

## ARTICLE XXXIII

### ACCESSION

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#### I. TEXT OF ARTICLE XXXIII

##### 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. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.

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#### II. INTERPRETATION AND APPLICATION OF ARTICLE XXXIII

##### A. SCOPE AND APPLICATION OF ARTICLE XXXIII

###### 1. “government...”

The contracting parties were defined as “governments” and not as “states” or “nations” so that governments with less than complete sovereignty could be contracting parties to GATT.<sup>1</sup> See also Article XXXII.

At the September 1992 Council meeting, the Chairman made the following statement concerning the accession of Chinese Taipei:

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<sup>1</sup>EPCT/198; EPCT/TAC/PV.22, pp. 21-22. Concerning acceptance of the General Agreement by “governments” see also EPCT/TAC/PV.12, EPCT/TAC/PV.13, EPCT/TAC/SR.12, EPCT/TAC/SR.13.

“The Chairman said that in recent months he had carried out extensive consultations on the subject of establishing a working party to consider the possible accession of Chinese Taipei, known in the GATT as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu. All contracting parties had acknowledged the view that there was only one China, as expressed in the United Nations General Assembly Resolution 2758 of 25 October 1971. Many contracting parties, therefore, had agreed with the view of the People’s Republic of China (PRC) that Chinese Taipei, as a separate customs territory, should not accede to the GATT before the PRC itself. Some contracting parties had not shared this view. There had been, however, a general desire to establish a working party for Chinese Taipei. Taking account of all the views expressed, he had concluded that there was a consensus among contracting parties on the following terms, which also met the PRC’s concerns:

“First, the Working Party on China’s status as a contracting party should continue its work expeditiously, taking account of the pace of China’s economic reforms, and report to the Council as soon as possible.

“Second, a Working Party on Chinese Taipei should be established at the present meeting, and should report to the Council expeditiously, with the following terms of reference and composition:

Terms of reference

‘To examine the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (referred to as “Chinese Taipei”) to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which may include a draft Protocol of Accession.’

“... Third, the Council should give full consideration to all views expressed, in particular that the Council should examine the report of the Working Party on China and adopt the Protocol for the PRC’s accession before examining the report and adopting the Protocol for Chinese Taipei, while noting that the working party reports should be examined independently.”<sup>2</sup>

The Chairman then proposed that the Council take note of his statement and agree to establish a working party on the basis of the understanding and the terms of reference and composition he had mentioned.<sup>3</sup>

## 2. “two-thirds majority”

The Report of the Working Party on “Accession at Annecy” of June 1949 notes that “It was agreed that the two-thirds majority required by Article XXXIII referred to such a majority of the number of contracting parties at the time at which the decision was taken, and not of the number of contracting parties at any later time at which an acceding government accedes in consequence of the decision”.<sup>4</sup>

During the Review Session of 1954-55, it was agreed to amend the last sentence of Article XXXIII to read: “Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a majority comprising two thirds of the contracting parties”.<sup>5</sup> However, this amendment was included in the Protocol of Organizational Amendments, which did not enter into force.

## 3. Procedures for accession

The Protocol of Provisional Application and the original text of the General Agreement, which were drawn up at the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, were annexed to the Final Act adopted at the conclusion of that Session, dated 30 October 1947. Paragraph 4 of the Protocol of Provisional Application specified that the Protocol was open for signature by any government signatory to the Final Act, until 30 June 1948 at the latest. All of the governments signatory to the Final Act except for Chile signed the Protocol before 30 June 1948. On 7 September 1948 the CONTRACTING PARTIES decided that “a government signatory of the Final Act of October 30, 1947 on behalf of which the

<sup>2</sup>C/M/259, p. 3-4.

<sup>3</sup>*Ibid.*, p. 4.

<sup>4</sup>GATT/CP.3/37, adopted on 9 June 1949, II/148, 149, para. 8.

<sup>5</sup>L/327, adopted on 28 February, 5 and 7 March 1955, 3S/231, 252; see Secretariat proposal at L/189, p. 19..

