

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED  
LIMITED B  
GATT/CP.5/49  
13 December 1950  
ORIGINAL: ENGLISH

---

CONTRACTING PARTIES  
Fifth Session

## REPORT OF WORKING PARTY "L" ON THE CONTINUING ADMINISTRATION OF THE GENERAL AGREEMENT

1. The Working Party had the following Terms of Reference:

"To examine in the light of the discussions of the plenary meetings on the 7th and 8th December the proposal for the appointment of a permanent committee to ensure the more effective administration of the General Agreement and to present a report to this Session, for consideration by the Contracting Parties and for transmission to governments for further study."

2. The Working Party, in the first instance, made a general review of the functions and responsibilities of the Contracting Parties under the provisions of the Agreement in order to present all material required for a consideration of the question whether or not a standing committee would contribute to the more efficient administration of the Agreement and, secondly, considered the terms of reference, the composition and method of selection, which would be appropriate for a standing committee if it should be decided that such a committee would serve a useful purpose.
3. Some members of the Working Party stated that, pending further study of the matter, their governments had not defined their attitude to the setting up of a standing committee, and they were not therefore in a position to commit their governments in any respect on this subject. It was agreed that, in these circumstances, the Working Party should discuss the proposal solely from the standpoint of the efficient and expeditious administration of the General Agreement with a view to indicating what type of standing committee would be likely to be most suitable from this standpoint if and when the Contracting Parties should decide that the setting up of such a committee was desirable.
4. As a basis for its deliberations, the Working Party assumed that the inter-sessional duties of a standing committee would be limited to work of a preparatory character, including, where appropriate, recommendations to the Contracting Parties, but would not include the taking of decisions, which would be reserved exclusively to the Contracting Parties. Moreover, the Working Party agreed that a principal objective of the proposal under consideration was to preserve the proved value of the periodical sessions of the Contracting Parties and to maintain the high level of representation including the attendance of officials responsible for carrying out the decisions of their governments in the field of commercial policy.

5. The Working Party then proceeded to examine those functions laid upon the Contracting Parties by specific provisions of the Agreement which assume that the Contracting Parties will be in a position to take joint action at any time. Those provisions of the Agreement imply that the Contracting Parties should be prepared either to meet at any time or to provide suitable machinery to discharge those functions when required. Moreover, the Contracting Parties have other responsibilities the discharge of which might be substantially facilitated by the existence of some continuing committee. In making this examination the Working Party proceeded on the basis of an analysis by the Executive Secretary which is annexed to this Report.
6. The analysis in the Annex is limited to the main continuing functions of the Contracting Parties with the purpose of showing how far their performance would be facilitated by the existence of some sort of standing committee. The Contracting Parties have recognised this problem previously by providing for inter-sessional action relating to the balance-of-payments articles and Article XVIII; inter-sessional bodies with powers to carry out preparatory work, including the initiation of consultations in certain cases, and to submit recommendations, have been appointed. Any general standing committee which the Contracting Parties might establish should absorb the powers of those bodies.
7. The Working Party considers that if a standing committee were appointed the Contracting Parties would probably wish it to act also as an agenda committee. If a preliminary examination could be made of the items on a provisional sessional agenda, it would be possible to clarify the issues submitted to the Contracting Parties, to indicate any additional information and documentation which might be required and instruct the secretariat to provide or obtain it, and to make recommendations regarding the order of business of each regular session. It should be noted that an agenda committee has been found useful by other organisations, e.g. the Economic and Social Council.
8. Having studied the functions and tasks which might be performed by a standing committee, the Working Party came to the conclusion without prejudice to the reservations in paragraph 2 or to other relevant considerations which governments will have to take into account before arriving at a decision, that a standing committee could serve a useful purpose by contributing to the efficient administration of the Agreement. The Working Party then proceeded to discuss several questions which would arise in connection with the establishment of such a committee.
9. Designation: The Working Party considered that the designation should not bear any implication that the committee would have any executive character, and therefore suggests that the term "standing committee", which has been used in this Report, would be the most appropriate.

10. Terms of Reference: The Working Party recommends that if the Contracting Parties decide to establish a standing committee the following terms of reference might be appropriate:

- (i) Insofar as Articles XII to XV may require action by the Contracting Parties when not in session, and subject to rules established by the CONTRACTING PARTIES, to initiate and engage in consultations under those Articles and to report or make appropriate recommendations to the CONTRACTING PARTIES.
- (ii) To examine applications under Article XVIII requiring action by the CONTRACTING PARTIES when not in session and to report or make appropriate recommendations to the CONTRACTING PARTIES.
- (iii) On the request of one or more contracting parties, to initiate and engage in consultations on, and facilitate the settlement of, differences between individual contracting parties arising under the provisions of the General Agreement and to report or make appropriate recommendations to the CONTRACTING PARTIES.
- (iv) To initiate and carry out preparatory work on questions referred to the CONTRACTING PARTIES by individual contracting parties under Article XXV:5(a).
- (v) To examine matters arising between sessions which require urgent decisions by the CONTRACTING PARTIES under Articles II:6(a), XIX, and XXV:5(a) and to make recommendations thereon.
- (vi) To carry out any specific action and to exercise any specific function expressly assigned to the Committee by the CONTRACTING PARTIES at any session.
- (vii) To instruct the Secretariat as necessary to provide or obtain from contracting parties information required by the CONTRACTING PARTIES in the consideration of items on the agenda of their sessions or necessary for the carrying out of the functions of the Standing Committee.
- (viii) To examine the provisional agenda for each session of the CONTRACTING PARTIES and to propose an order of business.
- (ix) In accordance with rules approved by the CONTRACTING PARTIES, to take telegraphic or postal ballots of the contracting parties on matters which require urgent decisions.
- (x) To recommend to the CONTRACTING PARTIES the convening of a special session to deal with matters which require urgent decisions.
- (xi) In general to do preparatory work and where necessary to make recommendations to the CONTRACTING PARTIES on any matters with which the CONTRACTING PARTIES may be required to deal at a session, in order to expedite the work of the CONTRACTING PARTIES.
- (xii) Nothing in these terms of reference shall be construed to permit the delegation of the Standing Committee by the CONTRACTING PARTIES of power to take any decision on their behalf pursuant to the General Agreement.

11. Rules of Procedure: The Working Party recommends that the Contracting Parties should instruct the Secretariat to distribute as soon as possible after the Fifth Session a draft of rules of procedure for a standing committee. The Working Party suggest that the draft rules of procedure should be substantially similar to those of the Contracting Parties, except that they would not include rules on voting. Further, the rules should provide that all meetings of the committee will be open to observers of contracting parties which are not members of the committee, and shall place upon the committee the obligation to invite contracting parties which are directly concerned with any question receiving attention to send representatives who will be entitled to participate freely in the discussions. The rules should also include appropriate provisions for safeguarding the confidential character of certain discussions similar to those applied by the Contracting Parties. Moreover, the Secretariat should consider whether two-thirds of the membership of the committee would be an appropriate quorum.

12. Composition: The Working Party discussed several proposals for the composition of a committee and for the selection of members and the rotation and tenure of office, and agreed to submit the following recommendations:

- (a) that a standing committee should consist of 15 members;
- (b) that a standing committee should include, on a permanent basis, the contracting parties of chief economic importance, in the determination of which particular regard should be paid to their shares in international trade, provided that in determining the number of such permanent seats the Contracting Parties would pay due regard to the importance of providing for adequate representation of small and medium economies;
- (c) that in establishing a standing committee, the Contracting Parties should have regard to the objective of ensuring that the committee -
  - (i) would be representative of the broad geographical areas to which the contracting parties belong, and
  - (ii) would be representative of different degrees of economic development and divergent economic interests;
- (d) that the tenure of office of non-permanent seats of a committee should be such as to provide on the one hand for an adequate rotation of membership and on the other for adequate continuity in the conduct of the work of the committee; and
- (e) that a customs union should be eligible for selection as a member of the committee on the same basis as a single contracting party, provided all members of the union were contracting parties and all so desired.

13. Chairmanship: The Working Party agreed to suggest that the Chairman of a standing committee should be elected by the Contracting Parties, and that temporary chairmen should be elected by the committee at times when the Chairman is absent.

14. Place of Meeting: The Working Party did not discuss the relative advantages of various places in which a standing committee might hold its meetings, but members were generally agreed that it would be advantageous if the place of meeting and the offices of the permanent staff were in the same place. In order to facilitate consideration of this question, in the event of the Contracting Parties deciding to appoint a standing committee, the Working Party recommends that the Executive Secretary be instructed to prepare a site study of Geneva and that any contracting party wishing to suggest any other possible place of meeting and site for the offices of the permanent staff should submit a site study thereof.

15. Secretariat Requirements: The Working Party also gave consideration to administrative and financial questions, including the structure of the Secretariat. The Working Party recognised that there was a need for the establishment of a permanent secretariat and that this question would in any case require to be dealt with at the Sixth Session of the Contracting Parties. The Working Party were of the opinion that the establishment of a standing committee would not materially affect either the functions or the structure of the Secretariat and that the servicing of meetings of a standing committee was not likely to involve more than a moderate increase in expenditure. The Working Party agreed that a detailed examination of this question would be more appropriate when budgetary problems are discussed at the Sixth Session.

