

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/123

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CONTRACTING PARTIES

Ninth Session

Review Working Party IV on
Organizational and Functional Questions

PROGRESS REPORT BY THE CHAIRMAN OF WORKING PARTY IV

1. The Working Party was established to consider specific proposals relating to the administration of the General Agreement, legal questions, and the scope of the General Agreement. The Working Party has not yet considered legal questions, including the entry into force of the amendments to the Agreement, the question of definitive application and various specific proposals relating to certain articles (see document W.9/62). The Working Party has directed its attention to questions affecting the administration of the Agreement, including an agreement on organizational provisions, and the question of the scope of the Agreement.
2. In the discussions it became apparent to the Working Party that it would be helpful if the CONTRACTING PARTIES could establish, as soon after the recess as possible, a legal and drafting committee.
3. A sub-group was established to consider an agreement on organizational provisions, the Working Party having agreed that the organizational provisions should be included in a separate instrument. A draft agreement is annexed to this report. In the form in which it is presented, and subject to the fact that certain articles have not yet been drawn up by the sub-group, this draft agreement is acceptable to most countries represented on the Working Party (some members of the Working Party have maintained reservations on a few individual articles, and these are noted in the Annex). The attention of contracting parties is drawn to the report of the Chairman of the sub-group (W.9/100) which contains a brief description of the main issues on which there was discussion in the Working Party.
4. The sub-group of the Working Party is still considering articles relating to the establishment of the Organization (see the Rapporteurs' report, W.9/93), membership, functions, amendments, entry into force, etc., as well as proposals by the United States to include articles on nullification and impairment and accession.

5. The second major item of the Working Party's terms of reference relates to proposals for widening the scope of the General Agreement, and for the insertion of new articles into it. The Working Party has not yet completed its consideration of these proposals, and hence, as I have already indicated, has not yet considered in detail the Article on functions, which will be included in the organizational agreement.

6. The Working Party was generally agreed on the danger of including so much within the General Agreement as to jeopardize its effectiveness and dissipate its activities. There was broad agreement in the Working Party that the CONTRACTING PARTIES and the proposed Organization should continue as far as possible the hitherto empirical approach of dealing with specific problems related to the objectives of the Agreement as they arise. Some form of enabling clause to be inserted in the organizational agreement was generally considered to be desirable in order to make this possible for the new Organization.

7. The Working Party has not yet considered an enabling clause in any detail, that is with respect to its form, implications, etc. It has thus far only addressed itself to specific proposals for the insertion of articles for widening the scope of the General Agreement and resolutions designed as a substitute for additions to the text of the Agreement. In the discussion of proposals for resolutions to be adopted by the CONTRACTING PARTIES, most members of the Working Party recognized that, in the majority of cases, it would be undesirable and unprofitable for the CONTRACTING PARTIES to abandon their practical approach and resort to exhortatory resolutions having no practical effect.

8. The Working Party considered the following specific proposals referred to it (see document W.9/27), and I shall briefly note how they have been disposed of,

(a) Commodities - this question is the subject of an interim report of the Working Party which has been circulated (L/297). The Working Party also agreed to a suggestion made by its sub-group that a letter should be sent to the Secretary-General of the United Nations drawing attention to the interest of the CONTRACTING PARTIES in commodity questions, both in view of Article XX:I(h) and, if the CONTRACTING PARTIES approved of the Working Party report as to further action in the commodity field, in view of this decision. A draft letter is annexed hereto.

In this connection I should refer here to a statement made by the United States Representative expressing the United States Government's opposition to the recommendations. This statement has been circulated in document W.9/111.

(b) Restrictive Business Practices - the proposal to insert provisions on this subject (Denmark, Norway, Sweden, L/282 and Germany, L/261/Add.1, page 43) having received no support by the Working Party, the Scandinavian delegations then proposed that the CONTRACTING PARTIES adopt a resolution (W.9/84) concerning action to be taken. The Working Party considered that the CONTRACTING PARTIES should postpone further consideration of this matter pending receipt at their next regular session of a report by the Executive Secretary on the discussions in this field by the Economic and Social Council.

