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I. GENERAL

The General Agreement on Tariffs and Trade was negotiated at an intermediate stage of the negotiations in 1946-1948 on the Charter of the International Trade Organization (ITO). The General Agreement has never entered into force, and has been provisionally applied by its contracting parties since 1 January 1948 under the Protocol of Provisional Application and other accession Protocols. Three principal bodies have been involved in the administration of the General Agreement: the CONTRACTING PARTIES, the Council of Representatives, and the Interim Commission for the International Trade Organization. The CONTRACTING PARTIES also established a Committee on Trade and Development, given a special role in administering Part IV of the General Agreement.

The General Agreement does not as such provide for membership in an organization, but instead provides in paragraph 1 of Article XXV that "Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES." The CONTRACTING PARTIES now meet in annual Sessions. Between sessions, business is conducted by the Council of Representatives, established in 1960 as a successor to the Inter-Sessional Committee. The Interim Commission for the International Trade Organization ("ICITO"), established in 1948 to prepare for the entry into force of the ITO Charter, has furnished secretariat services to the CONTRACTING PARTIES.

The Charter of the ITO never entered into force. The Review Session of the CONTRACTING PARTIES held in 1954-55 reached an Agreement on the Organization for Trade Cooperation (OTC) and also concluded a Protocol of Organizational Amendments to the General Agreement. Neither of these instruments entered into force.¹

In the Uruguay Round of multilateral trade negotiations, agreement was reached on the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), which was opened for signature on 15 April 1994 at the Marrakesh Ministerial Meeting concluding the Uruguay Round of multilateral trade negotiations. The WTO Agreement entered into force on 1 January 1995. On 8 December 1994, the Preparatory Committee for the WTO meeting on the occasion of the Implementation Conference, and the CONTRACTING PARTIES meeting in Special Session, each decided that "The legal instruments through which the contracting parties apply the GATT 1947 are herewith terminated one year after the date of entry into force of the WTO

¹The time-limit for signature of the Protocol of Organizational Amendments to the General Agreement expired on 7 April 1966; the Agreement on the Organization for Trade Cooperation did not receive the requisite number of acceptances for entry into force.

Agreement. In the light of unforeseen circumstances, the CONTRACTING PARTIES may decide to postpone the date of termination by no more than one year.² Accordingly, the provisional application of the General Agreement on Tariffs and Trade (1947) will terminate on 31 December 1995 unless thus extended. Application of the GATT 1994 will continue, but solely within the framework of the WTO Agreement.

II. TRANSITION TO THE WTO

A. PREPARATORY COMMITTEE FOR THE WTO

The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations provided in its paragraph 3 that "... Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declaration, to decide on the international implementation of the results, including the timing of their entry into force."³ The WTO Agreement does not provide for any fixed date of entry into force other than the one set at that implementation conference.

A Decision of Ministers also taken at the Marrakesh Ministerial Meeting established a Preparatory Committee for the World Trade Organization and set out its mandate, as follows:⁴

"Ministers,

"*Having regard to* the Agreement Establishing the World Trade Organization ..., and

"*Mindful* of the desirability of ensuring an orderly transition to the WTO and the efficient operation of the WTO as of the date of entry into force,

"hereby *agree* as follows:

"1. A Preparatory Committee for the WTO ... is hereby established. Mr. P.D. Sutherland in his personal capacity is appointed Chairman of the Committee.

"2. The Committee shall be open for membership to all Signatories of the Final Act of the Uruguay Round of Multilateral Trade Negotiations and to any contracting party eligible to become an original member of the WTO in accordance with Article XI of the WTO Agreement.

"3. A Sub-Committee on Budget, Finance and Administration, to be chaired by the Chairman of the GATT CONTRACTING PARTIES and a Sub-Committee on Services responsible for preparatory work on GATS matters are also established. The Committee may establish additional sub-committees as appropriate. Membership of the Sub-Committees shall be open to all members of the Committee. The Committee shall establish its own procedures and those of its sub-committees.

"4. The Committee will make all its decisions by consensus.

"5. Only those members of the Committee that are GATT contracting parties eligible to become original Members of the WTO in accordance with Articles XI and XIV of the WTO Agreement may participate in the decision-making of the Committee.

"6. The Committee and its sub-committees shall be serviced by the GATT Secretariat.

²PC/12, L/7583.

³The Ministerial Declaration on the Uruguay Round, adopted in Punta del Este, Uruguay on 26 September 1986 (Min.Dec., 3S/19), was divided into Part I (Negotiations on Trade in Goods) and Part II (Negotiations on Trade in Services), and final paragraph following Part II, entitled "Implementation of Results under Parts I and II" (33S/28). This final paragraph provided as follows: "When the results of the Multilateral Trade Negotiations in all areas have been established, Ministers meeting also on the occasion of a Special Session of CONTRACTING PARTIES shall decide regarding the international implementation of the respective results".

⁴Decision on the Establishment of the Preparatory Committee for the World Trade Organization, MTN.TNC/45(MIN), Annex IV.

“7. The Committee shall cease to exist upon the entry into force of the WTO Agreement, at which time it will forward its records and recommendations to the WTO.

“8. The Committee shall perform such functions as may be necessary to ensure the efficient operation of the WTO immediately as of the date of its establishment, including the functions set out below:

“(a) *Administrative, budgetary and financial matters:*

“To prepare recommendations for the consideration of the competent body of the WTO, or, to the extent necessary, take decisions or, as appropriate, provisional decisions in advance of the establishment of the WTO, with respect to the recommendations submitted to it by the Chairman of the Sub-Committee on Budget, Finance and Administration referred to in paragraph 3 above, in cooperation with the Chairman of the GATT Committee on Budget, Finance and Administration, assisted by proposals from the Secretariat on:

- “(i) the headquarters agreement provided for in Article VIII:5 of the WTO Agreement;
- “(ii) financial regulations, including guidelines for the assessment of WTO members' budget contributions, in accordance with the criteria set out in Article VII of the WTO Agreement;
- “(iii) the budget estimates for the first year of operation of the WTO;
- “(iv) the transfer of the property, including financial assets, of the ICITO/GATT to the WTO;
- “(v) the transfer and the terms and conditions of the transfer of the GATT staff to the WTO Secretariat; and
- “(vi) the relationship between the International Trade Centre and the WTO.