Protocol of Provisional Application was not signed by June 30, 1948 shall not be considered to be a 'party' within the meaning of Article XXXII of the General Agreement in its provisional application and consequently that any such government may accede to such Agreement pursuant to the accession provisions of Article XXXIII".<sup>6</sup> Thus, the first government to accede under Article XXXIII was Chile, which acceded under the Protocol for the Accession of Signatories to the Final Act of 30 October 1947.<sup>7</sup>

The modalities of accession to the GATT were first given in-depth consideration in 1949 at the Third Session, which took place in Annecy. Procedures Governing Negotiations for Accession and a Model Protocol of Accession were agreed at that time, together with the Annecy Protocol of Terms of Accession, which provided for the accession of Denmark, the Dominican Republic, Finland, Greece, Haiti, Italy, Liberia, Nicaragua, Sweden, and Uruguay. The Procedures agreed at Annecy provide: "The secretariat, on receiving a communication from a government not party to the General Agreement which wishes to enter into negotiations with contracting parties with a view to acceding to the Agreement, would notify the contracting parties ...".<sup>8</sup> Upon circulation of such a communication, the Council establishes a working party to examine the application for accession to the General Agreement and to submit recommendations to the Council which may include a draft protocol of accession. Many accession negotiations have taken place at the same time as ongoing trade negotiating rounds.

At its meeting on 27 October 1993, the Council agreed that the following procedures should henceforth be followed in the organization and pursuit of negotiations on accession to the General Agreement, without prejudice to procedures currently applied.

- "1. Upon reception of a formal request for accession to the General Agreement and its approval by the Council or by the CONTRACTING PARTIES, the Secretariat will address a communication to the acceding government in which it will outline the normal procedures followed by working parties on accession, and request that the acceding government submit a Memorandum on its Foreign Trade Régime that covers but is not limited to the topics of the outline contained in the Annex [to document L/7317]. This outline may be revised and amended as necessary in future, in the light of experience and of the results of the Uruguay Round.
- "2. It would be understood that the Secretariat will continue to make available to the government of the acceding country the necessary technical assistance facilities.
- "3. It would also be understood that in the course of its deliberations, the working party may request the Secretariat to prepare background documentation on specific issues or questions regarding the acceding government's trade policies which have arisen in the course of the examination by the working party."<sup>9</sup>

In current practice, after submission of the memorandum on the foreign trade régime, the CONTRACTING PARTIES invite questions from all contracting parties to which the applicant government provides written answers. The discussion in the working party is reflected in the report of the working party to the Council, to which are attached a draft Decision and Protocol of Accession. Accession tariff negotiations are held between the acceding government and those contracting parties to the GATT which wish to participate therein, in parallel with the working party. The accession schedule of concessions is annexed to the draft Protocol of Accession; it contains the concessions of the applicant government, and may include concessions of other governments. When the tariff negotiations have been concluded, the report of the accession working party together with the draft Decision and Protocol of Accession are submitted to the Council for adoption of the report and approval of the texts of the draft Decision and Protocol of Accession. A decision on accession is taken, by a two-thirds majority of the contracting parties, and the Protocol then enters into effect thirty days after signature by the applicant government.<sup>10</sup>

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<sup>6</sup>GATT/CP/1 p. 36.

<sup>7</sup>62 UNTS 68, signed at Geneva on 14 September 1948, entered into force 14 September 1948.

<sup>8</sup>I/110.

<sup>9</sup>L/7317, "Accession to the General Agreement - Complementary procedures to be followed in the organization and pursuit of negotiations", with attached "Outline Format for a Memorandum on the Foreign Trade Régime".

<sup>10</sup>See INT(80)42, "The Developing Countries and Accession to the GATT", Secretariat Note dated 23 September 1980.

At the November 1994 Council meeting, the Chairman of the Council made a statement on management of accession negotiations.

“... After consultations with delegations, it has ... been possible to identify a certain number of points which may help to guide both the Secretariat and governments in handling the negotiations on accession. These points ... are of an indicative nature; their aim is to rationalize the manner of work on accession negotiations when an unusually large number of requests for accession must be dealt with. They are not intended in any way to substitute for the established procedures which are maintained.

“The points are as follows:

- “1. the management of accession negotiations in the GATT should ensure the wider acceptance and effective application of rules and disciplines under the GATT, thus contributing towards the reform processes in the applicant countries or territories, and towards the objective of further strengthening the multilateral trading system;
- “2. there shall be no lowering of present standards for terms of accession to GATT;
- “3. accession negotiations should be limited to issues related to GATT rights and obligations including market access to the applicant country or territory;
- “4. accession negotiations should be approached on a case-by-case basis, while respecting the established procedures for negotiations with all applicants;
- “5. adequate lead-time should be allowed in the preparatory stage of accession negotiations before meetings of the respective working parties are convened, in order to allow both the applicant government and members of the working party to better prepare themselves;
- “6. in line with 5 above, more than one round of questions and answers may be organized if necessary; subsequent rounds will be designed to select and clarify issues before an initial meeting of the working party;
- “7. adequate lead-time should be allowed for governments to examine documentation;<sup>11</sup> the conformity of such documentation with established procedures should be checked in advance by the Secretariat, which would inform contracting parties and the applicant government of its views;
- “8. the Secretariat may be invited to examine the technical assistance requirements of the applicant government so as to elaborate its own plans for assistance and further coordinate them with those of individual governments;
- “9. the applicant government should be encouraged to undertake the necessary in-depth preparation for the accession negotiations before the working party meetings, *inter alia*, through informal consultations with contracting parties and the Secretariat;
- “10. applicant governments should also avail themselves, to the extent possible, of the training activities of GATT as part of their preparation for negotiations and to fully use their GATT observer status, in particular, to attend meetings of other accession working parties and of various committees.”<sup>12</sup>

