

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

W.9/198  
15 February 1955  
Special Distribution

CONTRACTING PARTIES  
Ninth Session

Review Working Party IV on Organizational  
and Functional Questions

## DRAFT REPORT OF WORKING PARTY IV

The Working Party may find it useful to consider a partial draft of its Report to the CONTRACTING PARTIES. This paper sets out the matters which have been dealt with and indicates those that are still to come.

### I N T R O D U C T I O N

1. The Working Party was established to consider specific proposals relating to the administration of the Agreement, legal questions, and the scope of the General Agreement.
2. It has drawn up a draft Agreement for the Organization on Trade Co-operation for the consideration of the CONTRACTING PARTIES which, apart from the specific reservations noted in the footnotes, is acceptable to the Working Party.
3. The texts of amendments proposed by the Working Party to certain Articles are contained in Annex 3.
4. The views of the Working Party on other proposals relating to the scope of the Agreement are set out in Section II below.
5. The Working Party recommends for the approval of the CONTRACTING PARTIES a resolution on Investment for Economic Development (Annex 2)

#### I. DRAFT AGREEMENT ON THE ORGANIZATION FOR TRADE CO-OPERATION

[Paragraphs from IV-A report to be inserted]

## II. SCOPE OF THE 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 the activities of the Organization charged with its administration. There was broad agreement in the Working Party that the CONTRACTING PARTIES and the proposed Organization should continue as hitherto to deal with specific problems related to the objectives of the Agreement as they arose.

## S P E C I F I C P R O P O S A L S

### Commodities

7. The Working Party submitted an interim report on commodity questions (L/297) which, for convenience of reference, is reproduced below.

"The Working Party has considered the proposal made by several delegations for inserting in the General Agreement provisions along the lines of Chapter VI of the Havana Charter. Whilst there was not any general support for this proposal, a substantial majority of the Working Party were in favour of the CONTRACTING PARTIES making appropriate arrangements for the study of commodity problems under the aegis of the General Agreement and of the establishment for this purpose at the present Session of a Working Party. This Working Party would consider proposals for principles to be included in a separate instrument, to govern international action designed to overcome problems arising in the field of international trade in primary commodities, taking into account organizational questions involved in the administration and application of such principles, and report thereon to the CONTRACTING PARTIES."

8. In view of the action taken by the CONTRACTING PARTIES on this recommendation of the Working Party, it was agreed not to pursue the discussion of proposals for the insertion in the General Agreement of proposals relating to trade in primary commodities.

9. Paraph on XI:1(h) to be inserted from IV-B report

### Restrictive Business Practices

10. The Working Party considered proposals by the delegations of Denmark, Norway and Sweden (L/283) and of Germany (L/261/Add.1, page 43) to include in the Agreement provisions along the lines of Chapter V of the Havana Charter, and a proposal by the Scandinavian delegations for a resolution on this subject (W.9/84). There were differences of view as to the appropriateness of the CONTRACTING PARTIES (or the new Organization which would assume the functions of the CONTRACTING PARTIES) undertaking the administration of an agreement covering restrictive business practices. As, however, action on this matter is still under consideration by the Economic and Social Council, the Working Party considers that it would be premature to carry the discussion further at the present time. The Working Party therefore recommends no change.

Purposes, Objectives and General Obligations

11. The Norwegian delegation withdrew its proposals for a new first Article relating to purposes and objectives and a new second Article relating to general obligations (L/276) on the understanding that the Agreement of Organizational Provisions and the General Agreement would contain provisions based on the same principles as the Norwegian proposals. The Chilean delegation agreed that the principles of its proposals to incorporate some of the language of Articles 3, 4 and 6 of the Havana Charter were covered by the New Zealand proposal for an Article relating to full employment, and that they would not therefore press their proposal separately. They also agreed that the substance of their proposals with reference to Article 8 of the Havana Charter could more appropriately be dealt with within the framework of the consideration of Article XVIII.

12. [Paragraph relating to the proposals concerning Article XXIX and a new first Article to be inserted.]

Full Employment

13. [Report from Sub-Group C to be inserted.]

International Investment for Economic Development

14. The Working Party recommends that the CONTRACTING PARTIES adopt a resolution on international investment for economic development, as proposed by the Chilean delegation (the text of a proposed resolution is contained in Annex 2.)

Double Taxation

15. The proposal by the German delegation (L/261/Add.1, page 52) supported by the delegation of Chile (L/272) to insert an article dealing with double taxation received the support of one other member of the Working Party. In view of the lack of support, the Working Party decided not to proceed further with this proposal.

### Transport Insurance

16. A proposal by the delegation of Germany (L/261) was withdrawn after the CONTRACTING PARTIES had discussed a note by the Executive Secretary (L/303) on discrimination in transport insurance, and on the understanding that the CONTRACTING PARTIES would maintain this item on the agenda for discussion at the Tenth Session.