“(b) *Institutional, procedural and legal matters:*

- “(i) To carry out the examination of and approve the schedules submitted to it in accordance with the ‘Decision on Acceptance of and Accession to the Agreement Establishing the World Trade Organization’ and to propose terms of accession in accordance with paragraph 2 of that Decision;
- “(ii) To make proposals concerning terms of reference for the bodies of the WTO, in particular those established in Article IV of the WTO Agreement, and the rules of procedure which they are called upon to establish for themselves, bearing in mind paragraph 1 of Article XVI;
- “(iii) To make recommendations to the General Council of the WTO concerning the appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement; and
- “(iv) To prepare and submit a report on its activities to the WTO.

“(c) *Matters related to the entry into force of the WTO Agreement and to the activities of the WTO within its scope and functions:*

- “(i) To convene and prepare the Implementation Conference;
- “(ii) To initiate the work programme arising from the Uruguay Round results as set out in the Final Act, such as overseeing, in the Sub-Committee on Services referred to in paragraph 3 above, negotiations in specific services sectors, and also to undertake work resulting from Decisions of the Marrakesh meeting;

- “(iii) To discuss suggestions for the inclusion of additional items on the agenda of the WTO's work programme;
- “(iv) To make proposals concerning the composition of the Textiles Monitoring Body in accordance with the criteria set out in Article 8 of the Agreement on Textiles and Clothing; and
- “(v) To convene the first meeting of the Ministerial Conference or the General Council of the WTO, whichever meets first, and to prepare the provisional agenda thereof.”

In carrying out its task, the Preparatory Committee held 11 meetings during the period 29 April to 21 December 1994. Its Report, the Committee minutes and the minutes of its Sub-Committees are the permanent record of the Committee's work.⁵

B. IMPLEMENTATION CONFERENCE OF 8 DECEMBER 1994

The Implementation Conference was held on 8 December 1994 in Geneva, in conjunction with a Special Session of the CONTRACTING PARTIES.⁶ The Implementation Conference agreed that the WTO Agreement would enter into force on 1 January 1995, provisionally adopted the report of the Preparatory Committee, and adopted a number of decisions drawn up by the Preparatory Committee in pursuance of its mandate. These decisions responded to issues raised during the deliberations of the Preparatory Committee and to the desire to provide a smooth transition between the GATT 1947 and the WTO, including a firm termination date for the GATT 1947; sufficient time for signatories of the Final Act to become Members of the WTO and participants in the legal arrangements therein; and arrangements facilitating stability of legal and institutional relations during the period of simultaneous provisional application of the GATT 1947 and application of the WTO Agreement. The Preparatory Committee finished its work and adopted the final draft of its report on 21 December 1994.

1. Transition to GATT 1994

The WTO Agreement incorporates the General Agreement on Tariffs and Trade 1994, defined in Annex 1A of the WTO Agreement as follows:

“The General Agreement on Tariffs and Trade 1994 (‘GATT 1994’) shall consist of:

“(a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;

“(b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:

- “(i) protocols and certifications relating to tariff concessions;
- “(ii) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);

⁵See documents PC/M/1-11, PC/BFA/M/1-2, PC/IPL/M/1-11, PC/SCS/M/1-6 and PC/SCTE/M/1-5; the documents of the Preparatory Committee and its subsidiary bodies are listed in PC/R/Add.1.

⁶The conference was held at the level of heads of delegation, this having been decided at the Marrakesh Ministerial Meeting; see MTN.TNC/45(MIN).

- “(iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement⁷;
 - “(iv) other decisions of the CONTRACTING PARTIES to GATT 1947;
- “(c) the Understandings set forth below:
- “(i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;
 - “(ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;
 - “(iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;
 - “(iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;
 - “(v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;
 - “(vi) Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994; and
- “(d) the Marrakesh Protocol to GATT 1994. ...”

Article II:4 of the WTO Agreement provides that “The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as ‘GATT 1994’) is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as ‘GATT 1947’).”

2. Decision on Transitional Co-existence of the GATT 1947 and the WTO Agreement

On 8 December 1994, the Preparatory Committee, meeting on the occasion of the Implementation Conference, adopted the following Decision on “Transitional Co-existence of the GATT 1947 and the WTO Agreement”. The CONTRACTING PARTIES meeting in Special Session on the same date also adopted this decision.

“The PREPARATORY COMMITTEE FOR THE WORLD TRADE ORGANIZATION

“*invites* the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade 1947 to take the following decision:

“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

⁷Footnote 1 to this text provides that “The waivers covered by this provision are listed in footnote 7 on pages 11 and 12 in Part II of document MTN/FA of 15 December 1993 and in MTN/FA/Corr.6 of 21 March 1994. The Ministerial Conference shall establish at its first session a revised list of waivers covered by this provision that adds any waivers granted under GATT 1947 after 15 December 1993 and before the date of entry into force of the WTO Agreement, and deletes the waivers which will have expired by that time.”

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;

“Desiring to end the period of co-existence on a date agreed in advance so as to provide predictability for policy makers and facilitate an orderly termination of the institutional framework of 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.

“2. The provisions of Article XXIII of the GATT 1947 shall not apply:

“(a) to disputes brought against a contracting party which is a Member of the WTO if the dispute concerns a measure that is identified as a specific measure at issue in a request for the establishment of a panel made in accordance with Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 of the WTO Agreement and the dispute settlement proceedings following that request are being pursued or are completed; and

“(b) in respect of measures covered by paragraph 1 above.

“3. The legal instruments through which the contracting parties apply the GATT 1947 are herewith terminated one year after the date of entry into force of the WTO Agreement. In the light of unforeseen circumstances, the CONTRACTING PARTIES may decide to postpone the date of termination by no more than one year.”⁸

3. Other decisions of 8 December 1994 on institutional matters

Further concerning the institutional functioning of the GATT 1947 and the WTO during the period of coexistence of the GATT 1947 and the WTO, on 8 December 1994 the Preparatory Committee at the Implementation Conference and the CONTRACTING PARTIES adopted the following decision on “Transitional Arrangements: Avoidance of Procedural and Institutional Duplication”:

“The PREPARATORY COMMITTEE FOR THE WORLD TRADE ORGANIZATION

“Noting that the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT 1947") and the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO

⁸PC/12, L/7583.