Tables on accessions appear in the Appendix.

See also the material on non-reciprocity for developing countries under Article XXXVI:8.

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<sup>11</sup>i.e. three to four weeks.

<sup>12</sup>C/COM/4, 16 November 1994.

#### 4. “terms to be agreed between such government and the CONTRACTING PARTIES”

##### (1) *Provisions in protocols of accession*

Certain provisions have appeared in almost all protocols of accession since the Annecy Protocol. The following text is drawn from the Decision and Protocol of Accession of Bolivia. Cross-references are provided to the places in this Index where material on the provision concerned can be found.

“The CONTRACTING PARTIES...

“Decide, in accordance with Article XXXIII of the General Agreement, that the Government of [ ... ] may accede to the General Agreement on the terms set out in the Protocol of Accession.

##### “*PROTOCOL OF ACCESSION OF [ ... ]*”

“The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as ‘contracting parties’ and the ‘General Agreement’, respectively), the European Economic Community and the Government of [ ... ] (hereinafter referred to as ‘[... ]’),<sup>13</sup>....

“Have through their representatives agreed as follows:

##### PART I - GENERAL

“1. [ ... ] shall, upon entry into force of this Protocol pursuant to paragraph 6, become a contracting party to the General Agreement, as defined in Article XXXII thereof,<sup>14</sup> and shall apply to contracting parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with the relevant legislation of [ ... ] existing on the date of this Protocol.<sup>15</sup>

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.<sup>16</sup>

“2. (a) The provisions of the General Agreement to be applied to contracting parties by [ ... ] shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which [ ... ] becomes a contracting party.<sup>17</sup>

<sup>13</sup>The reference to the European Economic Community is necessary because the EEC is not itself a contracting party.

<sup>14</sup>See material on Article XXXII in this Index.

<sup>15</sup>Concerning the definition of “existing legislation” and the relevant date for the purpose of provisional application, see the chapter on provisional application of the General Agreement.

<sup>16</sup>This sentence replaces for the acceding contracting party the provisions of the first interpretative note to Article I:1. See references to this note under Articles I and II.

<sup>17</sup>The text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment is the text of the General Agreement as agreed on 30 October 1947 (55 UNTS 187, UN Sales No. 1947.II/10). A list and overview of the amendments to the General Agreement can be found under Article XXX. A list of the sources of each of the provisions of the present text of the General Agreement, their effective dates and their respective citations in the United Nations *Treaty Series* or in GATT publications appears as an appendix to the text of the General Agreement published by the GATT Secretariat.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of [ ... ] shall be the date of this Protocol.<sup>18</sup>

#### PART II - SCHEDULE

“3. The schedule in the Annex shall, upon the entry into force of this Protocol, become a schedule to the General Agreement relating to [ ... ].

“4. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of the Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule annexed to this Protocol shall be the date of this Protocol.<sup>19</sup>

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the Schedule annexed to this Protocol shall be the date of this Protocol.<sup>20</sup>

#### PART III - FINAL PROVISIONS

“5. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for acceptance, by signature or otherwise, by [ ... ] until [date].<sup>21</sup> It shall also be open for acceptance by contracting parties and by the European Economic Community.

“6. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by [ ...].

“7. [ ... ] having become a contracting party to the General Agreement pursuant to paragraph 1 of this Protocol, may accede to the General Agreement upon the applicable terms of this Protocol by deposit of an instrument of accession with the Director-General. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever is the later. Accession to the General Agreement pursuant to this paragraph shall, for the purposes of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph 4 of Article XXVI thereof.<sup>22</sup>

“8. [ ... ] may withdraw its provisional application of the General Agreement prior to its accession thereto pursuant to paragraph 7 and such withdrawal shall take effect on the sixtieth day following the day on which written notice thereof is received by the Director-General.<sup>23</sup>

“9. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of each acceptance thereof, pursuant to paragraph 6 to each contracting party, to the European Economic Community, and to [ ... ].

