest in addition to the contracting party with which the concession was initially negotiated is meant not to make negotiations unduly difficult nor to create complications in the application of this Article in the future to concessions which result from negotiations thereunder but simply to ensure that a contracting party with a larger share in the trade affected by the concession than a contracting party with which the concession was initially negotiated shall have an effective opportunity to protect the contractual right which it enjoys under the Agreement. The Contracting Parties should, therefore, determine that a contracting party has a principal supplying interest if that contracting party has had, over a reasonable period of time prior to the negotiations, a larger share in the market of the applicant contracting party than a contracting party with which the concession was initially negotiated or would, in the judgment of the contracting parties, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant
contracting party. Accordingly, it will not be appropriate for the Contracting Parties to determine that more than one contracting party, or more than two contracting parties in exceptional cases when they were sharing the market almost equally, had a principal supplying interest. Under exceptional circumstances, in spite of the above provisions, the Contracting Parties may determine that a contracting party has a principal supplying interest if the concession concerns an item which constitutes a major part of total exports of such contracting party. The provision for participation in the negotiations of any contracting party with principal supplying interest, and for consultation with any contracting party having a substantial interest in the concession which the applicant contracting party is seeking to modify or withdraw, is not intended to make the applicant contracting party pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade prevailing at the time of the proposed withdrawal or modifications, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party. The expression "substantial interest" is a little vague one and can be differently interpreted by different parties. It is, however, intended to be interpreted as to cover only those contracting parties which have, or could reasonably be expected to have if there were no discriminatory quantitative restrictions affecting their exports, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

The negotiations and agreement concerning the withdrawal or modification of a concession may include the provision for a
compensatory adjustment with respect to other products. (36) In such negotiations or agreement, the contracting parties should make every effort to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations.

Even if no agreement is reached between the contracting parties primarily concerned, the contracting party proposing to modify or withdraw a concession shall be free to do so subject to the condition that any contracting party with which the concession was initially negotiated, any contracting party determined by the Contracting Parties to have a principal supplying interest and any contracting party similarly determined to have a substantial interest shall be free, not later than six months, to withdraw, after giving thirty days' notice to the Contracting Parties, substantially equivalent concessions initially negotiated with the applicant contracting party. (37) If agreement is reached between the contracting parties primarily concerned but any contracting party determined by the Contracting Parties to have a substantial interest in such concession is not satisfied, it shall be free, not later than six months, to withdraw, after giving thirty days' notice to the Contracting Parties, substantially equivalent concessions initially negotiated with the applicant contracting party. (38) The value of different concessions, however, cannot be compared precisely and it is very difficult to determine as to what are equivalent concessions.

(36) Article XXIII, 2.
(37) Article XXVIII, 3a.
(38) Article XXVIII, 3b.
The Contracting Parties are empowered to authorise any contracting party, at any time, in special circumstances, to enter into negotiations for modification or withdrawal of a concession included in its schedule of concessions. Such negotiations and any related consultations shall be conducted in accordance with the provisions of paragraph 1 and 2 of this Article. If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3b of this Article shall apply. (39) If no agreement is reached between the contracting parties within sixty days or within any other period specified by the Contracting Parties, the applicant contracting party will be free to refer the matter to the Contracting Parties. Upon such reference, the Contracting Parties are required to examine the matter promptly and to submit their views to the contracting parties primarily concerned with a view to achieve a settlement. If settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify, or withdraw, the concession subject to the condition that Contracting Parties do not determine that the applicant contracting party has unreasonably failed to offer adequate compensation. If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined by the contracting parties to have a principal supplying interest and any contracting party determined by the Contracting Parties to have a substantial interest shall be free, not later than six months, to modify or withdraw, giving thirty days' notice to the Contracting Parties,

(39) Article XXVIII, 4.
substantially equivalent concessions initially negotiated with the applicant contracting party.

It is feared by some contracting parties that the right of unilateral action contained in this Article might lead to frequent modification of bound rates. This fear, however, is unwarranted.

... the mere fact that a legal right to change a rate exists even if agreement by the other parties cannot be obtained does not mean that this right will be exercised on any extensive scale. Each party to GATT has an important vested interest in the concessions made by numerous parties. If it exercises its right to increase its own rates, it will have to face the prospect of increases by other parties to the detriment of its trade with them. (40)

The United Kingdom suggested that the right of unilateral action contained in this Article should be replaced by a provision for arbitration. This would provide an opportunity for the renegotiation of items safeguarding the interests of all countries. (41)

In developing economies, attempts at rapid development often result into inflation and a rise in prices. Consequently, underdeveloped countries should be permitted an increase in bound rates of specific duties without compensation to the extent it would have occurred automatically if the duties were on an ad valorem basis. (42)

Withholding or withdrawal of Concessions

Any contracting party is free to withhold or withdraw in whole or in part any concession provided for in its schedule in respect of


(41) GATT Document No. SR. 9/16, 11.

