

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Sixteenth Session

ESTABLISHMENT OF A COUNCIL OF THE CONTRACTING PARTIESFirst Report by the Special Group on GATT Organization

1. At the fifteenth session (SR.15/18) the CONTRACTING PARTIES requested the newly-elected Chairman and Vice-Chairman, together with the three outgoing officers and the Executive Secretary, to enquire into the working methods and organizational structure of the CONTRACTING PARTIES and to present suggestions and proposals for consideration at the sixteenth session.
2. The Group has reviewed the current and probable future responsibilities of the CONTRACTING PARTIES and the broadening rôle of the GATT in world trade. It appears to be generally recognized that the present-day problems of international trade require more careful and continuing attention than the CONTRACTING PARTIES have been able to give to them during their ordinary sessions. The tendency to form larger markets on a regional basis increases the importance of the organization whose responsibility it is to foster multilateral trade. Further, many structural problems have been revealed by the relaxation of import restrictions hitherto justified on balance-of-payments grounds and by the studies of agricultural protectionism and of the trade of under-developed countries initiated after the presentation of the Haberler report. These recent developments provide convincing evidence that the CONTRACTING PARTIES should be better equipped to shoulder their responsibilities. There can be no doubt that more work should be done, and if more is to be done the means must be provided. Thus the Group is convinced that the rôle of the GATT and the increasing responsibilities of the CONTRACTING PARTIES require action at this stage in establishing adequate and effective machinery so that urgent matters will receive the immediate attention which their importance warrants.
3. In its review of the operational structure of the GATT in relation to the responsibilities of the CONTRACTING PARTIES, the Group has come to the unanimous conclusion that there is an urgent need for a council capable of giving continuous and effective attention to the work of the GATT. Therefore, the Group recommends to the CONTRACTING PARTIES that arrangements be made for setting up such a council at the present session.
4. Because of the important developments mentioned above, the agendas for the ordinary sessions of the CONTRACTING PARTIES are necessarily long and heavy. But many items could be better dealt with or at least preparatory work could be done on them by a body which meets frequently and which has the task of making

extensive preparations for the sessions. During their sessions the CONTRACTING PARTIES could then concentrate on major policy issues and on taking the necessary basic decisions. If a Council is established with a solid legal basis and authority to act, and if the Council fulfils the expectations of the Group, the CONTRACTING PARTIES should find that it would be possible to revert, in 1961 or 1962, to one annual session.

5. The Group considered whether there would be any legal obstacles to the establishment of a Council with powers to act on behalf of the CONTRACTING PARTIES. The Group views a decision to set up a Council as constituting "joint action" in the sense of paragraph 1 of Article XXV and considers that the decision would be taken "with a view to facilitating the operation and furthering the objectives" of the General Agreement. It would, of course, have to be understood that, except on procedural matters, voting in the Council would be governed by the voting requirements of the GATT, i.e. on any matter delegated to the Council the number of affirmative votes required would not be less than that which would be required if the voting took place at a session of the CONTRACTING PARTIES.

6. The Group considered the question of the functions that might be assigned to the Council. It follows from the nature of the proposed Council that its functions and powers would be derived by delegation from the CONTRACTING PARTIES. Consequently, the Group recommends that the CONTRACTING PARTIES should confer the following duties and responsibilities upon the Council:

- (i) The Council should deal with matters expressly referred to it by the CONTRACTING PARTIES.
- (ii) The Council should act on behalf of the CONTRACTING PARTIES in performing functions prescribed in certain articles of the General Agreement, including those where time-limits are specified. These would include action under Article XVIII, Article XX:2 and 3, Article XXII:2, Article XXIII:2, Article XXIV:7 and Article XXVIII:4.
- (iii) The Council should consider other matters requiring urgent action and, if necessary, should hold special meetings for this purpose if so requested by the contracting parties concerned.
- (iv) The Council should supervise the work of committees and working parties appointed by the CONTRACTING PARTIES and where necessary provide guidance for them; it should examine their reports before they are submitted to the CONTRACTING PARTIES and make recommendations thereon. (The Group foresees that there may be a need for committees on tariff and customs questions, on problems of trade in agricultural products, on the problems of under-developed countries and on import restrictions.)
- (v) The Council should undertake preparation for the sessions of the CONTRACTING PARTIES, including the examination of the budget, administrative questions and many routine matters such as reports submitted under waivers.