- (c) The following proposals have been referred to sub-groups for further consideration after discussion in the Working Party:

Proposals for the insertion of articles relating to powers, objectives and general obligations (Norway, L/276 and Chile, L/272).

An article relating to full employment (New Zealand, W.9/79).

An article relating to relations with non-members (South Africa, W.9/92).

- (d) The following proposals did not receive sufficient support for the Working Party to proceed further in its consideration of them.

An article relating to double taxation (Germany, L/261/Add.1, page 52, and Chile, L/272).

An article relating to freedom of establishment (Germany, L/261/Add.1, page 53).

An article or recommendation relating to monopolistic practices in transport and shipping (Brazil).

- (e) The Working Party has not yet fully considered the following items:

A resolution relating to international investment for economic development (Chile, W.9/96).

Transport Insurance. A proposal by the German delegation to insert an article was withdrawn, but the Working Party will revert to this item, which forms Item 16 of the Agenda of the Ninth Session, after considering a report to be submitted by the Executive Secretary.

A recommendation relating to tied loans (Brazil, W.9/97).

Provisions relating to consultations concerning any decline in the off-take of primary commodities (Pakistan, L/291).

Proposals relating to Articles V, VI and VII and Trade statistics and laws affecting trade (W.9/98), referred from Working Party IV.

ANNEX I

DRAFT AGREEMENT ON ORGANIZATIONAL PROVISIONS

PART I - GENERAL

Article 1. Establishment¹

Article 2. Membership¹

Article 3. Functions¹

PART II - STRUCTURE OF THE ORGANIZATION

Article 4

The Organization shall consist of an Assembly, an Executive Committee and a secretariat.

The Assembly

Article 5

The Assembly shall consist of the members of the Organization.

Article 6

It shall be the responsibility of the Assembly to carry out the functions of the Organization as set forth in Article 3.

Article 7

The Assembly shall meet in regular annual session and in such special sessions as may be convened in accordance with the rules of procedure.

Article 8

The Assembly shall establish its own rules of procedure and shall approve the rules of procedure of the Executive Committee and of other subsidiary bodies.

¹ These Articles are still under consideration by the sub-group of Working Party IV and, accordingly, no text is proposed.

The Executive Committee

Article 9¹

The Executive Committee shall consist of sixteen members of the Organization elected periodically by the Assembly. Each election shall be for a single term and each member shall be eligible for re-election. In such elections, the Assembly shall be guided by the following criteria:

- (a)² The Executive Committee shall include the members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade.
- (b) The Executive Committee shall be representative of the broad geographical areas to which the members belong.
- (c) The Executive Committee shall be representative of different degrees of economic development, different types of economies and different economic interests.

Article 10³

The Executive Committee shall exercise the powers and perform the duties assigned to it by the Assembly.

Article 11

Any member of the Organization which is not a member of the Executive Committee shall be entitled to participate, without the right to vote, in the discussion by the Executive Committee of any matter of particular concern to it.

¹ The United Kingdom makes a specific reservation to this Article on the ground that this is a matter that should properly be left to the Organization itself to decide. If it were, nevertheless, decided to make provision for this in the Agreement, the United Kingdom also reserves its position as to the number of members.

² Brazil reserves its position on this clause.

³ Brazil, Chile, India and the United States specifically reserved their position on this Article, to the effect that any assignment of powers from the Assembly should be by a two-thirds vote.

The Secretariat

Article 12

The Assembly shall appoint a Director-General as chief administrative officer of the Organization. The powers, duties, conditions of service and term of office of the Director-General shall conform to regulations approved by the Assembly.

Article 13

The Director-General shall appoint members of the staff and shall fix their duties and conditions of service in accordance with regulations approved by the Assembly.

Article 14

The Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of the Assembly and subsidiary bodies of the Organization.

Article 15

The Director-General and the members of the staff shall have the status of international officials. In carrying out their duties they shall neither solicit nor accept instructions from any government or any authority outside the Organization. They shall refrain from any act incompatible with their position as international officials. Members shall respect the international character of the responsibilities of these persons and shall not seek to influence them in the discharge of their duties.

