

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

DIVISION LINGUISTIQUE

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Special Distribution

Trade Negotiations Committee

THE APPLICATION OF ARTICLE XXXV IN RELATION TO THE PRESENT TRADE NEGOTIATIONS

Note by the Director-General

1. It will be recalled that Article XXXV of the General Agreement provides that "the Agreement, or alternatively Article II of this Agreement shall not apply as between any contracting party and any other contracting party if:
 - (a) the two contracting parties have not entered into tariff negotiations with each other, and
 - (b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application."
2. The interpretation of the phrase "have not entered into tariff negotiations" has been based in the past on the ruling of 31 May 1949 by the Chairman of the CONTRACTING PARTIES that "delegations should be deemed to have entered into negotiations when they had exchanged lists of offers" (the full text of the ruling is set out in BISD, Volume II, page 35).
3. In the case of two contracting parties which are not applying the GATT to each other by virtue of an earlier invocation of Article XXXV by one of them, the procedure in the past has been that the letter, unless it intended to withdraw its invocation of the Article, would not submit offers to the other.
4. The ruling and the procedure described in the preceding two paragraphs are based on the earlier technique of tariff negotiation under which offers are made by each participant to other individual participants. This technique is not being used in the present negotiations where offers are tabled on a multilateral basis and not to individual countries separately.
5. As a result of the change in the procedure of negotiation, misunderstandings may arise in the present negotiations as to the effect of tabling offers on the position under Article XXXV. To avoid such misunderstandings the following procedure is suggested:
 - (a) as regards relations between contracting parties, each participant which has invoked Article XXXV in respect of another participant should, when tabling its initial offer, indicate whether it intends to continue this invocation;

- (b) as regards relations with, and between, acceding countries, any acceding country which intends to invoke the Article against another participant should notify me to that effect when tabling its initial offer, and any participating contracting party which intends to invoke the Article against an acceding country should notify me to that effect as soon as possible after the acceding country in question has tabled its initial offer.