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LATIN AMERICAN FREE TRADE AREA

Replies from the Participating Governments to the Questions submitted by Contracting Parties

The questions submitted to the signatories of the Montevideo Treaty in document L/1177 and the replies which have now been received are reproduced herein. Replies to the questions submitted in documents L/1177/Add.1 and 2 have not yet been received.

The replies contained in this document were transmitted to the Executive Secretary under cover of the following communication, dated 9 May, from the Chairman of the Provisional Committee of Montevideo.

"The Provisional Committee of Montevideo, exercising the responsibilities devolved upon it under the Protocol relating to its establishment signed on 18 February 1960 by the Governments of Argentina, Brazil, Chile, Mexico, Paraguay, Peru and Uruguay, has the honour to transmit to the Executive Secretary for the information of the contracting parties to the General Agreement a memorandum incorporating the answers to the questions put forward by contracting parties, concerning the Treaty establishing a free trade area and instituting the Latin American Free Trade Association (Montevideo Treaty).

"As the contracting parties to the General Agreement were informed at the fifteenth session, by the communication relating to the preparatory work for the establishment of this Treaty (document L/1092), the provisions of the Treaty are in conformity with the rules laid down in Article XXIV of the General Agreement concerning the formation of free trade areas. In this respect, the Member States are convinced that the provisions of the Treaty, in stimulating specialization and increases in productivity, will have positive effects on the speeding up of their economic development and therefore will promote the expansion of trade among one another and with third countries.

"The Treaty constitutes an important step in the efforts made by Latin American countries to place their external trade on an increasing multilateral basis, freeing such trade in general from direct controls and ensuring that outstanding restrictions will not be in excess of what is necessary to achieve and maintain their general balance-of-payments equilibrium. For that reason the Treaty, which establishes multilateral uniform treatment for intra-area trade, creates conditions which are conducive to the elimination of bilateral practices and methods.

"Being aware of the high spirit of co-operation and understanding in which the CONTRACTING PARTIES to the General Agreement received the information concerning the preparation for the establishment of the Latin American Free Trade Association at previous sessions, the Committee submits the attached answers, knowing full well that it can expect the CONTRACTING PARTIES to give it sympathetic consideration again at the sixteenth session."

I. ESTABLISHMENT OF THE FREE-TRADE AREA
(Article 1)

Article 1

Question 1

Do the Member States propose that the Latin American Free-Trade Association be considered as the kind of free-trade area covered by Article XXIV of the GATT?

Answer

Yes.

Question 2

Do the Member States consider that the Montevideo Treaty constitutes an "interim agreement" leading to the formation of a free-trade area or an agreement establishing such an area?

Answer

The Treaty is an agreement establishing a free-trade area.

Question 3

On what percentage of the trade between the Member States in products originating in their territories will duties be eliminated?

Answer

On substantially all their mutual trade.

Question 4

Would Member States indicate how the percentage stated in answer to the preceding question is arrived at, indicating whether account has been taken of the removal of monetary charges (arising from multiple exchange rates, prior deposits of import payments, import surcharges, and other non-tariff payments required of importers) levied on imports?

Answer

For the purpose of eliminating duties, charges and other restrictive regulations on substantially all the trade, account has been taken of the removal of the charges mentioned in this question.

Question 5

Since four signatory governments of the Montevideo Treaty are parties to the GATT, is it the intention of the Member States to request the CONTRACTING PARTIES to the GATT to approve the formation of the free-trade area in accordance with the provisions of Article XXIV:10 of the GATT?

Answer

We consider that the Treaty is in accordance with the provisions of Article XXIV:5 to 9 inclusive and therefore that Article XXIV:10 is not applicable.

Question 6

Does acceptance of the Treaty entail, for the Member States which are not parties to the GATT, any obligations toward third countries similar to those arising out of Article XXIV of the GATT for other members of the Association?

Answer

The Treaty only covers commitments undertaken by the Member States as between one another.

II. PROGRAMME FOR TRADE LIBERALIZATION

(Articles 2 - 13)

Article 2

Question 7

The provisions of the Montevideo Treaty are to be brought into full operation by the end of a twelve-year period. Would the Member States agree:

- (a) to keep the CONTRACTING PARTIES to the GATT informed of the progress made in the implementation of the provisions of the Treaty?
- (b) to keep the CONTRACTING PARTIES to the GATT informed in advance of all important developments and afford an opportunity for discussions of any important issues before final decisions are taken by the institutions of the Association?

Answer

- (a) Yes.
- (b) When the institutions of the association consider it to be appropriate.

Article 3

Question 8

Will the restrictions, duties and other charges imposed by the Member States on goods not subject to the complete elimination of restrictions, duties and other charges at the end of the transitional period (and thus not in the free-trade area) be non-discriminatory among Member States and with regard to third countries? If this is not the case, how do the Member States reconcile this discrimination with Article 18 of the Montevideo Treaty and Article I of the GATT?

Answer

The objective of the Treaty is to achieve the full liberalization of intra-Area trade.