Agreement") are legally distinct and that Members of the WTO may therefore remain contracting parties to the GATT 1947;

"Considering that contracting parties to the GATT 1947 and parties to the Tokyo Round Agreements that are also Members of the WTO should not be subjected to the inconvenience of having to notify and consult on their measures and policies twice;

"Desiring, therefore, that the bodies established under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement coordinate their activities to the extent that their functions overlap;

"Decides to propose the following procedures for adoption by the CONTRACTING PARTIES to the GATT 1947, the Committees established under the Tokyo Round Agreements and the General Council of the WTO:

"In the period between the date of entry into force of the WTO Agreement and the date of the termination of the legal instruments through which the contracting parties apply the GATT 1947 and of the Tokyo Round Agreements the following notification and coordination procedures shall apply under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement:

"1. If a measure is subject to a notification obligation both under the WTO Agreement and under the GATT 1947 or a Tokyo Round Agreement, the notification of such a measure to a WTO body shall, unless otherwise indicated in the notification, be deemed to be also a notification of that measure under the GATT 1947 or the Tokyo Round Agreement. Any such notification shall be circulated by the WTO Secretariat simultaneously to the Members of the WTO and to the contracting parties to the GATT 1947 and/or the parties to the Tokyo Round Agreement. These procedures are without prejudice to any notification procedures applicable in specific areas.

"2. The coordination procedures set out in paragraphs 3 and 4 below shall apply in the relations between the bodies referred to in sub-paragraphs (a) to (d) below:

"(a) The following Committees established under the GATT 1947 or a Tokyo Round Agreement shall coordinate their activities with the corresponding Committees established under the WTO Agreement:

Committee on Trade and Development,
Committee on Balance-of-Payments Restrictions,
Committee on Anti-Dumping Practices,
Committee on Customs Valuation,
Committee on Import Licensing,
Committee on Subsidies and Countervailing Measures,
Committee on Technical Barriers to Trade.

"(b) The Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures of the GATT 1947 shall coordinate their activities with the WTO Committee on Market Access proposed to be established.

"(c) The Working Parties established under the GATT 1947 to examine a regional agreement or arrangement shall coordinate their activities with Working Parties of the WTO that examine the same regional agreement or arrangement.⁹

"(d) The GATT 1947 Council of Representatives shall coordinate its trade policy reviews with those of the WTO Trade Policy Review Body.

⁹The Working Parties of the WTO include Working Parties originating from decisions of the CONTRACTING PARTIES to the GATT 1947 that were adopted before the entry into force of the WTO Agreement and therefore form part of the GATT 1994.

“3. The bodies established under the GATT 1947 or a Tokyo Round Agreement that are referred to in paragraph 2 above shall hold their meetings jointly or consecutively, as appropriate, with the corresponding WTO bodies. In meetings held jointly the rules of procedure to be applied by the WTO body shall be followed. The reports on joint meetings shall be submitted to the competent bodies established under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement.

“4. The coordination of activities in accordance with paragraph 3 above shall be conducted in a manner which ensures that the enjoyment of the rights and the performance of the obligations under the GATT 1947, the Tokyo Round Agreements and the WTO Agreement and the exercise of the competence of the CONTRACTING PARTIES to the GATT 1947, the Committees established under the Tokyo Round Agreements and the bodies of the WTO are unaffected.

“5. The CONTRACTING PARTIES to the GATT 1947, the Committees established under the Tokyo Round Agreements and the General Council of the WTO may decide independently to terminate the application of the provisions set out in paragraphs 1 to 4 above.”¹⁰

On the same date, the Preparatory Committee and the CONTRACTING PARTIES each adopted the following decision on “Participation in Meetings of WTO Bodies by Certain Signatories of the Final Act Eligible to Become Original Members of the WTO”:

“During a period of seven months following the date of entry into force of the WTO Agreement Signatories of the Final Act Embodying the Results of the Uruguay Round that are contracting parties to the GATT 1947 as of the date of this Decision and are eligible to become original Members of the WTO

“– may be present and speak at formal or informal meetings of the bodies established under the WTO Agreement other than the Textiles Monitoring Body, and

“– shall have access to all documents made available to Members of the WTO for such meetings.

“Such Signatories shall not have the right to participate in the decision-making of the bodies established under the WTO Agreement.”¹¹

See also the material on transition to the WTO under Articles I, VI and XXIII.

In addition, on 8 and 9 December 1994 the Preparatory Committee, the CONTRACTING PARTIES and the Executive Committee of ICITO adopted an Agreement on Transfer of Assets, Liabilities, Records, Staff and Functions from ICITO and the GATT to the WTO; see further at page 1123 below.

The WTO Agreement entered into force on 1 January 1995.

III. GATT 1947 BODIES

A. CONTRACTING PARTIES

1. Establishment, membership, functions and terms of reference

As noted above, the CONTRACTING PARTIES consist of the contracting parties to the GATT “acting jointly”. Article XXXII provides that “The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application”. The contracting parties to the GATT have gained such status by

¹⁰PC/11, L/7582.

¹¹PC/10, L/7581.

accepting the Protocol of Provisional Application; by accepting a protocol of accession under Article XXXIII which provides for provisional application of the General Agreement; or by succession to contracting party status under Article XXVI:5(c). A list of contracting parties to the GATT appears in the appendix which follows this chapter.

Other authority for joint action by the CONTRACTING PARTIES is provided for in the following provisions of the General Agreement: II:6(a); VI:6(b) and (c); VII:1 and 4(c); VIII:2; X:3(c); XII:4(b) through (d) and 5; XIII:4; XIV:2; XV:1, 2, 3, 5, 6, 7, 8; XVI:5; XVII:4(c); XVIII:6, 7, 12, 14, 16, 19, 22; XIX:2, 3; XX:(h),(j); XXII:2; XXIII:2; XXIV:7,10; XXV:5; XXVII; XXVIII:1, 4; XXVIII *bis*:1; XXIX; XXX:2; XXXIII; XXXVII:2(b); XXXVIII:1, 2; Annex I, Interpretative notes *Ad* Articles XII:4, XVIII:15, 16, and XXVIII:1. See also the material under Article XXV in this book, including material on the drafting history of Article XXV.