(42) GATT Document No. SR. 9/16, 3.
which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. This right, however, is not to be exercised unilaterally. The contracting party taking such action is required to inform the Contracting Parties and, upon request, consult with the contracting parties substantially interested in the product under consideration. (43)

**Tariff Schedules**

The tariff concessions exchanged between different countries are embodied into the tariff schedules annexed to the General Agreement. It is sometimes erroneously implied that these tariff schedules are only for a fixed period and would automatically expire at the end of the period unless renewed. Actually the tariff schedules have indefinite life; the expiration of the period of schedules only means that any contracting party is free to modify the bound tariffs on any item by negotiation with other concerned contracting parties. In the first instance, when the Agreement came into existence in 1948, the tariffs were bound until 1 January 1951. Before the expiry of this period, the contracting parties agreed to extend the assured life of the schedules by further three years. Several contracting parties, however, desired to re-negotiate tariffs on certain bound items before agreeing to this extension. These negotiations took place early in 1951 during the Torquay Tariff Conference. After affecting the desired changes, the life of the schedules was extended until 1 January 1954. The life of the Schedules was again extended until 1 July 1955. This

(43) Article XXVII.
extension of the assured life of the Schedules was accepted by several contracting parties after considerable hesitation. The majority of the contracting parties, however, considered desirable an extension of the firm binding so that the stability of the tariffs, which had been one of the principal achievements of the General Agreement, is not impaired. This extension was particularly desirable when the contracting parties were studying ways and means for further reducing tariffs and other barriers to trade to further the achievement of the objectives of the GAAT. On 10 March 1955, the Contracting Parties decided to extend the life of the tariff schedules up to 31 December 1958. (44) The revised Article XXVIII provided that the assured life of the schedules will be automatically extended by periods of three years. The revised Article, however, was not accepted by all the contracting parties. On 28 November 1957, the contracting parties, which did not accept the revised Article, declared not to invoke the provisions of Article XXVIII for modification or withdrawal of bound tariff rates till 1 January 1961. On 19 November 1960, these contracting parties again declared not to invoke the provisions of Article XXVIII for modification or withdrawal of bound tariff rates till 1 January 1964. (45)

Each contracting party is required to accord to the commerce of any other contracting party treatment which is not less favourable than that provided for in the relevant part of the relevant schedule

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(44) GATT, Basic Instruments and Selected Documents, Third Supplement (Geneva, 1955) 30-2.

(45) GATT, Basic Instruments and Selected Documents, Ninth Supplement (Geneva, 1961) 30-2.
annexed to this Agreement. In actual practice, sometimes, countries have acted in violation of this provision. Sometimes the countries have been permitted by a special waiver to levy tariffs at a rate higher than that contained in the relevant schedules. Some such cases are mentioned below:

Complaint by the United Kingdom Concerning the Increase of Import Duties in Greece. The Government of the United Kingdom lodged a complaint against the Government of Greece regarding its decision to increase the coefficient for currency conversion. The Contracting Parties concluded that the measure taken by the Greek Government violated the provisions of paragraph 1 of Article II of the General Agreement. Taking into consideration the undertaking of the Greek Government to remove, before 1 July 1953, the above mentioned changes, invited her to report the Contracting Parties on the action taken towards the fulfilment of the undertaking. (46) The matter came to an end with the rescinding of the measure on 20 July 1953. (47)

French Special Temporary Compensation Tax on Imports. Italy lodged a complaint against the French special temporary compensation tax. The Contracting Parties concluded that the tax raised the incidence of customs charges above the maximum rates bound under Article II and resulted into an increase in the incidence of preferences in excess of the minimum margins permissible under Article I. They found that the adversely affected contracting parties had reason for requesting for compensation under Article XXIII.

(46) GATT, Basic Instruments and Selected Documents, First Supplement (Geneva, 1953) 23.

(47) GATT, Basic Instruments and Selected Documents, Seventh Supplement (Geneva, 1959) 69.
of the General Agreement. They recommended that the French Government take measures to reduce discrimination against the trade of contracting parties whose exports are subject to tax but to which the liberalisation measures taken by France do not apply and called upon her to fulfil its undertaking to remove the tax as soon as possible. (48) The tax was reduced to some extent. At the eleventh session the French Government stated that owing to special financial difficulties, she did not think it would be possible for her, in the near future, to make substantial progress towards the reduction or elimination of compensation tax. The Contracting Parties expressed the hope that French Government would nevertheless proceed at the earliest possible time with a progressive and rapid elimination of the tax. (49) The tax was abolished on 10 August 1957 and replaced by other measures. (50)

**Peruvian Import Charges.** The Government of Peru requested for a waiver from the provisions of paragraph 2 of Article I and of paragraph 1 of Article II to the extent necessary to allow it to introduce surcharges on all tariff items including the specific duties bound under the General Agreement and to exempt from the surcharges products originating in countries with which Peru is entitled to maintain preferential arrangements under paragraph 2(d) of Article I. This measure was necessitated by a serious deterioration in Peru's balance of payments position. It was entitled to

(48) GATT, n. 44, 26-8.

(49) GATT, Basic Instruments and Selected Documents, Fifth Supplement (Geneva, 1957) 27-8.

(50) GATT, n. 47, 68.
institute quantitative import restrictions under Article XII. Considering that the imposition of quantitative restrictions would be more detrimental than the temporary surcharges, it decided not to resort to the provision of Article XII. On 21 November 1958, the Contracting Parties decided, subject to certain conditions, to grant the requested waiver to Peru. (51)

**Nicaraguan Import Duties.** The Government of Nicaragua notified the Contracting Parties of its intention to take certain measures including a temporary increase in duties on certain products bound under Article II to safeguard its monetary reserves which seriously declined owing to deficit in its balance of payments in 1958. Though entitled to institute import restrictions under the provisions of Article XII or Article XVIII, it preferred other measures, including a temporary increase in customs tariffs, because these were less restrictive than the quantitative restrictions. The Nicaraguan Government undertook to remove the additional duties by gradual stages in accordance with the improvement in the monetary reserves position. Keeping these things in view, on 20 November 1959, the Contracting Parties decided, subject to certain conditions, to waive the provisions of paragraph 1 of Article II to the extent necessary to permit the Nicaraguan Government to increase duties on certain products bound under Article II. (52)


(52) *GATT, Basic Instruments and Selected Documents, Eighth Supplement* (Geneva, 1950) 52-6 and 164.