“10. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.<sup>24</sup>

<sup>18</sup>The text of each of these provisions refers to “the date of this Agreement”: see the discussion in this Index under Article XXVI:1 and each of these provisions. Article XXVI:1 provides that “The date of this Agreement shall be 30 October 1947”. This paragraph in the accession protocol replaces that date, for the purpose of the obligations of the acceding contracting party, with the date of the accession protocol.

<sup>19</sup>See the material on “date of this Agreement” under Article II:1.

<sup>20</sup>See the material in this Index on Article II:6(a) and the adjustment of specific duties.

<sup>21</sup>The accession protocol of Cambodia, which was agreed in 1961 and provided no deadline for acceptance, has not yet been accepted by Cambodia. Later protocols of accession have provided for a deadline for acceptance by the acceding contracting party.

<sup>22</sup>See the material under Article XXVI:4 in this Index.

<sup>23</sup>See material on withdrawal of provisional application in the chapter of this Index on provisional application of the General Agreement.

<sup>24</sup>See the discussion of registration under Article XXVI in this Index.

“DONE at Geneva on [date] in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto<sup>25</sup>, each text being authentic.”

**(2) *Reservations in accession protocols and commitments in accession protocols***

Paragraph 4 of the protocol of accession of Switzerland provides a reservation with regard to the application of the provisions of Article XI of the General Agreement to the extent necessary to permit Switzerland to apply import restrictions pursuant to certain Swiss legislation; see under Article XI. Paragraph 5 of the same protocol provides a reservation with regard to the provisions of Article XV:6: see under Article XV:6.<sup>26</sup> By the Decision of 1 April 1966 “The CONTRACTING PARTIES, acting pursuant to Article XXXIII of the General Agreement, decide that Switzerland may accede to the General Agreement on the terms set out in the said Protocol.”<sup>27</sup>

The Protocols of Accession of Poland, Romania, and Hungary (and the corresponding Decisions on accession) each provide for a reservation with respect to Article XV:6 identical to that of Switzerland.<sup>28</sup>

Other protocols of accession have provided for time-limited reservations for existing measures inconsistent with the General Agreement, such as certain internal taxes of the Philippines and Thailand<sup>29</sup>, the Egyptian consolidation of economic development tax and import taxes and surcharges of Costa Rica<sup>30</sup>, and quantitative restrictions maintained by Costa Rica.<sup>31</sup>

Certain recent accession protocols also refer to additional commitments listed in specified paragraphs of the relevant accession working party report. Issues dealt with in these commitments have included, for instance: elimination of discrimination in internal taxation or of import charges in excess of bound duty rates; application of customs charges consistent with Articles II and VIII; trade effects of maximum price controls on consumer items; customs valuation practices including elimination of uplifts or official prices; publication of trade regulations; elimination of quantitative restrictions; notification and consultation on request regarding quantitative restrictions; non-discriminatory application of quantitative restrictions; non-arbitrary application of technical standards and certification requirements to imports; application of anti-dumping measures only in accordance with Article VI and of safeguard measures only in accordance with Article XIX; notification of subsidies under Article XVI and of state trading under Article XVII; reduction of certain export financing programmes; elimination of domestic-content requirements for purchasing by State enterprises; operation of free trade zones; revision of rules of regional trade groupings so as to be compatible with GATT; notification and periodic reporting on regional trade agreements to which the acceding government is a party; and acceptance of Tokyo Round agreements such as those on import licensing, customs valuation and anti-dumping procedures.<sup>32</sup>

See also the discussion of reservations on acceptance under Article XXVI, and the discussion of reservations to protocols of amendment under Article XXX.

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<sup>25</sup>While each of the English, French and Spanish texts of the accession protocol itself is authentic, in order to avoid the burden of translation and authentication of other-language texts of entire tariff schedules, the Schedule of concessions attached thereto is authentic only in the language specified by the contracting party submitting it. See the material on authentic text under Article XXVI:3.

<sup>26</sup>14S/7, 8-9.

<sup>27</sup>14S/13, 14.

<sup>28</sup>15S/46, 49-50, para. 8 (Poland); 18S/5, 8, para. 7 (Romania); 20S/3, 6, para. 8 (Hungary).

<sup>29</sup>See Article III.

<sup>30</sup>See Article II.

<sup>31</sup>See Article XI.

