

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

CPC/W/28

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Special Distribution

Preferential Arrangements Among
Developing Countries
Negotiated in GATT

COMMITTEE OF PARTICIPATING COUNTRIES

Accession Formalities in GATT

Note by the Secretariat

In connexion with a request for information during the discussions by the Committee on 13 October of the draft Protocol for the Accession of Paraguay to the Protocol Relating to Trade Negotiations Among Developing Countries the secretariat has summarized a number of relevant points on formalities for accession to the General Agreement.

Accession

1. Article XXXIII of the General Agreement provides that a government may accede to the Agreement on terms to be agreed between such government and the CONTRACTING PARTIES. The terms of accession have to be consistent with the provisions of GATT and could not, for example, prescribe different voting requirements for accession of the applicant government from those laid down in Article XXXIII or qualify the application of Article I of the General Agreement. Decisions of the CONTRACTING PARTIES under this Article shall be taken by a two-thirds majority. This provision is comparable to those contained in paragraphs 14 and 4 of the Protocol Relating to Trade Negotiations Among Developing Countries.

2. In accordance with normal procedure, a government wishing to accede to the General Agreement is required to make an application in writing and submit a memorandum on its foreign trade régime. The GATT Council considers the application and sets up a working party to examine the applicant's foreign trade régime and to submit recommendations which may include a draft Protocol of Accession.¹

¹BISD 18S/89 and 94

3. After carrying out the examination of the applicant's foreign trade régime, and carrying out any tariff negotiations requested, the Working Party prepares a draft Protocol of Accession to which the schedule of tariff concessions is annexed and a draft Decision for the applicant's accession to the General Agreement. These texts are submitted for approval by the Council together with the report of the Working Party.

4. When adopting the Working Party's report, the GATT Council approves the draft Protocol of Accession and draft Decision.

5. The draft Decision is put to a vote of the CONTRACTING PARTIES, its adoption requiring a two-thirds majority. Once the necessary majority is reached, the decision becomes binding for all contracting parties with the exception of those invoking Article XXXV of the General Agreement concerning non-application.

6. The text of the Decision is normally brief. Hence, it is stated that the CONTRACTING PARTIES, having regard to the results of the negotiations relating to the accession of the applicant government to the General Agreement on Tariffs and Trade and having prepared a Protocol for the applicant's accession, decide that the applicant government may accede to the General Agreement on the terms set out in the Protocol of Accession.¹

Signature and entering into force

7. Protocols of accession to the General Agreement have a general part, a part dealing with the applicant's tariff schedule and final provisions.² The final provisions state, inter alia, that the Protocol of Accession shall be open for signature by the applicant government until a certain date (or until the close of the respective session of the CONTRACTING PARTIES) and that it shall enter into force on the thirtieth day following the day upon which it shall have been signed by the applicant government. This last provision is in accordance with the final part of Article XXVI:6 which says that the instrument of acceptance of each other applicant government shall take effect on the thirtieth day following the day on which such instrument has been deposited. A similar provision appears in the second part of paragraph 20 of the Protocol Relating to Trade Negotiations Among Developing Countries and has been incorporated in paragraph 6 of the draft Protocol for the Accession of Paraguay (CPC/W/23).

¹BISD 18S/22-23

²BISD 18S/4-5; 8-9

8. The protocols of accession to the General Agreement customarily are also open for signature by contracting parties and by the European Economic Community. However, no signature other than that of the applicant government is required for the entering into force of a Protocol of Accession. Unless the tariff schedules of some contracting parties have been amended as a consequence of the tariff negotiations with the applicant government, signature by other contracting parties constitutes, in essence, a diplomatic gesture of goodwill by these contracting parties towards the applicant government. A similar provision - with like effects - is contained in paragraph 5 of the draft Protocol for the Accession of Paraguay (CPC/W/23).

Non-application

9. After adoption of the Decision by a two-thirds majority the arrangement applies between the applicant government and the CONTRACTING PARTIES as a whole. The act of accession is not between the applicant government and the individual contracting parties who sign the Protocol of Accession because this would result in the dissolution of the multilateral arrangement into a series of arrangements and would be inconsistent, inter alia, with Article I of the General Agreement.

10. A contracting party not wishing to apply the General Agreement to the applicant government with which it has not entered into tariff negotiations would need to invoke Article XXXV at the time the applicant becomes a contracting party. As the applicant government becomes a contracting party when the Protocol of Accession enters into force, Article XXXV is invoked before the end of the thirty-day period following the signing by the applicant government. There is no need to repeat in the protocols of accession the provisions of Article XXXV of the General Agreement. Contracting parties are notified of the signing of the Protocol of Accession by the applicant government as soon as this takes place in order to give them due notice and, inter alia, ample time to invoke Article XXXV should they wish to do so.

11. A similar provision is contained in paragraph 15 of the Protocol Relating to Trade Negotiations Among Developing Countries. In accordance with the CONTRACTING PARTIES Decision of 26 November 1971, and in view of paragraph 1 of the Protocol Relating to Trade Negotiations Among Developing Countries, concessions exchanged pursuant to the Protocol apply to all developing countries which are parties to the Protocol unless paragraph 15 of the Protocol has been invoked. This would apply to all developing countries acceding with or without negotiations to the Protocol. Any deviation from the basic principle of general applicability of concessions would constitute a departure from the provisions of the Protocol and would also appear, prima facie, to require a revision of the Decision of the CONTRACTING PARTIES dated 26 November 1971.