Question 9

Would the Member States indicate whether "substantially all their reciprocal trade" in this Article means "substantially all the trade between the constituent territories" of the free-trade area?

Answer

Yes.

Question 10

Would the Member States supply all available information concerning "other charges of equivalent effect", indicating those which are actually in force in the Member States?

Answer

Such information will be supplied in due time.

Question 11

Are prior deposits covered by the term "restrictions"? If so, do the parties to the Treaty envisage a time when products of the Area will be imported into Member States free of deposit, while imports from outside the Area will be subject to prior deposits?

Answer

Prior deposits are subject to the same treatment as other duties, charges and other restrictive regulations.

Question 12

In Mexico, importers in certain circumstances have to produce evidence of compensating exports. Is it envisaged that importers in Mexico of goods from the Area will be relieved of these obligations?

Answer

When they are considered as duties, charges or other restrictive regulations.

Question 13

Can it be assumed that the obligation to eliminate duties, charges etc., does not affect the exchange auction system in Brazil?

Answer

When they are considered as duties, charges or other restrictive regulations.

Question 14

Do the provisions of this Article apply to quantitative restrictions now maintained by Member States for the purpose of safeguarding their balances of payments?

Answer

The Treaty lays down that restrictions shall be eliminated, regardless of their type or purposes.

Question 15

What protection could a Member State expect from the Treaty against deflections of trade resulting from the fact that the Member State concerned was maintaining quantitative restrictions toward countries outside the Area, while applying the provisions of this Article to other Member States only?

Answer

The protection which the provisions of the Treaty afford in cases where difficulties occur in the general expansion of trade.

Question 16

- (a) Will Member States, acting in conformity with the provisions of this Article, be required to accomplish the gradual elimination of "restrictions" other than customs duties and other charges even though these restrictions may have been permitted under Articles XI, XII, XIII, XIV, XV, or XX of the GATT?
- (b) If so, is it intended that such restrictions be eliminated in the case of imports from other contracting parties to the GATT as well as from parties to the Montevideo Treaty? If not, what restrictions now maintained will be eliminated pursuant to this Article, and to what extent will this elimination be extended to imports from other contracting parties to the GATT as well as from parties to the Montevideo Treaty?

Answer

- (a) Yes.
- (b) The Treaty only covers relations between the Member States.

Question 17

Member States of the Montevideo Treaty who are members of the International Monetary Fund or contracting parties to the GATT have broad international obligations for the removal of quantitative restrictions and the elimination of discrimination in the application of such restrictions:

- (a) Would it be appropriate conduct for such a contracting party to relax quantitative import restrictions, including import prohibitions, on intra-area trade without at the same time relaxing such restrictions on trade with third countries?
- (b) Is it anticipated that the provision for gradual elimination of such quantitative import restrictions under this Article could inhibit a Member State from removing immediately quantitative restrictions inconsistent with that Member State's broader international commitments?

Answer

- (a) The Treaty only covers trade between the Member States and therefore does not cancel out international obligations undertaken by individual members.
- (b) No.

Article 4

Question 18

Does the Montevideo Treaty contain provisions which the Member States consider constitute a "plan and schedule" complying with the provisions of the GATT? If not, is it the intent of the Member States to supply to the CONTRACTING PARTIES to the GATT such a "plan and schedule"?

Answer

Chapter II of the Treaty constitutes the plan and schedule, the implementation of which will ensure the full establishment of the free-trade area.

Question 19

How will the Member States ensure that there will be a progressive, regular reduction, within the period mentioned in Article 2, in duties, charges and other restrictions affecting intra-area trade in products listed in the Common Schedule?

Question 20

Does the clause in sub-paragraph (b) of this Article, which reads "through the gradual reduction provided for in Article 5", constitute a commitment on the part of each of the Member States to include annually in their respective National Schedules commodities listed in the Common Schedule? If not, what assurance is there that there will be progressive and regular reductions in duties, charges and other restrictions on commodities listed in the Common Schedule during the twelve-year period mentioned in Article 2?

Question 21

Does the Treaty contemplate the gradual addition to the Common Schedule of items appearing on the National Schedules?

Answer to questions 19, 20 and 21

The national schedules and the common schedules are independent from one another but their co-ordinated operation will secure the achievement of the liberalization programme.

The national schedules incorporate the fulfilment of individual commitments to eliminate duties, charges and other restrictive regulations on substantially all imports into the territory of each member from other members in the area.

The common schedule incorporates products which at the expiry of the twelve-year period must be entirely free from duties, charges and other restrictive regulations and can move freely throughout the constituent territories of the area.

At the expiry of the twelve-year period all the products included in the common schedule must, of necessity, be included in each national schedule.

Question 22

Will the Member States inform the CONTRACTING PARTIES to the GATT of the results of the periodic negotiations provided for in this Article?

Answer

Yes.

Article 5

Question 23

Since the duties and charges levied by each Member State on its imports from the others is to constitute a decreasing percentage of duties and charges currently applicable to third parties, could not a part of the required decrease in this percentage be achieved by raising duties applicable to third parties? What assurances are there that the Montevideo Treaty will conform with Article XXIV:5(b) of the GATT, concerning the level of duties and other regulations applicable to the trade of countries outside the Treaty Area?