<sup>32</sup>See, e.g. Protocols for Accession of Mexico (reference to commitments in paragraph 83 of L/6010, adopted on 15 July 1986, 33S/57), L/6036, 33S/3, 4, para. 2; El Salvador (reference to commitments in paragraph 58 of L/6771), L/6795, 37S/27, 28 para. 2(a); Venezuela (reference to commitments in paragraph 90 of L/6696), L/6717, 37S/72, para. 2(a); and Guatemala (reference to commitments in paragraph 47 of L/6770, adopted on 6 February 1991, 38S/3, 16), L/6826, 38S/16, 17, para. 2.

## 5. Provisional accession

“Provisional accession” was a concept used during the 1955-1975 period. It was first implemented in the case of Switzerland.<sup>33</sup> The 1956 Report of the Working Party on “Arrangements and Procedures for the Accession of Switzerland”<sup>34</sup> recommended arrangements and procedures to enable Switzerland to accede to the GATT, in the first place provisionally and then definitively. These arrangements provided that Switzerland would “enter into tariff negotiations with a view to provisional accession”<sup>35</sup> and that a declaration would be drawn up providing for entry into force of the tariff concessions for a limited period, and for trade between the signatories and Switzerland to be governed by its terms which would incorporate by reference all the provisions of the General Agreement. The Declaration would be accepted as valid even though accompanied by certain reservations by Switzerland. “The Working Party felt that it was desirable that a fixed period should be specified for the duration of the period of provisional accession. They felt that this period, which might be extended upon request of Switzerland by a decision of the CONTRACTING PARTIES, should be relatively short ...”<sup>36</sup>

Upon completion of the arrangements for provisional accession the CONTRACTING PARTIES adopted a Declaration on “Provisional Accession of the Swiss Confederation”<sup>37</sup> and a Resolution on “Participation of Switzerland in the work of the CONTRACTING PARTIES.”<sup>38</sup> At the same time they placed the following Understanding on record:

“In view of the wording of the provisions of Articles XXV and XXXII, it is not possible, from a strictly legal point of view, to give full voting rights to Switzerland. However, in the normal course of business this is not very important since the CONTRACTING PARTIES do not usually proceed to a formal vote in reaching decisions; generally the Chairman takes the sense of the meeting and Switzerland would have the same opportunity as contracting parties to express its opinion.”<sup>39</sup>

A similar understanding had been recorded with respect to the 1953 Declaration on “Commercial Relations between certain Contracting Parties to the General Agreement and Japan”.<sup>40</sup>

The Declaration on Swiss provisional accession provided that “the commercial relations between the participating countries and the Swiss Confederation shall ... be based upon the General Agreement as if the Swiss Confederation had acceded to the General Agreement in accordance with the relevant procedures and as if the schedules annexed to this Declaration were schedules annexed to the General Agreement”.<sup>41</sup> Provisional accession subsequently granted to other governments, pending their definitive accession, was not accompanied by tariff negotiations.

The Chairman of the 1959 Working Party which recommended provisional accession for Israel explained that “although the provisions of Article XXXIII of the General Agreement did not specifically require countries to enter into tariff negotiations before accession, the Working Party had thought it desirable to follow the precedent set by the CONTRACTING PARTIES in dealing with previous requests for accession and to await the outcome of tariff negotiations before drawing up the terms for the full accession of Israel. ... As Israel will accede provisionally to the General Agreement without a schedule of tariff concessions ... the Working Party had felt that contracting parties accepting the Declaration should not have to accept direct obligations towards Israel in respect of the modification or withdrawal of tariff concessions. Israel would, however, receive the benefits of most-favoured-nation treatment under Article I of the General Agreement”.<sup>42</sup>

<sup>33</sup>Provisional accession as a concept was earlier proposed by Japan in 1953, to facilitate accession by Japan in advance of the next general round of trade negotiations (see L/109, proposal by Japan of 4 August 1953); however it was instead decided to adopt the Decision of 23 October 1953 on “Participation of Japan in the Sessions of the Contracting Parties” (2S/30) and the Declaration of 24 October 1953 on “Commercial Relations between Certain Contracting Parties to the General Agreement and Japan” (2S/31). See also L/107, Secretariat Note of 20 August 1953, and G/55/Rev.1, Report on “Arrangements for Japanese Participation”, adopted 23 October 1953, 2S/117.

<sup>34</sup>L/598, adopted on 17 November 1956, 5S/40; SR.11/18, p. 203.

<sup>35</sup>L/598, adopted on 17 November 1956, 5S/40, 44, para. 13.

