

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

CPC/W/57
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Special Distribution

Preferential Arrangements Among Developing Countries Negotiated in GATT

ACCESSION PROCEDURES

Note by the Secretariat

1. In the course of taking up applications for accession to the Protocol, a number of legal, procedural and technical points have been raised from time to time by certain members of the Committee of Participating Countries (CPC). At its last meeting, the Committee felt that it would be useful for future reference if it were to examine various matters relating to accession to the Protocol (CPC/44 paragraph 8) and asked the secretariat to prepare a background note for this purpose. The following paragraphs attempt to describe, in summary form, a number of issues relating to accession taking into account particular points raised and the discussions which have taken place on this subject at earlier meetings of the Committee.¹

Accession

2. Paragraph 14 of the Protocol states that it shall be open for accession to all developing countries. The Committee, is required to take the necessary steps to facilitate accession on terms consistent with the applicant country's present and future development, financial and trade needs, as well as past trade developments, and makes arrangements for any negotiations for the exchange of concessions which a participating country may wish to carry out with the developing country seeking accession. Participating countries take these needs and developments into account in entering into or carrying out such negotiations. In the light of such negotiations, the applicant country may accede on terms agreed with the Committee. The Committee may agree that an applicant country can accede to the Protocol without such negotiations on terms agreed with the Committee. This provision has been applied with respect to applications for accession of two countries - Bangladesh and Paraguay.

¹Certain matters relating to formalities for accession to the General Agreement, in connexion with an accession to the Protocol, have been described in document CPC/W/28.

3. The basic procedures for accession to the Protocol are described in document CPC/S/1. These provide, inter alia, that following a written communication whereby a developing country interested in acceding to the Protocol notifies its interest to the Chairman of the Committee of Participating Countries or to the GATT secretariat, the initial phase contemplates the circulation of information on the applicant's trade régime, as well as the exchange of information and consultations between the country interested in accession and other countries concerned, with a view to exploring possibilities for an exchange of concessions and the scope for any negotiations that might take place. Upon completion of the exploratory process and, where appropriate, following a formal application for accession by the interested country, the Committee of Participating Countries makes arrangements for the opening of negotiations including a programme for the exchange of request lists and follow-up action. Following examination of the applicant country's trade régime and taking into account its application for accession and all other relevant factors including its development, financial and trade needs, the CPC may accept accession of a country without negotiations on the basis of a protocol of accession mutually agreed between participating countries and the applicant.

4. A country interested in accession through negotiations may table a list of initial offers which can form the basis for any negotiations required, having as guidelines a programme established by the CPC in consultation with the applicant country. Negotiations can take place using a request and offer procedure. The negotiations are pursued in accordance with the provisions of the Protocol Relating to Trade Negotiations Among Developing Countries; the working rules and procedures adopted by the Trade Negotiations Committee of Developing Countries in February 1970 apply mutatis mutandis (Annex to CPC/S/1). The results of the negotiations are embodied in a schedule of concessions annexed to a protocol of accession to be approved by the Committee of Participating Countries together with the text of the Committee's decision on the application for accession. No country is committed to accession until negotiations have been satisfactorily concluded and a protocol of accession on mutually acceptable terms has been drawn up. Requests for accession to the Protocol are considered by the CPC on a case-by-case basis.

5. Pursuant to the procedure described above, two or more developing countries could negotiate accession to the Protocol at the same time. It is also understood that any group of countries, in a position to undertake common commitments with respect to tariff matters or other aspects of commercial policy, may jointly negotiate accession.

Protocol of Accession

6. A protocol of accession involving an exchange of concessions consists of a general part, a part dealing with the acceding country's schedule of concessions and final provisions. The general part provides, *inter alia*, that the acceding country, consistent with its rules and regulations applying to the conduct of foreign trade, will co-operate with participating countries in promoting the objectives of the Protocol and that the products described in its schedule of concessions, upon their importation into the territory of the acceding country from participating countries, shall not be subject to customs duties higher than those provided for in the schedule. Other regulations of commerce, applied by the acceding country to products described in the schedule of concessions and originating in the territories of participating countries, shall in general terms not be more restrictive than regulations of commerce applied by the acceding country to its other trading partners. The acceding country shall promptly notify to the Committee of Participating Countries any changes in its foreign trade régime which may affect the trade interests of the participating countries and shall provide the Committee with trade statistics and such other information relevant to its trade in the products described in the schedule of concessions as the Committee may from time to time need for the discharge of its functions. The acceding country is required to provide relevant information on its rules of origin and certifying agencies to the Committee within a specified period of time following the entry into force of the protocol of accession.

7. Where a country accedes without negotiations, the protocol of accession has no schedule annexed. However, the acceding country is required to ensure that its duties and other regulations of commerce applied to products originating in countries members of the Protocol are no higher or more restrictive than those applied to products originating in countries entitled to most-favoured-nation treatment. Otherwise, the provisions outlined in paragraph 6 above are broadly followed where a country accedes without a schedule of concessions.