Answer

The Treaty provides for the gradual elimination of duties, charges and other restrictive regulations on intra-area trade. The policy to be adopted by individual members concerning their external tariffs must be consistent with international commitments entered into individually.

Question 24

Is the "weighted average applicable to third countries" obtained by dividing (1) the total duties and charges which would have been collected on three years' imports from all sources of the relevant commodities had these duties and charges been assessed at rates in force on 31 December prior to the negotiations by (2) the total value of these imports from all sources in the three-year period?

Answer

This interpretation is correct.

Question 25

In performing the computations required by this Article, how will "charges" (fiscal, monetary or other) which are distinct from rates of duty be computed?

Answer

In conformity with the criteria to be laid down by the institutions of the Association.

Question 26

What are the plans of the Member States with regard to discussions with the IMF of measures to be taken under the Treaty (e.g. Articles 3-5) insofar as the provisions of the Treaty are applicable to multiple exchange rates or other measures subject to the Articles of Agreement of the IMF?

Answer

This point relates to the normal relations of each Member State with the International Monetary Fund.

Question 27

What kinds of restrictions would be subject to the provisions of the third paragraph of this Article? Would the relaxation or the elimination of these restrictions be extended to all Member States on a non-discriminatory basis?

Answer

1. This provision refers to restrictive regulations of any type which are not included in the concept of duties and charges referred to in paragraph 2 of Article III.
2. Yes.

Question 28

Is it anticipated that, under the provisions of the third paragraph of this Article, a Member State that is a member of the IMF or a contracting party to the GATT would relax quantitative import restrictions toward countries inside the Area without extending similar treatment to third countries?

Answer

The Treaty only covers relations between the Member States.

Article 7

Question 29

What percentage of the aggregate value of trade between themselves do the Member States consider would have to be liberalized to achieve liberalization of "substantially all such trade" as referred to in this Article?

Answer

Article VII provides that substantially all the trade shall mean a proportion between 75 and 100 per cent, the latter percentage to be achieved during the fourth three-year period.

Question 30

This Article provides for inclusion of products on a Common (liberalized) Schedule equivalent to "substantially all of the trade" within the fourth three-year period of the transition period. If some duties, charges or restrictions are permitted to be retained, how and when will the permissible extent of these be determined in respect of each Member State?

Answer

In respect of items included in the Common Schedule which represent substantially all the trade, no duties charges or other restrictive regulations will be maintained at the end of the twelve-year period.

Question 31

Does the "aggregate value of the trade among Member States" mentioned in this Article mean the total value of all trade between the Member States regardless of the origin of the products traded or does it refer merely to the trade between the Member States in products originating in their territories?

Answer

Article 7 refers to the aggregate value of trade in products originating in the area.

Question 32

How do the Member States plan to reconcile the commitment in Article 7 to free an increasing proportion (ultimately "substantially all") of trade among Member States with actions which may be taken under the Saving Clauses (Articles 23-26), the Special Provisions Concerning Agriculture (Article 27-31), and the Measures in Favour of Countries at a Relatively Less Advanced Stage of Economic Development (Article 32) in the event of a conflict between the commitment of Article 7 and these actions?

Answer

The restrictions mentioned will always be of a temporary nature and will not hinder the fulfilment of the liberalization programme.

Question 33

Do the Member States intend to eliminate duties and other restrictive regulations of commerce on substantially all the trade between their constituent territories in products originating in such territories, not only on commodities actually traded, but with respect to substantially all actual and potential trade in products originating in their territories? If so, how do the Member States propose to ensure the incorporation in the liberalization programme set forth in Articles 2-13 of the Montevideo Treaty of substantially all products originating in their constituent territories and potentially tradeable among them?

Answer

Yes, by means of annual negotiations.

Articles 4 - 7

Question 34

What measures would Member States agree to in order to prevent sudden changes in area treatment of goods originating in third countries unduly affecting normal trade channels?

Answer

The Treaty contains no provisions which could justify such modifications to its application.

Article 8

Question 35

May a product included in the Common Schedule be subject to the restrictions permitted by Articles 23, 24 and 25? If so, how is such action reconciled with the "irrevocable" nature of the Common Schedule as described in this Article?

Answer

This "irrevocable" nature refers to the withdrawal of concessions but not to the temporary suspension of their practical effects in cases of emergency.

Question 36

In what circumstances is it envisaged that withdrawal would take place? Would withdrawal of a National Schedule concession preclude its final incorporation in the Common Schedule?

Answer

1. Concessions could be withdrawn only in the conditions and circumstances agreed between the contracting parties in the course of the corresponding negotiations.
2. The withdrawal of concessions granted under the national schedules does not prevent their subsequent incorporation in the Common Schedule.

Question 37

Could the expression "adequate compensation" in the second paragraph of this Article include reimposition or intensification of quantitative import restrictions by the country with respect to which concessions are withdrawn? If so, would such measures be consistent with a country's obligations under the GATT or the IMF?