At its meeting on 19 June 1992, the Council decided that the representative of the Federal Republic of Yugoslavia should refrain from participating in the business of the Council.¹² At its meeting on 16-17 June 1993, the Council agreed in the light of United Nations General Assembly Resolution 47/1 to modify this decision as follows: "The Council considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the contracting party status of the former Socialist Federal Republic of Yugoslavia in the GATT, and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for accession to the GATT and that it shall not participate in the work of the Council and its subsidiary bodies. The Council further invites other committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements and the Committee on Trade and Development, to take the necessary decisions in accordance with the above".¹³

2. Rules of Procedure

The CONTRACTING PARTIES have adopted Rules of Procedure for their sessions. The most recent consolidated text of the Rules of Procedure appears in the twelfth Supplement of the BISD, and reflects the most recent change to the Rules in 1964.¹⁴

3. Observer status

The Rules of Procedure for Sessions of the CONTRACTING PARTIES provide as follows:

Rule 8: "The representatives of countries signatories of the Final Act adopted at the conclusion of the United Nations Conference on Trade and Employment at Havana which have not become contracting parties may attend meetings in the capacity of observers participating in the discussions without vote."

Rule 9: "Representatives of other countries invited to the United Nations Conference on Trade and Employment and of intergovernmental organizations may attend the meetings as observers on the invitation of the CONTRACTING PARTIES, and, on the invitation of the CONTRACTING PARTIES, participate in the discussions without vote in accordance with the terms of such invitation."

A Note of 15 June 1990 by the Secretariat on "Observer Status in GATT" notes these rules and states as follows:¹⁵

¹²C/M/257 and Corr.1.

¹³C/M/264, p. 3.

¹⁴Rules of Procedure at BISD 12S/10-16, reflecting changes adopted SR.21/11 p. 182-83 on the basis of proposals at W.21/10, W.21/12. Earlier rules appear at: GATT/1/1 Ann.3 (draft), discussed at GATT/1/SR.1 p. 1-4, adopted at GATT/1/SR.3 p. 2-3 and GATT/1/SR.4 p. 1, version as adopted GATT/1/16; GATT/CP.2/3 (draft), discussed GATT/CP.2/SR.1 p. 2-11, GATT/CP.2/SR.4 p. 1-2 + Corr.1, version as adopted GATT/CP.2/Rev.2; GATT/CP.3/41 p. 4 (adoption of present Rule 1 in modified form), consolidated rules at GATT/CP/30, republished at BISD Vol.I/95-100; changes to Rules 10-12, BISD 2S/7; Spec/237/56 (draft change to Rule 2), adoption of changes to Rule 2 at SR.11 p. 185-88, adoption of changes to Rules 10-12 at SR.11 p. 64-66, consolidated text at BISD 5S/11-16; Spec/285/58 (proposed changes to Rules 1 and 10), adopted SR.13/8 p. 32, report BISD 7S/108, amendments as adopted BISD 7S/7.

¹⁵C/173, p. 1-2; see also Note by the Secretariat of 27 June 1984 on the same subject, C/129. + Suppls.

“The United Nations has observer status. Also, certain of its specialized agencies and regional commissions, and several other international organizations, have been admitted as observers. ...

“International non-governmental organizations (NGOs) do not have ‘consultative status’ in GATT: none have been admitted as observers at sessions.

“The composition of observer delegations is left to the governments or international organizations concerned.”

A Decision of 21 July 1993 on “Observer Status of Governments in the Council of Representatives” provides, *inter alia*, that “Observer governments ... may participate as observers in Sessions of the CONTRACTING PARTIES ...”.¹⁶ Consequently, countries not falling under Rule 8 are accorded observer status at sessions of the CONTRACTING PARTIES if they have observer status in the Council. See below at page 1103 concerning this decision and observer status in the Council.

In 1965, during the discussion of the request from the Republic of China (now known in the GATT as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, or Chinese Taipei¹⁷) to be represented by observers at sessions of the CONTRACTING PARTIES, the Chairman of the CONTRACTING PARTIES stated that “Consistently ... with the practice of the United Nations, it was quite clear that for the CONTRACTING PARTIES to admit observers did not prejudice the position of the CONTRACTING PARTIES or of individual contracting parties towards recognition of the government in question. The Executive Secretary had based himself also upon the opinion of the Legal Department of the United Nations, which was that the question of representation in an international organization was distinct from the question of recognition of a government by other members of that organization”.¹⁸ In 1971, at the opening of the Twenty-seventh Session, the Chairman noted that in reaching their decision in 1965 to accede to the request of the Republic of China, the CONTRACTING PARTIES had agreed to follow decisions of the United Nations on essentially political matters, and suggested that the CONTRACTING PARTIES should follow the decision taken in United Nations Resolution 2758 (XXVI). It was agreed that for these reasons, representatives of the Republic of China should no longer attend sessions of the CONTRACTING PARTIES as observers.¹⁹ In the Council in 1992, in discussion of the establishment of a working party on accession of Chinese Taipei to the General Agreement, the Chairman of the Council noted that “as part of the understanding reached on this matter, the titles carried by [the representative of Chinese Taipei] would not have any implication on the issue of sovereignty”.²⁰

4. Election of officers

Rule 10 of the Rules of Procedure of the CONTRACTING PARTIES provides that “During the course of each regular session a Chairman, a First Vice-Chairman and two other Vice-Chairmen shall be elected from among the representatives. They shall hold office from the end of that session until the end of the next regular session”.²¹ In practice the Chairman and three Vice-Chairmen are elected at the annual Session of the CONTRACTING PARTIES.

5. Procedures

(1) Convening of and circulation of agenda for sessions

(a) Regular sessions

Rule 1 of the Rules of Procedure provides that “Sessions of the CONTRACTING PARTIES shall be held from time to time as required. The date of each session shall be fixed by the CONTRACTING PARTIES at a previous session”. Rule 2 provides that “The provisional agenda for each session shall be drawn up by the Secretary in

¹⁶L/7286, para. 5.

¹⁷See Statement by Council Chairman at September 1992 Council meeting, C/M/259, p. 2-3.

¹⁸SR.22/3, p. 22.

¹⁹SR.27/1, p. 1-4.