ANNEX

ANALYSIS OF THE CONTINUING FUNCTIONS AND RESPONSIBILITIES  
OF THE CONTRACTING PARTIES

1. Consultations under Article XII:4(a), (b) and (c) :

Under paragraphs 4(a) and 4 (c) a contracting party may wish to consult with the Contracting Parties before it institutes or intensifies restrictions under Article XII. The Contracting Parties must be in a position to meet such requests promptly. Under paragraph 4(b) the Contracting Parties are required to invite a contracting party intensifying import restrictions under Article XII to enter into consultations within 30 days. Lack of adequate machinery for arranging prompt and expeditious consultation renders the implementation of this provision extremely difficult, as experience has shown. The Contracting Parties recognised this at their Third Session by establishing an intersessional procedure to initiate such consultations, and by providing (GATT/CP.3/30/Rev.1 and 50/rev.1) for the convening of an ad hoc committee or a select committee according to the nature of the consultations.

2. Examination of Complaints Lodged under Article XII:4(d) :

If a contracting party asks the Contracting Parties to examine whether the restrictions of another contracting party are applied inconsistently with the provisions of the Agreement, it may be necessary for the Contracting Parties to make arrangements for a preliminary examination of all the facts in order to arrive at a rapid and fully considered decision in the course of a single session. Here again the Contracting Parties at their Third Session recognised the desirability of providing for some intersessional procedure (GATT/CP.3/50/Rev. paras. 17-20) and in adopting the report of the Working Party they considered that in some cases a committee might be useful in assisting the Contracting Parties to effect a settlement of the differences.

3. Third Report under Article XIV:1(g) :

The Contracting Parties will have to draft in 1952 a third report on restrictions which are still applied under Article XII and which deviate from the rule of non-discrimination. A decision will have to be taken at the Sixth Session as to the arrangements to be made for the preparation of that report. The experience gained in drafting the First Report clearly indicates that some preparatory work by a body of representatives of contracting parties would have contributed substantially to improving the quality of the report and saving time at the Fourth Session when it was approved.

4. Other Action under Article XIV :

As from March 1952, the Contracting Parties have important functions to discharge in connection with the application of discriminatory measures. Paragraph 1(g) provides that in March 1952 any contracting party still entitled to take action under paragraph (1)(c) or under Annex J shall consult the Contracting Parties as to any deviations from Article XIII still in force and as to its continued resort to the provisions of paragraph (1)(c) or Annex J. This predicates that the Contracting Parties will be in session in March 1952, or will have made other arrangements for initiating such consultations during that month. Moreover, the Contracting Parties may, as a result of such consultations, prescribe limitations of a general character to which permitted deviations may be subjected. They may also make representations, in exceptional circumstances, to any contracting party which is entitled to take action under

the provisions referred to above. The Contracting Parties may also be called upon to give their consent to a temporary deviation from the rule of non-discrimination under the circumstances defined in paragraph 2. Finally, the Contracting Parties have responsibilities to discharge under paragraph 3 of Annex J with respect to the exceptions provided in that annex. It is difficult to see how the Contracting Parties will be able to discharge these increasing responsibilities under Article XIV without some intersessional machinery with authority to carry out at least the necessary preparatory work.

5. Procedures for consultation with the International Monetary Fund (Article XV:3):

The provisional arrangement with the International Monetary Fund may be reviewed at the Sixth Session. It is, in any case, clear that consultation arrangements with the Fund would be greatly facilitated if there were some continuing body of the Contracting Parties between sessions. If and when the Contracting Parties feel disposed to replace the present provisional arrangement with the Fund by a more formal agreement it would be helpful if so important a matter could receive careful preparatory study before being finally considered by the Contracting Parties.

6. Special Exchange Agreements (Article XV:6):

The implementation of a special exchange agreement concluded with a contracting party which is not, or ceases to be, a member of the Fund, may require the existence of some continuing machinery which would be available to deal with matters requiring urgent action. The examination of procedures for implementing special exchange agreements at successive sessions of the Contracting Parties has underlined this need.

7. Action Required under Article XVIII:

Under paragraph 10 the Contracting Parties are required to advise, "ordinarily within 15 days after receipt of an application", the contracting party which proposes to introduce a measure of the type referred to in paragraph 6 of the date by which a decision will be taken by the Contracting Parties. This decision, as a rule, has to be given "at the earliest practicable date and not later than 90 days after receipt of such application". As indicated in GATT/CP.3/60/Rev.1, the preparation and examination of the information submitted by the applicant country, and in some cases of the objections raised by other contracting parties to the proposed measures, as well as the preparation of recommendations to the Contracting Parties, may have to take place before a regular meeting of the Contracting Parties is held, in order to avoid undue prolongation of the Session. At their Third Session, the Contracting Parties agreed to set up an intersessional committee which could be convened between the sessions and which would be responsible for making recommendations to the Contracting Parties.

