

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES  
Twenty-Third Session

## DEFINITIVE APPLICATION OF THE GATT

### Note by the Director-General

The question of the entry into force of the General Agreement pursuant to Article XXVI was again brought before the CONTRACTING PARTIES at the twenty-second session and was referred to the Council with a request for a report to be submitted to the present session. The Council, at its meeting on 14-16 March, was informed that many contracting parties might now be prepared to accept the GATT under Article XXVI provided they could confidently expect that it would be accepted by a sufficient number of contracting parties to bring a positive result. The Council therefore decided to include the item tentatively in the provisional agenda for the twenty-third session. However, it was the wish of the Council that the item should not be maintained on the agenda for the present session unless it has been ascertained that a sufficient number of contracting parties are ready to give an assurance that they will proceed as rapidly as possible after the session with the necessary legal or constitutional procedures to enable them to deposit with the Director-General the instruments of acceptance envisaged in paragraph 4 of Article XXVI.

It will be recalled that the General Agreement has been in force for eighteen years but is still being applied on a provisional basis pursuant to the Protocol of Provisional Application and to the various protocols of accession. "Provisional application" signifies that contracting parties are required to apply Part II of the GATT only to "the fullest extent not inconsistent with existing legislation", i.e. legislation, containing mandatory provisions, which existed on 30 October 1947 or in the case of contracting parties which acceded since 1948 on the date of their respective protocols of accession. Provisional application was intended to be a temporary arrangement pending the GATT's entry into force definitively under Article XXVI. To accept the GATT under Article XXVI a government is required to deposit an instrument of acceptance with the Director-General. The GATT will enter into force, in accordance with Article XXVI:6, as between those governments which accept it, when it has been accepted by governments named in Annex H whose territories account for 85 per cent of the total external trade of such territories.

The question of bringing the GATT into force definitively under the procedures of Article XXVI was discussed at the ninth session in 1954/55. The CONTRACTING PARTIES considered that an acceptance under Article XXVI should be valid even though accompanied by a reservation in respect of Part II similar to that covering existing legislation in the Protocol of Provisional Application and, accordingly, they adopted unanimously a Resolution enabling contracting parties to attach reservations to their acceptances. The text of the Resolution is annexed.

A note on previous discussions of this question was distributed at the twenty-second session in document L/2375. The information provided by governments in 1955, on the extent to which they were prevented by internal mandatory legislation from complying with the provisions of Part II of the GATT, was reproduced in L/2375/Add.1.

ANNEX

DEFINITIVE APPLICATION OF THE GATT

RESOLUTION OF 7 MARCH 1955 EXPRESSING THE UNANIMOUS AGREEMENT OF THE CONTRACTING PARTIES TO THE ATTACHING OF A RESERVATION ON ACCEPTANCE PURSUANT TO ARTICLE XXVI<sup>1</sup>

Having regard to the fact that the contracting parties have hitherto applied the General Agreement provisionally and have been required under such provisional application to apply Part II of the General Agreement only to the fullest extent not inconsistent with existing legislation,

Recognizing the desirability that contracting parties should accept the Agreement definitively under the provisions of Article XXVI at as early a date as possible,

Noting that it would not be practicable for certain contracting parties to bring their domestic legislation into conformity with Part II of the General Agreement immediately upon accepting it under the provisions of Article XXVI and accordingly that these contracting parties would not be in a position to so accept it unless a transitional period is provided for,

Recognizing the desirability that contracting parties should use their best endeavours to bring such legislation into conformity with the provisions of the General Agreement as soon as practicable,

The contracting parties unanimously agree

1. that an acceptance pursuant to Article XXVI shall be valid even if accompanied by a reservation to the effect that Part II of the General Agreement will be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947 or, in a case of a contracting party which since 30 June 1949 has acceded to the Agreement, the date of the Protocol providing for such accession,
2. that any contracting party attaching such a reservation shall submit as soon as possible after its acceptance of the General Agreement pursuant to Article XXVI a list of the principal legislative provisions covered by such reservation,
3. that the CONTRACTING PARTIES shall review annually progress made in bringing such legislation into conformity with the General Agreement,
4. that three years from the entry into force of the General Agreement under Article XXVI the CONTRACTING PARTIES shall review the situation then prevailing with respect to such reservations with a view to assessing the progress achieved towards the full application of the General Agreement by all contracting parties and to make appropriate recommendations.

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<sup>1</sup>BISD, Third Supplement, page 48.