Decision

8. The text of the decision is normally brief. Hence, it is stated that the Committee of Participating Countries, having regard to the request for accession to the Protocol and to the results of the negotiations relating to the accession of the applicant government to the Protocol and having prepared a protocol for the applicant's accession, decides that the applicant government may accede to the Protocol on the terms set out in the protocol of accession.

9. The decision is put to a vote of the participating countries in accordance with paragraph 4 of the Protocol, which provides that a decision concerning accession to the Protocol be adopted by a two-thirds majority. Based on the practice of the Committee of Participating Countries, this has been taken to mean that the adoption of a decision regarding accession requires a two-thirds majority of participating countries having ratified the Protocol. The Committee of Participating Countries has followed a procedure whereby voting relating to accession to the Protocol is carried out by postal ballot. The texts of decisions and protocols of accession have been circulated jointly with the ballot papers. Once the necessary majority is reached, the decision becomes binding for all participating countries with the exception of those invoking paragraph 15 of the Protocol concerning non-application.

Signature and entry into force

10. The final provisions of the protocols of accession state, *inter alia*, that the protocol of accession shall be open for signature by the acceding government until a certain date and that it shall enter into force on the thirtieth day following the day upon which it shall have been signed by the acceding government. This last provision is in accordance with paragraph 20 of the Protocol which says that after its entry into force it will enter into force for each government which accepts it on the thirtieth day following the date of such acceptance.

11. The protocols of accession to the Protocol are also open for signature by participating countries apparently in accordance with GATT custom. However, as for the General Agreement, no signature other than that of the applicant government is required for the entry into force of a protocol of accession. Unless the tariff schedules of some participating countries have been amended as a consequence of negotiations with the applicant country, signature by other participating countries constitutes, in essence, a diplomatic gesture of goodwill by these participating countries towards the applicant.

12. In order to sign the protocol of accession, the representative of the acceding country is required to establish that the powers received from his government permit him to enter into such a binding international obligation on behalf of his government. Representatives of other participating countries may sign the protocol of accession (see paragraph 10), either upon submission of adequate powers or evidence that their governments have instructed them to sign.

13. Dates of protocols of accession, indicated in their final paragraphs, which are blank at the time of their approval by the CPC are the dates on which the required two-thirds majority for adoption of the decision stating that the applicant country may accede to the Protocol on terms set out in the protocol of accession is reached.

Ratification

14. Depending upon the constitutional procedures of the acceding government, accession may require ratification or parliamentary approval. The signing of a protocol of accession subject to ratification means that the instrument will not enter into force until the thirtieth day following the date of the deposit of the respective instrument of ratification.

Non-application

15. After adoption of the decision relating to accession by a two-thirds majority and subject to the other procedures for signature and ratification, the arrangement applies between the applicant government and the participating countries as a whole. The act of accession is not between the applicant government and the individual participating countries 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 paragraph 1 of the Protocol.

16. In accordance with the CONTRACTING PARTIES Decision of 26 November 1971^{1/} and in view of paragraph 1 of the Protocol, concessions exchanged apply to all developing countries which are parties to the Protocol unless its paragraph 15 is invoked. This applies to all developing countries acceding with or without negotiations to the Protocol.

17. A participating country not wishing to apply the Protocol to an applicant government with which it has not entered into direct negotiations^{2/}, or vice versa, needs to invoke paragraph 15 of the Protocol before the applicant

^{1/} 18 BISD 26-28.

^{2/} The expression "direct negotiations" used in paragraph 15 of the Protocol has not been defined in the arrangement. However, this paragraph is based on the provisions of Article XXXV of the General Agreement which, inter alia, provide that the General Agreement, or alternatively its Article II, shall not apply as between any contracting party and any other contracting party if: (a) the two contracting parties have not entered into tariff negotiations with each other, and (b) either of the contracting parties at the time either becomes a contracting party, does not consent to such application. Pursuant to a ruling by the Chairman of the CONTRACTING PARTIES, delegations have been deemed to have entered into negotiations when they have held a first meeting scheduled by the Tariffs Negotiations Working Party at which they had exchanged lists of offers (BISD Vol. II page 35).

becomes a participating country. As the applicant government becomes a participating country when the protocol of accession enters into force, paragraph 15 is invoked before the end of the thirty-day period following either the signing of the protocol of accession by the applicant government, or the deposit of the instrument of ratification, as the case may be. Participating countries are notified of the signing of the protocol of accession by the applicant as soon as this takes place in order to give them due notice and, *inter alia*, ample time to invoke paragraph 15 should they wish to do so. The secretariat promptly informs participating countries of actions involving the invocation of paragraph 15.

Circulation of the protocol of accession and notification of accession

18. In accordance with paragraph (b) of the CONTRACTING PARTIES Decision of 26 November 1971, any participating country which, pursuant to the arrangements set out in the Protocol, introduces or modifies any preferential concessions shall so notify the CONTRACTING PARTIES and shall furnish them with all useful information relating to the actions taken.

19. As a matter of course, the secretariat furnishes copies of the protocols of accession and, where relevant, the respective schedules of concessions to all participating countries and to all CONTRACTING PARTIES.