<sup>36</sup>L/598, adopted on 17 November 1956, 5S/40, 43, 44; SR.11/18, p. 203.

<sup>37</sup>Declaration of 22 November 1958, 7S/19.

<sup>38</sup>Resolution of 22 November 1958, 7S/18.

<sup>39</sup>SR.13/1, p. 3.

<sup>40</sup>Declaration of 24 October 1953, 2S/30-32.

<sup>41</sup>7S/19, para. 1.

<sup>42</sup>SR.14/10, p. 119/120; see also 8S/60, para. 5.



There have been no formal arrangements for provisional accession since 1975, the date of the Declaration on Provisional Accession of Colombia. While there have been requests for provisional accession in a few cases, each of the governments concerned has decided to proceed directly to the accession process without the intermediate step of provisional accession.<sup>43</sup>

A table of provisional accessions appears in the Appendix to this book.

## 6. De facto application of the General Agreement

See Article XXVI.

### B. RELATIONSHIP BETWEEN ACCESSION UNDER ARTICLE XXXIII AND SUCCESSION TO CONTRACTING PARTY STATUS UNDER ARTICLE XXVI:5(C)

Article XXVI:5(c) provides that if any customs territory in respect of which a contracting party has previously accepted the Agreement possesses or acquires autonomy in respect of its external commercial relations and the other matters provided for in the General Agreement, it shall be deemed to be a contracting party if it is sponsored by the responsible contracting party through submission of a declaration establishing the fact of such autonomy. A government becoming a contracting party under Article XXVI:5(c) does so on the terms and conditions previously accepted by the metropolitan government on behalf of the territory in question, including any applicable Schedule of concessions. For this reason, some newly-independent States which were eligible to use the special procedure for succession to contracting party status under Article XXVI:5(c) have opted instead for accession under Article XXXIII.<sup>44</sup> For instance, Cambodia chose to accede under Article XXXIII in order not to assume the former Schedule of concessions of France for Indo-China.<sup>45</sup>

In 1972, upon its independence, Bangladesh requested accession to GATT in accordance with the provisions of Article XXXIII. In Council discussion, a number of contracting parties considered that

“Given the undertaking of Bangladesh to accept the full obligations of a schedule of tariff bindings identical with that applied before independence, pending its renegotiation under Article XXVIII, as well as all other obligations of GATT membership ... it [was not] necessary to set up the usual working party to consider and report on the suitability of Bangladesh membership. As the circumstances in this case were unusual the CONTRACTING PARTIES should be ready to modify the usual procedures in dealing with it.”<sup>46</sup>

An accession Protocol was drawn up on these terms and Bangladesh became a contracting party to the General Agreement.<sup>47</sup>

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<sup>43</sup>See Application of Costa Rica for provisional accession in L/5830, discussion at C/M/191; Costa Rica decided to accede to the General Agreement without provisional accession.

<sup>44</sup>See, e.g., L/3339 and C/M/61, p. 18 concerning the request for accession by the Democratic Republic of Congo, and more generally the Note by the Secretariat on “Developing Countries and Accession to the GATT”, INT(80)42 of 23 September 1980.

<sup>45</sup>A Recommendation of 22 November 1957 (6S/10), stating that “Cambodia ... [has] possessed ... full autonomy for a considerable period and ... it would be appropriate to apply the recommended procedures [for sponsorship under Article XXVI:5(c)]” to Cambodia, provided for application of the General Agreement *de facto* by contracting parties in their relations with Cambodia (see also GATT/CP.5/50, GATT/CP.5/SR.24, p. 3). Such application was then extended “until such time as Cambodia accedes to the General Agreement” by the Decision of 17 November 1958 on “Arrangements for the Accession of Cambodia” (7S/17). In 1958 Cambodia requested accession under Article XXXIII, not Article XXVI:5(c), in order not to assume the former Schedule of concessions of France for Indo-China; see statement in L/900, Spec/275/58. Cambodia then negotiated a Protocol of Accession under Article XXXIII (11S/12), including negotiation of a Schedule of concessions. The Protocol provided that it was opened to signature by Cambodia, by contracting parties and by the European Community, with no deadline for signature. In 1964 Cambodia advised that it did not, for the moment, envisage accepting the accession Protocol (L/2271). As Cambodia has not yet signed its Protocol of Accession, this Protocol has not entered into force. The concessions initially negotiated with Cambodia by Czechoslovakia, the EEC and Norway have not been withdrawn under Article XXVII. As of August 1995, Cambodia has not requested succession to contracting party to the General Agreement under Article XXVI:5(c), and appears in the list of *de facto* contracting parties in the appendix.

