

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED W
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CONTRACTING PARTIES
Fifth Session

CONTINUING FUNCTIONS AND RESPONSIBILITIES OF THE CONTRACTING PARTIES

Note by the Executive Secretary

I. INTRODUCTION

1. This Note is limited to an analysis of those functions laid upon the Contracting Parties by specific provisions of the Agreement which predicate that the Contracting Parties are in a position to take joint action at any time. This implies that the Contracting Parties must either be prepared to meet at any time or to provide suitable machinery to discharge those functions when required. Similarly the Contracting Parties have other responsibilities the discharge of which would be substantially facilitated by the existence of some continuing committee.

II. MAIN CONTINUING FUNCTIONS OF THE CONTRACTING PARTIES

Tariff Problems

2. Article XIX provides that before any contracting party takes action under paragraph 1 of the Article, 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 of Article XIX, they have to act rapidly in order to avoid damage to the interests of the country proposing to invoke the provisions of paragraph 1.

3. 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 of Article XIX, 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.

4. 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.

5. 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.

Action Required under Article XVIII

6. Under paragraph 10 of Article XVIII 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 Article XVIII 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.

7. The Contracting Parties have also responsibilities in connection with re-negotiations arising out of paragraphs 3 (b) and 5 of Article XVIII. 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 of Article XVIII also 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.

Action Required under Articles XII to XV

8. 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 approving the proposals contained in GATT/CP.3/30/Rev.1 and GATT/CP.3/50/Rev.1 which provided for the convening of an ad hoc committee or a select committee according to the nature of the consultations.

9. 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 Regular Session. Here again the Contracting Parties at their Third Session recognised the desirability of providing for some intersessional procedure (see GATT/CP.3/50/Rev.1 par.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.

10. Third Report under Article XIV(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 indicated 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 Session where it was approved.

11. 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) of Article XIV 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 of Article XIV. Finally, the Contracting Parties have responsibilities to discharge under paragraph 3 of Annex J with respect to the exceptions provided in that annex.

12. 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.

13. Special Exchange Agreements (Article XV para. 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.

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

The provisional arrangement with the International Monetary Fund may be reviewed at the Sixth Session and it is not appropriate here to anticipate action by the Contracting Parties in this respect. It is, however, 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.

Action arising out of Article XXIII

15. If a contracting party wishes to refer to the Contracting Parties a case under Article XXIII, 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.

16. 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 the Working Party came to the conclusion 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.

Other Functions of the Contracting Parties

17. In addition to the specific functions referred to above, it should be noted that under paragraph 1 of Article XXV of the General Agreement 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 regular 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.

18. 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 GATT obligations. If the Contracting Parties are called upon to consider waivers of GATT obligations in such cases (as 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.

III GENERAL REMARKS

19. This note is confined to a summary analysis of the main continuing functions with the purpose of showing how far their performance would be facilitated by some sort of Standing Committee between sessions. As will have been seen above, the Contracting Parties have recognised this problem previously in relation to intersessional action relating to Article XVIII and the balance of payments articles, and have contemplated intersessional bodies with powers to carry out preparatory work, including the initiation of consultations in certain cases, and the submission of recommendations. Any general standing committee which the Contracting Parties establish would presumably absorb the powers of these bodies.

20. In this analysis it has been assumed that intersessional work should be limited to a preparatory and recommendatory character, not including the taking of decisions, which are reserved exclusively for the Contracting Parties.

21. If it were decided to set up an intersessional body, it would be desirable to examine to what extent this body could also act as an agenda committee. If a preliminary examination could be made of the items of the Agenda, it would be possible to clarify the issues submitted to the Contracting Parties, to indicate any additional information and documentation required and to instruct the Secretariat to obtain or provide it, and to make recommendations regarding the order of business of each regular session. Such an Agenda Committee has been found useful, e.g., by the Economic and Social Council, in the arrangement and expediting of its work.

22. This note does not cover other organisational matters, such as the strengthening of the secretariat which was referred to in the plenary discussion, or other administrative and financial matters.

23. For the convenience of the members of the Working Party the various points which the Working Party has agreed to cover in its discussions are listed below:

(i) Standing Committee:-

- (a) Designation
- (b) Terms of reference
- (c) Rules of procedure
- (d) Composition (including method of selection; rules for the rotation of membership and tenure of office)
- (e) Chairmanship
- (f) Place of Meeting

(ii) Administrative and financial questions, including Secretariat structure.