### Freedom of Establishment

17. The Working Party decided not to proceed further with the proposal by the delegation of Germany (L/261/Add.1, page 53) to insert an article providing for freedom of establishment, since it had received no support.

### Tied Loans

18. In view of the lack of support for its proposal that a provision be inserted in the General Agreement relating to tied loans, the delegation of Brazil proposed that the CONTRACTING PARTIES adopt a resolution (W.9/97) recommending that international credit agencies abstain whenever possible from attaching conditions to long-term loans for economic development. While there was general agreement with the premise that loans should be used in the most economic way possible, the Working Party considered that the CONTRACTING PARTIES could not make suggestions as to the credit policies of international lending agencies, and the Working Party did not support the adoption of a resolution on this subject by the CONTRACTING PARTIES.

### Monopolistic Practices in Transport and Shipping

19. The Brazilian delegation proposed that the Organization should follow the activities of all international bodies concerned with the field of shipping, freight, etc., and submit reports and observations to the Assembly. There was little support for this proposal, most members feeling that the field of shipping was highly technical and beyond the competence of a body which was to be primarily concerned with questions of trade and commercial policy.

Relations with Non-Members

20. The Working Party considered the question of the extension by contracting parties to non-contracting parties of the benefits of the Agreement by means of bilateral agreements. It was pointed out in the discussion that non-contracting parties frequently received all of the benefits of the Agreement without having to undertake its corresponding obligations. Thus, more favourable treatment was in fact being accorded to non-contracting parties than to contracting parties, which was calculated to discourage rather than to induce other countries to join. Most members of the Working Party felt, however, that the attitude a contracting party wished to adopt to a non-contracting party was a matter of internal policy.

21. [Sub-Group C report to be inserted]

Consultations concerning a decline in the off-take  
of primary commodities

22. The Working Party considered the proposal by the delegation of Pakistan for the inclusion in the General Agreement of provisions for consultations regarding any decline in the off-take of primary commodities (W.9/134). The Working Party recommends that the proposal be met by amendments to Articles XVIII and XXII<sup>1</sup>.

III. PROPOSALS RELATING TO ARTICLES XVIII, XXII, XXIII, XXV  
XXVI, XXVII, XXVIII, XXXIII AND XXV, AND LEGAL QUESTIONS

Entry into Force of Amendments

23. [To be inserted]

Definitive application

24. [To be inserted]

---

<sup>1</sup> For the text of amendments to these Articles see Annex 3.

Article XVIII<sup>1</sup>

25. The changes to this Article have been referred to in paragraph 22 above.

Article XXII<sup>1</sup>

26. The changes to this Article have been referred to in paragraph 22 above.

Article XXIII<sup>1</sup>

27. The Working Party discussed proposals by the Governments of Denmark, Norway and Sweden to add an interpretative note to paragraph 2 of Article XXIII. The representative of the Scandinavian countries, when introducing the proposals, stressed that action by the CONTRACTING PARTIES under Article XXIII should be directed towards the maintenance of a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the original situation; it was, therefore, desirable that resort should be had to retaliatory action only when all other possibilities had been explored.

28. The proposal was withdrawn in the light of the agreement by the Working Party that, subject to the qualifications explained in the following paragraph, the principle set out in the proposed interpretative note conformed with both the intention of the Article and the practice the CONTRACTING PARTIES had hitherto followed in applying its provisions. The Working Party considered that the requirement in paragraph 2 of the Article that the circumstances must be "serious enough" limits the possibility of authorizing a contracting party or parties to take appropriate retaliatory action to cases where endeavours to solve the problem through the withdrawal of the measures causing the damage, the substitution of other concessions, or some other appropriate action have not proved to be possible, and where there is considered to be a substantial justification for retaliatory action, as in cases in which such authorization appears to be the only means either of preventing serious economic consequences to the country for which a benefit has been nullified or impaired, or the only means of restoring the original situation.

---

<sup>1</sup> For the text of amendments to these Articles see Annex 3.

29. Furthermore, the Working Party felt that any implication (such as had existed in the Scandinavian proposal) that the provision of appropriate compensation, on the one hand, and the removal of a measure inconsistent with the Agreement, on the other hand, are fully equivalent and satisfactory alternatives would not accord with the intent and spirit of the Article. In their view, the first objectives if the CONTRACTING PARTIES decided, in the event of a complaint under Article XXIII, that certain measures were inconsistent with provisions of the Agreement, should be to secure the withdrawal of the measures. In such a case, the alternative of providing compensation for damage suffered should be resorted to only if the immediate withdrawal of the measures was impracticable and only as a temporary measure pending the withdrawal of the measures which were inconsistent with the Agreement.

30. It was agreed to delete from the second sentence to the end of paragraph 2, since these provisions were included in the Organizational Agreement as Article 15.