²⁰C/M/259, p. 3-4.

²¹When the present text of Rule 10 was adopted it was noted that “it was proposed that one of the Vice-Chairmen should be designated the First Vice-Chairman and that he should be resident either in Geneva or fairly close to the GATT headquarters and should normally preside whenever the Chairman is not available”. SR.21/11 p. 182-83.

consultation with the Chairman and shall be communicated to the contracting parties at least five weeks before the date of the meeting. It shall be open to any contracting party to propose items for inclusion in this provisional agenda up to six weeks from the date of meeting". As of the end of 1992, there had been forty-eight regular sessions of the CONTRACTING PARTIES.

The CONTRACTING PARTIES have occasionally met at Ministerial level.²²

(b) *Special sessions*

Rule 1 of the Rules of Procedure provides that "A session may, however, be held at another date on the initiative of the Chairman, or at the request of a contracting party concurred in by a majority of the contracting parties. Notice of the convening of any such session shall be given to contracting parties at least twenty-one days in advance of the session". As of July 1995, there had been seven special sessions of the CONTRACTING PARTIES, most recently on 24 March 1995.²³ The Procedures for Future Appointment of the Director-General approved in 1986 provide that in the event of a vacancy during the term of office of the Director-General, the new Director-General should be appointed by the CONTRACTING PARTIES within six months from the date of the vacancy, if necessary at a special session convened for this purpose.²⁴

In view of this shorter advance notice for special sessions, the time-limits mentioned in Rule 2 have not been applied to special sessions. In practice, the date and provisional agenda have been determined by the Chairman of the CONTRACTING PARTIES on the basis of consultations with the contracting parties and the Secretariat, and the Secretariat has provided as much advance notice as possible by circulating the notice convening the session and the provisional agenda simultaneously, at least twenty-one days in advance of the proposed date for the session.

(2) *Conduct of sessions by Chairman*

Rule 17 of the Rules of Procedure provides that "In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, shall direct the discussion, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and, subject to these rules, have complete control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant".

²²Sessions of the CONTRACTING PARTIES at Ministerial level were held in Geneva from 26-30 October 1957 during the Twelfth Session of the CONTRACTING PARTIES; from 16-18 October 1959 during the Thirteenth Session; from 27-29 October 1959 during the Fifteenth Session held in Tokyo; from 27-30 November 1961 during the Nineteenth Session (adopting the Conclusions of the Meeting of Ministers, 10S/25); from 16-21 May 1963 (adopting the Action Programme and Ministerial Conclusions, 12S/36, and establishing the Trade Negotiations Committee for the Kennedy Round); during the Twenty-fourth Session in November 1967, following the conclusion of the Kennedy Round; from 12-14 September 1973 in Tokyo (adopting the Tokyo Declaration establishing the Trade Negotiations Committee for the Tokyo Round, 20S/19); from 26-29 November 1982 during the Thirty-eighth Session (adopting the Ministerial Declaration which appears at 29S/9); and in Punta del Este on 15-16 September 1986 (adopting the Punta del Este Declaration and establishing the Trade Negotiations Committee for the Uruguay Round; 33S/19). In addition the Trade Negotiations Committee met at Ministerial level from 4-6 May 1964 to mark the formal opening of the Kennedy Round and adopted the negotiating guidelines at 13S/109. On the convening of an agenda for ministerial meetings, see further CG.18/W/62, "Preparatory Work for Ministerial Meetings in the GATT", Secretariat Note dated 12 October 1981.

²³The first Special Session was held in Torquay on 29 March - 3 April 1951; it was convened by the Chairman at the request of a number of contracting parties in order to receive and act upon a suggestion to establish an inter-sessional working party to consider proposals directed toward the reduction of disparities in European tariffs (GATT/CP/99). The Second Special Session (which approved the text of Part IV of the General Agreement) was held in Geneva on 17-26 November 1964 and 8 February 1965; its convening was agreed at the twenty-first session (SR.21, p. 150). The Third Special Session was held in Geneva on 28 April 1980 at the level of heads of delegation and was convened by the Chairman of the CONTRACTING PARTIES to consider the appointment of a new Director-General on the retirement of Director-General Long. The Fourth Special Session was held in Geneva on 30 September - 2 October 1985 and was convened by the Chairman of the CONTRACTING PARTIES at the request of the United States, this request having been concurred in by a majority of contracting parties (GATT/AIR/2180, GATT/AIR/2190). The Fifth Special Session was held in Geneva on 9 June 1993 at the level of heads of delegation and was convened by the Chairman of the CONTRACTING PARTIES to consider the appointment of a new Director-General on the retirement of Director-General Dunkel (GATT/AIR/3442). The Sixth Special Session was held in Geneva on 8 December 1994 at the level of heads of delegation to consider the implementation of the results of the Uruguay Round as provided for in the final paragraph of the Punta del Este Ministerial Declaration; see further at page above (PC/AIR/40, GATT/AIR/3652). The Seventh Special Session was held in Geneva on 24 March 1995 at the level of heads of delegation and was convened by the Chairman of the CONTRACTING PARTIES to consider the appointment of a new Director-General on the retirement of Director-General Sutherland.

²⁴L/6099, approved on 26 November 1986, 33S/55.

(3) *Chairman's rulings*

Rule 18 provides that “During the discussion of any matter, a representative may raise a point of order. In this case the Chairman shall immediately state his ruling. If his ruling is challenged, the Chairman shall immediately submit it for decision and it shall stand unless overruled”. There are many examples of Chairman’s rulings, particularly in the first ten years of the GATT.²⁵

(4) *Decision-making, voting and consensus*

(a) *Voting majorities*

Article XXV:3 states that “Each contracting party is entitled to have one vote at all meetings of the CONTRACTING PARTIES”. Article XXV:4 states that “Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast”. The preparatory work of the General Agreement also notes, in connection with the CONTRACTING PARTIES’ power of concurrence under Article II:6 that “the concurrence regarding adjustment which is envisaged would require a simple majority vote as indicated by Article XXV”.²⁶

Rule 28 of the Rules of Procedure provides that “Except as otherwise specified in the General Agreement on Tariffs and Trade, decisions shall be taken by a majority of the representatives present and voting”. The established practice of the CONTRACTING PARTIES is that a contracting party that abstains is not considered as voting.