Answer

No. "Adequate compensation" refers to the substitution of a concession by a concession or concessions of equivalent value.

Article 10

Question 38

- (a) What is the phrase "due fairness" intended to mean?
- (b) What criteria will be used in determining "due fairness" in considering the situations of those Member States whose levels of duties, charges and restrictions differ substantially from those of others?

Answer

The phrase "due fairness" mentioned in Article 10 is intended to avoid substantial differences between the various levels of duties, charges and other restrictive regulations among the Member States should have, as a result of the negotiation, substantially different trade effects.

Articles 11 and 12

Question 39

When drafting these Articles, what had the parties to the Treaty in mind?

Answer

The purpose was to ensure that negotiations should not result in serious and persistent injury between the Member States.

Question 40

What criteria are contemplated for determining "significant and persistent disadvantages" under the provisions of these Articles?

Answer

The criteria to determine whether there is a case of serious and persistent injury shall be defined in due time by the institutions of the Association.

Question 41

How will disadvantages arising from concessions (Article 11) be distinguished from disadvantages arising from other circumstances (Article 12)?

Answer

As a result of an analysis of the situation which would arise.

Question 42

- (a) What are the finds of "non-restrictive measures" and remedies contemplated under these Articles?
- (b) Would such measures be non-restrictive not only of intra-Area trade but also of trade with contracting parties to the GATT not signatories of the Montevideo Treaty?
- (c) Would such measures in any way affect products in the Common Schedule?

Answer

- (a) Basically, the concessions would be extended further.
- (b) The Treaty only covers relations between the Member States.
- (c) Yes. The process of liberalization would be speeded up.

Question 43

Could the implementation of Article 12 result in an intensification of discrimination against third countries?

Answer

No.

Question 44

Does the making of "every effort within their power", referred to in Article 12, include the taking of measures which would otherwise be inconsistent with (a) the Montevideo Treaty and/or (b) the GATT?

Answer

No.

Article 13

Question 45

Should a Member State find it impossible to comply with the provisions of Articles 5 and 7 on the basis of concessions intended to result in reciprocity as defined in this Article, what procedure is envisaged to ensure its full participation in a free-trade area in which duties and restrictive regulations of commerce have been removed with respect to substantially all its trade with other participants in the area in products of territories of the area?

Answer

The obligations undertaken by the contracting parties under Articles 3 and 5 are basic and mandatory under the Treaty.

Article 13 refers to the principles which will serve as a basis for the negotiations provided for under Article 5.

Question 46

If a Member State has removed duties and other restrictive regulations with respect to substantially all trade with the other Member States in the area in products originating in the territories of the area, how will it then be possible for the principle of reciprocity to guide any further negotiations between that country and the other Member States under the provisions of Articles 5 and 7?

Answer

In this case, the Member State will already have fulfilled the commitment undertaken in conformity with Article 5.

Question 47

Given the above situation, could those Member States still short of achieving the required trade liberalization refuse or obstruct the offering of what they might consider as "unilateral" concessions to the Member State which had achieved the required liberalization on the grounds that reciprocity of concessions was not possible?

Answer

No. Furthermore, the Member State, will under Article 18, enjoy the benefit of all the concessions exchanged by the other contracting parties.

Question 48

- (a) How are the Member States to measure the "expected growth in the flow of trade"?
- (b) Is the "expected growth" defined as the expectation of individual Member States or of the Committee of the Association?

Answer

- (a) By assessing at the time of the negotiations the foreseeable trade effects of the concessions granted and received.
- (b) As the expectation of the Member States.

III. EXPANSION OF TRADE AND ECONOMIC COMPLEMENTARITY
(Articles 14-17)

Article 14

Question 49

What steps are contemplated to attain the objectives set forth in sub-paragraphs (b) and (c) of this Article?

Answer

By means of annual negotiations in which due account will be taken of the technical studies carried out by the Member States and the institutions of the Association.

Article 15

Question 50

What is meant by the term "reconcile" in this Article?

Answer

To reduce the most significant disparities.

Question 51

In order to ensure fair competition among themselves, particularly with regard to industrial production, the Member States are to endeavour "to reconcile their import and export regimes as well as the treatment they accord to capital goods and services from outside the Area". Does this mean:

- (a) that a Member State which has no local production to protect will have to raise its duties to the level of those levied by Member States which have local industries to protect? How will this apply to products subsequently added to the Schedules?
- (b) that all Member States will adopt a common policy in their investment laws, terms of credit for imports, etc.?
- (c) that the Member States propose to adopt a uniform policy as regards the treatment to be given to foreign shipping services?

Answer

- (a) Such is not the intention.
- (b) Not necessarily.
- (c) This is not relevant to the provisions of the Treaty.

Question 52

Will the implementation of this Article result in the imposition of quantitative restrictions?

Answer

No.

Question 53

If Member States are considering moving towards uniform tariff rates, would they be willing to move towards the lowest rather than the highest rates of duty?

Answer

The harmonization provided for under Article 15 does not necessarily imply that customs duties will be made uniform. The purpose is to carry out this process of harmonization in accordance with the most liberal criteria.

Question 54

Is there any possibility that, in the process of reconciling their import and export regimes, Member States might be required to harmonize their import regimes and might such harmonization or other action under this Article mean that barriers to the trade of third countries would be increased and discrimination against such countries intensified?

Question 55

Do the Member States intend to use their import system in such a way as to preserve the expansion of trade with outside countries, especially with those whose imports of Latin American products as well as exports of goods important for industrial development show an increasing trend?

Question 56

By what means will the measures taken with respect to import and export regimes and the treatment accorded to goods from outside the Area be so implemented as to be consistent with the provisions of the GATT?

Answer to questions 54, 55 and 56

One of the objectives of the Treaty is to expand the external trade of the Member States with the rest of the world. The intention therefore is not that restrictions should be intensified vis-à-vis third countries.

Article 16

Question 57

Sub-paragraph (a) of this Article envisages the formulation of agreements among representatives of economic sectors in order to promote closer co-ordination of industrialization. In the light of this provision, are any measures contemplated in order to prevent restrictive business practices frustrating the benefits expected from the reduction or removal of trade barriers between Member States?

Answer

1. Sub-paragraph (a) does not refer to agreements but to arrangements between the economic sectors concerned for the purpose of facilitating the co-ordination of the industrialization policies of the Member States.
2. On the other hand, the Treaty contains provisions intended to prevent practices which might impair normal competitive conditions.

Question 58

Would the complementarity agreements provided for in this Article have the effect of confining the number of competing plants in an industry? How would this achieve the objective stated in Article 15 of ensuring "fair competitive conditions" among the Member States?

Answer

No.

Question 59

Will the Member States explain fully the anticipated nature of the "mutual agreements on complementarity by industrial sectors" authorized by this Article?

Answer

These are agreements intended to speed up the process of liberalization relating to products included in the relevant sector.

Question 60

How will the agreements contemplated by this Article affect customs duties and other regulations of commerce applied by Member States to products of (a) other parties to the Montevideo Treaty and (b) third countries?

Answer

Such agreements will not be of a discriminatory nature, and their effects will only be those resulting from the process of liberalization.

Question 61

What is the anticipated duration of the complementarity agreements?

Answer

The period of validity of such agreements will be determined in each individual case.

Articles 16 and 17

Question 62

Do those Articles mean that the Member States propose to try and plan investment in the Area as a whole, and that before any foreign projects may be undertaken in the territories of any one of the Member States, approval of the project must be given by all the Member States?

Answer

No.

Question 63

Will the agreements contemplated in the provisions of these Articles be consistent with the provisions of Articles 18 and 20 of the Montevideo Treaty?

Answer

Yes.

Question 64

Are the agreements under these Articles to be regarded as an integral part of the Association arrangements for the purposes of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Answer

Complementarity agreements constitute a device for the fulfilment of the liberalization programme provided for under the Treaty.

Question 65

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, any agreements which may be concluded pursuant to the provisions of these Articles of the Montevideo Treaty?

Answer

In conformity with the preceding question, paragraph 7 of Article XXIV is not considered to be applicable. However, the Member States have no objection to any information deemed to be relevant by the institutions of the Association being furnished to the CONTRACTING PARTIES to GATT.

Article 17

Question 66

Will the liberalization programme applied to the products of the sector concerned contemplate the inclusion of these products in the Common Schedule and the complete elimination of duties, charges and other restrictions, insofar as intra-Area trade in these products is concerned, within the period mentioned in Article 2 of the Montevideo Treaty?

Answer

Yes. Its purpose is precisely to speed up the process of liberalization.

Question 67

By what means will "clauses designed to reconcile the treatment accorded to raw materials and other components" be so implemented as to be consistent with the GATT?

Answer

In general, harmonization will be directed towards a reduction of the most important differences and the avoidance of any additional restrictions on trade with third countries.

IV. SAVING CLAUSES
(Articles 23-26)

Article 23

Question 68

How would restrictions applied pursuant to this Article be justified under the GATT?

Answer

Such restrictions refer only to trade between the Member States. They will always be of a temporary nature and will not hinder the fulfilment of the liberalization programme.

Question 69

What specific criteria are contemplated for identifying and determining the existence or threatened existence of "serious repercussions on specific productive activities of vital importance to the national economy"?

Answer

They will be determined in each individual case by the institutions of the Association.

Question 70

Would quantitative import restrictions applied under the provisions of this Article be non-discriminatory as between countries outside the Area as well as toward those inside the Area?

Answer

The Treaty only covers relations between the Member States.

Question 71

What obligations under the Treaty does a country have with respect to relaxing and removing such quantitative import restrictions?

Answer

In general, those of Chapter II, supplemented by the provisions of Article 26 of the Treaty and, more specifically, those imposed under the decision granting authorization to impose the restrictions.

Question 72

Could such quantitative import restrictions be relaxed toward countries inside the Area and not toward third countries?

Answer

The Treaty only covers relations between the Member States.

Article 24

Question 73

What criteria will the Member States follow in determining whether to authorize a Member State to extend to intra-Area trade in products included in the liberalization programme measures adopted to correct its overall balance of payments?

Answer

The criteria will be fixed in due time by the institutions of the Association.

Question 74

- (a) Will import restrictions applied by a Member State under this Article for balance-of-payments reasons in relation to Member States and to other members of GATT accord with Articles XIII and XIV of the GATT?
- (b) If it is intended that restrictive measures to correct an unfavourable balance of payments should be applied first against third countries and only later, if at all, to other Member States, how would Member States reconcile such action with their commitments under the IMF and the GATT?

Answer

- (a) Article 24 merely provides for the possibility of extending such restrictions to intra-Area trade in the products included in the liberalization programme.
- (b) The Treaty only covers relations between the Member States and does not interfere with their other international commitments.

Question 75

- (a) What procedure will be followed to ensure that a country imposing quantitative import restrictions under this Article will relax them as its balance-of-payments position improves?
- (b) Could a country relax such quantitative import restrictions toward countries inside the Area but not likewise toward third countries?

Answer

- (a) This will be done in accordance with the rules provided for under Article 26.
- (b) The Treaty only covers relations between the Member States.

Article 26

Question 76

Would the negotiations foreseen under this Article deal only with the elimination of restrictions within the Area?

Answer

Yes.

Question 77

Could the outcome of negotiations foreseen under this Article result in more rapid relaxation of quantitative import restrictions toward countries in the Area than toward third countries?

Answer

The Treaty only refers to relations between the Member States.

V. SPECIAL PROVISIONS AFFECTING AGRICULTURE
(Articles 27-31)

Article 28

Question 78

This Article provides for the maintenance in certain circumstances of certain restraints on competition in trade between Member States in agricultural products during the transitional period. Is it intended to require complete removal of these restraints at the end of the twelve-year period and to require complete free trade within the Area on agricultural goods? If this is the case, what arrangements, if any, exist to ensure the progressive removal of these restraints during the twelve-year period? If Member States cannot at present give the CONTRACTING PARTIES to the GATT an assurance that these restraints will all be removed at the end of the twelve-year period and that trade in agricultural products will then be free do they agree that the CONTRACTING PARTIES will need to know their plans before being able finally to determine that the requirements of Article XXIV:8(b) have been fulfilled?

Answer

The provisions of Article 28 will not be applicable after the expiry of the twelve-year period which is set forth for the formation of the Free Trade Area.

Question 79

How would the measures applied pursuant to this Article be justified under the GATT?

Answer

Those are temporary provisions the implementation of which will not hinder the fulfilment of the liberalization programme.

Question 80

What is meant by the term "anti-economic" used in this Article and in Article 31?

Answer

This refers to situations leading to a decline in marginal productivity.

Question 81

What criteria are contemplated for determining whether an "increase in anti-economic production is involved" in measures a Member State might decide to apply pursuant to the provisions of this Article?

Answer

The situation will be examined in each individual case by the institutions of the Association.

Question 82

What is the definition of "agricultural commodities"? Will rubber, raw cotton and the more highly processed foodstuffs (e.g. packaged food-stuffs) be covered by this definition?

Answer

The institutions of the Association will provide a definition in due time.

Question 83

What criteria are contemplated for determining "commodities of substantial importance" under the provisions of this Article?

Answer

This will be decided in each individual case by the institutions of the Association.

Question 84

What proportion of intra-Area trade do the Member States anticipate will be excluded by this Article from the regular trade liberalization programme during the transitional period defined in Article 2?

Question 85

How and when is it intended that the products affected by measures applied pursuant to this Article at the end of the transitional period will be subject to the provisions of Articles 3, 4, 5, 7 and 8?

Question 86

May the measures permissible under this Article be applied to a product on the Common Schedule?

Answer to Questions 84, 85 and 86

The measures provided for under this Article do not involve the exclusion of those products from the liberalization programme but the temporary suspension, on an exceptional basis, of some of the effects of this programme.

Question 87

- (a) How would imports be limited under the provisions of this Article?
- (b) Are quantitative restrictions envisaged as a means of control? If so, how would such restrictions be justified under the GATT?

Answer

- (a) Mainly by means of quantitative restrictions.
- (b) These are temporary provisions the implementation of which will not hinder the fulfilment of the liberalization programme.

Question 88

Where Member States limit the import of certain commodities from other Member States under Article 23 or 28, will they be expected or required to limit the import of these commodities from third countries? If so, will the Member States inform the GATT before these measures are put into effect?

Answer

The Treaty only covers the relations between the Member States.

Question 89

Would the measures applied pursuant to the provisions of this Article be non-discriminatory not only as between Member States but also as between them and contracting parties to the GATT?

Answer

The Treaty only covers relations between the Member States.

Article 29

Question 90

This Article provides that an attempt shall be made to expand intra-Area trade in agricultural commodities by such means as agreements:

- (a) What is the nature of the agreements envisaged in this Article?
- (b) What safeguards exist that the conclusion of such agreements will not increase the barriers to trade of countries outside the Area?
- (c) Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, details of such agreements?

Answer

- (a) Mainly long-term purchases and sales agreements through normal channels of trade.
- (b) Such agreements cannot conceivably affect such countries considering that under this Article they will operate in normal competitive conditions.
- (c) As Article XXIV:7 is not considered to be applicable, the Member States have no objection to any information deemed to be relevant by the institutions of the Association being furnished to the CONTRACTING PARTIES to GATT.

Question 91

Are agreements under this Article to be regarded as an integral part of the Association arrangements for the purpose of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Answer

Such agreements will in general be in the nature of commercial operations.

Question 92

Would the agreements contemplated under the provisions of this Article result in discrimination between countries within the Area or between the countries inside and those outside the Area? Should there be discrimination within the Area, how would it be reconciled with the provisions of Article 18?

Answer

There does not appear to be any reason why there should be any discrimination.

Question 93

What assurances are there that these agreements would be consistent with the provisions of the GATT and the policies and decisions of the CONTRACTING PARTIES to the GATT or the IMF regarding bilateralism?

Answer

The Montevideo Treaty is precisely intended to make it possible to eliminate the system of bilateral agreements.

Question 94

Will products included in the agreements permitted by this Article be excluded from the provisions of Articles 3, 4, 5, 7 and 8 during the transitional period of Article 2? If so, how and when will these products be made subject to the provisions of Articles 3, 4, 5, 7 and 8?

Answer

No.

Article 30

Question 95

Could the Member States give an example of the type of situation to which the provisions of this Article would apply?

Answer

Under Chapter VII restrictions may not be used as an incentive to increase domestic productive capacity.

Question 96

What criteria will be followed in determining whether the measures provided for in Chapter VII of the Treaty are applied for the purpose of incorporating, in the production of agricultural commodities, resources which imply a reduction in the average level of productivity?

Answer

The institutions of the Association will examine each case individually.

VI. MEASURES IN FAVOUR OF COUNTRIES AT A RELATIVELY

LESS ADVANCED STAGE OF ECONOMIC DEVELOPMENT

(Article 32)

Question 97

Are measures authorized under this Article to be regarded as an integral part of the Association arrangements for the purposes of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Answer

These measures are of a temporary nature and will not hinder the fulfilment of the liberalization programme.

Question 98

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT pursuant to Article XXIV:7 of the GATT any measures authorized pursuant to this Article of the Montevideo Treaty?

Answer

When the institutions of the Association deem it appropriate.

Question 99

What criteria are used to determine whether a Member State may benefit from the provisions of this Article?

Answer

Those will be determined in each individual case by the institutions of the Association.

Question 100

Is it envisaged that quantitative import restrictions would be applied under the provisions of this Article (sub-paragraphs a, b, c, and d)?

- (a) If so, could such restrictions be applied or relaxed so as to discriminate in favour of countries in the Area and against third countries?
- (b) How would it be determined when a country shall cease to apply such restrictions?

Answer

Yes.

- (a) The Treaty only covers relations between the Member States.
- (b) This will be determined in each individual case by the institutions of the Association, in the decision granting authorization.

Question 101

What is the nature of the "advantages" contemplated in sub-paragraph (a) of this Article and what special arrangements are envisaged?

Answer

A Member State may grant another Member State in a relatively less advanced stage of economic development in the Area concessions which will not be extended to other members,

Question 102

Could the "advantages" contemplated under the provisions of sub-paragraph (a) of this Article be retained after the termination of the period cited in Article 2? If so, how could such action be reconciled with Article 18 of the Treaty of Montevideo and Article I of the GATT?

Answer

Yes.

Consistency results from the fact that such action would be of a temporary nature.

Question 103

Are measures affecting imports or exports envisaged under sub-paragraph (a) of this Article? If so, what kind of measures? Is there an upper limit to the duration for which a measure may be applied?

Answer

- (a) This refers to importation.
- (b) The nature of the action taken will depend on the circumstances of the case.
- (c) These would be temporary measures.

Question 104

What are the "more favourable conditions" contemplated under subparagraph (b) of this Article?

- (a) Could the liberalization programme be applied in a discriminatory fashion?
- (b) Would the programme still provide for the reduction of duties, charges and other restrictions within twelve years, or could it be extended beyond that period?
- (c) To what extent would the programme for the reduction of duties be made more favourable and would there, nevertheless, be a final time-limit for achieving a free-trade area?

Answer

They will be determined in each case by the institutions of the Association.

- (a) No.
- (b) and (c) The Member States intend to comply strictly with the liberalization programme.

Question 105

How do the provisions of sub-paragraph (c) of this Article differ from those of Article 24?

Answer

The difference arises from the fact that the measures provided for under Article 24 are subject to the limitation laid down in Article 26.

Question 106

What criteria are contemplated for determining an "unfavourable balance of payments" under the provisions of sub-paragraph (c) of this Article?

Question 107

In order for the provisions of sub-paragraph (c) of this Article to become operative would a country's balance of payments have to be "unfavourable" simply with countries in the Area or with the world as a whole?

Answer to Questions 106 and 107

What is involved here is the overall balance of payments.

Question 108

If the measures under sub-paragraph (c) of this Article take the form of import restrictions, would they be operated in the manner provided for in Articles XVIII, XIII and XIV of the GATT?

Answer

To the extent that this was appropriate.

Question 109

How will the authorizations under sub-paragraph (d) of this Article be controlled?

Answer

By the institutions of the Association.

Question 110

- (a) May the measures permissible in sub-paragraph (d) of this Article be applied after the end of the transitional period?
- (b) Would such measures be consistent with the GATT, particularly Article I thereof?

Answer

- (a) Yes.
- (b) They would be consistent in view of their temporary nature.

Question 111

Are measures affecting imports or exports envisaged under sub-paragraph (d) of this Article? If so, what kind of measures?

Answer

1. These measures refer only to quantitative restrictions.
2. They are, inter alia, quantitative restrictions.

Question 112

- (a) Are the products which may benefit from the provisions of sub-paragraph (d) of this Article to be excluded from the provisions of Articles 3, 4, 5, 7 and 8 during the transitional period of Article 2?
- (b) If so, how and when will these products be made subject to the provisions of Articles 3, 4, 5, 7 and 8?

Answer

(a) and (b) No. The application of the provisions of paragraph (d) does not interrupt the implementation of the liberalization programme. It only results in some of its effects being temporarily suspended.

VII. MISCELLANEOUS PROVISIONS
(Articles 48-54)

Article 49

Question 113

What are the criteria to be adopted for the purpose of determining the origin of goods and for their classification?

Answer

The criteria will be determined in due time by the institutions of the Association.

Question 114

In adopting criteria for the purpose of determining the origin of goods, will the Member States make special provisions to facilitate the use of raw materials normally imported from outside the Area in goods deemed to originate within the Area?

Answer

Yes, in all likelihood.

Article 50

Question 115

Under what provision of the GATT do the Member States justify the restrictions on exports set forth in this Article?

Answer

The Signatory States hold the view that Article 50 is not inconsistent with any provision of the GATT.

VIII. FINAL CLAUSES
(Articles 55-65)

Article 60

Question 116

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, amendments to the Montevideo Treaty presented pursuant to the provisions of this Article?

Answer

Yes.

Article 62

Question 117

Does this Article apply to international agreements such as the GATT and the IMF?

Answer

Yes.

Question 118

Does the second paragraph of this Article imply that the Member States must reconcile conflicts between the Treaty of Montevideo and existing agreements in favour of the former?

Answer

Not necessarily.

IX. PROTOCOL NO. 1

Question 119

Paragraph 7 of this Protocol provides that the Member States shall be entitled to exclude products of little value from the group subject to tariff reduction provided that their aggregate value does not exceed 5 per cent of the value of imports for the Area. Are the products to be excluded left entirely within the discretion of the importing Member? What safeguard is there that this Member will not exclude products produced in the Area in which there has hitherto been little trade because of high import barriers? What does the expression products "of little value" mean?

Answer

For practical reasons, these products are excluded from statistical computations but this does not mean that they are excluded from the liberalization programme.

The Standing Executive Committee will be called upon to furnish statistical evidence.

Question 120

Does paragraph 18 of Title V of this Protocol imply that the procedure for securing "the highest possible degree of effective reciprocity" may involve restrictive measures which would favour reciprocity at the expense of inhibiting the highest possible trade levels?

Answer

No.

Question 121

If Member States are considering the equalization of tariff rates, would they be willing to move toward the lowest rather than the highest rates of duty?

Question 122

How will Member States ensure that measures taken pursuant to paragraph 18 of Title V of this Protocol will be consistent with Article XXIV:5 of the GATT?

Answer to Questions 121 and 122

These provisions are not directed towards the establishment of a common external tariff. They merely incorporate the rules which are intended to serve as a basis for specific negotiations which presumably will take account of the lowest rates of duty.

X. PROTOCOL NO. 4

Question 123

What proportion of inter-Area trade is represented by the exclusion of petroleum and petroleum derivatives, as qualified by the second paragraph of the Protocol, from the provisions of the Treaty?

Answer

Trade in petroleum and petroleum derivatives is not excluded from the system of liberalization instituted under the Treaty.

The second paragraph of this Protocol merely refers to certain commitments arising out of purchases and sales contracts entered into by

Member States prior to the signature of the Treaty. The actual value of the trade resulting from such commitments is not significant.

XI. RESOLUTION I

Question 124

Apart from Resolution I, the Treaty contains no references to provisions for invisible transactions and credits. Are Member States contemplating preferential area arrangements for such transactions? If not, are non-Member countries right in assuming that invisible transactions and transfers will continue to be on a non-discriminatory basis?

Answer

No preferential treatment is contemplated for such transactions.

XII. GENERAL QUESTIONS

Question 125

Will Member States be free without restriction to reduce their external tariffs in negotiation with other GATT contracting parties or otherwise?

Answer

Yes.

Question 126

Are existing special regimes for free zones and ports to be retained?

Answer

The Treaty does not deal with this matter.