7. It is not contemplated that the CONTRACTING PARTIES would delegate to the Council the power to grant a waiver from the provisions of the GATT. It would nevertheless be helpful if requests for waivers were examined by the Council and were then submitted with the Council's recommendations to the CONTRACTING PARTIES.

8. It should be understood that the conclusions reached by the Council, except where powers of decision are specifically delegated to it, would be submitted in the form of recommendations for confirmation or approval by the CONTRACTING PARTIES. In cases of urgency, approval could be requested by postal ballot or by the convening of a special session. In particular cases, it might be agreed, for example by the parties to a dispute, that the right of reference to the CONTRACTING PARTIES would be waived. Further, in the case of a matter specifically referred to the Council, it would be open to the CONTRACTING PARTIES to provide that the decision of the Council would be final provided no objection were raised within a certain time-limit.

9. The Council could of course establish working parties and panels to study particular problems and to report back to the Council with recommendations.

10. The Group devoted particular attention to the question of membership. It appeared, on the one hand, that a small body might operate more effectively but, on the other hand, that the CONTRACTING PARTIES might be prepared to delegate more authority if all contracting parties prepared to participate were free to do so. After exploring the various possibilities, the Group decided strongly in favour of a Council composed of all contracting parties which were able to make arrangements for effective participation through representation at an appropriate level. Thus, while proposing that there should be no numerical limitation on membership, the Group considers that contracting parties should not seek membership unless they could undertake to provide suitable representation. Appointments to the Council should be made by the assembly, i.e. by the CONTRACTING PARTIES in session, on the basis of nominations submitted by the Chairman. Contracting parties wishing to apply for membership should consider whether it would be possible for them to make the necessary arrangements to ensure effective participation and should discuss their proposed arrangements with the Chairman of the CONTRACTING PARTIES. While it is desirable that the representation of Governments in Geneva should be strengthened, the Group considers that it need not be laid down as a condition of membership that representatives must be resident in Geneva, provided they will be able normally to attend all meetings.

11. The Group recognized that certain countries situated far from Geneva may wish to participate in the work of the Council but may have real difficulties in providing appropriate representation. In view of the frequency of meetings and of these difficulties of representation, such countries may be reluctant to apply for membership. There seems to be a real possibility that the Council established as proposed might tend to be unbalanced in its composition. The Group felt that if this should happen some contracting parties, which had sought membership, would be found prepared to abstain. The Group also considered whether the CONTRACTING PARTIES should undertake to pay the travel expenses of representatives to come to Geneva from distant capitals and explored the possibility of a group of distant countries accepting joint representation on the Council. However, the Group feels that it may not be

possible to decide at this session upon the best means of resolving these difficulties and suggests that the Council, after it has been established, should itself examine the problems involved in arriving at a truly representative membership. Further, the CONTRACTING PARTIES should from time to time review the working of the arrangement with particular reference to the maintenance of the representative character of the Council. It should, of course, be understood that contracting parties which are not members could send observers to the meetings of the Council and of any bodies established by it and, further, that a non-member claiming an interest in a matter under discussion would, upon request, be co-opted as a full member for that discussion.

12. The Group proposes that bi-monthly meetings of approximately one week should be envisaged. Thus, while there are two sessions of the CONTRACTING PARTIES, the Council would meet in January and March, July and September. The Council would probably meet also just before and just after each session and it would meet at other times as required, on the call of the Executive Secretary, at ten days' notice.

13. If a representative were unable to attend a meeting the Council might agree that he be replaced by an alternate. For some purposes it might be decided to hold meetings at the level of alternates.

14. The Group also discussed the question of the Chairmanship of the Council. There were different views among the members and in these circumstances the Group can only suggest that it be left to the Council to elect its own Chairman.

15. The Group's examination of other questions, particularly problems of staffing, is proceeding and a further report will be submitted in due course.