Special majorities are called for in Articles XXIV:10, XXV:5 and XXXIII. Article XXIV:10 provides for approval by a two-thirds majority of proposals which do not fully comply with the requirements of Article XXIV:5-9. Article XXV:5 provides for waivers of obligations but requires that “any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote (i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and (ii) prescribe such criteria as may be necessary for the application of this paragraph”. Article XXXIII provides for accession to the General Agreement and requires that such decisions be taken by the CONTRACTING PARTIES by a two-thirds majority.

(b) *Voting procedure at Sessions*

The Rules of Procedure do not specify how votes are to be taken. According to established practice, votes are taken either by ballot, or by the show of cards or a roll-call, or on a few occasions by show of hands.²⁷ A 1961 Note by the Executive Secretary on “Voting Procedures” states that “In view of the increasing number of occasions, at Sessions of the CONTRACTING PARTIES, when representatives are called upon to participate in formal voting, and in view of the difficulty of taking an accurate count of the votes cast when representatives are asked to raise cards, it is proposed that, in future, voting on decisions, declarations, etc., should be done by ballot. On each occasion when a formal vote is required, ballot papers will be distributed and a ballot box will be placed in the conference room. The result of each vote will be announced on the same or the following day and the ballot papers as well as the Executive Secretary’s report will be available for inspection in the files of the Secretariat. It will of course remain open to any representative to request a vote by the raising of cards or, in accordance with normal practice, by roll call. The existing procedure for postal and telegraphic ballots during intersessional periods will still apply”.²⁸

Nothing in the Rules of Procedure prevents a contracting party from requesting a secret ballot. It is up to the Chairman to decide whether to either accept a request by one contracting party for a secret ballot, or ascertain whether a majority would be in favour of such a ballot. At the 46th Session of the CONTRACTING PARTIES, in discussion of a request for a roll call vote on a waiver, “The Chairman recalled that the European Communities had asked for a roll-call vote, and noted that it was understood that contracting parties’ representatives attended sessions

²⁵See, e.g., Rulings by the Chairman of 24 August 1948 relating to Article I:1 at II/12.

²⁶EPCT/TAC/PV/24 p. 40 (statement by Chairman of Sub-Committee on Schedules explaining the text proposed in EPCT/208).

²⁷Vote by show of hands: SR.47/1 p. 7.

²⁸L/1477, dated 16 May 1961.

with the necessary authority to perform the functions indicated in Article XXV of the General Agreement. Under the authority given to the Chairman in Rule 17, he then ruled that a roll-call vote be taken on this matter”.²⁹

(c) *Postal and telegraphic voting*

The record of the preparatory work of the General Agreement states that the phrase “majority of the votes cast” was used in Article XXV:3 of the General Agreement in order to permit postal and telegraphic voting as it was foreseen that there might be a need for continuous operation between formal sessions.³⁰ Accordingly, the CONTRACTING PARTIES have adopted rules for airmail and telegraphic ballots.³¹ Rule 5 of these rules provides that “The governments entitled to participate in an airmail or telegraphic ballot are those which are contracting parties at the time of the decision to submit the matter to a vote”.³² In May 1993, in discussion of a waiver request, the Council approved the text of the draft decision and recommended its adoption by the CONTRACTING PARTIES by a vote by postal ballot. In this connection the Council Chairman noted that “the decision, when and if adopted by a vote by postal ballot, would be circulated as usual ... Furthermore, the effective date of the Waiver Decision would be the date of its adoption. As representatives were aware, when voting by postal ballot, contracting parties were customarily given 30 days in which to cast their votes. Accordingly, the effective date of this decision would be the date at which the requisite majority was obtained, but not later than the thirtieth day following the present Council meeting”.³³

At the Fortieth Session of the CONTRACTING PARTIES in November 1984, the United States requested that the vote on the US request for a waiver for the US Caribbean Basin Economic Recovery Act “be postponed until it could be taken under intersessional procedures which would allow all contracting parties to participate. The Chairman said that it was up to the United States, as the country requesting the waiver, to decide whether it wanted to put the request to a vote at the present session”.³⁴ At the Council meeting in December 1984, the “Chairman recalled that ... the United States had requested that the vote on this decision be postponed to the intersessional period when the balloting could be done by postal ballot, thereby enabling all interested contracting parties to participate. The CONTRACTING PARTIES had agreed to refer this matter to the Council for appropriate action in the light of the statements at the session”.³⁵ In reply to a question by Nicaragua whether such a remittance of the matter back to the Council was contrary to established GATT practice, “the Director-General said that there appeared to be no precedent for the procedure: nevertheless, the CONTRACTING PARTIES’ decision to refer this matter back to the Council had been taken in accordance with the applicable rules. ... the normal practice was for the Council to transmit decisions to the CONTRACTING PARTIES for adoption, but that there were also cases in which that process functioned in reverse. The passage of matters back and forth between the Council and the CONTRACTING PARTIES happened frequently. It seemed, however, that Nicaragua’s question referred to a specific type of action for which there appeared to be no precedent”.³⁶ The Council took note of the statements and recommended adoption of the draft decision by the CONTRACTING PARTIES by postal ballot.³⁷

(d) *Consensus*

The CONTRACTING PARTIES routinely take votes on decisions for waivers under Article XXV:5 and on accessions under Article XXXIII. However, regarding the practice of the CONTRACTING PARTIES in relation to other business, the Report of the Working Party on “Arrangements for Japanese Participation” notes that “... the CONTRACTING PARTIES do not usually proceed to a formal vote in reaching decisions; generally, the Chairman takes the sense of the meeting ...”.³⁸ Similarly, the decision on the participation of Switzerland in the work of the

²⁹SR.46/1 p. 21.

³⁰EPCT/TAC/PV/25 p. 11-12, reflecting a statement by the Legal and Drafting Committee that the formulation “a majority of the contracting parties present and voting” would exclude postal voting (EPCT/209, note p. 8).

³¹The rules presently in effect are the Rules for Airmail and Telegraphic Ballots, BISD 12S/16, adopted 31 March 1964 (SR.21/9 p. 143; see also L/2154, W.21/9). Earlier rules on the same subject appear at BISD Vol.1/101, BISD 1S/7, BISD 2S/13, BISD 3S/14, BISD 5S/21, BISD 7S/10-11.

