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Most-favoured-nation clause: statement made by the representative of the UNCTAD secretariat at the 1497th meeting, at the request of the Commission

Topic:
Most-favoured-nation clause

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United Nations Conference on Trade and Development^a

[Original: English]
[9 June 1978]

1. The question of most-favoured-nation treatment, and its relationship to the preferential treatment of developing countries, has been of major concern to UNCTAD since its inception. General Principle Eight of recommendation A.I.1, adopted at the first session of the Conference, provided *inter alia* that international trade should be conducted to mutual advantage on the basis of most-favoured-nation treatment. However, developed countries should grant concessions to all developing countries and extend to developing countries all concessions they granted to one another and should not, in granting these or other concessions, require any concessions in return from developing countries. New preferential concessions, both tariff and non-tariff, should be made to developing countries as a whole and such preferences should not be extended to developed countries. Developing countries need not extend to developed countries preferential treatment among themselves.^b

2. While most-favoured-nation treatment aims at equality of treatment, paradoxically it is preferences that constitute a means of enabling developing countries to come closer to real equality of treatment. In fact, the m.f.n. principle does not take account of the inequalities in economic structure and levels of development in the world; to treat equally countries that are economically unequal constitutes equality of treatment only from a formal point of view, but amounts actually to inequality of treatment. Consequently, preferential reductions on imports from developing countries bring those countries closer to achieving equality of treatment with producers in national or multinational markets, take into account the fact that they are at a lower level of development, and correct a situation where they have in actual fact disadvantages in comparison with imports from developed countries.

3. The breakthrough for the introduction of generalized preferences in the tariff area for products originating in developing countries was achieved by UNCTAD resolution 21 (II), adopted at the second session of UNCTAD. In that resolution the Conference *inter alia* laid down the objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favour of developing countries, namely: (a) to increase their export earnings; (b) to promote their industrialization; (c) to accelerate their rates of economic growth.^c

4. Decision 75 (S-IV), adopted by the Trade and Development Board at its fourth special session, defined *inter alia* the legal status of the GSP. It was recognized in that connexion that no country intended to invoke its rights to most-favoured-nation treatment with a view to obtaining, in whole or in part, the preferential treatment granted to developing countries in accordance with UNCTAD resolution 21 (II), and that the contracting parties to the General Agreement on Tariffs and Trade intended to seek the required waiver or waivers as soon as possible.

5. The decision also embodied the statement made by the preference-giving countries that the legal status of the tariff preferences to be accorded to the beneficiary countries by each preference-giving country individually would be governed by the following considerations:

1. The tariff preferences would be temporary in nature;

2. Their grant would not constitute a binding commitment and, in particular, would in no way prevent: (a) their subsequent withdrawal in whole or in part; or (b) the subsequent reduction of tariffs on a most-favoured-nation basis, whether unilaterally or following international tariff negotiations;

3. Their grant would be conditional upon the necessary waiver or waivers in respect of existing international obligations, in particular in the General Agreement on Tariffs and Trade.

6. The decision also provided that developing countries that were to share their existing tariff advantages in some developed countries as the result of the introduction of the GSP would expect the new access in other developed countries to provide export opportunities at least to compensate them.^d

7. Mainly on the basis of UNCTAD resolution 21 (II) and decision 75 (S-IV) of the Trade and Development Board, a large number of developed countries have introduced schemes of generalized preferences. Such schemes are at present applied by the following developed market economy countries: Australia, Austria, Canada, the EEC countries (Belgium, Denmark, France, Federal Republic of Germany, Ireland, Italy, Luxembourg, Netherlands, United Kingdom), Finland, Japan, New Zealand, Norway, Sweden, Switzerland and the United States of America.

8. Moreover, the following socialist countries of Eastern Europe grant preferential treatment to developing countries: Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland and the USSR.

9. A number of the schemes of generalized preferences have undergone important changes since their entry into force. There have been continuous efforts in UNCTAD towards an improvement of the existing schemes. In this connexion, special mention should be made of resolution 96 (IV), adopted at the fourth session of UNCTAD, which provides *inter alia* that the generalized system of non-reciprocal, non-discriminatory preferences should be improved in favour of developing countries, taking into account the relevant interests of those developing countries enjoying special advantages, as well as the need to find ways and means of protecting their interests. With regard to the duration of the GSP, the resolution provided that it should continue beyond the initial period of 10 years originally envisaged, bearing in mind, in particular, the need for long-term export planning in developing countries.^e

10. The developing countries are interested in strengthening the legal status of the GSP. Accordingly, the Manila Declaration and Programme of Action, adopted by the developing countries in February 1976,^f proposed that the GSP should be given a firm statutory basis and made a permanent feature of the trade policies of the developed market economy countries and of the socialist countries of Eastern Europe.

11. An important step towards the improved legal status of the GSP was the adoption of the Charter of Economic Rights and Duties of States, article 18 of which stipulates:

"Developed countries should extend, improve and enlarge the system of generalized non-reciprocal and non-discriminatory tariff preferences to the developing countries consistent with the relevant agreed conclusions and relevant decisions as adopted

^a Statement made by the representative of the UNCTAD secretariat at the 1497th meeting of the Commission, held on 9 June 1978.

^b *Proceedings of the United Nations Conference on Trade and Development*, vol. I, *Final Act and Report* (United Nations publication, Sales No. 64.II.B.11), p. 20.

^c *Ibid.*, *Second Session*, vol. I [and Corr.1 and 3 and Add.1 and 2], *Report and Annexes* (United Nations publication, Sales No. E.68.II.D.14), p. 38.

^d See *Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 15 (A/8015/Rev.1)*, pp. 261 *et seq.*, Part Three, annex I.

^e *Proceedings of the United Nations Conference on Trade and Development, Fourth Session*, vol. I [and Corr.1], *Report and Annexes* (United Nations publication, Sales No. E.76.II.D.10), p. 10.

^f *Ibid.*, p. 109.

on this subject, in the framework of the competent international organizations. Developed countries should also give serious consideration to the adoption of other differential measures, in areas where this is feasible and appropriate and in ways which will provide special and more favourable treatment, in order to meet the trade and development needs of the developing countries. In the conduct of international economic relations the developed countries should endeavour to avoid measures having a negative effect on the development of the national economies of the developing countries, as promoted by generalized tariff preferences and other generally agreed differential measures in their favour."

As may be seen from this provision, the Charter of Economic Rights and Duties of States pronounces itself in favour of preferential treatment for developing countries not only in the area of tariffs but also in other areas where this is feasible.

12. Such areas are indicated *inter alia* in UNCTAD resolution 96 (IV), which has already been mentioned, and which deals with a set of interrelated and mutually supporting measures for the expansion and diversification of exports of industrial products of developing countries, as well as in UNCTAD resolution 91 (IV), on the multilateral trade negotiations.⁹ Resolution 96 (IV) requests developed countries to give consideration to the view of developing countries that developed countries should apply the principle of differential and more favourable treatment in favour of developing countries to non-tariff barriers also. Resolution 91 (IV) urges the practical and expeditious application in the multilateral trade negotiations of differential measures that would provide special and more favourable treatment for developing countries in accordance with the provisions of the Tokyo Declaration and, *inter alia*, underlines that there is widespread recognition that subsidies and countervailing duties are areas where special and differentiated treatment for developing countries is both feasible and appropriate. The same resolution stresses the need to ensure that the least developed among developing countries receive special treatment in the context of any general or specific measures taken in favour of developing countries during the negotiations.

13. I have referred to the preferential tariff treatment in favour of developing countries under the GSP and to the specific situation of those developing countries that enjoy special advantages, as well as to the need to ensure that the least developed countries receive special treatment, as outlined for instance in UNCTAD resolution 91 (IV). I have also referred to preferential treatment in favour of developing countries in other areas than tariffs. The preferential treatment so far discussed relates to preferential measures taken by developed countries in favour of developing countries.

⁹ *Ibid.*, p. 14.

14. Last but not least, I have to underline the great importance of preferential treatment which developing countries accord or intend to accord each other. In connexion with the establishment of a New International Economic Order, collective self-reliance and growing co-operation among developing countries are of capital importance. Preferential trade arrangements among developing countries, including those of a limited scope, can play a key role, to an ever increasing extent, in the measures of economic co-operation among developing countries. In line therewith, resolution 1 (I) of the UNCTAD Committee on Economic Co-operation among Developing Countries has called upon the Secretary-General of UNCTAD, in establishing the work programme on economic co-operation among developing countries, to give special priority to the initiation of studies relating to a global scheme of trade preferences among developing countries and the intensification of ongoing work and activities relating to the strengthening of subregional, regional and interregional economic co-operation and integration among developing countries.^h

15. I have discussed the objectives and forms of preferential treatment for developing countries as they have developed in the recent past, and particularly in this Second United Nations Development Decade. This issue of preferential treatment is still under consideration by governments in UNCTAD, as well as in the context of the multilateral trade negotiations conducted in the framework of GATT. It raises a number of complex questions, the resolution of which is not foreseeable at present. However, I wish to point out that draft article 21 is limited to tariff preferences under the GSP, while developing countries are seeking preferential treatment or special differentiated treatment in all areas of trade relations with developed countries. Moreover, they consider that preferential treatment granted in trade among themselves should not be extended to developed countries. In addition, I wish to stress the importance of draft article 27, which I understand is intended to leave open the way for the elaboration of new rules to the benefit of developing countries as regards their preferential treatment.

16. There is no doubt that the work of the Commission can substantively contribute to the maintenance and further development of this preferential treatment in the future, particularly in the third Development Decade and thereafter. To this end, however, it would be necessary that the preferential treatment described should be adequately covered by the draft articles under consideration. It is in this spirit that I wish the Commission all success in its further work.

^h *Official Records of the Trade and Development Board, Seventeenth Session, Supplement No. 2 (TD/B/652), annex I, p. 15.*

C. Comments of specialized agencies and other intergovernmental organizations *

1. United Nations Educational, Scientific and Cultural Organization

[Original: French]
[12 January 1978]

I have the honour to inform you that UNESCO has no comments to make and no information to submit on this subject.

* Two other intergovernmental organizations, the Customs Co-operation Council and the Central Office for International Railway Transport, indicated that they had no comments to make on the draft articles. Nevertheless, they drew attention,

However, for your information I should like to point out that in at least one agreement it is provided that UNESCO shall benefit from a clause which might be called a "most-favoured-organization clause". I refer to annex B of the Agreement between the

respectively, to the International Convention on the Simplification and Harmonization of Customs Procedures, signed at Kyoto on 18 May 1973 ("Kyoto Convention"), particularly in connexion with draft articles 22 and 23, and to the following decisions relating to trade agreements and international railway tariffs: judgment of the Prague district trade court of 21 May 1935; judgment of the Rome appeals court of 16 April 1940; judgment of the Italian High Court of Appeals of 19 April 1945.