ANNEX A

The GATT Provisions for Free Trade Arrangements

The General Agreement on Tariffs and Trade (GATT) was formed in 1948 at the intersection of two conflicting impulses in international commercial relations. One was the determination to reestablish the principle of nondiscrimination, which had badly eroded before World War II. The GATT thus selected as its cornerstone the unconditional most-favored-nation (MFN) principle; its very first sentence states:

"With respect to custom duties [and other charges on imports and exports] any advantage, favor, 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 products originating in or destined for the territories of all other contracting parties." [1]

Thus, GATT countries would treat the products of all other members on an equal basis, concessions that were negotiated would be passed on to all, and any new preferences were to be prohibited. (But members might retain previously established preferences such as those among commonwealth countries, or then in effect between the United States and Cuba and the United States and the Philippines.)

At the same time, the GATT had to accommodate a new and irrepressible movement—at first confined to Europe—toward regional free trade through arrangements in which participants shared this privilege among themselves alone. Indeed, on the same day that GATT was born in Geneva to encourage multilateralism, the Belgium-Netherlands-Luxembourg Economic Union (Benelux) was launched in Brussels to initiate the postwar movement toward regional free trade.

The delicate task of reconciling these trends fell to Article XXIV.[2] The first relevant paragraph recognized that regional free trade might be so oriented and organized to serve its participants without frustrating the basic goals of the GATT, and to this end permitted members to form new free-trade arrangements, either as customs unions or free trade areas.

"The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries party to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories." [3]

The remaining six paragraphs of article XXIV then went on to provide rules designed to prevent the new project from violating the spirit of the above paragraph by imitating the commonwealth preference system or becoming an inward-looking protectionist trade bloc.

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[1] From paragraph 1 of article I, entitled "General Most Favoured Nation Treatment."

[2] The relevant text of article XXIV of the GATT, setting forth the conditions for new free-trade arrangements, is presented verbatim and accompanied with a brief commentary in Lea, op. cit., pp. 99–107. A more extensive discussion is to be found in James Jay Allen, "The European Common Market and the GATT" (Washington, D.C.: The University Press of Washington for the Institute for International and Foreign Trade Law, Georgetown University Law Center), 1960; and Lambrinidis, op. cit., chapter XII, "Compatibility of the EFTA Convention with GATT."

[3] Article XXIV, par. 4.