³²See in this connection L/2154, W.21/9 and SR.21/9.

³³C/M/263, p. 23.

³⁴SR.40/2, p.12.

³⁵C/M/184, p.2.

³⁶C/M/184, p.2.

³⁷C/M/184, p.2.

³⁸G/55/Rev.1, adopted on 23 October 1953, 2S/117, 118 para. 4.

CONTRACTING PARTIES in connection with Swiss provisional accession was approved at the Thirteenth Session subject to an understanding which included the point that “In view of the wording of the provisions of Articles XXV and XXXII, it is not possible, from a strictly legal point of view, to give full voting rights to Switzerland. However, in the normal course of business this is not very important since the CONTRACTING PARTIES do not usually proceed to a formal vote in reaching decisions; generally the Chairman takes the sense of the meeting ...”.³⁹ The most recent recorded decision of the CONTRACTING PARTIES adopted by vote, other than decisions on waivers or accession, was in 1959.⁴⁰ Concerning the practice of consensus, see also the references below at page 1108 concerning decision-making in the Council.

(5) *Relationship between the CONTRACTING PARTIES and Committees or Councils established under the Tokyo Round Agreements*

A Decision adopted on 28 November 1979 on “Action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations” provides as follows:

- “1. The CONTRACTING PARTIES reaffirm their intention to ensure the unity and consistency of the GATT system, and to this end they shall oversee the operation of the system as a whole and take action as appropriate.
- “2. The CONTRACTING PARTIES note that as a result of the Multilateral Trade Negotiations, a number of Agreements covering certain non-tariff measures and trade in Bovine Meat and Dairy Products have been drawn up. They further note that these Agreements will go into effect as between the parties to these Agreements as from 1 January 1980 or 1 January 1981 as may be the case and for other parties as they accede to these Agreements.
- “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.
- “4. In the context of 1 and 3 above, the CONTRACTING PARTIES would receive adequate information on developments relating to the operation of each Agreement and to this end there will be regular reports from the concerned Committees or Councils to the CONTRACTING PARTIES. The CONTRACTING PARTIES may request additional reports on any aspect of the various Committees’ or Councils’ work.
- “5. Further, the CONTRACTING PARTIES understand that interested non-signatory contracting parties will be able to follow the proceedings of the Committees or Councils in an observer capacity, and that satisfactory procedures for such participation would be worked out by the Committees or Councils”.⁴¹

Each of the Committees and Councils established under these agreements annually presents a report to the CONTRACTING PARTIES, which takes note of these reports. Each of these Committees and Councils has established rules on participation by observers.

³⁹SR.13/1 (adoption of Decision which appears at 7S/18). See also provisions on participation in decision-making process in L/7155, Decision of 3 December 1992 on “Interim Application of the General Agreement” to the Czech Republic and the Slovak Republic.

⁴⁰“Freedom of Contract in Transport Insurance”, Recommendation of 27 May 1959, 8S/26; adoption by 22-7 vote with 4 abstentions, SR.14/9 p. 115.

⁴¹L/4905, 26S/201. See also discussion at SR.35/3-4 p. 14-62, W.35/2.

B. INTERSESSIONAL COMMITTEE

1. Establishment, Membership, Functions and Procedures

In order to ensure effective operation of the General Agreement between Sessions, the CONTRACTING PARTIES instituted intersessional procedures at an early date. These procedures included the provisions for mail and telegraphic ballots discussed above, and provisions for an Intersessional Committee.⁴²

The rules of procedure in effect just before the Committee was terminated provided that the Committee consisted of seventeen members, elected at the last session in each calendar year in such a manner that its composition reflected the criteria set out on page 201 of Volume II of the BISD. Contracting parties not members of the Committee or of a working party established by it could be represented by observers. The Committee was presided over by the Chairman of the CONTRACTING PARTIES. The Committee met to deal with matters expressly referred to it by the CONTRACTING PARTIES and to deal with other matters requiring urgent action, including applications made under Article XVIII:A, C and D or XXVIII:4. The Committee was authorized to establish working parties and to make recommendations to the CONTRACTING PARTIES where a dispute had been referred to the Committee. The rules provided that the Committee would meet in Geneva on the call of the Executive Secretary, with at least ten days' advance notice.⁴³ This advance notice requirement could be seen as the forerunner of the Council's "ten-day rule" discussed at page 1105 below.

2. Termination

The Intersessional Committee was terminated by the Decision of 4 June 1960 of the CONTRACTING PARTIES, which conferred upon the Council of Representatives, created by the same Decision, the specific functions previously delegated to the Intersessional Committee and to its Chairman under the Intersessional Procedures.

C. COUNCIL

1. Establishment, functions and relationship with the CONTRACTING PARTIES

On 4 June 1960 at their Sixteenth Session, the CONTRACTING PARTIES terminated the Intersessional Committee and established the Council of Representatives with the following terms of reference:

"The functions of the Council shall be:

"(a) To consider matters arising between sessions of the CONTRACTING PARTIES which require urgent attention, and to report thereon to the CONTRACTING PARTIES with recommendations as to any action which might appropriately be taken by them at the next regular session, at a special session which may be called by the Council, or by a postal ballot.

"(b) To supervise the work of committees, working parties, and other subsidiary bodies of the CONTRACTING PARTIES operating intersessionally, providing guidance for them when necessary, examining the reports of such bodies, and making recommendations thereon to the CONTRACTING PARTIES.

"(c) To undertake preparation for sessions of the CONTRACTING PARTIES.

"(d) To deal with such other matters with which the CONTRACTING PARTIES may deal at their sessions, and to exercise such additional functions with regard to matters referred to above, as may be expressly delegated

⁴²See discussion at Second Session (establishment of working party between sessions to administer Article XVIII); Fifth Session report on "Continuing Administration of the General Agreement" adopted on 16 December 1950, GATT/CP.5/49, BISD II/197; Sixth Session report adopted on 24 October 1951 establishing a committee for Agenda and Inter-sessional Business, GATT/CP.6/41, BISD Vol.II/205, and resulting intersessional procedures for interval between Sixth and Seventh sessions, BISD Vol.I/102; Intersessional Procedures for interval between Seventh and Eighth sessions, BISD 1S/7; procedures incorporating changes made at Eighth session, BISD 2S/8; proposals at Eleventh Session, Spec(237)56 and Spec(233)56, and procedures incorporating changes made at Eleventh Session, BISD/5S/17; procedures incorporating changes made at Thirteenth Session, BISD 7S/7.