Article 16

The selection of the members of the staff shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

V o t i n gArticle 17

At meetings of the Assembly each member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the General Agreement or in this Agreement, decisions of the Assembly shall be taken by a majority of the votes cast.

Members of the Executive Committee and other subsidiary bodies shall have one vote therein.

In the exercise by the Organization of any function under the General Agreement, unless such agreement provides otherwise, only Members which are also parties to such agreement shall be counted thereunder in determining the fulfilment of the respective voting requirements¹.

PART III - BUDGET AND ADMINISTRATIVE PROVISIONSB u d g e tArticle 18

The Director-General shall present to the Assembly, through the Executive Committee, the annual budget estimates and financial statements of the Organization. The Assembly shall approve the accounts and the budget. It shall apportion the expenditures of the Organization among the members, in accordance with a scale of contributions to be fixed by the Assembly, and each member shall contribute promptly to the Organization its share of these expenditures. The Assembly shall take necessary measures to ensure that the contributions are paid by all members.

Relations with other organizationsArticle 19

The Organization shall make arrangements with intergovernmental bodies and agencies which have related responsibilities to provide for effective co-operation and the avoidance of unnecessary duplication of activities.

¹ Consideration by the sub-group of this paragraph, proposed by the United States, is awaiting its consideration of membership.

Article 20¹

In pursuance of the provisions of the preceding Article, the Organization may, by an agreement approved by the Assembly, be brought into relationship with the United Nations, as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations.

Article 21

The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Organization.

S t a t u s

Article 22

The Organization shall have legal personality and shall enjoy in the territory of each of the members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

Article 23

The representatives of the members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization.

Article 24

The privileges and immunities to be accorded by a member to the Organization, representatives and officials shall be similar to those accorded by that member to specialized agencies of the United Nations, their representatives and officials under the Convention on the Privileges and Immunities of the Specialized Agencies, or under similar arrangements.

PART IV - SPECIAL FUNCTIONS RELATING TO THE GENERAL AGREEMENT

Article 25

In exceptional circumstances, not elsewhere provided for in this Agreement, nor provided for in the General Agreement, the Assembly may waive an obligation imposed upon a contracting party by the General Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the members.

¹ South Africa reserves its position on the entire article. The United States reserves its position that "may" should read "shall".

The Assembly may also by such a vote (i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations imposed by the General Agreement upon a contracting party thereto, and (ii) prescribe such criteria as may be necessary for the application of this Article.

Note. Articles relating to amendments, entry into force, registration, etc., are still under consideration by the sub-group and accordingly no text is proposed for such articles.

ANNEX 2

Sir,

I have been directed by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade to write to you in connection with the forthcoming meeting of the Commission on International Commodity Trade established under Resolution 557 (XVIII) of the Economic and Social Council. With reference to the provisions of paragraph 3(c) and 9 of that Resolution the CONTRACTING PARTIES request that the attention of the Commission and of other organs of the United Nations concerned with commodity questions be drawn to the interest of the CONTRACTING PARTIES in international action concerned with problems of primary commodities, in the first place in view of Article XX:I(h) of the General Agreement, and secondly in view of the Decision taken by the CONTRACTING PARTIES at their Ninth Session to establish a Working Party to consider proposals for principles to govern international action designed to overcome problems arising in the field of international trade in primary commodities.

Article XX:I(h) of the General Agreement reads as follows:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

I. -----

(h) undertaken in pursuance of obligations under inter-governmental commodity agreements, conforming to the principles approved by the Economic and Social Council of the United Nations in its Resolution of 28 March 1947, establishing an Interim Co-ordinating Committee for International Commodity Arrangements."

The Decision of the CONTRACTING PARTIES referred to above is in the following terms:-

.....

Accordingly the CONTRACTING PARTIES hope that it will be possible for the Commission to afford opportunities to the CONTRACTING PARTIES to consult with the Commission as contemplated by paragraph 3(c) of the Resolution which I have cited above.

Accept, Sir, the assurances of my highest consideration.

E. Wyndham White,
Executive Secretary.

The Secretary-General,
United Nations,
New York, N.Y.