The Contracting Parties have also responsibilities in connection with renegotiations arising out of paragraphs 3 (b) and 5. The Contracting Parties may be called upon to determine which contracting parties are materially affected by proposed measures. Whilst the decision to grant a release will have to be taken by the Contracting Parties, there are a number of preliminary stages which could hardly be deferred until a regular session. Paragraph 4 implies the ability of the Contracting Parties to consult at any time with a contracting party when it wishes to adopt preventive measures or to suspend its obligations or concessions in emergency circumstances.

8. Action arising out of Article XXIII:

If a contracting party wishes to refer to the Contracting Parties a case of nullification or impairment, the Contracting Parties are required to investigate "promptly" any matter so referred to them. The decisions in such cases are clearly of great importance especially as they may involve the suspension of obligations or concessions. Accordingly, the Contracting Parties will wish to examine each case in considerable detail. Preparatory examination of cases by a standing committee would greatly facilitate the task of the Contracting Parties in giving adequate consideration to the case and arriving at a decision in the course of a single session.

Experience gained in dealing with complaints which have been formally referred to the Contracting Parties under the provisions of Article XXIII, or which were in the nature of an Article XXIII request, support this view. In the case of the Chilean request regarding subsidies on fertilisers, it was necessary to examine an important documentation to bring out the facts of the case; as regards the application of Brazilian internal taxes, the examination of the material required extensive study by working parties at two sessions, and at the current session several delegations held the view that there was not sufficient time to assemble and examine all the documents required for a full study of all the aspects of the problem. Another question which raised similar difficulties was the request submitted by the Cuban government with respect to the position of the Cuban textile industry.

9. Tariff Problems:

Article XIX provides that before any contracting party takes action under paragraph 1, it shall afford the Contracting Parties an opportunity to consult with it in respect of the proposed action. As the action contemplated is of an emergency character, it is clear that if the Contracting Parties wish to consult in accordance with the provisions of paragraph 2, they have to act rapidly in order to avoid damage to the interests of the country proposing to invoke the provisions of paragraph 1. Moreover, if an agreement among the interested contracting parties is not reached, the Contracting Parties have to indicate whether they disapprove or not of the suspension of substantially equivalent obligations or concessions by the contracting parties affected. As such suspension must be announced within 90 days after action has been taken under paragraph 1, the Contracting Parties will probably desire to inform the parties concerned of their views before the suspension takes effect, i.e., before the expiration of 30 days from the day on which the written notice of such suspension is received by them.

Another provision of the Agreement which might require rapid action is that contained in paragraph 6 (a) of Article II. If a country devalues its currency, it may feel it necessary to adjust certain specific duties and charges without waiting for the next ordinary session of the Contracting Parties. It may, therefore, be necessary for the Contracting Parties to work out a procedure which may avoid undue delay in the decision which is to be taken by them under this paragraph.

Whilst the same need for urgent action may not arise in the near future out of the application of Article XXIV, this is a case where preparatory examination would greatly facilitate the carrying out of the responsibilities of the Contracting Parties if they are called upon to act under that Article.



10. Other Functions:

In addition to the specific functions referred to above, it should be noted that under paragraph 1 of Article XXV the Contracting Parties have certain implied functions covered by the phrase "representatives of the Contracting Parties shall meet from time to time.... generally with a view to facilitating the operation and furthering the objectives of this Agreement". For example, under this general provision, the Contracting Parties have a number of functions relating to tariff negotiations and the schedules to the Agreement. These functions involve a number of administrative arrangements of some detail and importance, which can only with difficulty be dealt with at a session, as was shown, for example, by the need for a Working Party to continue between the Third and Fourth Sessions to complete arrangements for the present negotiations. Particularly difficult questions may arise in the future if certain non-participating countries wish to negotiate for accession in the interval, which may be long, between the Torquay negotiations and any further general round of negotiations. Whilst the Contracting Parties might well decide in principle on such a matter at a regular session it might be difficult to work out and implement the necessary arrangements in the absence of some continuing body. Similarly experience has shown that a considerable number of problems arise in connection with the rectification and modification of schedules, and some mechanism for dealing with these would be desirable even in present circumstances, and might well become essential if sessions were held at longer intervals.

Moreover, under Article XXV, the Contracting Parties may at any time be called upon to consider applications by a contracting party or contracting parties for waiver of obligations. Some of these applications may be of great complexity and of an urgent character. In order that they may be disposed of in a single session a good deal of preparation might be required. For example, governments which are contracting parties may also be involved in other arrangements which affect their obligations under the Agreement. If the Contracting Parties are called upon to consider waivers of obligations in such cases (for example, in the case of the Schuman plan) very extensive preparation may have to be made in advance of the session at which these matters are to be decided upon.

A list of other articles of the Agreement containing provisions requiring action by the Contracting Parties, on which the assistance of a standing committee would probably be helpful, would include XII:5, XIII:4, XVI, XXII, and XXVII.