#### Article XXV<sup>1</sup>

31. The amendments proposed to paragraphs 1-5(a) of Article XXV have already been referred to under paragraph above.

32. Paragraphs 5(b), (c) and (d) are being considered by Working Party II.

#### Article XXVI<sup>1</sup>

33. It was agreed to insert two new paragraphs in place of paragraph 1 and to amend paragraph 5 (which would become paragraph 6) of this Article, to delete the interpretative note and to revise the percentage shares of total external trade contained in Annex H, based on the average for five years, 1949-53. These percentages have been calculated including the United Kingdom, French and Benelux dependent and affiliated territories, listed in document G/9.

#### Article XXIX<sup>1</sup>

34. [To be inserted.]

---

<sup>1</sup> For the text of amendments to these Articles see Annex 3.

Article XX<sup>1</sup>

35. It was agreed to amend paragraph 1 of this Article and to add two new paragraphs to cover the case of withdrawals. A third new paragraph providing for a procedure for entry into force of rectifications and modifications was also agreed.

Article XXI<sup>1</sup>

36. It was agreed to delete the date contained in this Article.

Article XXIII<sup>1</sup>

37. The amendments proposed to this Article to provide for an acceding government to become a member have already been referred to in paragraph above. It was also agreed to clarify the phrase relating to the voting requirement.

Article XXV<sup>1</sup>

38. A title was agreed for this Article and amendments to paragraphs 1 and 2, those to paragraph 1 consequential upon the amendments to Article XV.

ANNEX I

Final Note

39. It was agreed to delete this Note.

---

<sup>1</sup> For the text of amendments to these Articles see Annex 3.

ANNEX 1

Draft agreement on the Organization for Trade Co-operation

[To be inserted]

ANNEX 2

Draft Resolution on  
International Investment for Economic Development

HAVING REGARD

- (a) to the objectives of the General Agreement which include inter alia raising the standards of living, developing the full use of the resources of the world, and expanding the production and exchange of goods,
- (b) to the fact that the General Agreement recognizes by special provisions relating to governmental assistance for economic development, the contribution which the economic development of the less-developed territories of contracting parties could make to the attainment of these objectives,
- (c) to the fact revealed in the periodic review of quantitative restrictions maintained by many contracting parties that such restrictions are widely maintained in countries engaged in substantial programmes of economic development,

RECOGNIZING THAT

an increased flow of capital into countries in need of investment from abroad and, in particular, into under-developed countries would facilitate the objectives of the General Agreement by stimulating economic development of these countries whilst at the same time rendering it less necessary for them to resort to import restrictions,

THE CONTRACTING PARTIES

RECOMMEND that the contracting parties who are in a position to provide capital for international investment and the contracting parties who desire to obtain such capital use their best endeavours to create conditions calculated to stimulate the international flow of capital having regard in particular to the importance for this purpose of providing by appropriate methods for security for existing and future investment, the avoidance of double taxation, and facilities for the transfer of earnings upon foreign investments,

UrGE that contracting parties upon the request of any contracting party enter into consultation or participate in negotiations directed to the conclusion of bilateral and multilateral agreements relating to these matters.

ANNEX 3

Amendments proposed to the General Agreement

Article XVIII

The following sub-paragraph should be inserted in Article XVIII (as contained in document W.9/154).

"5. (a) The CONTRACTING PARTIES recognize that the export earnings of contracting parties whose economies are of the type described in paragraphs 4(a) and (b) above, and which depend on exports of a small number of primary commodities may be seriously reduced by a decline in the sale of such commodities. Accordingly, when a contracting party's exports of primary commodities are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII."

Article XX

Article XX:I(h) should be amended to read as follows: to be inserted from IV-B report.

Article XXII

Article XXII should be amended to read as follows:

"Article XXII - Consultation

"1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

"2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1."

Article XXIII

Article XXIII should be amended to read as follows:

"Article XXIII - Nullification or Impairment

"1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

"2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES."

Article XXV

[to be inserted from IV-A report.]

Article XXVI

[Amendments to Article XXVI are being considered by the Legal and Drafting Committee].

Article XXIX

[to be inserted from IV-C report].

Article XXX

[the amendments to Article XXX are being considered by the Legal and Drafting Committee].

Article XXXI

In the second and third lines and in the eighth line of Article XXXI, the words "on or after 1 January 1951" should be deleted.

Article XXXIII

Article XXXIII should be amended to read as follows:

"Article XXXIII - Accession

"A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES, and provided that such government shall accept at the time of accession the Agreement on the Organization for Trade Co-operation. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a majority comprising two-thirds of the contracting parties."

Article XXXV

Article XXXV should be amended to read as follows:

"Article XXXV - Non-Application of the Agreement  
between particular Contracting Parties

1. The amendments to this paragraph are pending the amendments to Article XXV.
2. The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations."

Annex H

This is being considered by the Legal and Drafting Committee

Annex I

The interpretative note ad Article XXVI should be deleted.

The final note should be deleted:

