

**PART I**

**ARTICLE I**

**GENERAL MOST-FAVOURED-NATION TREATMENT**

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|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <b>I.</b>  | <b>TEXT OF ARTICLE I, ANNEXES A THROUGH G OF THE GENERAL AGREEMENT, AND INTERPRETATIVE NOTE AD ARTICLE I</b> .....                                                                        | 24 |
| <b>II.</b> | <b>INTERPRETATION AND APPLICATION OF ARTICLE I</b> .....                                                                                                                                  | 28 |
| <b>A.</b>  | <b>SCOPE AND APPLICATION OF ARTICLE I</b> .....                                                                                                                                           | 28 |
| <b>1.</b>  | <b>Interpretation and Application of Paragraph 1</b> .....                                                                                                                                | 28 |
| <b>(1)</b> | <b><i>“customs duties and charges of any kind imposed on or in connection with importation or exportation or the international transfer of payments for imports or exports”</i></b> ..... | 28 |
| <b>(a)</b> | <i>Unbound tariffs</i> .....                                                                                                                                                              | 28 |
| <b>(b)</b> | <i>“charges of any kind”</i> .....                                                                                                                                                        | 28 |
| <b>(c)</b> | <i>Import surcharges</i> .....                                                                                                                                                            | 28 |
| <b>(d)</b> | <i>Variable levies</i> .....                                                                                                                                                              | 29 |
| <b>(e)</b> | <i>Trade conducted at most-favoured-nation duty rates</i> .....                                                                                                                           | 30 |
| <b>(2)</b> | <b><i>“the method of levying such duties and charges”</i></b> .....                                                                                                                       | 30 |
| <b>(3)</b> | <b><i>“all rules and formalities in connection with importation and exportation”</i></b> .....                                                                                            | 30 |
| <b>(4)</b> | <b><i>“matters referred to in paragraphs 2 and 4 of Article III”</i></b> .....                                                                                                            | 30 |
| <b>(5)</b> | <b><i>“any advantage, favour, privilege or immunity granted by any contracting party ...”</i></b> .....                                                                                   | 31 |
| <b>(a)</b> | <i>Duty waiver conditional on certification by a particular government</i> .....                                                                                                          | 31 |
| <b>(b)</b> | <i>Export price monitoring schemes</i> .....                                                                                                                                              | 31 |
| <b>(c)</b> | <i>Exemption from charges</i> .....                                                                                                                                                       | 32 |
| <b>(d)</b> | <i>Actions with respect to countervailing duties</i> .....                                                                                                                                | 32 |
| <b>(6)</b> | <b><i>“originating in” and country of origin</i></b> .....                                                                                                                                | 32 |
| <b>(7)</b> | <b><i>“shall be accorded immediately and unconditionally”</i></b> .....                                                                                                                   | 33 |
| <b>(a)</b> | <i>Reciprocity clauses</i> .....                                                                                                                                                          | 33 |
| <b>(b)</b> | <i>Tax exemptions on condition of existence of a tax system of family allowances in the exporting country</i> .....                                                                       | 33 |
| <b>(c)</b> | <i>Exemptions on condition of minimum import price guarantees</i> .....                                                                                                                   | 34 |
| <b>(d)</b> | <i>Reservation of import quotas for outward processing traffic</i> .....                                                                                                                  | 34 |
| <b>(e)</b> | <i>Tariff treatment conditional on the existence of a co-operation contract</i> .....                                                                                                     | 34 |
| <b>(f)</b> | <i>Special treatment for diplomatic gifts, supplies and equipment accorded on the basis of reciprocity</i> .....                                                                          | 35 |
| <b>(g)</b> | <i>Application to individual cases and “balancing”</i> .....                                                                                                                              | 35 |
| <b>(8)</b> | <b><i>“like product”</i></b> .....                                                                                                                                                        | 35 |
| <b>(a)</b> | <i>General</i> .....                                                                                                                                                                      | 35 |
| <b>(b)</b> | <i>Examination of “like product” issues in particular cases</i> .....                                                                                                                     | 36 |
| <b>(c)</b> | <i>Price discrimination</i> .....                                                                                                                                                         | 39 |
| <b>2.</b>  | <b>Paragraphs 2 and 4: Historical preferences and margins of preference</b> .....                                                                                                         | 40 |
| <b>(1)</b> | <b><i>Modification of margins of preference</i></b> .....                                                                                                                                 | 40 |
| <b>(a)</b> | <i>Relationship between negotiated reductions in the most-favoured-nation duty rate and the margin of preference</i> .....                                                                | 40 |
| <b>(b)</b> | <i>Increase in margins of preference</i> .....                                                                                                                                            | 42 |
| <b>(c)</b> | <i>Reinstatement of historical preferences</i> .....                                                                                                                                      | 42 |
| <b>(d)</b> | <i>Change in historical preferences due to tariff reclassification</i> .....                                                                                                              | 42 |
| <b>(2)</b> | <b><i>Base dates for purposes of paragraph 4 and Annex G, and modification thereof</i></b> .....                                                                                          | 43 |
| <b>(3)</b> | <b><i>“in respect of duties or charges”</i></b> .....                                                                                                                                     | 43 |
| <b>3.</b>  | <b>Paragraph 3</b> .....                                                                                                                                                                  | 44 |
| <b>B.</b>  | <b>RELATIONSHIP BETWEEN ARTICLE I AND OTHER PROVISIONS OF THE GENERAL AGREEMENT</b> .....                                                                                                 | 44 |
| <b>1.</b>  | <b>Article III</b> .....                                                                                                                                                                  | 44 |
| <b>2.</b>  | <b>Article VI</b> .....                                                                                                                                                                   | 44 |
| <b>3.</b>  | <b>Article IX</b> .....                                                                                                                                                                   | 45 |
| <b>4.</b>  | <b>Article XII</b> .....                                                                                                                                                                  | 45 |
| <b>C.</b>  | <b>RELATIONSHIP OF ARTICLE I TO OTHER INTERNATIONAL AGREEMENTS</b> .....                                                                                                                  | 45 |
| <b>1.</b>  | <b>Agreement on Implementation of Article VI</b> .....                                                                                                                                    | 46 |
| <b>2.</b>  | <b>Agreement on Interpretation and Application of Articles VI, XVI and XXIII</b> .....                                                                                                    | 46 |
| <b>3.</b>  | <b>Agreement on Government Procurement</b> .....                                                                                                                                          | 46 |
| <b>D.</b>  | <b>EXCEPTIONS AND DEROGATIONS</b> .....                                                                                                                                                   | 47 |
| <b>1.</b>  | <b><i>“imports of products for immediate or ultimate consumption in governmental use”</i></b> .....                                                                                       | 47 |
| <b>2.</b>  | <b>Exceptions and derogations provided in other Articles of the General Agreement</b> .....                                                                                               | 47 |
| <b>(1)</b> | <b><i>Anti-dumping and countervailing duties</i></b> .....                                                                                                                                | 47 |

|                                                                                                                                                                             |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (2) <i>Frontier traffic and customs unions</i> .....                                                                                                                        | 47 |
| 3. Exceptions and derogations authorized in Protocols of Accession and in Declarations on Provisional Accession .....                                                       | 48 |
| (1) <i>Protocol of Provisional Application</i> .....                                                                                                                        | 48 |
| (2) <i>Protocols of Accession</i> .....                                                                                                                                     | 48 |
| (a) <i>General</i> .....                                                                                                                                                    | 48 |
| (b) <i>Particular contracting parties</i> .....                                                                                                                             | 48 |
| 4. Waivers granted under the provisions of paragraph 5 of Article XXV .....                                                                                                 | 49 |
| (1) <i>Decision on "Generalized System of Preferences" of 25 June 1971</i> .....                                                                                            | 49 |
| (2) <i>Decision on "Trade negotiations among developing countries" of 26 November 1971</i> .....                                                                            | 50 |
| (3) <i>Waivers granted to individual contracting parties</i> .....                                                                                                          | 51 |
| 5. Preferential arrangements authorized by Decisions of the CONTRACTING PARTIES without reference to paragraph 5 of Article XXV .....                                       | 51 |
| (1) <i>First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)</i> ..... | 51 |
| (2) <i>Agreement on the Association of South-East Asian Nations (ASEAN) Preferential Trading Arrangements</i> .....                                                         | 52 |
| (3) <i>Trade Expansion and Economic Co-operation Agreement</i> .....                                                                                                        | 52 |
| 6. Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause") .....                                       | 53 |
| (1) <i>Scope</i> .....                                                                                                                                                      | 54 |
| (2) <i>Preference schemes</i> .....                                                                                                                                         | 56 |
| (3) <i>Preferential arrangements notified under the Enabling Clause</i> .....                                                                                               | 56 |
| (4) <i>"Graduation"</i> .....                                                                                                                                               | 58 |
| 7. Coexistence of the GATT 1947 and the WTO Agreement .....                                                                                                                 | 59 |
| III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS .....                                                                                                                    | 59 |
| IV. RELEVANT DOCUMENTS .....                                                                                                                                                | 61 |

## I. TEXT OF ARTICLE I, ANNEXES A THROUGH G OF THE GENERAL AGREEMENT, AND INTERPRETATIVE NOTE AD ARTICLE I

### Article I

#### *General Most-Favoured-Nation Treatment*

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,\* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

- (a) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;
- (b) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;
- (c) Preferences in force exclusively between the United States of America and the Republic of Cuba;
- (d) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5 of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

4. The margin of preference\* on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

- (a) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;
- (b) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in subparagraph (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Interpretative Note *Ad* Article I from Annex I

*Paragraph 1*

The obligations incorporated in paragraph 1 of Article I by reference to paragraphs 2 and 4 of Article III and those incorporated in paragraph 2 (b) of Article II by reference to Article VI shall be considered as falling within Part II for the purposes of the Protocol of Provisional Application.

The cross-references, in the paragraph immediately above and in paragraph 1 of Article I, to paragraphs 2 and 4 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, 1948.

*Paragraph 4*

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates. As examples:

- (1) If the most-favoured-nation rate were 36 per cent *ad valorem* and the preferential rate were 24 per cent *ad valorem*, the margin of preference would be 12 per cent *ad valorem*, and not one-third of the most-favoured-nation rate;
- (2) If the most-favoured-nation rate were 36 per cent *ad valorem* and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent *ad valorem*;
- (3) If the most-favoured-nation rate were 2 francs per kilogramme and the preferential rate were 1.50 francs per kilogramme, the margin of preference would be 0.50 franc per kilogramme.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

- (i) The re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on April 10, 1947; and
- (ii) The classification of a particular product under a tariff item other than that under which importations of that product were classified on April 10, 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

## ANNEX A

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (a)  
OF ARTICLE I

United Kingdom of Great Britain and Northern Ireland  
 Dependent territories of the United Kingdom of Great Britain and Northern Ireland  
 Canada  
 Commonwealth of Australia  
 Dependent territories of the Commonwealth of Australia  
 New Zealand  
 Dependent territories of New Zealand  
 Union of South Africa including South West Africa  
 Ireland  
 India (as on April 10, 1947)  
 Newfoundland  
 Southern Rhodesia  
 Burma  
 Ceylon

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other contracting parties which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

The imposition of an equivalent margin of tariff preference to replace a margin of preference in an internal tax existing on April 10, 1947 exclusively between two or more of the territories listed in this Annex or to replace the preferential quantitative arrangements described in the following paragraph, shall not be deemed to constitute an increase in a margin of tariff preference.

The preferential arrangements referred to in paragraph 5(b) of Article XIV are those existing in the United Kingdom on April 10, 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork and bacon. It is the intention, without prejudice to any action taken under sub-paragraph (h) of Article XX, that these arrangements shall be eliminated or replaced by tariff preferences, and that negotiations to this end shall take place as soon as practicable among the countries substantially concerned or involved.

The film hire tax in force in New Zealand on April 10, 1947, shall, for the purposes of this Agreement, be treated as a customs duty under Article I. The renters' film quota in force in New Zealand on April 10, 1947, shall, for the purposes of this Agreement, be treated as a screen quota under Article IV.

The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of April 10, 1947.

## ANNEX B

LIST OF TERRITORIES OF THE FRENCH UNION REFERRED  
TO IN PARAGRAPH 2 (b) OF ARTICLE I

France  
 French Equatorial Africa (Treaty Basin of the Congo<sup>1</sup> and other territories)  
 French West Africa  
 Cameroons under French Trusteeship<sup>1</sup>  
 French Somali Coast and Dependencies  
 French Establishments in Oceania  
 French Establishments in the Condominium of the New Hebrides<sup>1</sup>  
 Indo-China  
 Madagascar and Dependencies  
 Morocco (French zone)<sup>1</sup>  
 New Caledonia and Dependencies  
 Saint-Pierre and Miquelon  
 Togo under French Trusteeship<sup>1</sup>  
 Tunisia

<sup>1</sup>For imports into Metropolitan France and Territories of the French Union.

## ANNEX C

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (b) OF ARTICLE I  
AS RESPECTS THE CUSTOMS UNION OF BELGIUM, LUXEMBURG  
AND THE NETHERLANDS

The Economic Union of Belgium and Luxemburg  
Belgian Congo  
Ruanda Urundi  
Netherlands  
New Guinea  
Surinam  
Netherlands Antilles  
Republic of Indonesia

For imports into the territories constituting the Customs Union only.

## ANNEX D

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (b)  
OF ARTICLE I AS RESPECTS THE UNITED STATES OF AMERICA

United States of America (customs territory)  
Dependent territories of the United States of America  
Republic of the Philippines

The imposition of an equivalent margin of tariff preference to replace a margin of preference in an internal tax existing on April 10, 1947, exclusively between two or more of the territories listed in this Annex shall not be deemed to constitute an increase in a margin of tariff preference.

## ANNEX E

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS BETWEEN CHILE  
AND NEIGHBOURING COUNTRIES REFERRED TO IN PARAGRAPH 2 (d) OF ARTICLE I

Preferences in force exclusively between Chile on the one hand, and

1. Argentina
2. Bolivia
3. Peru

on the other hand.

## ANNEX F

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS BETWEEN LEBANON  
AND SYRIA AND NEIGHBOURING COUNTRIES REFERRED TO IN PARAGRAPH 2 (d) OF ARTICLE I

Preferences in force exclusively between the Lebano-Syrian Customs Union, on the one hand, and

1. Palestine
2. Transjordan

on the other hand.

## ANNEX G

DATES ESTABLISHING MAXIMUM MARGINS OF PREFERENCE  
REFERRED TO IN PARAGRAPH 4 OF ARTICLE I

|                                  |                   |
|----------------------------------|-------------------|
| Australia.....                   | October 15, 1946  |
| Canada.....                      | July 1, 1939      |
| France .....                     | January 1, 1939   |
| Lebano-Syrian Customs Union..... | November 30, 1938 |
| Union of South Africa .....      | July 1, 1938      |
| Southern Rhodesia .....          | May 1, 1941       |

## II. INTERPRETATION AND APPLICATION OF ARTICLE I

### A. SCOPE AND APPLICATION OF ARTICLE I

#### 1. Interpretation and Application of Paragraph 1

(1) *“customs duties and charges of any kind imposed on or in connection with importation or exportation or the international transfer of payments for imports or exports”*

(a) *Unbound tariffs*

The Panel Report on “Spain - Tariff Treatment of Unroasted Coffee” includes the following Panel finding: “Having noted that Spain had not bound under the GATT its tariff rate on unroasted coffee, the Panel pointed out that Article I:1 equally applied to bound and unbound tariff items”.<sup>1</sup>

(b) *“charges of any kind”*

The Chairman of the CONTRACTING PARTIES ruled on 24 August 1948 that “consular taxes would be included in ‘charges of any kind’; Article VIII merely dealt with the magnitude of such taxes in relation to the cost of services rendered, whereas Article I embodied the principle of non-discrimination”. Consequently the application by Cuba of a 5 per cent consular tax to certain countries, but only of 2 per cent to others, was inconsistent with Article I.<sup>2</sup> The Panel on “United States Customs User Fee” found, in connection with an argument that exemptions from this fee were inconsistent with Article I:1, that “The Panel understood the argument that these exemptions were inconsistent with the obligations of Article I to be as follows: The merchandise processing fee was a charge imposed on or in connection with importation within the meaning of Article I:1. ... No answer in opposition to these legal claims was given, nor was the Panel aware of any that could be given”.<sup>3</sup>

(c) *Import surcharges*

The Reports of the Working Parties on “United Kingdom Temporary Import Charges”<sup>4</sup> and “United States Temporary Import Surcharge”<sup>5</sup> each note the arguments of developing countries in favour of exempting from the surcharge products of developing countries or products of which developing countries were the principal supplier. These Reports also note the arguments in response that special exemption of imports by origin would produce trade diversion and, to the extent that it encouraged imports, delay removal of the surcharge.<sup>6</sup> The Report in 1971 of the Group of Three (constituted of the Chairmen of the CONTRACTING PARTIES, the Council and the Committee on Trade and Development) recommended that if the United States surcharge were maintained beyond 1 January 1972, “the United States Government should take steps to exempt imports from developing countries from the charge”, and that the Danish temporary surcharge should exempt products covered by the Danish preference scheme for imports from developing countries.<sup>7</sup> The Working Party Report on the “Danish Temporary Import Surcharge” provides that “Without prejudice to the legal issues involved, the Working Party noted that as from the introduction of the Danish general preference scheme on 1 January 1972, products included in that scheme would be exempted from the surcharge when imported from members of the Group of Seventy-Seven. Several members of the Working Party welcomed this decision of the Danish Government noting that this had been one of the recommendations of the Group of Three. Other members expressed concern that the exemption did not extend to all developing countries. Some other members said that the discrimination created by these exemptions gave their delegations cause for concern”.<sup>8</sup>

<sup>1</sup>L/5135, adopted on 11 June 1981, 28S/102, III, para. 4.3.

<sup>2</sup>II/12, CP.2/SR. II, pp. 7-8.

<sup>3</sup>L/6264, adopted on 2 February 1988, 35S/245, 289-290, paras. 122-123.

<sup>4</sup>L/2676, adopted on 17 November 1966, 15S/113, 115, para. 10.

<sup>5</sup>L/3573, adopted on 16 September 1971, 18S/212, 220-222, paras. 34-38.

<sup>6</sup>15S/115-116, para. 10; 18S/218, para. 25.

<sup>7</sup>L/3610, 18S/70, 74, para. 17(ii) (US surcharge); 75, para. 20 (Danish surcharge).

<sup>8</sup>L/3648, adopted on 12 January 1972, 19S/120, 126, 129 (identical text in paras. 22 and 41).

Paragraph 2 of the 1979 Declaration on “Trade Measures Taken for Balance-of-Payments Purposes” provides that:

“If, notwithstanding the principles of this Declaration, a developed contracting party is compelled to apply restrictive import measures for balance-of-payments purposes, it shall, in determining the incidence of its measures, take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties”.<sup>9</sup>

A 1984 Statement by the Chairman of the Committee on Balance-of-Payments Restrictions to the Council, summarizing the result of discussions in 1982-83 concerning the work of the Committee and the role therein of balance-of-payments problems confronting heavily-indebted developing countries, notes *inter alia* that these discussions had endorsed the view that “any action taken in the balance-of-payments field should be consistent with the multilateral principles embodied in the General Agreement”,<sup>10</sup> and adds:

“In clear language this means that actions should be taken on a most-favoured-nation basis or, pursuant to the provisions of Part IV of the General Agreement (particularly Article XXXVII) and the 1979 Decision on Differential and More Favourable, Treatment, Reciprocity and Fuller Participation of Developing Countries, in a manner consistent with that decision, including special treatment for the least-developed among the developing countries. It was noted that Paragraph 2(c) of the Decision allows for the possibility of more favourable treatment to be accorded among developing contracting parties. ...

“In view of the consensus to respect multilateral principles in responding to the needs of countries experiencing severe balance-of-payments difficulties, the possibility of focussing trade actions on such countries would depend on the choice of products for which a particular country is a principal or substantial supplier to a particular market, or on the choice of specific measures which would particularly benefit that country, it being understood that the implementation of each particular measure would be consistent with the multilateral principles referred to”.<sup>11</sup>

(d) *Variable levies*

In 1961 Uruguay requested a ruling from the CONTRACTING PARTIES concerning whether the application of variable import duties was compatible with the General Agreement. A 1961 Note by the Executive Secretary on “Questions relating to Bilateral Agreements, Discrimination and Variable Taxes” states, *inter alia*:

“... the question might arise as to whether a variable import duty is consistent with the provisions of Article I on most-favoured-nation treatment. This question can, however, hardly be discussed *a priori* without a knowledge of the exact nature of the measure in question or the manner in which it is operated”.<sup>12</sup>

See also the discussion of this Note in summary records of the Nineteenth Session.<sup>13</sup> The 1962 Panel Report on the “Uruguayan Recourse to Article XXIII” notes as follows:

“The Panel was faced with a particular difficulty in considering the status of variable import levies or charges. It noted the discussion which took place at the nineteenth session of the CONTRACTING PARTIES on this subject during which it was pointed out that such measures raised serious questions which had not been resolved. In these circumstances the Panel has not considered it appropriate to examine the consistency or otherwise of these measures under the General Agreement”.<sup>14</sup>

<sup>9</sup>26S/206, 207; for background to this provision see Report of the Working Party on “United States Temporary Import Surcharge”, L/3573, adopted 16 September 1971, 18S/212, 220-223, paras. 34-38, 40.

<sup>10</sup>C/125, dated 13 March 1984, approved by the Council on 15/16 May 1984 (C/M/178, p. 26), 31S/56, 60, para. 13.

<sup>11</sup>*Ibid.*, 31S/60-61, paras. 14, 16.

<sup>12</sup>Note dated 21 November 1961, L/1636, para. 7.

<sup>13</sup>SR.19/8, pp. III-120.

<sup>14</sup>L/1923, adopted 16 November 1962, 11S/95, 100, para. 17.

*(e) Trade conducted at most-favoured-nation duty rates*

A Note by the Director-General of 21 June 1972 on “Main Findings Concerning Trade at Most-favoured-nation and at Other Rates” presents data gathered by a working party, in response to a decision reached at the Twenty-seventh Session, from 34 governments concerning the share of trade at most-favoured-nation rates, at preferential rates, and at higher-than-most-favoured-nation rates for the years 1955, 1961, 1964 and 1970.<sup>15</sup>

*(2) “the method of levying such duties and charges”*

In November 1968, at the Twenty-fifth Session, the Director-General was asked for a ruling on whether parties to the Agreement on Implementation of Article VI of the General Agreement had a legal obligation under Article I of the General Agreement to apply the provisions of the Anti-Dumping Code in their trade with all GATT contracting parties. The Director-General replied that “In my judgment the words of Article I – ‘the method of levying duties and charges (of any kind)’ and ‘all rules and formalities in connexion with importation’ – cover many of the matters dealt with in the Anti-Dumping Code, such as investigations to determine normal value or injury and the imposition of anti-dumping duties. ... Furthermore, for a contracting party to apply an improved set of rules for the interpretation and application of the GATT only in its trade with contracting parties which undertake to apply the same rules would introduce a conditional element into the most-favoured-nation obligations which, under Article I of GATT, are clearly unconditional”.<sup>16</sup>

In 1980 a Panel was established to examine the complaint of India that “the United States action to levy countervailing duties on imports of dutiable products from India without applying injury criteria referred to in paragraph 6 of Article VI, while extending the benefit of such criteria to imports from some other contracting parties, is not consistent with the obligations of the United States under GATT, including the provisions of Article I thereof”. However, the proceedings of the Panel were terminated in 1981 at the request of India, after resolution of the matter as a result of bilateral consultations between India and the United States.<sup>17</sup> See also references to this dispute at page 46 below.

In a discussion in 1985 of the application of “value-for-duty” legislation by Canada to garments imported from Hong Kong, it was stated that country-specific discriminatory mark-ups for customs valuation purposes were contrary to the provisions of Articles I and VII.<sup>18</sup>

*(3) “all rules and formalities in connection with importation and exportation”*

The Panel Report on “United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil” includes the following finding:

“The Panel considered that the rules and formalities applicable to countervailing duties, including those applicable to the revocation of countervailing duty orders, are rules and formalities imposed in connection with importation, within the meaning of Article I:1”.<sup>19</sup>

*(4) “matters referred to in paragraphs 2 and 4 of Article III”*

This phrasing was inserted during the Geneva session of the Preparatory Committee in 1947, in order “to extend the grant of most-favoured-nation treatment to all matters dealt with in [these paragraphs] regardless of whether national treatment is provided for in respect of such matters”.<sup>20</sup>

<sup>15</sup>Summing up by the Chairman at the Twenty-seventh Session, L/3641, 18S/37, 38, para. 4(d); Note by the Director-General, L/3708; see also discussion at C/M/78, C/M/79.

<sup>16</sup>L/3149, Note by the Director-General dated 29 November 1968.

<sup>17</sup>28S/113.

<sup>18</sup>C/M/165, p. 20; VAL/M/6, p. 9.

<sup>19</sup>DS18/R, adopted on 19 June 1992, 39S/128, 150, para. 6.8.

<sup>20</sup>US proposal at EPCT/W/146; annotated agenda, EPCT/W/150; EPCT/A/PV/7, p. 14.

In response to a request for an interpretation of paragraph 1 of Article I with respect to rebates of excise duties, the Chairman of the CONTRACTING PARTIES ruled on 24 August 1948 that “the most-favoured-nation treatment principle embodied in that paragraph would be applicable to any advantage, favour, privilege or immunity granted with respect to internal taxes”.<sup>21</sup>

The 1952 Panel Report on “Belgian Family Allowances” discusses a Belgian system of tax exemptions for products imported from countries considered to have a system of family allowances similar to that of Belgium, in relation to Article I.<sup>22</sup> See below at page 33.

Under the Protocol Amending Part I and Articles XXIX and XXX of the General Agreement, which was agreed in the Review Session of 1954-55, the words “and with respect to the application of internal taxes to exported goods” would have been included in paragraph 1 to remove any uncertainty as to the application of Article I to discrimination in the exemption of exports from the levy of an excise tax.<sup>23</sup>

The Panel Report on “Japan - Trade in Semi-Conductors” examined, *inter alia*, measures by Japan to promote sales of foreign semi-conductors in Japan. The EEC claimed that Japan had thereby been granting preferential market access to US producers and exporters of semi-conductors and that, in the light of “the general tendency of the Agreement to address issues on a bilateral basis,” this “could not but have discriminatory effects contrary to Article I of the General Agreement”.<sup>24</sup> Japan denied that it granted preferential market access to the producers of the United States and claimed that its policy was to improve market access on a non-discriminatory basis.<sup>25</sup> The Panel considered these arguments but “found that the information submitted to it did not demonstrate that the Japanese measures to improve access to its market for semi-conductors favoured United States products inconsistently with Article I of the General Agreement”.<sup>26</sup>

See also Interpretative Note *ad* Article I, paragraph 1.

**(5) “any advantage, favour, privilege or immunity granted by any contracting party ...”**

*(a) Duty waiver conditional on certification by a particular government*

The 1981 Panel Report on “European Economic Community - Imports of Beef from Canada” examined the compatibility with the General Agreement of EEC regulations implementing a levy-free tariff quota for high quality grain-fed beef; these regulations made suspension of the import levy for such beef conditional on production of a certificate of authenticity. The Panel found that “the only certifying agency authorized to certify the meat ... listed in Annex II of the Commission Regulation, was a United States agency mandated to certify only meat from the United States”, and concluded “that Commission Regulation (EEC) No. 2972/79 ... had the effect of preventing access of ‘like products’ from other origin than the United States, thus being inconsistent with the most-favoured-nation principle in Article I of the General Agreement”.<sup>27</sup>

*(b) Export price monitoring schemes*

The 1988 Panel Report on “Japan - Trade in Semi-Conductors” examined the argument of the EC that the system of third country market monitoring<sup>28</sup> instituted by the Japan-US Agreement on Trade in Semi-Conductors was inconsistent with Article I since it was only applied to Japanese exports to 16 countries, 14 of which were contracting parties. The system, the EEC claimed, violated Article I “to the extent that Japan granted immunity to all but the 14 contracting parties and that the Community did not benefit from the advantages granted to those countries to which the system did not apply”. The Panel found the Japanese

<sup>21</sup>II/12, CP.2/SR.II, CP.3/SR.19.

<sup>22</sup>G/32, adopted on 7 November 1952, 1S/59; GATT/CP.6/25 and Add.1.

<sup>23</sup>3S/206, para. 3. This Protocol was abandoned as of 31 December 1967; see 15S/65.

<sup>24</sup>L/6309, adopted on 4 May 1988, 35S/116, 135-136, paras. 60- 61.

<sup>25</sup>*Ibid.*, 35S/136, para. 62.

<sup>26</sup>*Ibid.*, 35S/161, para. 127.

<sup>27</sup>L/5099, adopted on 10 March 1981, 28S/92, 98, paras. 4.2-4.3.

<sup>28</sup>This system, as described in a Japanese position paper, consisted essentially of two mechanisms: requests by the Government to producers and exporters that dumping should be avoided, and export approval and monitoring costs and export prices, cf. 35S/116, 120, paras. 19-20.

measures to be inconsistent with Article XI:1 and “did not consider it necessary to make a finding on whether or not their administration was contrary to Article I:1 ... the Panel considered that, once a measure had been found to be inconsistent with the General Agreement whether or not it was applied discriminatorily, the question of its non-discriminatory administration was no longer legally relevant. The Panel noted that another Panel had also refrained from examining the alleged discriminatory aspects of a restriction after having found it to be inconsistent with Article XI”.<sup>29</sup>

(c) *Exemption from charges*

In the panel proceeding on “United States - Customs User Fee”,<sup>30</sup> Canada and the EEC requested the Panel to find the United States merchandise processing fee enacted by the Omnibus Budget and Reconciliation Act 1986 to be in breach of Articles II and VIII. India, an intervening party, “requested the Panel to consider whether the exemption contained in the merchandise processing fee legislation in favour of imports from least developed countries was consistent with the MFN obligations of Article I:1”.<sup>31</sup> The issue was also raised by Australia and Singapore as intervening parties, but not by the two complainants which reserved their rights on the issue and did not object to the Panel dealing with it. The Panel refrained from a formal finding on the issue, in accordance with GATT practice, which it considered sound legal practice, to make findings only on those issues raised by the parties to the dispute. The Panel stated:

“The Panel understood the argument that these exemptions were inconsistent with the obligations of Article I to be as follows: The merchandise processing fee was a ‘charge imposed on or in connection with importation’ within the meaning of Article I:1. Exemptions from the fee fell within the category of ‘advantage, favour, privilege or immunity’ which Article I:1 required to be extended unconditionally to all other contracting parties. Such preferential exemptions therefore constituted a breach of the obligation of non-discrimination of Article I:1. The exemption from the fee granted to beneficiaries of the CBERA was not authorized by the waiver granting the US authority to extend duty-free treatment to these beneficiaries (31S/20). Nor was it authorized by the Enabling Clause of 28 November 1979 ... the relevant provisions of which authorized preferential tariff and non-tariff measures for the benefit of developing countries only if such measures conformed to the Generalized System of Preferences or to instruments multilaterally negotiated under GATT auspices. Nor, finally, did the Enabling Clause, cited above, authorize the preferential exemption from the merchandise processing fee for products from least developed developing countries. Under the Enabling Clause, special measures for least developed developing countries were permitted only if taken ‘in the context of any general or specific measures in favour of developing countries’”.<sup>32</sup>

(d) *Actions with respect to countervailing duties*

The Panel Report on “United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil” found that “... the automatic backdating of the effect of revocation of a preexisting countervailing duty order, without the necessity of the country subject to the order making a request for an injury review, is properly considered to be an advantage within the meaning of Article I:1”.<sup>33</sup>

(6) *“originating in” and country of origin*

The wording “originating in” was deliberately chosen to exclude the concept of “provenance”. As stated in the course of the discussion at the London session of the Preparatory Committee, “what you need ... to obtain the benefit of the minimum rates is to prove the origin and those rates would apply even if [the products] entered the importing country by way of a third country”.<sup>34</sup> The Preparatory Committee did not consider it necessary to

<sup>29</sup>L/6309, adopted on 4 May 1988, 35S/116, 159, para. 122. The reference in the text is to the Panel Report on “Canada - Administration of the Foreign Investment Review Act”, L/5504, adopted on 7 February 1984, 30S/140.

<sup>30</sup>L/6264, adopted 2 February 1988, 35S/245.

<sup>31</sup>*Ibid.*, 35S/289, para. 121.

<sup>32</sup>*Ibid.*, 35S/289-290, para. 122.

<sup>33</sup>DS18/R, adopted on 19 June 1992, 39S/128, 150, para. 6.9.

<sup>34</sup>EPCT/C.II/PV/11, p. 9.

define these phrases and suggested that such a definition should be studied by the ITO.<sup>35</sup> A sub-committee of the Preparatory Committee at its Geneva session considered it “to be clear that it is within the province of each importing member country to determine in accordance with the provisions of its law for the purpose of applying the most-favoured-nation provision, whether goods had in fact originated in a particular country”.<sup>36</sup>

The 1991 Panel Report on “United States - Restrictions on Imports of Tuna,” which has not been adopted, examined, *inter alia*, the labelling provisions of the US Dolphin Protection Consumer Information Act (DPCIA), which provide that when a tuna product exported from or offered for sale in the United States bears the label “Dolphin Safe” or any similar label indicating it was fished in a manner not harmful to dolphins, this tuna product may not contain tuna harvested on the high seas by a vessel engaged in driftnet fishing, or harvested in the Eastern Tropical Pacific Ocean (ETP) by a vessel using a purse-seine net unless certain facts are certified under penalty of law. The use of such labels is not a requirement but is voluntary. The Panel examined Mexico’s secondary argument that these provisions were inconsistent with Article I:1 because they discriminated against Mexico as a country whose exclusive economic zone was entirely in the ETP. The panel noted that the harvesting of tuna by intentionally encircling dolphins with purse-seine nets was practised only in the ETP because of the particular type of association between dolphins and tuna observed only in that area.

“By imposing the requirement to provide evidence that this fishing technique had not been used in respect of tuna caught in the ETP the United States therefore did not discriminate against countries fishing in this area. The Panel noted that, under United States customs law, the country of origin of fish was determined by the country of registry of the vessel that had caught the fish; the geographical area where the fish was caught was irrelevant for the determination of origin. The labelling regulations governing tuna caught in the ETP thus applied to all countries whose vessels fished in this geographical area and thus did not distinguish between products originating in Mexico and products originating in other countries.

“... The Panel found for these reasons that the tuna products labelling provisions of the DPCIA relating to tuna caught in the ETP were not inconsistent with the obligations of the United States under Article I:1 of the General Agreement.”<sup>37</sup>

Concerning the work done in the GATT on rules of origin for goods, see under Article VIII. On marking of origin, see under Article IX.

**(7) “shall be accorded immediately and unconditionally”**

*(a) Reciprocity clauses*

The 1952 Report of the Working Party on the “International Convention to Facilitate the Importation of Commercial Samples and Advertising Material” notes concerning the draft text of the Convention: “A proposal to insert in the Convention a reciprocity clause was considered by the majority of the members of the Working Party to be inconsistent with Article I of the General Agreement”.<sup>38</sup>

*(b) Tax exemptions on condition of existence of a tax system of family allowances in the exporting country*

The 1952 Panel Report on “Belgian Family Allowances” contains the following finding.

“According to the provisions of paragraph 1 of Article I of the General Agreement, any advantage, favour, privilege or immunity granted by Belgium to any product originating in the territory of any country with respect to all matters referred to in paragraph 2 of Article III shall be granted immediately and unconditionally to the like product originating in the territories of all contracting parties. Belgium has

<sup>35</sup>London Report, p. 9; EPCT/C.II/PV/12, pp. 3-4.

<sup>36</sup>EPCT/174, p. 3.

<sup>37</sup>DS21/R (unadopted), dated 3 September 1991, 39S/155, 203-204, paras. 5.43-5.44.

<sup>38</sup>G/33, adopted on 7 November 1952, 1S/94, 98, para. 27.

granted exemption from the levy under consideration to products purchased by public bodies when they originate in Luxembourg and the Netherlands, as well as in France, Italy, Sweden and the United Kingdom. ... it is clear that that exemption would have to be granted unconditionally to all other contracting parties. The consistency or otherwise of the system of family allowances in force in the territory of a given contracting party with the requirements of the Belgian law would be irrelevant in this respect, and the Belgian legislation would have to be amended insofar as it introduced a discrimination between countries having a given system of family allowances and those which had a different system or no system at all, and made the granting of the exemption dependent on certain conditions.”<sup>39</sup>

(c) *Exemptions on condition of minimum import price guarantees*

In the 1978 Panel Report on “EEC - Programme of Minimum Import Prices, Licences and Surety Deposits for Certain Processed Fruits and Vegetables”

“The Panel ... examined the provision for an exemption from the lodging of the additional security associated with the minimum import price for tomato concentrates in relation to the obligations of the Community under Article I:1. The Panel noted that Article 10 of Council Regulation (EEC) No. 516/77 stated that the ‘lodging of such additional security shall not be required for products originating in non-member countries which undertake, and are in a position, to guarantee that the price on import into the Community shall be not less than the minimum price for the product in question, and that all deflection of trade will be avoided’. The Panel noted the argument by the representative of the United States that this provision amounted to conditional most-favoured-nation treatment inconsistent with Article I:1 of the General Agreement, since it removed one of the requirements for certain countries while leaving a burden on other countries. The Panel further noted the argument by the representative of the Community that this provision did not make any distinction based on the economic system or any other factor between third suppliers and that the possibility to guarantee that the minimum price would be respected was open to all unconditionally. The Panel considered that, regardless of whether a guarantee had to be provided by the importer or the government of the exporting country, so long as a guarantee was necessary for all imports from all potential third country suppliers, there would be no discrimination within the meaning of Article I:1. Therefore the Panel concluded that the provision for an exemption from the lodging of the additional security associated with the minimum import price for tomato concentrates was not inconsistent with the obligations of the Community under Article I:1.”<sup>40</sup>

(d) *Reservation of import quotas for outward processing traffic*

During the discussions on proposals regarding the extension, modification or discontinuance of the Protocol Extending the Arrangement Regarding International Trade in Textiles in the ninth meeting of the Textiles Committee under the Arrangement as extended in 1977, several signatory states considered the proposed reservation of a portion of import quotas for outward processing traffic as being not consistent with either the Arrangement Regarding International Trade in Textiles or the provisions of GATT, in particular Article I.<sup>41</sup>

(e) *Tariff treatment conditional on the existence of a co-operation contract*

The 1973 Working Party Report on the “Accession of Hungary” notes the view of several delegations that the implementation of the regulations submitted by the Hungarian delegation with respect to co-operation contracts (countertrade), in particular as regards the question of tariff exemptions and reductions granted in this framework, would be inconsistent with Article I of the General Agreement. In response to a request for a legal opinion, “the GATT secretariat, while emphasizing that questions of interpretations of the General Agreement were matters for the CONTRACTING PARTIES and not for the secretariat, gave certain comments, *inter alia* that the prerequisite of having a co-operation contract in order to benefit from certain tariff treatment appeared to imply conditional most-favoured-nation treatment and would, therefore, not appear to be compatible with the General Agreement.”<sup>42</sup>

<sup>39</sup>G/32, adopted on 7 November 1952, 1S/59, 60, para. 3.

<sup>40</sup>L/4687, adopted on 18 October 1978, 25S/68, 106, para. 4.19.

<sup>41</sup>COM.TEX/W/127.

<sup>42</sup>L/3889, adopted on 30 July 1973, 20S/34, 36, para. 12.

(f) *Special treatment for diplomatic gifts, supplies and equipment accorded on the basis of reciprocity*

The Report of the Review Session Working Party on “Schedules and Customs Administration” records that:

“Referring to the provisions for most-favoured-nation treatment, the representative of Germany informed the Working Party that German customs law requires that special treatment for gifts to heads of foreign states, equipment for diplomatic and consular offices and goods for the use of representatives of foreign governments may be granted only on a basis of reciprocity, thus not permitting observance of most-favoured-nation obligations for such imports. Many other countries follow the same practice. The Working Party took note of this situation and saw no reason why established practice in these cases should be disturbed”.<sup>43</sup>

(g) *Application to individual cases and “balancing”*

The Panel Report on “United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil” states with respect to Article I:1:

“The Panel ... considered that Article I:1 does not permit balancing more favourable treatment under some procedure against a less favourable treatment under others. If such a balancing were accepted, it would entitle a contracting party to derogate from the most-favoured-nation obligation in one case, in respect of one contracting party, on the ground that it accords more favourable treatment in some other case in respect of another contracting party. In the view of the Panel, such an interpretation of the most-favoured-nation obligation of Article I:1 would defeat the very purpose underlying the unconditionality of that obligation”.<sup>44</sup>

**(8) “like product”**

(a) *General*

During discussions at the London session of the Preparatory Committee, it was stated that “the expression had different meanings in different contexts of the Draft Charter”.<sup>45</sup> The Preparatory Committee did not think it necessary to define this phrase and recommended that such definition be studied by the ITO.<sup>46</sup> Both at that time and later at the Havana Conference, it was suggested that the method of tariff classification could be used for determining whether products were “like products” or not.<sup>47</sup>

See also the discussion of “like product” in the context of Article III:2 and III:4. The term “like product” or “like domestic product” is used in several other GATT provisions as well, including Articles II:2(a); VI:1(a); VI:1(b); IX:1; XI:2(c); XIII:1; and XVI:4. Other terms such as “like commodity” (Article VI:7), “like merchandise” (Article VII:2), and “like or competitive products” (Article XIX:1) also occur. See also the classification problems arising under Articles II and XXIV:5 (“corresponding duties”).

The Panel Report on “United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil” notes with reference to this concept:

“The Panel noted that Article I would in principle permit a contracting party to have different countervailing duty laws and procedures for different categories of products, or even to exempt one category of products from countervailing duties altogether. The mere fact that one category of products is treated one way by the United States and another category of products is treated another is therefore in principle not inconsistent with the most-favoured-nation obligation of Article I:1. However, this provision clearly prohibits a

<sup>43</sup>L/329, adopted 26 February 1955, 3S/205, 206 para. 3.

<sup>44</sup>DS18/R, adopted on 19 June 1992, 39S/128, 151, para. 6.10.

<sup>45</sup>EPCT/C.II/65, p. 2.

<sup>46</sup>EPCT/C.II/PV/12, pp. 6-7; London Report, p. 9, para. A.1(c).

<sup>47</sup>EPCT/C.II/PV/12, p. 7-8; E/CONF.2/C.3/SR.5, p. 4.

contracting party from according an advantage to a product originating in another country while denying the same advantage to a *like product* originating in the territories of other contracting parties”.<sup>48</sup>

(b) *Examination of “like product” issues in particular cases*

The 1950 Report of the Working Party on “The Australian Subsidy on Ammonium Sulphate” examined a claim by Chile regarding the following facts: the Australian government had formerly subsidized the distribution of both imported and domestic ammonium sulphate and imported sodium nitrate fertilizers, and had ceased to subsidize distribution of imported sodium nitrate; the subsidy on ammonium sulphate was maintained because its users were subject to price ceilings, while the agricultural producers who used most of the sodium nitrate were not.

“As regards the applicability of Article I to the Australian measure, the working party noted that the General Agreement made a distinction between ‘like products’ and ‘directly competitive or substitutable products’. This distinction is clearly brought out in Article III, paragraph 2, read in conjunction with the interpretative note to that paragraph. The most-favoured-nation treatment clause in the General Agreement is limited to ‘like products’. Without trying to give a definition of ‘like products’, and leaving aside the question of whether the two fertilizers are directly competitive, the working party reached the conclusion that they were not to be considered as ‘like products’ within the terms of Article I. In the Australian tariff the two products are listed as separate items and enjoy different treatment. ... In the tariffs of other countries the two products are listed separately. In certain cases the rate is the same, but in others the treatment is different. ...”<sup>49</sup>

The 1978 Panel Report on “EEC - Measures on Animal Feed Proteins” examined EEC measures requiring domestic producers or importers of oilseeds, cakes and meals, dehydrated fodder and compound feeds and importers of corn gluten feed to purchase and denature skimmed milk powder held by EEC intervention agencies, as a condition for the receipt of production subsidies (in the case of domestic producers) or as a condition on importation (in the case of importers). A security deposit could be substituted for proof of such purchase; the amount of the security varied depending on the type of feed. Examining *inter alia* a claim by the United States that, as proteins added to animal feeds should be considered to be like products, the requirement of different levels of security deposit for different vegetable proteins was inconsistent with Article I:1,

“The Panel began by examining whether all products used for the same purpose of adding protein to animal feeds should be considered to be ‘like products’ within the meaning of Articles I and III. Having noted that the General Agreement gave no definition of the concept of ‘like product’, the Panel reviewed how it had been applied by the CONTRACTING PARTIES in previous cases.”<sup>50</sup>

“The Panel noted, in this case, such factors as the number of products and tariff items carrying different duty rates and tariff bindings, the varying protein contents and the different vegetable, animal and synthetic origins of the protein products before the Panel - not all of which were subject to the EEC measures. Therefore, the Panel concluded that these various protein products could not be considered as ‘like products’ within the meaning of Articles I and III.”<sup>51</sup>

“The Panel noted that the general most-favoured-nation treatment provided for in Article I:1 applied to ‘like products’ regardless of territorial origin but did not mention ‘directly competitive or substitutable products’. In this regard the Panel did not consider animal, marine and synthetic proteins to be products like those vegetable proteins covered by the measures. The Panel also noted that a significant proportion of EEC imports of ‘like products’, including soybeans, subject to the measures originated from contracting parties other than the United States.”<sup>52</sup>

<sup>48</sup>DS18/R, adopted on 19 June 1992, 39S/128, 151, para. 6.11.

<sup>49</sup>GATT/CP.4/39, adopted on 3 April 1950, II/188, 191, para. 8.

<sup>50</sup>The footnote to this sentence provides: “For instance BISD II/188, BISD 1S/53, BISD II/181, 183”.

<sup>51</sup>L/4599, adopted on 14 March 1978, 25S/49, 63, paras. 4.1-4.2.

<sup>52</sup>*Ibid.*, 25S/68, para. 4.20.

The 1981 Panel Report on “Spain - Tariff Treatment of Unroasted Coffee” examined a claim of Brazil under Article I:1 with respect to a Spanish Royal Decree which divided unroasted coffee into five tariff classifications: “Colombian mild,” “other mild,” “unwashed Arabica,” “Robusta” and “other”. The first two were duty-free and the latter three were subject to a duty of 7 per cent *ad valorem*; the tariff on raw coffee was unbound.

“The Panel found that there was no obligation under the GATT to follow any particular system for classifying goods, and that a contracting party had the right to introduce in its customs tariff new positions or sub-positions as appropriate.<sup>53</sup> The Panel considered, however, that whatever the classification adopted, Article I:1 required that the same tariff treatment be applied to ‘like products’. The Panel therefore.. focused its examination on whether the various types of unroasted coffee listed in the Royal Decree 1764/79 should be regarded as ‘like products’ within the meaning of Article I:1. Having reviewed how the concept of ‘like products’ had been applied by the CONTRACTING PARTIES in previous cases involving, *inter alia*, a recourse to Article I:1,<sup>54</sup> the Panel noted that neither the General Agreement nor the settlement of previous cases gave any definition of such concept.

“The Panel examined all arguments that had been advanced during the proceedings for the justification of a different tariff treatment for various groups and types of unroasted coffee. It noted that these arguments mainly related to organoleptic differences resulting from geographical factors, cultivation methods, the processing of the beans, and the genetic factor. The Panel did not consider that such differences were sufficient reason to allow for a different tariff treatment. It pointed out that it was not unusual in the case of agricultural products that the taste and aroma of the end-product would differ because of one or several of the above-mentioned factors.

“The Panel furthermore found relevant to its examination of the matter that unroasted coffee was mainly, if not exclusively, sold in the form of blends, combining various types of coffee, and that coffee in its end-use, was universally regarded as a well-defined and single product intended for drinking.

“The Panel noted that no other contracting party applied its tariff régime in respect of unroasted, non-decaffeinated coffee in such a way that different types of coffee were subject to different tariff rates.

“In the light of the foregoing, the Panel *concluded* that unroasted, non-decaffeinated coffee beans listed in the Spanish Customs Tariff ... should be considered as ‘like products’ within the meaning of Article I:1.

“The Panel further noted that Brazil exported to Spain mainly ‘unwashed Arabica’ and also Robusta coffee which were both presently charged with higher duties than that applied to ‘mild’ coffee. Since these were considered to be ‘like products’, the Panel *concluded* that the tariff régime as presently applied by Spain was discriminatory vis-à-vis unroasted coffee originating in Brazil<sup>55</sup> and “not in conformity with the provision of Article I:1”.<sup>56</sup>

The 1989 Panel Report on “Canada/Japan: Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber” examined Canada’s claim that Japan’s application of an 8 per cent tariff on imports of SPF “dimension lumber” (surfaced softwood lumber designed for use as framing members in construction) was inconsistent with Article I:1 because SPF dimension lumber and dimension lumber of other types, which benefited from a zero duty rate, were “like products” within the meaning of Article I:1. Citing documents dealing with the drafting history and interpretation of the “like products” concept<sup>57</sup> Japan argued that these were different products, in practical terms, physical origins, characteristics, end-uses, consumer perception, etc. and so were not “like products” in the sense of Article I:1; Japan noted that concessions distinguished by species had been exchanged and upheld in successive GATT tariff negotiations.<sup>58</sup> Canada argued that past panels had considered the

<sup>53</sup>The footnote to this sentence provides: “Provided that a reclassification subsequent to the making of a concession under the GATT would not be a violation of the basic commitment regarding that concession (Article II:5)”.

<sup>54</sup>The footnote to this sentence refers to BISD Vol. II/188; 1S/53; 25S/49; 27S/98.

<sup>55</sup>L/5135, adopted 11 June 1981, 28S/102, 111-112, paras. 4.4-4.10 *passim*.

<sup>56</sup>*Ibid.* 28S/112, para. 4.11.

<sup>57</sup>References given are to EPCT/C.II/65 p. 2; EPCT/C.II/PV.12 p. 7; EPCT/C.II/36 p. 8; E/CONF.2/C.III/SR.5 p. 4; GATT/CP/4/39 para. 8; IC/SR.9 p. 2; BISD 25S/49-53; and BISD 28S/92-98.

<sup>58</sup>L/6470, adopted on 19 July 1989, 36S/167, 180, paras. 3.19-3.20.

interpretation of the “like product concept” to be the same in both Articles I and III, and that because these were trade-creating obligations a narrow definition of like products would not be appropriate; Japan argued that they were not the same.<sup>59</sup>

“... In substance, Canada complains of the fact that Japan had arranged its tariff classification in such a way that a considerable part of Canadian exports of SPF dimension lumber to Japan was submitted to a customs duty of 8 per cent, whereas other comparable types of dimension lumber enjoy the advantage of a zero-tariff duty. The Panel considered it impossible to appreciate fully the Canadian complaint if it had not in a preliminary way clarified the bearing of some principles of the GATT-system in relation to tariff structure and tariff classification.

“The Panel noted in this respect that the General Agreement left wide discretion to the contracting parties in relation to the structure of national tariffs and the classification of goods in the framework of such structure ... The adoption of the Harmonized System, to which both Canada and Japan have adhered, had brought about a large measure of harmonization in the field of customs classification of goods, but this system did not entail any obligation as to the ultimate detail in the respective tariff classifications. Indeed, this nomenclature has been on purpose structured in such a way that it leaves room for further specifications.

“The Panel was of the opinion that, under these conditions, a tariff classification going beyond the Harmonized System’s structure is a legitimate means of adapting the tariff scheme to each contracting party’s trade policy interests, comprising both its protection needs and its requirements for the purposes of tariff- and trade negotiations. ...

“Tariff differentiation being basically a legitimate means of trade policy, a contracting party which claims to be prejudiced by such practice bears the burden of establishing that such tariff arrangement has been diverted from its normal purpose so as to become a means of discrimination in international trade. Such complaints have to be examined in considering simultaneously the internal protection interest involved in a given tariff specification, as well as its actual or potential influence on the pattern of imports from different extraneous sources ...<sup>60</sup>

“... if a claim of likeness was raised by a contracting party in relation to the tariff treatment of its goods on importation by some other contracting party, such a claim should be based on the classification of the latter, i.e. the importing country’s tariff.

“The Panel noted in this respect that ‘dimension lumber’ as defined by Canada was a concept extraneous to the Japanese Tariff ... nor did it belong to any internationally accepted customs classification. The Panel concluded therefore that reliance by Canada on the concept of dimension lumber was not an appropriate basis for establishing ‘likeness’ of products under Article I:1 of the General Agreement.

“At the same time, the Panel felt unable to examine the Canadian complaint in a broader context ... Canada did not contend that different lumber species *per se* should be considered like products, regardless of the product-form they might take ... Thus there appeared to be no basis for examining the issue raised by Canada in the general context of the Japanese tariff classification.”<sup>61</sup>

In Council discussion when this panel report was adopted, Canada raised the concern that “this interpretation could lead to pre-eminence being given to the tariff classification of a contracting party when determining ‘like products’ under Article I ... this interpretation could well preclude a contracting party from exercising its rights under Article I:1 for equal treatment of like products if the products involved were not specifically identified in the tariff classification system of the importing contracting party. The Harmonized System of tariff classification was not designed with Article I:1 rights in mind ... Tariff classification systems cannot identify specifically each and every possible product which may be imported. In the tariff classification system of contracting parties it is

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<sup>59</sup>*Ibid.*, 36S/186-187, paras. 3.37-3.39.

<sup>60</sup>*Ibid.*, 36S/197-198, paras. 5.7-5.10.

<sup>61</sup>*Ibid.*, 36S/199, paras. 5.13-5.15.

regularly the case that an individual tariff line or description will cover a wide range of different products, particularly in the example of lines which read 'other' or 'not elsewhere specified'. Additionally, there are new products continually entering the marketplace which are not identified in tariff schedules".<sup>62</sup>

The 1990 Panel Report on "European Economic Community - Regulation on Imports of Parts and Components" examined Japan's claim that the imposition of anti-dumping duties on certain products assembled inside the Community on the basis of an earlier anti-dumping order applicable to imports of finished products was not permissible under Articles VI or XX (d) and thus violated Articles I, II, III and VI. During the dispute, "Japan pointed out that Article 13:10 of Council Regulation (EEC) No. 2423/88 provided for the imposition of duties on products produced or assembled in the EEC on the basis of the proportion of parts imported from Japan used in the production or assembly of such products. As such, these duties could be seen as a special type of customs duties levied on parts imported from Japan ... If one considered the duties imposed under Article 13:10 as customs duties on imported parts, these duties violated Article I:1 of the General Agreement because they were imposed only on parts imported from Japan; thus, discrimination occurred between parts originating in Japan and like products of third countries".<sup>63</sup> The Panel made no finding with respect to this claim.

The 1992 Panel Report on "United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil" examined a claim relating to the automatic backdating of the effect of revocation of a countervailing duty order (see above at page 32).

"The Panel ... examined whether the products to which the United States had accorded the advantage of automatic backdating are like the products to which this advantage had been denied. The Panel noted that the products to which the procedures under Section 331 of the Trade Act of 1974 had actually been applied (industrial fasteners, industrial lime, automotive glass) are not like the product to which Section 104(b) of the Trade Agreements Act of 1979 had been applied in the case of Brazil (non-rubber footwear). However, the Panel also noted that Brazil not only claimed that the application of these two Acts in concrete cases was inconsistent with Article I:1 of the General Agreement but also that the United States' legislation itself was inconsistent with that provision. The Panel recalled that neither Section 331 of the 1974 Act nor Section 104(b) of the 1979 Act makes any distinction as to the particular products to which each applies, other than that the former applies to duty-free products originating in the territories of contracting parties and the latter applies to dutiable products originating in the territories of contracting parties signatories to the Subsidies Agreement. The products to which Section 331 of the 1974 Act accords the advantage of automatic backdating are therefore in principle the same products to which Section 104(b) of the 1979 Act denies the advantage of automatic backdating".<sup>64</sup>

(c) *Price discrimination*

The 1978 Note by the GATT Secretariat on "Modalities of Application of Article XIX" notes concerning actions notified as having been taken under Article XIX that

"A number of actions of a quantitative and tariff-type nature have been linked to the price of the products concerned. In practice, such measures, although applied on a global basis, may have been selective in their application to one or a limited number of countries. In the current ten-year period, ten such instances have been notified, compared to eight during the preceding twenty years. Some of these measures took the form of special customs valuation methods levied for imports at lower prices during a short agricultural or horticultural season. In addition to these measures, there were a few cases in the earlier years where specific duties or sur-taxes were replaced by ad valorem rates".<sup>65</sup>

In Council discussion of a 1977 Article XIX action by Finland imposing a surcharge on imports of pantyhose (tights) below a basic price, the representative of Singapore noted that Article XIX referred to "any

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<sup>62</sup>L/6528; see also C/M/232, p. 9-12; C/M/234, p. 44-49; C/M/235, p. 15-18.

<sup>63</sup>L/6657, adopted on 16 May 1990, 37S/132, 147, para. 3.32.

<sup>64</sup>DS18/R, adopted on 19 June 1992, 39S/128, 151-152, para. 6.12.

<sup>65</sup>L/4679, para. 45.

product” and stated that this action was aimed at low-cost suppliers in developing countries. The representative of Finland stated that the measure was fully in accordance with Article XIX.<sup>66</sup>

During discussion in the Committee on Trade and Development in March 1983 of a Canadian Article XIX action on leather footwear, which exempted footwear above a certain value, it was stated that “This price discrimination was not only contrary to the letter and spirit of Article XIX, but also established a dangerous precedent, and had an adverse effect on the export interests of developing countries. The representative of Canada stated that in the view of his authorities, the Article XIX action referred to ... was consistent with the relevant provisions of the General Agreement, and the price discrimination element in the action did not constitute a new precedent under the GATT”. Several other contracting parties expressed concern at the price-discriminatory use of Article XIX and stated that they regarded a discrimination between suppliers, either geographically or on the basis of prices, as an infringement of GATT rules.<sup>67</sup> Canada’s Article XIX action on imports of footwear was discussed again in the GATT Council meeting in March 1985. Concern was expressed at “Canada’s application of price breaks in the context of this Article XIX action. Such devices could produce such a narrow and selective definition of source that the action could no longer be said to be truly non-discriminatory. This would appear to conflict with the fundamental principles of the General Agreement”.<sup>68</sup>

## 2. Paragraphs 2 and 4: Historical preferences and margins of preference

For a general discussion of the negotiating history of the provisions of Article I on historical preferences, see section III below.

The interpretative Note *ad* Article I:4 provides that the margin of preference is the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product and not the proportionate relation between those rates; this definition was decided on (during the Geneva negotiations on the General Agreement) because of the difficulty of calculating a percentage margin when the preferential rate is zero, and because it was determined that only the absolute size of the margin, and not the percentage difference, was economically meaningful.<sup>69</sup>

In discussions at the London session of the Preparatory Committee, it was agreed that the exemption to the most-favoured-nation clause for historical preferences refers only to preferences in the form of tariff margins and has “nothing to do with quotas or quantitative restrictions”.<sup>70</sup>

The present form of Annex B (territories of the French Union) reflects the deletion in 1955 of certain territories, which had been raised to the status of French départements on 1 January 1948 and then formed part of the metropolitan customs territory.<sup>71</sup>

Many of the historical preferences referred to in paragraph 2 have been subsequently changed or terminated, although some still exist.

### (1) *Modification of margins of preference*

#### (a) *Relationship between negotiated reductions in the most-favoured-nation duty rate and the margin of preference*

The rules for the tariff negotiations conducted in 1947 at the Geneva session of the Preparatory Committee, in connection with the conclusion of the General Agreement, referred to the provisions in Article 24 of the London Draft Charter that “Prior international commitments shall not be permitted to stand in the way of

<sup>66</sup>C/M/119 p. 21-22.

<sup>67</sup>COM.TD/114, p. 10, paras. 41-43.

<sup>68</sup>C/M/186, p. 5.

<sup>69</sup>EPCT/230; EPCT/TAC/PV/16, pp. 21-35. The method of calculation of margins of preference in paragraph 4 was utilized in the 1949 Report of the Working Party on “Brazilian Internal Taxes,” GATT/CP.3/42, II/181, 183-184, paras. 11-12.

<sup>70</sup>EPCT/C.II/PV/4, p. 35; EPCT/C.II/PV/12, p. 9. See also Article XXIV:5(a).

<sup>71</sup>Fourth Protocol of Rectifications and Modifications to the Annexes and to the Texts of the Schedules of the General Agreement (done 7 March 1955, entered into force 23 January 1959); see also W.9/162. See also discussion of status of territories within French Union as of 1946 at EPCT/C.II/PV/4 p. 18-20.

negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification of existing international obligations except by agreement between the contracting parties or, failing that, by termination of such obligations in accordance with their terms. All negotiated reductions in most-favoured-nation tariffs shall operate automatically to reduce or eliminate margins of preference". These rules further stated that "all margins of preference remaining after negotiations would be bound against increase".<sup>72</sup>

Similarly, the procedures for the Annecy tariff conference of 1949 and the Torquay tariff conference of 1950 each provided that

"The negotiations will be conducted in accordance with the rules set forth in paragraph 2 of Article 17 of the Havana Charter, *i.e.*,

...

"(c) in negotiations relating to any specific product with respect to which a preference applies,

- (i) when a reduction is negotiated only in the most-favoured-nation rate, such reduction shall operate automatically to reduce or eliminate the margin of preference applicable to that product;
- (ii) when a reduction is negotiated only in the preferential rate, the most-favoured-nation rate shall automatically be reduced to the extent of such reduction;
- (iii) when it is agreed that reductions will be negotiated in both the most-favoured-nation rate and the preferential rate, the reduction in each shall be that agreed by the parties to the negotiations; and
- (iv) no margin of preference shall be increased. ...

"(e) Prior international obligations shall not be invoked to frustrate negotiations with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of existing international obligations except with the consent of the parties to such obligations, or in the absence of such consent by modification or termination of such obligations in accordance with their terms".<sup>73</sup>

The procedures for the 1956 tariff conference and for the Dillon Round in 1960-61 provided that "In so far as negotiations relate to preferences, the applicable provisions of the General Agreement shall be applied in accordance with the rules, as relevant, followed hitherto in negotiations sponsored by the CONTRACTING PARTIES".<sup>74</sup>

During the Third Session, held at Annecy in 1949, Cuba sought a ruling that the reduction of most-favoured-nation tariff rates by the United States in the tariff negotiations conducted at that time at Annecy would be inconsistent with the provisions of a bilateral trade agreement between Cuba and the United States predating the General Agreement, which guaranteed certain percentage margins of preference. On 9 August 1949 the CONTRACTING PARTIES adopted a Decision on "Margins of Preference" which provided *inter alia*, that "A margin of preference, on an item included in either or both parts of a schedule, is not bound against decrease by the provisions of the General Agreement. This decision does not preclude the possibility of resort to Article XXIII".<sup>75</sup>

<sup>72</sup>London Report, p. 49. See also the discussion of the effect of preferences on tariff negotiations, in the Sub-Committee on Procedures (which drafted the procedures for the Geneva 1947 negotiations): EPCT/C.II/PRO/PV/12.

<sup>73</sup>Procedures Adopted for Torquay Tariff Conference, I/104-105, para. 3; Memorandum on Tariff Negotiations to be held in Geneva commencing 11 April 1949, adopted 31 August 1948, GATT/CP.2/SR.15, p. 5, GATT/CP.2/26, para. III.1.

<sup>74</sup>"Rules and Procedures for the Tariff Conference commencing in Geneva on 18 January 1956", 4S/79, 81, para. 11(d); "Rules and Procedures for the Tariff Conference commencing in Geneva on 1 September 1960", 8S/114, 118, para. VII(d).

<sup>75</sup>Decision of 9 August 1949 on "Margins of Preference", II/11; see also draft decision and footnote in GATT/CP.3/71, statements of Cuba in GATT/CP.3/63 and GATT/CP.3/89, discussion at GATT/CP.3/SR.34-SR.38, and adoption of ruling and footnote by vote at GATT/CP.3/SR.38 p. 6-9. See also discussion of related Cuban legal claims and Article XXIII at II/152-153 paras. 22-25. See also reference to this Decision at pages 41, 45 below.

*(b) Increase in margins of preference*

It was stated during the negotiation of the General Agreement text in 1947 “that negotiations should not lead to the increase of margins of preference. This appears in Article 17 [of the Geneva Draft Charter], and is in fact our guiding thread to this Article”.<sup>76</sup>

At the Review Session in 1954-1955, reference was made to the rigid “no-new-preference rule ... contained in Article I”.<sup>77</sup> Proposals to amend Article I:4 or Article XXIV to permit increase in margins of preference, even by negotiation, were unsuccessful; the Review Working Party on Schedules and Customs Administration which examined these proposals considered that the objectives of these proposals could best be sought by an application for a suitable waiver.<sup>78</sup> In 1954, Italy brought a complaint against the imposition by France of a temporary compensation tax on certain imports, from which certain imports from the French Union were exempted. During the 1954-55 Review Session the CONTRACTING PARTIES adopted conclusions that “the tax has increased the incidence of customs charges in excess of maximum rates bound under Article II, and the application of this tax introduces, in respect of the products affected, an increase in the incidence of preferences in excess of the maximum margins permissible under Article I; and it follows that the action of the French Government justifies the invocation of the provisions of Article XXIII and that any contracting party whose trade is adversely affected has grounds to propose under paragraph 2 of that Article such compensatory action as it may think appropriate for authorization by the CONTRACTING PARTIES”.<sup>79</sup>

For examples of examination of preferential margins in the light of the rules in Article I on margins of preference, see the 1971 Panel Report on “Jamaica - Margins of Preference”<sup>80</sup> and the 1969 Working Party Report on “Malawi Tariff Preferences - Preferential Margins”.<sup>81</sup>

See also Article XXIV:9 and its interpretative note regarding the coexistence of margins of preference and customs unions or free-trade areas, and the adjustment of preferences by negotiation in conjunction with the formation of a customs union or free-trade area.

*(c) Reinstatement of historical preferences*

The wording “existing on 10 April 1947” in paragraph 4 was adopted in order to “include rates or margins which had legal existence on the base date but were not actually applied”.<sup>82</sup> The Interpretative Note to paragraph 4 provides that the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on April 10, 1947, is not contrary to a general binding of margins of preference if taken in accordance with established uniform procedures.

*(d) Change in historical preferences due to tariff reclassification*

The Interpretative Note to paragraph 4 provides that the classification of a particular product under a tariff item other than that under which importations of that product were classified on April 10, 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item, is not contrary to a general binding of margins of preference if taken in accordance with established uniform procedures. However, the preparatory work indicates that it was understood that the “general provisions relating

<sup>76</sup>EPCT/TAC/PV.9, p. 16.

<sup>77</sup>SR.9/17, p. 3.

<sup>78</sup>L/329, adopted 26 February 1955, 3S/205, 207-208 para. 6 (proposals by Australia, New Zealand, Chile). See also the waivers of Article I:4 granted to the United Kingdom in 1953 for increases in margins of preference for items admitted duty-free from the Commonwealth (2S/20, amended at 3S/25) and in 1955 for preferential treatment for imports from overseas territories for whose international relations it is responsible (3S/21).

<sup>79</sup>Decision of 17 January 1955 on “French Special Temporary Compensation Tax on Imports”, 3S/26, 27; see discussion and adoption at SR.9/28, 29; see also reference to this decision at 6S/96 para. 20.

<sup>80</sup>L/3485, adopted on 2 February 1971, 18S/183.

<sup>81</sup>L/3194, adopted 15 April 1969, 17S/156.

<sup>82</sup>EPCT/174, p. 5.

to the binding of margins would not override specific undertakings in the tariff schedules to maintain particular products under a particular tariff classification”.<sup>83</sup>

**(2) *Base dates for purposes of paragraph 4 and Annex G, and modification thereof***

The date of 10 April 1947 referred to in paragraph 4 was the opening date of the Second Session (held in Geneva) of the Preparatory Committee for the Havana Conference;<sup>84</sup> for those countries listed in Annex G this date is replaced by the dates specified in Annex G, except as modified by the waiver decisions listed below.

The 1971 Panel Report on “Jamaica - Margins of Preference” examined the base date applicable to Jamaica under Article I:4 and its implications for increases in margins of preference after 10 April 1947 and before the date of succession to the rights and obligations of a contracting party under Article XXVI:5(c).

“The Panel held that since Jamaica had acceded to the General Agreement on Tariffs and Trade under the provisions of Article XXVI:5(c) it had acquired the rights and obligations which had previously been accepted by the United Kingdom in respect of the territory of Jamaica. This meant that Jamaica assumed the rights and obligations involved in the application to it of the General Agreement by the United Kingdom before Jamaica became independent. On 6 August 1962, the day Jamaica became independent, Article I:4 formed part of the General Agreement as it had been applied by the United Kingdom on behalf of the territory of Jamaica. The provision of Article I:4 establishing 10 April 1947 as the base date for permissible margins of preference was therefore applicable to Jamaica”.<sup>85</sup>

However, on recommendation of this Panel, a waiver changing the base date was granted to Jamaica; see below.

The date “April 10, 1947” under Article I:4 is replaced by other dates in certain protocols of accession:

- Cambodia, by “1 September 1960”, Protocol of Accession, IIS/13, para. 3; however, this Protocol has not been accepted by Cambodia; and
- Ireland, by “30 June 1967”, Protocol of Accession, 15S/42, para. 2.

The date “April 10, 1947” and the respective dates set forth in Annex G to the General Agreement are replaced by other dates in certain waiver decisions of the CONTRACTING PARTIES under Article XXV:5:

- Australia (“in relation to products of the Federation of Rhodesia and Nyasaland”), by “20 November 1959”, Decision of 19 November 1960, 9S/46;
- Rhodesia and Nyasaland (Malawi, Zambia and Zimbabwe), by “3 December 1955”, Decision of 19 November 1960, 9S/46;
- Union of South Africa (“in relation to products of the Federation of Rhodesia and Nyasaland”), by “30 June 1960”, Decision of 19 November 1960, 9S/46; and
- Jamaica, by “1 August 1962”, Decision of 2 March 1971, 18S/33.

**(3) *“in respect of duties or charges”***

These words in paragraph 4 of Article I were inserted to make it clear that the obligations therein applied not only to ordinary customs duties but also to other charges such as primage and surtaxes.<sup>86</sup>

<sup>83</sup>EPCT/174, 194; EPCT/TAC/SR.16; EPCT/TAC/PV/28, p. 14; EPCT/EC/PV/2/22, pp. 30-32.

<sup>84</sup>Concerning base dates for margins of preference, see also discussion in the Sub-Committee on Procedures at the London session of the Preparatory Committee, EPCT/C.II/PRO/PV/8 p. 25ff.

<sup>85</sup>L/3845, adopted 2 February 1971, 18S/183, 187, para. 13. The Panel suggested that the CONTRACTING PARTIES consider granting a waiver to Jamaica to change the base date to 1 August 1962, and prepared a draft waiver decision; see Decision at L/3503, 18S/33.

<sup>86</sup>EPCT/TAC/PV/26, pp. 11-12.

### 3. Paragraph 3

Paragraph 3 corresponds to Article 16, paragraph 3 of the Havana Charter; however, where the Charter paragraph referred to Charter Article 15 (for which no counterpart exists in the General Agreement), the General Agreement paragraph refers to the use of the waiver provisions of Article XXV in the light of Article XXIX.<sup>87</sup> This insertion was agreed by the Working Party on “Modifications to the General Agreement” which met during the Second Session of the CONTRACTING PARTIES in September 1948 to consider updating the General Agreement to reflect the results of the Havana Conference.<sup>88</sup> “The working party agreed to recommend the insertion of a new paragraph in Article I in order to provide for the special position of certain countries of the Near East. It was the view of the working party that, under the proposed new paragraph of Article I, the CONTRACTING PARTIES, in taking action pursuant to Article XXV with respect to preferences among countries formerly a part of the Ottoman Empire, would be required to make a decision in accordance with the principles and requirements of Article 15 of the Havana Charter.”<sup>89</sup>

This preference exception was exercised on the occasion of the accession of the United Arab Republic in February 1970. The Report of the Working Party on “Provisional Accession of the United Arab Republic” notes:

“... the Working Party ... decided that the preferential arrangements under the Arab League Convention should be dealt with under paragraph 3 of Article I of the General Agreement. Although the United Arab Republic was detached from the Ottoman Empire prior to 24 July 1923, paragraph 3 of Article I could be considered as applying to the United Arab Republic by analogy. ... The Working Party considered that this matter could be appropriately dealt with in the instrument of accession of the United Arab Republic since the legal requirements of a two-thirds majority contained in Article XXV:5 would be covered by the requirements of a two-thirds majority for the vote on terms of accession. The Working Party recognized that any subsequent addition of new items to the number of those enjoying preferences on the base date could be dealt with when the question arose in accordance with paragraph 3 of Article I by a further Decision of the CONTRACTING PARTIES under Article XXV:5.”<sup>90</sup>

Accordingly, the Protocol for the Accession of the United Arab Republic refers to Article I:3.<sup>91</sup>

## B. RELATIONSHIP BETWEEN ARTICLE I AND OTHER PROVISIONS OF THE GENERAL AGREEMENT

In addition to Article I, the General Agreement contains a number of other most-favoured-nation or non-discrimination clauses, relating to internal quantitative regulations (Article III:7), cinematographic films (Article IV(b)), transit of goods (Article V:5, 6), marks of origin (Article IX:1), quantitative restrictions (Article XIII:1), state trading (Article XVII:1), governmental assistance to promote the establishment of a particular industry (Article XVIII:20), and measures essential to the acquisition or distribution of products in short supply (Article XX(j)).

### 1. Article III

See under Article III.

### 2. Article VI

See under Article VI.

<sup>87</sup>E/CONF.2/C.3/77/Rev.1 and SR.44. Article 15 of the Charter permitted authorization of new preferential agreements between two or more countries in the interest of economic development or reconstruction.

<sup>88</sup>GATT/CP.2/22/Rev.1, adopted on 1 and 2 September 1948, II/39, 40, para. 5.

<sup>89</sup>*Ibid.*, II/43-44, para. 25; see also Havana Reports p. 40.

<sup>90</sup>L/1876, adopted 13 November 1962, IIS/75, 76, para. 3.

<sup>91</sup>17S/2, 3, paragraph 2(b).

**3. Article IX**

See under Article IX.

**4. Article XIII**

See under Article XIII.

**C. RELATIONSHIP OF ARTICLE I TO OTHER INTERNATIONAL AGREEMENTS**

During the Third Session, held at Annecy in 1949, Cuba sought a ruling that the reduction of most-favoured-nation tariff rates by the United States in the tariff negotiations conducted at that time at Annecy would be inconsistent with the provisions of a bilateral trade agreement between Cuba and the United States predating the General Agreement, which guaranteed certain percentage margins of preference. The CONTRACTING PARTIES adopted a Decision by vote on "Margins of Preference" which provided *inter alia*, that "the determination of rights and obligations between governments arising under a bilateral agreement is not a matter within the competence of the CONTRACTING PARTIES".<sup>92</sup> This Decision was subject to the following footnote.

"<sup>1</sup>This Decision by its terms clearly refers only to the determination of the rights and obligations as between the parties to the bilateral agreement and arising from the agreement. It is, however, within the competence of the CONTRACTING PARTIES to determine whether action under such a bilateral agreement would or would not conflict with the provisions of the General Agreement".

In a Decision of 28 November 1979 on "Action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations," the CONTRACTING PARTIES reaffirmed "their intention to ensure the unity and consistency of the GATT system" and decided, with respect to the agreements reached in the Tokyo Round:

"3. The CONTRACTING PARTIES also note that existing rights and benefits under the GATT of contracting parties not being parties to these Agreements, including those derived from Article I, are not affected by these Agreements".<sup>93</sup>

The Decision of the same date on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" provides, *inter alia*, that

"1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.

"2. The provisions of paragraph 1 apply to the following:

...

"(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT; ...

...

"(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries."

<sup>92</sup>II/11; see also draft decision and footnote in GATT/CP.3/71, statements of Cuba in GATT/CP.3/63 and GATT/CP.3/89, discussion at GATT/CP.3/SR.34-SR.38, and adoption of ruling and footnote by vote at GATT/CP.3/SR.38 p. 6-9. See also discussion of related Cuban legal claims at II/152-153 paras. 22-25.

<sup>93</sup>26S/201.

See further at page 53 below concerning this Decision. See also a Secretariat Note of 1987 on “MTN Agreements and Arrangements: Special and Differential Treatment for Developing Countries”, which lists provisions in the Tokyo Round agreements providing such special and differential treatment.<sup>94</sup>

### 1. Agreement on Implementation of Article VI

In November 1968, at the Twenty-fifth Session, the Director-General was asked for a ruling on whether parties to the Agreement on Implementation of Article VI of the General Agreement had a legal obligation under Article I of the General Agreement to apply the provisions of the Anti-Dumping Code in their trade with all GATT contracting parties. The Director-General replied in the affirmative; see page 30 above.<sup>95</sup> At the first meeting of the Committee on Anti-Dumping Practices on 15 November 1968 the representative of the European Communities stated that “the Communities maintained the position they had taken at the discussion of the same question in April 1967, i.e. that the parties were under no obligation to apply the provisions of the Code to non-signatories”.<sup>96</sup>

### 2. Agreement on Interpretation and Application of Articles VI, XVI and XXIII

In 1980 the Council established a Panel to examine the complaint of India that “the United States action to levy countervailing duties on imports of dutiable products from India without applying injury criteria referred to in paragraph 6 of Article VI, while extending the benefit of such criteria to imports from some other contracting parties, is not consistent with the obligations of the United States under GATT, including the provisions of Article I thereof”. In its panel request, India, referring to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade of 12 April 1979, maintained “that as the U.S. government has taken the obligation to apply the injury test to subsidised products imported by it, it has to apply the test unconditionally to all contracting parties of the GATT irrespective of whether the new Agreement applies between the USA and other contracting parties”.<sup>97</sup> The proceedings of the Panel were terminated at the request of India after resolution of the matter as a result of bilateral consultations between India and the United States.<sup>98</sup> The matter was again raised by India in 1982 and referred to the Committee on Subsidies and Countervailing Measures for conciliation,<sup>99</sup> but was not pursued further.

The Report of the Panel on “United States - Definition of Industry Concerning Wine and Grape Products”, established under the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement to examine a dispute regarding a provision of the United States countervailing duty laws, notes that “the Panel held the view that Article VI of the GATT and the corresponding Code provision should, because they permitted action of a non-m.f.n. nature otherwise prohibited by Article I, be interpreted in a narrow way”.<sup>100</sup>

### 3. Agreement on Government Procurement

Article II of the Agreement on Government Procurement provides:

“1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, the Parties shall provide immediately and unconditionally to the products and suppliers of other Parties offering products originating within the customs territories (including free zones) of the Parties, treatment no less favourable than: ...

“(b) that accorded to products and suppliers of any other Party.

<sup>94</sup>MTN.GNG/NG8/W/2, dated 4 May 1987.

<sup>95</sup>L/3149.

<sup>96</sup>COM.AD/1.

<sup>97</sup>L/5062.

<sup>98</sup>28S/113.

<sup>99</sup>SCM/20, SCM/M/11, SCM/M/Spec/7.

<sup>100</sup>SCM/71, adopted on 28 April 1992, 39S/436, 447, para. 4.5.

“2. The provisions of paragraph 1 shall not apply to customs duties and charges of any kind imposed on or in connexion with importation, the method of levying such duties and charges, and other import regulations or formalities”.

However, Article III:11 of the same Agreement provides:

“... The Parties may also grant the benefits of this Agreement to suppliers in the least-developed countries which are not Parties, with respect to products originating in those countries”.

#### **D. EXCEPTIONS AND DEROGATIONS**

##### **1. “imports of products for immediate or ultimate consumption in governmental use”**

Article 8 of the US Draft Charter (the most-favoured-nation clause) included within its scope “all matters relating to internal taxation or regulation referred to in Article 9” (the national treatment clause of the US Draft Charter, which included in turn “laws and regulations governing the procurement by governmental agencies of supplies for public use other than by or for the military establishment”). The last sentence of the proposed Article 8 provided: “The principle underlying this paragraph shall also extend to the awarding by Members of governmental contracts for public works, in respect of which each Member shall accord fair and equitable treatment to the commerce of other Members”. At the London session of the Preparatory Committee it was agreed to remove governmental contracts from the scope of the most-favoured-nation and national-treatment clauses.<sup>101</sup> See the material in this Index on Article XVII:2 for a more detailed discussion of this question.

The scope of the exception for government procurement was discussed in the 1952 Panel Report on “Belgian Family Allowances”, which concerned a charge levied on foreign goods purchased by public bodies; the panel found that the charge was an internal charge under Article III:2, and therefore subject to the most-favoured-nation clause of Article I. The Panel Report notes that “As regards the exception provided in paragraph 2 of Article XVII, it would appear that it referred only to the principle set forth in paragraph 1 of that Article, i.e., the obligation to make purchases in accordance with commercial considerations and did not extend to matters dealt with in Article III.”<sup>102</sup>

See also the exceptions for government procurement provided for in Articles III:8(a) and XVII:2 of the General Agreement. See also Articles II and III:11 of the Agreement on Government Procurement.

##### **2. Exceptions and derogations provided in other Articles of the General Agreement**

###### **(1) *Anti-dumping and countervailing duties***

See material under Article VI on the relationship between Article VI and Article I.

###### **(2) *Frontier traffic and customs unions***

See under Article XXIV.

The Report of the Sub-Committee of the Havana Conference which examined Articles 16 and 42 of the Havana Charter (corresponding to Articles I and XXIV of the General Agreement) notes as follows: “The Sub-Committee discussed with the delegate of Italy the latter’s proposal to except the special regime existing between the Republic of Italy and the Republic of San Marino and the State of the Vatican City from the provisions of paragraph 1 of Article 16. The Sub-Committee was of the opinion that the special arrangements existing between Italy and these two territories were not contrary to the Charter”.<sup>103</sup>

<sup>101</sup>London Report, p. 9, Chapter III para. A.1((d)(i); see also EPCT/30.

<sup>102</sup>G/32, adopted on 7 November 1952, 1S/59, 60, para. 4.

<sup>103</sup>Havana Reports, p. 48, para. 11.

### 3. Exceptions and derogations authorized in Protocols of Accession and in Declarations on Provisional Accession

#### (1) *Protocol of Provisional Application*

The Interpretative Note to Article I paragraph 1 was based on a proposal by the United States the object of which was to reserve legislation regarding preferential internal taxes until definitive acceptance of the Agreement.<sup>104</sup>

#### (2) *Protocols of Accession*

##### (a) *General*

Protocols for the Accession to the General Agreement on Tariffs and Trade contain a standard provision according to which the acceding government

“... 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, 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 its legislation existing on the date of this Protocol.

“The obligations incorporated in paragraph 1 of Article I by reference to Article III ... of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.”<sup>105</sup>

##### (b) *Particular contracting parties*

*Argentina* - Preferences accorded to Bolivia, Brazil, Chile, Paraguay, Peru, Uruguay (Declaration on Provisional Accession, para.1(d));<sup>106</sup> however, on acceding under Article XXXIII in 1967 the Government of Argentina advised that tariff preferences were no longer granted, the beneficiaries now being members of the Latin American Free Trade Area.<sup>107</sup>

*Egypt* - Preferences accorded to Jordan, Syria, Iraq, Lebanon, Libya, Saudi Arabia, and Yemen (Declaration on Provisional Accession and Protocol of Accession); however, see under Article I:3 above at page 44.<sup>108</sup>

*Germany* - Provision in Decision on Accession that “notwithstanding the provisions of Article I ... the accession of the Government of the Federal Republic of Germany will not require any modification in the present arrangements for, or status of, intra-German trade in goods originating within Germany.”<sup>109</sup>

*Hungary* - Maintenance of existing trading relations with the countries enumerated in Annex A to its protocol of accession.<sup>110</sup> In a communication dated 5 May 1977, Hungary stated that, with effect from 1 July 1977, it would add the Republic of Cuba to the list of countries enumerated in Annex A, while respecting the obligations that it had entered into as set forth in the relevant paragraphs of the Protocol.<sup>111</sup>

<sup>104</sup>Proposal at EPCT/W/343; discussion at EPCT/TAC/PV/9, EPCT/TAC/PV/10, EPCT/TAC/PV/26, p. 9-11 (referring to preferential internal tax on processing of coconut oil from the Philippines, later notified as measure under the Protocol of Provisional Application; see L/309/Add.2).

<sup>105</sup>E.g. paragraphs 1 in the Protocols for the Accession of Bolivia (L/6562), Costa Rica (L/6626), El Salvador (L/6795), Tunisia (L/6656), Venezuela (L/6717), 37S/5, 7, 27, 41, 72.

<sup>106</sup>9S/12.

<sup>107</sup>15S/99, para. 18.

<sup>108</sup>11S/47, 11S/76, 17S/2.

<sup>109</sup>II/34.

<sup>110</sup>20S/3, para. 3.

<sup>111</sup>24S/4.

*Japan* - Provision that “so long as the status of any island referred to in Article 3 of the Treaty of Peace with Japan, of 8 September 1951, remains provisional under the terms of that treaty, the provisions of the General Agreement shall neither apply to such island nor require the modification of such treatment as is presently accorded by Japan to such island”.<sup>112</sup>

*Portugal* - maintenance of preferential treatment between customs territories in respect of which Portugal applies the General Agreement, provided that duties and other restrictive regulations of commerce are eliminated on substantially all such trade.<sup>113</sup>

*Spain* - Maintenance of preferential treatment of trade between customs territories listed in Annex B of accession protocol, provided that such trade is duty-free.<sup>114</sup>

*Uruguay* - Preferences accorded to Paraguay (Annex Protocol, para. 1(d));<sup>115</sup> These preferences terminated as of 31 December 1961 when the Uruguayan-Paraguay Treaty was terminated.<sup>116</sup>

#### 4. Waivers granted under the provisions of paragraph 5 of Article XXV

A table under Article XXV lists all waiver decisions by the CONTRACTING PARTIES. See also the discussion under Article XXV:5 concerning procedures for waivers to Article I.

##### (1) *Decision on “Generalized System of Preferences” of 25 June 1971*

This Decision<sup>117</sup> waived the provisions of Article I for a period of ten years. Although it did not refer to paragraph 5 of Article XXV, this Decision was made on the basis of a Communication from the prospective preference-giving contracting parties (C/W/178) applying for a waiver in accordance with Article XXV:5. In the Council discussion regarding this Decision, it was pointed out that

- (i) the waiver made possible the implementation of a system of generalized non-reciprocal and non-discriminatory preferences as agreed at the Second UNCTAD (1968);
- (ii) the waiver did not specify the determination of the beneficiary countries and covered general guidelines for a decision on beneficiary countries presented by preference-giving countries in the UNCTAD, “according to which donor countries would in general base themselves on the principle of self-election”;
- (iii) the waiver is without prejudice to any Article of the General Agreement other than Article I; rights under Article XXIII are fully preserved;
- (iv) an amendment proposed to add the word “developed” in operative paragraph (a) of the waiver so as to permit preferences to developing countries “without according such treatment to like products of other *developed* contracting parties ...” was not accepted.<sup>118</sup>

The 1971 waiver was not renewed in the light of the Decision of 28 November 1979 on “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries” (“Enabling Clause”), which authorizes “preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences”. See section 0 below.

The 1972 Working Party Report on the “Danish Temporary Import Surcharge” provides that “Without prejudice to the legal issues involved, the Working Party noted that as from the introduction of the Danish general preference scheme on 1 January 1972, products included in that scheme would be exempted from the surcharge

<sup>112</sup>4S/7, para. 1(d).

<sup>113</sup>11S/20, 21, para. 3.

<sup>114</sup>12S/27, 28, paras. 3-4.

<sup>115</sup>1/79.

<sup>116</sup>L/1845.

<sup>117</sup>L/3545, 18S/24.

<sup>118</sup>C/M/69.

when imported from members of the Group of Seventy-Seven. Several members of the Working Party welcomed this decision of the Danish Government noting that this had been one of the recommendations of the Group of Three. Other members expressed concern that the exemption did not extend to all developing countries. Some other members said that the discrimination created by these exemptions gave their delegations cause for concern".<sup>119</sup>

**(2) Decision on "Trade negotiations among developing countries" of 26 November 1971**

This Decision<sup>120</sup> waived Article I:1 to the extent necessary to permit each contracting party participating in the arrangements set out in the Protocol relating to Trade Negotiations among Developing Countries<sup>121</sup> to accord preferential treatment as provided in the Protocol with respect to products

originating in other parties to the Protocol. While the Decision contains no reference to paragraph 5 of Article XXV, the Chairman of the CONTRACTING PARTIES noted that there was no formal request for a ballot and therefore concluded that the conditions for the grant of a waiver under paragraph 5 of Article XXV had been met and that the Decision had been adopted in accordance with the requirements of that paragraph.<sup>122</sup>

The Chairman of the Contact Group put on record a statement by the countries participating in the negotiations that the Protocol would be open for accession to all developing countries and that, according to the participating countries, paragraph 14 of the Protocol would enable them to give, on a case by case basis, sympathetic consideration to a request from a least developed among developing countries to accede to the Protocol without negotiations; and secondly, that the Committee of Participating Countries to be established under paragraph 4 of the Protocol would study, examine and consider, on a case by case basis, the question of accession of developing dependent territories as and when a request for accession was received from any developing dependent territory.<sup>123</sup>

In reply to a question, the Director-General explained that a waiver from the provisions of paragraph 1 of Article I related solely to the obligation to grant most-favoured-nation treatment in respect of the matters expressly referred to in that paragraph and in respect of which there was no obligation under other provisions of the General Agreement to grant non-discriminatory or most-favoured-nation treatment. It was clear from the text of paragraph (a) of the Decision that the stipulations contained in other provisions of the General Agreement were not affected.<sup>124</sup> The representative of India stated that the States which had participated in the negotiations had taken note of the statement by the Director-General and would consult with the CONTRACTING PARTIES if they needed any further legal coverage.

**GSP Schemes Notified to the GATT 1947**

|                      |                                                                                                    |
|----------------------|----------------------------------------------------------------------------------------------------|
| Australia            | L/3982+Adds., L/7205+Adds.                                                                         |
| Canada               | L/4027+Adds.                                                                                       |
| Hungary              | L/4106+Adds.                                                                                       |
| Japan                | L/3559; L/3691; L/3876; L/4397; L/4531+Adds.; L/7035                                               |
| New Zealand          | L/3693; L/4366+Adds.                                                                               |
| Norway               | L/3570; L/4242+Adds.; L/7042+Adds.                                                                 |
| Switzerland          | L/3667; L/4020+Adds.                                                                               |
| United States        | L/4299+Adds.; L/5153+Adds.; L/7072+Adds.                                                           |
| European Communities | L/3550; L/3671; L/3954; L/4000; L/4161; L/4282; L/4468; L/4624; L/4804+Adds.; L/5116+Adds.; L/7376 |

\* GSP schemes that have been replaced by the EC's due to accession to the EC, or where the contracting party no longer exists (Czechoslovak Republic) do not appear. See earlier editions of this work for document references.

<sup>119</sup>L/3648, adopted on 12 January 1972, 19S/120, 126, 129 (identical text in paras. 22 and 41).

<sup>120</sup>18S/26.

<sup>121</sup>L/3643 and Add.1, 18S/11.

<sup>122</sup>SR.27/12.

<sup>123</sup>SR.27/6.

<sup>124</sup>SR.27/12.

The Protocol relating to Trade Negotiations among Developing Countries entered into force 11 February 1973.<sup>125</sup> As of June 1993, the Protocol had been ratified by fifteen developing countries: Bangladesh, Brazil, Chile, Egypt, India, Israel, Mexico, Pakistan, Peru, Republic of Korea, Romania, Tunisia, Turkey, Uruguay and Yugoslavia; Paraguay had signed the Protocol *ad referendum* and the Philippines had signed but not ratified the Protocol.<sup>126</sup> India withdrew from the Protocol effective 29 March 1993.<sup>127</sup>

Referring to the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause") referred to below, the Committee of Participating Countries stated in its Seventh Annual Report to the CONTRACTING PARTIES: "There is thus a standing legal basis resulting from the Tokyo Round for the Protocol Relating to Trade Negotiations Among Developing Countries".<sup>128</sup> The annual reports of the Committee have stated: "The Protocol is applied under the provisions of the Enabling Clause, and in particular under the terms of its paragraph 2(c)".<sup>129</sup> See also the references to preferential arrangements under the Enabling Clause, below at page 57.

**(3) Waivers granted to individual contracting parties**

See the table of waivers under Article XXV:5.

**5. Preferential arrangements authorized by Decisions of the CONTRACTING PARTIES without reference to paragraph 5 of Article XXV**

**(1) First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)**

The Decision of 14 March 1978 on "First Agreement on Trade Negotiations Among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)"<sup>130</sup> was drafted by the Working Party which examined the provisions of this agreement, concluded between Bangladesh, India, Laos, Philippines, Republic of Korea, Sri Lanka and Thailand. The Report of the Working Party records that the spokesman for the parties to the Agreement stated

"that Articles I, XXIV and XXXVII of the General Agreement all had equal force. In the Bangkok Agreement, the participating States were fulfilling the commitments and undertakings accepted by developing contracting parties in Part IV of the General Agreement in a manner which was consistent with their individual development, financial and trade needs ..".

In the view of the participating States, a waiver of GATT obligations under Article XXV of the General Agreement was not necessary for the implementation of the Bangkok Agreement.<sup>131</sup> In the view of the other members of the Working Party

"the Bangkok Agreement which was not aimed at the establishment of a customs union or a free-trade area in accordance with Article XXIV of the General Agreement, introduced an element of discrimination against traditional suppliers in a way which could affect their trade. As, in their view, the Bangkok Agreement was not covered by Article I of the General Agreement and Part IV did not override other Parts of the General Agreement, a waiver or other appropriate decision by the CONTRACTING PARTIES seemed called for in this case".<sup>132</sup>

<sup>125</sup>Status of Legal Instruments, p. 15-1.1.

<sup>126</sup>See also Decisions on Accession to the Protocol by Bangladesh, 23S/157 (entry into force: 29 March 1977); Paraguay, 23S/154 (not yet in force); Romania, 25S/174 (entry into force: 15 September 1978). See also annual reports of the Committee of Participating Countries at 21S/126, 22S/73, 23S/147, 24S/154, 25S/163, 26S/337, 27S/172, 28S/129, 29S/155, 30S/203, 31S/291, 32S/191, 33S/224, 34S/218, 35S/409, 36S/475, 37S/325, 38S/114.

<sup>127</sup>Let/1790, dated 15 October 1992.

<sup>128</sup>27S/172.

<sup>129</sup>See, e.g., L/7106, CPC/W/161.

<sup>130</sup>25S/6.

<sup>131</sup>L/4635, adopted 14 March 1978, 25S/109, III, para. 7.

<sup>132</sup>*Ibid.*, 25S/110-III, para. 5.

The US delegate “stated his delegation’s understanding that the draft Decision was intended to meet the waiver requirements of Article XXV:5”.<sup>133</sup>

The Report of the Working Party states: “It was understood that the Agreement would in no way be considered as affecting the legal rights of contracting parties under the General Agreement”.<sup>134</sup>

The Standing Committee of the Bangkok Agreement has submitted biennial reports to the Committee on Trade and Development “having regard to paragraph 2(c) of the CONTRACTING PARTIES Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”.<sup>135</sup> See also the references to preferential arrangements under the Enabling Clause, below at page 57.

(2) *Agreement on the Association of South-East Asian Nations (ASEAN) Preferential Trading Arrangements*

The Decision of 29 January 1979 on “Agreement on ASEAN Preferential Trading Arrangements”<sup>136</sup> was drafted by a Working Party which examined the provisions of this Agreement between Indonesia, Malaysia, the Philippines, Singapore and Thailand. The Report of the Working Party notes that the parties to the Agreement were not claiming that it constituted a free-trade area or an interim agreement leading to the formation of a free-trade area, and also provides:

“A number of members of the Working Party stated their belief that some form of GATT cover should be provided for the Agreement, since in their view it was not fully consistent with the provisions of the General Agreement. While some of these members believed that an Article XXV:5 waiver would be most appropriate, they were prepared to recommend a decision by the CONTRACTING PARTIES. The spokesman for the parties to the Agreement stated that in the view of the ASEAN countries, the Agreement followed the letter and spirit of the provisions of the General Agreement, especially those in Part IV. However, in the light of a previous developments in GATT with regard to the examination of economic groupings among developing countries, the ASEAN countries would be prepared to accept a decision”.<sup>137</sup>

“The United States delegate stated his delegation’s understanding that the Draft Decision was intended to meet the waiver requirements of Article XXV:5 ... It was also understood that the Agreement would in no way be considered as affecting the legal rights of contracting parties under the General Agreement”.<sup>138</sup>

Reports on trade co-operation among ASEAN member states have been submitted and examined under the Enabling Clause; see also the references at page 57 below to preferential arrangements between developing countries under the Enabling Clause.<sup>139</sup> The ASEAN Common Effective Preferential Tariff Scheme (CEPT) and Framework Agreement on Enhancing ASEAN Economic Cooperation were notified under the Enabling Clause (see page 57).

(3) *Trade Expansion and Economic Co-operation Agreement*

A Decision of 14 November 1968 on the “Trade Arrangement between India, the United Arab Republic and Yugoslavia” provided that the three participating contracting parties may implement the Trade Expansion and Economic Co-operation Agreement between them notwithstanding the provisions of Article I:1, subject to certain

<sup>133</sup>*Ibid.* 25S/113, para. 18.

<sup>134</sup>Para. 21.

<sup>135</sup>L/5243 and COM.TD/112; report and review in 1990, L/6718 and L/6744. Report to the Committee on Trade and Development in 1982 and Committee review,

<sup>136</sup>L/4768, 26S/224.

<sup>137</sup>L/4735, 26S/321, 326, para. 19.

<sup>138</sup>*Ibid.*, paras. 21, 23.

<sup>139</sup>The most recent such report is L/7111.

conditions and procedures including a review at the Twenty-sixth Session.<sup>140</sup> This Decision was renewed successively through 1983.<sup>141</sup>

The Report of the Working Party in 1968 which examined this agreement and drafted the Decision notes that several representatives considered that “Part IV ... did not override the obligations of other parts of the General Agreement. In their view the Tripartite Agreement was inconsistent with the basic most-favoured-nation provision of Article I of GATT and accordingly some decision of the CONTRACTING PARTIES was required”.<sup>142</sup> The US representative said “that in the view of his Government the draft decision ... was intended to meet the requirements of Article XXV:5 of the General Agreement”.<sup>143</sup> “The representatives of the three countries reiterated that the Agreement was in pursuance of their obligations under Part IV and consistent with the spirit of the General Agreement”.<sup>144</sup>

The different views on the compatibility of the Agreement with the General Agreement were maintained in the Working Party which carried out the review of this Decision<sup>145</sup> and in a 1973 Working Party reviewing the renewal Decision of 1970, in which several members stated that “in their view the Agreement was in full conformity with the provisions and spirit of the General Agreement, in particular Article XXXVII. ... The representative of the participating States ... could not agree that the Tripartite Agreement was inconsistent with the GATT even though it involved a departure from Article I”.<sup>146</sup>

See also the references to preferential agreements under the “Enabling Clause” below at page 57.

## 6. Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (“Enabling Clause”)

The Decision of the CONTRACTING PARTIES of 28 November 1979<sup>147</sup>, insofar as it provides for departures from Article I of the General Agreement, provides as follows.

“1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries<sup>1</sup>, without according such treatment to other contracting parties.

“2. The provisions of paragraph 1 apply to the following:<sup>2</sup>

“(a) Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences,<sup>3</sup>

“(b) Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT;

“(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another;

“(d) Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.

<sup>140</sup>16S/17.

<sup>141</sup>Decision of 20 February 1970, 17S/21, expiry 31 March 1973; extended by Decision of 22 March 1973, 20S/23, until the 29th Session; Decision of 13 November 1973, 20S/23, expiry 31 March 1978; Decision of 14 March 1978, 25S/8, expiry 31 March 1983.

<sup>142</sup>L/3032, adopted on 14 November 1968, 16S/83, 87, para. 12.

<sup>143</sup>*Ibid.*, 16S/88, para. 16.

<sup>144</sup>*Ibid.*, 16S/87, para. 13.

<sup>145</sup>L/3341, adopted on 13 February 1970, 17S/138, 143, para. 14.

<sup>146</sup>L/3950, adopted on 7 November 1973, 20S/224, 227-228, paras. 12-13.

<sup>147</sup>26S/203.

“3. Any differential and more favourable treatment provided under this clause:

“(a) shall be designed to facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties;

“(b) shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on a most-favoured-nation basis;

“(c) shall in the case of such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries.

“4. Any contracting party taking action to introduce an arrangement pursuant to paragraphs 1, 2 and 3 above or subsequently taking action to introduce modification or withdrawal of the differential and more favourable treatment so provided shall:<sup>4</sup>

“(a) notify the CONTRACTING PARTIES and furnish them with all the information they may deem appropriate relating to such action;

“(b) afford adequate opportunity for prompt consultations at the request of any interested contracting party with respect to any difficulty or matter that may arise. The CONTRACTING PARTIES shall, if requested to do so by such contracting party, consult with all contracting parties concerned with respect to the matter with a view to reaching solutions satisfactory to all such contracting parties”.

The footnotes 1 - 4 state:

<sup>1</sup>The words ‘developing countries’ as used in this text are to be understood to refer also to developing territories.

<sup>2</sup>It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph.

<sup>3</sup>As described in the Decision of the CONTRACTING PARTIES of 25 June 1971, relating to the establishment of ‘generalized non-reciprocal and non-discriminatory preferences beneficial to the developing countries’ (BISD 18S/24).

<sup>4</sup>Nothing in these provisions shall affect the rights of contracting parties under the General Agreement”.

(1) *Scope*

The Report of the Working Party on “United States Caribbean Basin Economic Recovery Act (CBERA)” notes that at “the request of the Working Party, the representative of the secretariat described the secretariat’s understanding of the meaning of footnote 2 of paragraph 2 of the Enabling Clause. In brief, the Enabling Clause provided authority or cover only for the kinds of preferential treatment described therein. Footnote 2 of paragraph 2 of the Enabling Clause recognized that there could be other situations involving preferential treatment not falling within the scope of paragraph 2 which the CONTRACTING PARTIES might wish to cover under the GATT provisions for joint action. The provisions in question could not be those of Part IV, including Article XXXVIII thereof, as these did not provide authority for preferential treatment. The joint action envisaged had to be in terms of paragraph 5 of Article XXV irrespective of whether this was specifically mentioned or not”.<sup>148</sup>

<sup>148</sup>L/5708, adopted on 6-8 and 20 November 1984, 31S/180, 189-190, para. 31.

Regarding the application of the Enabling Clause to preferences extended to least-developed countries and not to less-developed countries generally, see the material from the Panel Report on “United States - Customs User Fee” above at page 32.

The 1990 Report of the Working Party on “Accession of Tunisia” records the request of a member, referring to Tunisia’s preferential agreements, for “information on the meaning and method of implementation of the ‘principle of priority supply’, in the context of non-tariff import trade preferences ... The representative of Tunisia said that the principle of priority supply which appeared in certain trade agreements with the Maghreb and Arab countries was not a specific trade measure but rather a political and moral commitment to seek to increase their mutual trade. In his view, the principle of priority supply was in conformity with Part IV of the General Agreement and paragraph 2(c) of the Enabling Clause Decision of November 1979 which had authorized developing countries to exchange tariff and non-tariff measure preferences in the context of regional or global arrangements”.<sup>149</sup>

The 1992 Panel Report on “United States - Denial of Most-favoured-nation Treatment as to Non-rubber Footwear from Brazil” examined arguments of Brazil concerning the scope of the exception to Article I under the Enabling Clause, and its application to Section 331 of the Tariff Act of 1930, which provided certain treatment in the case of revocation of countervailing duty orders:

“... the United States accords duty-free status under a variety of laws only to products of a particular origin, the most important being the law establishing the GSP. The GSP programme of the United States, both in its nature and in its design, accords duty-free status to only certain products originating in only certain developing countries. The Panel noted that, together with the grant of a tariff advantage to the designated beneficiary countries under this programme, Section 331 of the Trade Act of 1974 accords a *non-tariff advantage* to the same beneficiary countries in the form of the automatic backdating of countervailing duty revocation orders. The Panel considered that the grant of this non-tariff advantage under Section 331 of the 1974 Act to duty-free products originating in a country beneficiary of the GSP programme, which advantage is denied to dutiable products originating in the territory of a Subsidies Agreement signatory, is inconsistent with the most-favoured-nation provision of Article I:1 of the General Agreement.

“The Panel then examined whether the CONTRACTING PARTIES had taken any action which would permit the United States to accord the non-tariff advantage of Section 331 of the Trade Act of 1974 to duty-free products emanating from countries beneficiaries of the GSP programme, without unconditionally and immediately according this same advantage to dutiable products originating in the territories of signatories of the Subsidies Agreement. In this regard, the Panel noted that ... the ‘Enabling Clause’ permits, in paragraph 2(a) thereof, ‘preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the Generalized System of Preferences ...’, notwithstanding the provisions of Article I. It was clear that the Enabling Clause expressly limits the preferential treatment accorded by developed contracting parties in favour of developing contracting parties under the Generalized System of Preferences to tariff preferences only.

“The Panel referred in this context to a discussion of this issue by an earlier panel concerned with the customs user fee of the United States.<sup>150</sup> The panel in that case considered the claim that exemption from a merchandise processing fee granted to the beneficiaries of the Caribbean Basin Economic Recovery Act was not authorized by the waiver granting the United States authority to extend duty-free treatment to these beneficiaries, and that it was also not authorized by the Enabling Clause. That panel noted that no answer in opposition to this legal claim was given and that it was not aware of any that could be given. However, in view of the fact that this claim was raised by third parties and not by the parties to the dispute, this earlier panel did not consider it appropriate to make a formal finding on the issue.

“Accordingly, the Panel found that there is no decision of the CONTRACTING PARTIES justifying the given inconsistency with Article I:1 of the non-tariff advantage accorded to duty-free products originating in

<sup>149</sup>L/6277, adopted on 12 December 1990, 37S/30, 39, para. 33.

<sup>150</sup>The footnote to this sentence refers to the Panel report on “United States - Customs User Fee,” adopted on 2 February 1988, BISD 35S/245, 290.

countries beneficiaries of the United States GSP programme in the backdating of the effect of the revocation of countervailing duty orders".<sup>151</sup>

## (2) *Preference schemes*

The 1980 Report of the Committee on Trade and Development refers to a statement from a representative of a developing country that the preferential treatment of certain textile imports under the European Communities' GSP scheme for 1980 had not been extended to all beneficiaries of the Communities' GSP scheme and amounted to discrimination inconsistent with the spirit of the GSP. The representative of the European Communities replied that in view of the increasingly serious difficulties in the textiles sector, the Communities had to limit their zero duty treatment for textile imports under the GSP to countries which were either a signatory of the MFA or had entered into a commitment to abide by obligations similar to those under that Arrangement.<sup>152</sup>

The July 1992 session of the Committee on Trade and Development discussed the issue of extension of GSP treatment to East European countries and republics of the former USSR; however, no consensus has yet been reached on this issue.<sup>153</sup>

See also the section on "graduation" below.

Concerning the Lomé Convention, see Article XXIV.

## (3) *Preferential arrangements notified under the Enabling Clause*

When an agreement is notified under the Enabling Clause, it is inscribed on the agenda of the Committee on Trade and Development (CTD). Subsequent actions of the CTD may include "noting" the agreement, requesting additional information, establishing a working party and adopting its reports, and reviewing reports made by members on developments under the agreement. The following trade arrangements had been notified under the Enabling Clause as of March 1994:

- 1971 Protocol relating to Trade Negotiations among Developing Countries<sup>154</sup>
- 1980 Montevideo Treaty establishing the Latin American Integration Association (ALADI)<sup>155</sup>
  - ALADI bilateral economic complementarity agreements<sup>156</sup>
  - Southern Common Market Agreement (MERCOSUR)<sup>157</sup>
- Association of South-East Asian Nations (ASEAN)
  - Asian Trade Expansion Programme (1975 Bangkok Agreement)<sup>158</sup>

<sup>151</sup>DS18/R, adopted on 19 June 1992, 39S/128, 152-153, paras. 6.14-6.17.

<sup>152</sup>L/5074, adopted 26 November 1980, 27S/48, 51, paras. 10-11.

<sup>153</sup>COM.TD/132, L/7124.

<sup>154</sup>See Seventh Report of the Committee at 27S/172; activities in framework of Protocol are annually reviewed by CTD. See further at page 51 above.

<sup>155</sup>Successor to the 1960 Montevideo Treaty for the establishment of LAFTA. Members: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Notification in 1982 (L/5342, C/M/144) reviewed by CTD (COM.TD/112); reports in 1984 (L/5859) reviewed by CTD (COM.TD/118); 1985 (COM.TD/W/423) reviewed by CTD (COM.TD/120); 1987 (L/6158+Add.1) supplemented in 1988 (L/6158/Add.1, COM.TD/W/469) reviewed by CTD in 1987, 1988, 1989 (COM.TD/126, L/6241, L/6418, COM.TD/129); 1989 (L/6531, reviewed by CTD (L/6605); 1991 (L/6946).

<sup>156</sup>L/5689, L/6158+Add.1, COM.TD/W/469, L/6531, L/6946, discussed at COM.TD/127, COM.TD/128, L/6418 (35S/31, 34).

<sup>157</sup>Members: Argentina, Brazil, Paraguay and Uruguay. Notified 1992, L/6985+Add.1, L/7044; see also COM.TD/W/496, COM.TD/W/497. Working party established on 28 May 1993 under the Committee on Trade and Development: terms of reference at L/7373, circulation of text in L/7370 and L/7370/Add.1, notification of implementation of common external tariff from 1 January 1995 in L/7615, questions and replies in L/7540.

<sup>158</sup>Authorized initially through Decision of 14 March 1978; reports submitted under Enabling Clause in 1982 (L/5243) reviewed by CTD (COM.TD/112); 1990 (L/6718) reviewed by CTD (L/6744, 37S/76).

- 1978 Agreement on ASEAN Preferential Trading Arrangements<sup>159</sup>
- Common Effective Preferential Tariff Scheme (CEPT) for the ASEAN Free Trade Area and Framework Agreement on Enhancing ASEAN Economic Cooperation<sup>160</sup>
- 1980 South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)<sup>161</sup>
- 1982 Unified Economic Agreement among member states of the Gulf Cooperation Council<sup>162</sup>
- 1987 Cartagena Agreement (Andean Group) on sub-regional trade liberalization and adoption of a common external tariff<sup>163</sup>
- 1989 Global System of Trade Preferences Among Developing Countries (GSTP)<sup>164</sup>
- 1991 Trade Agreement between Thailand and the Lao People's Democratic Republic<sup>165</sup>
- 1991 Additional Protocol on Preferential Tariffs negotiated among members of the Organization for Economic Cooperation<sup>166</sup>

In addition, as noted above, the Protocol relating to Trade Negotiations among Developing Countries and the 1967 Trade Expansion and Co-operation Agreement ("Tripartite Agreement") between Egypt, India and Yugoslavia, both of which predated the Enabling Clause, have since 1979 been treated as having a basis in the Enabling Clause.

The 1989 Report of the Committee on Trade and Development records that in response to a question in the Committee on Trade and Development regarding whether the CONTRACTING PARTIES were expected to approve the GSTP, which had been notified under the Enabling Clause,

"a representative of the Secretariat said that the Committee has not established detailed procedures for the examination of arrangements which were notified under the Enabling Clause. The Committee was given from the CONTRACTING PARTIES in 1980 the responsibility for supervising the operation of the Enabling Clause. Under this mandate the Committee had so far received a limited number of notifications on arrangements concluded in accordance with paragraph 2(c) of the Enabling Clause. The practice of the Committee so far had been to take note of these arrangements after having duly examined them and completed such examination. On that basis the Committee reported statements made in regard

<sup>159</sup>Authorized initially by Decision of 29 January 1979 (L/4768, 26S/224). Members of ASEAN: Indonesia, Malaysia, Philippines, Singapore and Thailand (Brunei Darussalam joined in 1984). Notification under Enabling Clause in 1982 (L/5243), reviewed by CTD (COM.TD/112); report (L/5455) reviewed by CTD (COM.TD/114); notification in 1989 (L/6569) reviewed by CTD (L/6605, 36S/49, 55); 1990 (L/6718) reviewed by CTD (L/6744, 37S/76).

<sup>160</sup>Members: Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand. Notified in L/7111; supplements the 1978 Agreement on ASEAN Preferential Trading Arrangements.

<sup>161</sup>Members: Australia and New Zealand, and Cook Islands, Fiji, Kiribati, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu and Western Samoa; extension to Nauru and Vanuatu by New Zealand notified 1982.. Notified at L/5100, L/5488; Council decision 26 November 1971 to require submission of reports by Australia and New Zealand in accordance with procedure for the examination of biennial reports on regional agreements, C/M/148, p. 12.

<sup>162</sup>Members: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates. See L/5676, L/5735.

<sup>163</sup>Members: Bolivia, Colombia, Ecuador, Peru and Venezuela. The 1987 Cartagena Agreement superseded the 1969 Cartagena Agreement which established the Andean Group, concluded in the context of the 1960 Treaty of Montevideo establishing the Latin American Free Trade Association (LAFTA). In 1988, the Cartagena Agreement became independent as regards aspects relating to the Montevideo Treaty which had expired. The Andean Group originally was composed of Bolivia, Chile, Colombia, Ecuador and Peru. Chile withdrew from the Treaty in October 1976 and Venezuela acceded in 1973. Agreement notified 1990 (L/6737), noted by CTD (L/6744, 37S/76-77); further notification 1991 (L/6841) reviewed by CTD (COM.TD/131); notification 1992 (L/7088, L/7089).

<sup>164</sup>Notified 1989 (L/6564+ Add.1); reviewed by CTD in 1989 (L/6605, 36S/55-58, paras. 22-28, 30) and 1990 (COM.TD/130).

<sup>165</sup>Notified under Enabling Clause, L/6947.

<sup>166</sup>Members: original: Iran, Pakistan and Turkey; subsequent: Azerbaijan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Notified 1992 (L/7047).

to such arrangements and any action taken in relation to them in its annual reports to the CONTRACTING PARTIES".<sup>167</sup>

During 1992, there were extensive discussions in the Council and the Committee on whether the MERCOSUR Agreement should be notified and examined under the Enabling Clause or under Article XXIV. This agreement was notified under the Enabling Clause and the Committee established a working party with the following terms of reference:

"To examine the Southern Common Market Agreement (MERCOSUR) in the light of the relevant provisions of the Enabling Clause and of the General Agreement, including Article XXIV and to transmit a report and recommendations to the Committee for submission to the CONTRACTING PARTIES, with a copy of the report transmitted as well to the Council. The examination in the Working Party will be based on a complete notification and on written questions and answers."<sup>168</sup>

#### (4) "Graduation"

The question of the compatibility of "graduation" with the Enabling Clause was discussed in 1981-82 in the Committee on Trade and Development and the Council.<sup>169</sup>

At the Fifty-eighth Session of the Committee on Trade and Development, one representative stated that in the view of her authorities "the Enabling Clause had provided a useful mechanism for permitting temporary departures from the most-favoured-nation principle, and this had been achieved with a minimum of damage to the integrity of the General Agreement. However, this would continue to be the case only if the use of preferential treatment was gradually phased out. Contracting parties should give high priority to ensuring a timely transition to fuller participation in the framework of rights and obligations under the General Agreement. The Enabling Clause provided the legal basis for GSP programmes and the GSP had offered an opportunity for developing countries to expand and diversify their exports to the developed countries. ... She said that the guidelines provided in paragraph 3 of the Enabling Clause were important, and particularly paragraph 3(c), which indicated that special and differential treatment should be provided on a dynamic basis, taking into account changes in development levels and the development, financial and trade needs of developing countries. ... She noted that paragraph 7 required differentiation between developing countries beyond that envisaged for the least-developed countries. In the light of the economic progress made by some countries there should be a greater degree of differentiation among developing countries in regard to access to preferential treatment and to the degree of reciprocity required in negotiations".<sup>170</sup> "In regard to the provisions of paragraph 7 of the Enabling Clause, some representatives said that this paragraph did not provide the basis for discrimination among developing countries. ... Another representative noted that the decision to participate more fully in the GATT system of obligations was an autonomous decision to be taken in terms of a country's own judgment of its development, trade and financial needs".<sup>171</sup>

During the review of the implementation of Part IV and of the operation of the Enabling Clause at the Sixty-third Session of the Committee on Trade and Development on 19 April 1988, the representative of Brazil stated that "although preferential concessions constituted a unilateral act of the donor country the exclusion of countries from GSP was *per se* a discrimination which was not based on the agreed principles .... some countries were clearly moving away from the observance of the basic principles set out in the Decision of the CONTRACTING PARTIES of 25 June 1971 and of 28 November 1979 concerning the granting of preferential treatment to products originating in developing countries. ... developed contracting parties acting individually had been authorized to grant such a preferential treatment provided that the corresponding schemes were of a generalized, non-discriminatory and non-reciprocal nature. The fact that such schemes were of a voluntary character and did not constitute a binding obligation for the preference-giving countries did not in his view give

<sup>167</sup>L/6605, adopted 4 December 1989, 36S/49, 57, para. 25.

<sup>168</sup>L/7029 (request); L/7373 (WP terms of reference) see Council discussion in C/M/202, C/M/223, C/M/226, C/M/247, C/M/249, C/M/254, C/M/255, C/M/258, C/M/259, C/M/260; see discussion in Committee on Trade and Development, COM.TD/132, L/7124; SR.48. See also documents listed under MERCOSUR above.

<sup>169</sup>C/M/152.

<sup>170</sup>L/5913, adopted 28 November 1985, 32S/21, 32-33, para. 34.

<sup>171</sup>*Ibid.*, 32S/33, para. 36.

them the right to ignore the legal framework under which they had been authorized to implement such schemes".<sup>172</sup>

See also above under "Preference schemes".

### 7. Coexistence of the GATT 1947 and the WTO Agreement

On 8 December 1994, the Preparatory Committee for the WTO, meeting on the occasion of the Implementation Conference, adopted a Decision on "Coexistence of the General Agreement on Tariffs and Trade 1947 and the World Trade Organization". The CONTRACTING PARTIES meeting in Special Session on the same date also adopted this decision, which provides *inter alia*:

"The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade (hereinafter referred to as 'GATT 1947'),

*"Noting* that not all contracting parties to the GATT 1947 meeting the conditions for original membership in the World Trade Organization ... will be able to accept the Marrakesh Agreement Establishing the WTO ... as of its date of entry into force, and that the stability of multilateral trade relations would therefore be furthered if the GATT 1947 and the WTO Agreement were to co-exist for a limited period of time;

*"Considering* that, during that period of co-existence, a contracting party which has become a Member of the WTO should not be under a legal obligation to extend the benefits accruing solely under the WTO Agreement to contracting parties that have not yet become WTO Members and should have the right to act in accordance with the WTO Agreement notwithstanding its obligations under the GATT 1947; ...

*"Decide as follows:*

"1. The contracting parties that are Members of the WTO may, notwithstanding the provisions of the GATT 1947,

"(a) accord to products originating in or destined for a Member of the WTO the benefits to be accorded to such products solely as a result of concessions, commitments or other obligations assumed under the WTO Agreement without according such benefits to products originating in or destined for a contracting party that has not yet become a Member of the WTO; and

"(b) maintain or adopt any measure consistent with the provisions of the WTO Agreement."<sup>173</sup>

Concerning the transition to the WTO, see further in the chapter on Institutions and Procedure.

### III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Article I of the General Agreement corresponds to Article 16 of the Havana Charter, Article 8 of the US Draft, Article 14 in the London and New York Drafts, and Article 16 in the Geneva Draft Charter. Paragraph 1 is modelled on the standard League of Nations most-favoured-nation clause.<sup>174</sup> References to

<sup>172</sup>COM.TD/127, p. 5.

<sup>173</sup>PC/12, L/7583, preamble and para. 1.

<sup>174</sup>London Report, p. 9. See also EPCT/C.II/W/10 (Note by the Preparatory Committee Secretariat comparing the League of Nations clause with Article 8:1 of the US Draft Charter).

“international transfer of payments” and “internal taxes” were introduced into the standard clause by the United States in the US Draft.<sup>175</sup>

Article 8 of the US Draft Charter included both a general most-favoured-nation clause and an exemption therefrom of certain preferences in the rate of ordinary import customs duties. The margin of preference could not be increased above the level existing on 1 July 1946, and would be subject to negotiations for its elimination.<sup>176</sup> The London Draft Charter provided an m.f.n. exemption for (1) preferences in force exclusively between territories in respect of which there existed on 1 July 1939 common sovereignty or relations of protection or suzerainty; (2) Imperial preferences; (3) U.S.-Cuban preferences; and (4) preferences in force on 1 July 1946 exclusively between neighbouring countries. The margin of preference could not exceed the level remaining after negotiations which were to be conducted to reduce tariffs and preferences. All negotiated reductions in m.f.n. tariffs would operate automatically to reduce or eliminate margins of preference.<sup>177</sup> The Geneva Draft Charter limited the maximum margin of preference to the maximum margin permitted under the General Agreement, or, if not thus provided for, the margin existing on 10 April 1947 or any earlier base date established for GATT negotiations; it was at this point that the Annexes took the form that they have in the General Agreement.<sup>178</sup> At Havana, the Charter was amended to provide for additional groups of preferences; these preferences appear in the Havana Charter but were not as such taken into the General Agreement.<sup>179</sup>

Paragraph 4 is more precise than the corresponding Havana Charter paragraph (Article 16:4) as it had to cover all the cases resulting from the tariff negotiations.<sup>180</sup> Also, the word “margins” is used in paragraph 2 of the Charter Article instead of “levels;” the preferences between the United States and the Philippines are set out as a sub-paragraph of paragraph 2 in the Charter, and in the General Agreement are listed in Annex D; and the final paragraphs of Annexes A and D concerning certain preferential internal taxes are included in the Charter as paragraph 5.

Article I has been amended only once, in 1948, through the Protocol Amending Part I and Article XXIX; the amendments (insertion of paragraph 3) are discussed above at page 44. Amendment of Article I was again discussed in the Review Session of 1954-55. A number of amendments were proposed then regarding margins of preference and failed to gain acceptance; see above at page 42. One amendment of substance was agreed, the inclusion in paragraph 1 of a reference to internal taxes applied to exported goods; see page 31 above. In addition, it was agreed to group into one Annex all preferences between neighbouring countries under paragraph 2(d) and to include in it the preferences provided for between Uruguay and Paraguay in the Annex Protocol of Accession, and to delete Annex F since Lebanon and Syria were no longer contracting parties.<sup>181</sup> These amendments were effected through the Protocol Amending Part I and Articles XXIX and XXX, which failed to gain the requisite unanimous acceptance and was abandoned at the end of 1967.<sup>182</sup>

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<sup>175</sup>EPCT/C.II/25, p. 2.

<sup>176</sup>US Draft Charter, Art. 8(2).

<sup>177</sup>London Draft Charter Arts. 14(2), 24(1)(c). See also initial discussion of historical preferences in EPCT/C.II/PRO/PV/5 .

<sup>178</sup>Geneva Draft Charter Article 16.

<sup>179</sup>Preferences between Portugal and Portuguese territories; Colombia, Ecuador and Venezuela; republics of Central America; and Argentina and neighbouring countries. Havana Charter Annexes E, H, I, J.

<sup>180</sup>EPCT/TAC/PV/9, pp. 16-23.

<sup>181</sup>L/329, adopted 26 February 1955, 3S/205, 206-207, para. 5.

<sup>182</sup>15S/65.

**IV. RELEVANT DOCUMENTS***London*

Discussion: EPCT/C.II/7, 25, 27, 41, 65  
 EPCT/C.II/PV/4, 11(a), 12  
 Reports: EPCT/30

*New York*

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*Geneva*

Discussion: EPCT/EC/SR.2/6, 7, 8, 22  
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 EPCT/A/SR.7, 42, 43  
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 24, 26 (p. 9-12), 28, 29  
 Reports: EPCT/135, 158, 174, 178, 189,  
 192, 194, 196, 211, 215, 230  
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 189, 242, 249  
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 147, 149, 159, 162, 287, 312,  
 318, 321, 341, 343

*Havana*

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*Review Session*

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 3S/205  
 Other: GATT/184, 193  
 L/189, 261/Add.1, 270, 272, 274,  
 282  
 W.9/45, 53, 114, 124, 162,  
 217+Corr.1, 236  
 Spec/3/55, 85/55, 94/55