<sup>46</sup>C/M/81, p. 2. See also L/3752, Communication from Bangladesh seeking accession under Article XXXIII, and discussion at SR.28/6, p. 81-85.

<sup>47</sup>Protocol for the Accession of the People’s Republic of Bangladesh, 19S/3; L/3771, Decision of 10 November 1972 on “Accession of the People’s Republic of Bangladesh”, 19S/6.

In 1992, Slovenia became independent and requested accession under Article XXXIII, stating at the July 1992 Council meeting that

“Slovenia intended to continue to apply the GATT’s provisions in force before its independence, including the obligations pursuant to the Schedule of Concessions of the former SFRY [Socialist Federal Republic of Yugoslavia]. Slovenia expected that the terms of accession to be agreed upon by itself and the CONTRACTING PARTIES should reflect the conditions that had prevailed thus far.... Her Government considered that the existing GATT provisions did not adequately address situations such as that of Slovenia. In the absence of more appropriate provisions, however, it had decided to seek accession to the General Agreement in accordance with the provisions of Article XXXIII, with the hope that the CONTRACTING PARTIES would be prepared to accept Slovenia as a contracting party without further negotiations and to agree that the terms of accession should reflect the conditions which had thus far prevailed.... In Slovenia’s case... there was no legal and internationally-recognized entity of the former SFRY that could make the necessary declaration on its behalf under Article XXVI:5(c). Slovenia hoped, therefore, that the Council would agree to accept its proposal, and requested the Secretariat to draft a Protocol of Accession which would include a Schedule identical to that applied before independence. ...”

A number of delegations stated that

“... they could not accept Slovenia’s immediate accession without negotiations, as had been done when Bangladesh had applied for accession ... They suggested that it would be in both Slovenia’s and the CONTRACTING PARTIES’ interests to follow the normal accession procedures of Article XXXIII, and requested that a working party with standard terms of reference be established to examine Slovenia’s request, including the memorandum on its foreign trade régime, and to prepare the necessary instruments. They would work constructively in the working party with a view to concluding the process as quickly as possible.”

The establishment of a working party in accordance with Article XXXIII procedures was accepted by Slovenia and the Council so decided.<sup>48</sup> See also under Article XXXII concerning the contracting party status of Yugoslavia.

On 27 November 1992, the Czech and Slovak Federal Republic (CSFR) submitted a Request for Participation in GATT of the Czech Republic and the Slovak Republic.<sup>49</sup> At the Forty-eighth Session in December 1992, the Chairman

“recalled that the CSFR had announced that it would cease to exist on 31 December 1992 and that, as of 1 January 1993, that State would be replaced by two successor States, the Czech Republic and the Slovak Republic. Both these States had expressed their interest in becoming GATT contracting parties and their determination to continue to fulfil the obligations incumbent upon the CSFR under the General Agreement, including in particular those set up in Schedule X. Moreover, the Czech Republic and the Slovak Republic had also undertaken to accept the Arrangement Regarding International Trade in Textiles and its Protocols of Extension, as well as the Tokyo Round Agreements and Arrangements to which the CSFR was currently a party, namely the Agreement on Technical Barriers to Trade, the Agreement on Implementation of Article VII, the Agreement on Import Licensing Procedures, and the Agreement on Implementation of Article VI.

“It appeared that contracting parties were ready to agree that the Czech Republic and the Slovak Republic accede to the General Agreement, pursuant to Article XXXIII, under the same terms as those presently applied by the CSFR, without carrying out any negotiations, and to agree on transitional arrangements for the interim period until the necessary procedures had been fulfilled ... .”

The representative of the US then stated that

“... The Chairman’s statement had indicated that in the case of the accessions to GATT of the Czech Republic and the Slovak Republic under Article XXXIII, negotiations would not be necessary. The United

<sup>48</sup>C/M/258 pp. 3-5.

<sup>49</sup>L/7127, “Czech and Slovak Federal Republic - Request for Participation in GATT of the Czech Republic and the Slovak Republic,” dated 27 November 1992.

States did not intend that the participation in the GATT of the newly independent states should be on a basis that was different from that of the CSFR. However, it needed to place on record the conditions under which – in this situation and in potential similar situations in the future – it could accept that negotiations were not necessary. These conditions were: (1) that the defunct State had a high level of obligations under GATT with a bound tariff schedule at meaningful levels; (2) that the new States were fully willing and able to accept an identical level of obligations and the same tariff schedule; and, (3) that the new States were not contemplating important reorientations to their basic trade and economic policies which would nullify or impair trade opportunities enjoyed by other contracting parties in their markets.”

