NON-DISCRIMINATION IN INTERNATIONAL TRADE*

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By way of preface let me note that prior to the negotiation of the General Agreement on Tariffs and Trade (GATT), there had been a great deal of discrimination in international trade and payments. The arguments governments accepted in justifying their discriminatory practices were many and varied, not least amongst them were several which were essentially political. Thus, one frequent reason for discriminating against another country was to apply pressure to accomplish some political objective or, alternatively, to discriminate in favour of someone for the same purpose. Granting “better” treatment to trade with former military allies and well-disposed neutrals than to former enemies and less friendly neutrals was often believed to be “reasonable” and “appropriate”.

The belief that exchanges of favours amongst limited groups of nations would bring both political and sentimental gains has a long history. Such treatment, it was argued, would strengthen political ties and smooth the way toward political union. It has been widely accepted for over a century that there were often compelling political reasons for a mother country granting preferential treatment to the exports of her colonial areas and, once the economies of a such areas had been developed on the basis of such preferences, a case was found to exist for continuing the discriminatory arrangements lest some of them become acutely depressed areas.

Historically, the more strictly economic arguments for discrimination have been short run, and from the point of view of a single or small group of nations, rather than from a long-run and universal point of view.

That most powerful economic argument for import barriers – outright protection – has often been a telling argument for discriminatory practices: appear to be favouring your consumers by reducing some barriers but keeping out the goods of serious foreign competitors. Men wielding political power have often found it easy to accept the case noted by Adam Smith, just 200 years ago, that “it is only fair” to discriminate in favour of those who buy from you. Most quickly forgot his answer: “The sneaking arts of underling tradesmen are thus erected into political maxims for the conduct of a great empire; for it is the most underling tradesmen only who make it a rule to employ chiefly their own customers. A great trader purchases his goods where they are cheapest and best, without regard to any little interest of this kind.”

The argument that it is unfair on the face of it that one country should receive “free” what others had to “pay for” in terms of increasing access to their markets has found many supporters. So, too, governments have not always been able to re-

* The views set out here are those of the author only. It is not to be presumed that they are shared by other members of the GATT secretariat or by any Contracting Party to the GATT.
sist the temptation to discriminate in the hope that they could thereby get a double return for any tariff cuts they made. There have, of course, also been sophisticated arguments that discriminatory policies could be defended on the grounds they fostered freer trade, the essence of the argument being that a policy of non-discrimination encouraged a lot of countries to become "free-riders" rather than to contribute themselves to trade liberalization. One of the more sophisticated and hardy arguments has been that discrimination permitted a country to introduce a monopsonistic principle into its trade and so could improve its terms of trade.

Although those responsible for determining government policy have had no trouble finding some justification for discrimination, be it political or economic or both, most careful students of commercial policy in the period just prior to World War II had concluded that the case was not made. Against this background, those who during and after World War II negotiated the General Agreement on Tariffs and Trade believed that discrimination was, on balance, an evil thing and that the world's efficiency, welfare and political well-being would be best served by adhering to unconditional most-favoured-nation (MFN) treatment. And so it came to be that Article I, paragraph 1 of the General Agreement on Tariffs and Trade enshrines the MFN principle and so proscribes discrimination. And it has been defended by many as the most important single rule of conduct in international trade.¹

Even in those heady days when negotiators truly believed they could and were building a better world and when, because of the chaos in which the world then was, one could hope to bring about far greater reforms than are possible at a time when affairs may not be ideal but are at least tolerable; even then certain exceptions were provided.

One (Article XIV), a country suffering acute balance-of-payments difficulties during a time when the major trading currencies were inconvertible could discriminate against imports which had to be paid for in currencies that were in short supply. Two, existing preferential systems could be maintained (Article I, paragraph 2) but the preferential margins were not to be increased and no new preferences were to be created. Three, customs unions and free trade areas were blessed (Article XXIV) provided certain fairly rigorous conditions were met. Then, too, there was GATT Article XXXV which specified that any contracting party had the option of not applying the GATT to another contracting party - that is, could discriminate against it - provided such reservations were invoked at the time the country to be discriminated against accedes to the General Agreement. Although this clause has been invoked by a good many countries in the past, most frequently against Japan, the number of cases has steadily declined and today it affects only a small amount of the world's trade, and in some instances the rules of the GATT are de facto in force.

¹. Article I states "With respect to customs duties and charges of any kind imposed on ... imports or exports, and with respect ... to all rules and formalities in connection with importation and exportation ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."