The CONTRACTING PARTIES took note of the statements and adopted a “Decision on Interim Application of the General Agreement”:

“The CONTRACTING PARTIES, acting pursuant to Article XXV of the General Agreement,

“*Decide*, in view of the exceptional circumstances, to apply, from 1 January 1993, the General Agreement and the relevant instruments negotiated under the auspices of the GATT, to the Czech Republic and the Slovak Republic, on an interim basis, as if they had already acceded thereto. It shall be understood that the Czech Republic and the Slovak Republic will also apply the General Agreement and the relevant instruments to the contracting parties and that their respective Protocols of Accession will provide for the acceptance and entry into force of their rights and obligations as of 1 January 1993. During the transitional period, the Governments of the Czech Republic and the Slovak Republic are entitled to participate in all activities of the CONTRACTING PARTIES and their subsidiary bodies but shall not participate in the decision-making process. This transitional arrangement shall expire on the date of entry into force of the respective Protocols of Accession to the General Agreement of the Czech Republic and the Slovak Republic, or on 1 May 1993, whichever date is the earlier.”<sup>50</sup>

At the same time a Decision was adopted inviting the Secretariat to prepare draft protocols of accession and accession decisions for the Czech Republic and Slovak Republic, and stating that tariff schedules encompassing the concessions in Schedule X - Czechoslovakia were to be annexed to each protocol of accession.<sup>51</sup> Pursuant to this Decision the protocols and decisions were submitted for approval by the Council at its first meeting in 1993. Upon approval at the February 1993 Council meeting, the texts of the Protocols were put to a vote, and when the required two-thirds majority had been obtained, the Protocols of Accession were opened for acceptance and entered into force for the Czech Republic and for the Slovak Republic on 15 April 1993, thirty days after each had accepted its Protocol.

### III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

The Article in the Havana Charter corresponding to GATT Article XXIII is Article 71.

The text of the General Agreement as adopted 30 October 1947 required the consent of all contracting parties as a precondition to accession of any new contracting party. Since Article 17 of the Havana Charter permitted contracting parties to the GATT to withhold application of concessions in their GATT Schedules with respect to the trade of an ITO Member that had not become a GATT contracting party, it was proposed during the Havana Conference “to amend the GATT to permit the admission of a country as a contracting party upon a vote of two-thirds of the contracting parties instead as of a unanimous vote as at present required”. Accordingly, the second sentence of Article XXXIII, which changed the unanimity requirement by providing for decisions taken by a two-thirds majority, was added by the 1948 Protocol Modifying Certain Provisions, which entered into force on 15 April 1948.<sup>52</sup> At the same time, Articles XXXV and XXV:5(b) were added; see section III under Article XXXV.

During the Review Session it was agreed to amend Article XXXIII to provide that the terms of accession would be agreed between the acceding government and the Organization for Trade Cooperation, and that the acceding government would be required to accept the Agreement on the Organization for Trade Cooperation;

<sup>50</sup>L/7155, Decision of 3 December 1993, 39S/6.

<sup>51</sup>L/7156, Decision of 3 December 1993, 39S/6-7; Draft Protocols and decisions on accession at C/W/725, C/W/726.

<sup>52</sup>Havana Reports, p. 162, para. 7(a).

the amended Article XXXIII would also have clarified the majority requirement for accession decisions. The provisions on accession on behalf of a separate customs territory would have been moved into an interpretative note.<sup>53</sup> However, these amendments were contained in the Protocol of Organizational Amendments to the General Agreement, which did not enter into force.

#### IV. RELEVANT DOCUMENTS

##### *Geneva*

Discussion: EPCT/TAC/SR.16  
 EPCT/TAC/PV/22, 25  
 Reports: EPCT/135, 189, 196, 206, 209,  
 214/Add.1/Rev.1  
 Other: EPCT/W/273, 274, 285, 312

##### *Review Session*

Discussion: SR.9/38  
 Reports: W.9/198, W.9/215+Corr.1,  
 3S/233-234, 252  
 Other: L/189, L/292, W.9/62, W.9/93,  
 W.9/151

##### *CONTRACTING PARTIES*

Discussion: GATT/CP.2/SR.8, 11, 15, 20, 24  
 Reports: GATT/CP.2/20, 29  
 GATT/CP.3/37

<sup>53</sup>See 3S/233-234 and 3S/252.