⁴³BISD 7S/7.

to it by the CONTRACTING PARTIES, including action on behalf of the CONTRACTING PARTIES in performing functions under the provisions of the General Agreement, other than action under paragraph 5 of Article XXV, and under decisions and other formal actions taken by the CONTRACTING PARTIES".⁴⁴

From 1960 until 1968, decisions on matters under Article XXIII:2, including the adoption of panel reports, were made by the CONTRACTING PARTIES, acting on recommendations agreed by the Council.⁴⁵

The Report on Establishment of a Council of the CONTRACTING PARTIES, which was also adopted on 4 June 1960, states that "It is not contemplated that the CONTRACTING PARTIES would delegate to the Council the power to grant a waiver from the provisions of the GATT. It would nevertheless be helpful if requests for waivers were examined by the Council and were then submitted with the Council's recommendations to the CONTRACTING PARTIES".⁴⁶

At their Twenty-fifth Session in 1968, the CONTRACTING PARTIES agreed to the suggestion of the Chairman that

"there should be possibilities of shortening considerably the agenda for the CONTRACTING PARTIES in the ordinary sessions, so that they could concentrate on matters of major importance. In recent years the amount of intersessional activity had increased to such an extent that the Council should give greater assistance to the CONTRACTING PARTIES in guiding the various Committees and Working Parties and, when necessary, in taking action.... The Council, in effect, had authority to take action on all matters of concern to the CONTRACTING PARTIES other than final decisions under paragraph 5 of Article XXV".⁴⁷

Since that time, the Council has handled all business other than final decisions on waivers. Panel reports under Article XXIII:2 have been adopted by the Council (acting for the CONTRACTING PARTIES) or have been adopted at the annual Session of the CONTRACTING PARTIES when this would afford more timely action.

The Decision of 4 June 1960 also provides in paragraph 3 that:

"If a contracting party considers it is adversely affected by the exercise by the Council of any of its above functions which involve recommendations to individual contracting parties or the making of determinations or taking of decisions, it may suspend the operation of such action by the Council through the submission of a written appeal to the CONTRACTING PARTIES. The CONTRACTING PARTIES may, either generally or in particular cases or types of cases, provide that such recommendations, determinations of decisions of the Council shall become final if no appeal has been lodged within a specified reasonable period. In particular cases individual contracting parties may, either before or after action has been taken by the Council, waive their right of appeal and agree to accept the action as final".⁴⁸

2. Membership

The Decision of 4 June 1960 provides that the Council is "composed of representatives of all contracting parties willing to accept the responsibilities of membership therein". The Report on Establishment of a Council of the CONTRACTING PARTIES, which was adopted at the same time, stated that "After exploring the various possibilities, the Group decided strongly in favour of a Council composed of all contracting parties which were able to make arrangements for effective participation through representation at an appropriate level. Thus, while proposing that there should be no numerical limitation on membership, the Group considers that contracting parties should not seek membership unless they could undertake to provide suitable representation ... it need not be laid down as a condition of membership that representatives must be resident in Geneva, provided they will be

⁴⁴BISD 9S/8-9 reflecting decisions recorded at SR.16/11 p. 161 (approval of formal establishment of Council with terms of reference as set out in W.16/15 as amended in W.16/15/Corr.2; approval of proposals in W.16/15 as amended in W.16/15/Corr.1).

⁴⁵See, e.g., reference to adoption by the CONTRACTING PARTIES of Panel reports, and recommendations made by the CONTRACTING PARTIES to contracting parties, on "Exports of Potatoes to Canada", "French Import Restrictions", and "Uruguayan Recourse to Article XXIII", at 11S/55-56; each of these decisions expressly authorizes the Council to deal with certain follow-up issues.

⁴⁶L/1200, p. 3.

⁴⁷SR.25/9 p. 176-177.

⁴⁸9S/8.

able normally to attend all meetings”.⁴⁹ A statement included in the Decision of 4 June 1960 provides further that “Membership in the Council is open also to governments which have acceded provisionally to the General Agreement. Groups of contracting parties are free to propose one or more of their members to participate in the Council. A contracting party not a member of the Council, which claims an interest in a matter under consideration by the Council and desires to be represented during the consideration of that matter, is co-opted as a full member for this purpose”.⁵⁰

At its meeting on 19 June 1992, the Council decided that the representative of the Federal Republic of Yugoslavia should refrain from participating in the business of the Council; see the further decision above at page 1094 on the status of Yugoslavia as a contracting party.⁵¹

A list of members of the Council appears in the appendix which follows this chapter.

3. Observer status

At the first meeting of the Council in September 1960

“It was agreed that the following should be invited to be represented by observers at sessions of the Council:

“(a) governments, as follows: contracting parties and governments having acceded provisionally which were not members of the Council; governments associated with the work of the CONTRACTING PARTIES through special arrangements or which had been invited to participate in the work of the CONTRACTING PARTIES; and governments otherwise in the process of acceding or being associated with the work of the CONTRACTING PARTIES;

“(b) inter-governmental organizations, as follows: International Monetary Fund, Organization for European Economic Co-operation, United Nations, other inter-governmental organizations directly interested in matters before the Council, and also the secretariats of regional associations for economic integration”.⁵²

At the May 1990 meeting of the Council, in connection with the former USSR’s request for observer status, the Chairman recalled this decision and noted that “Rules concerning the rights and obligations of observers were to be found in Rules 8 and 9 of the Rules of Procedure for Sessions of the CONTRACTING PARTIES ... These rules foresaw that observers may attend meetings and participate in discussions without vote. Following these guidelines, the Council had in practice invited observers to speak after Council members had spoken on a particular point”.⁵³ The Council agreed to review the issue of the status of observers and their rights and obligations. A background note of 15 June 1990 by the Secretariat on “Observer Status in GATT” states as follows:⁵⁴

“Contracting parties are not *ipso facto* members of the Council, but can become so by simply announcing their wish to become members. Several contracting parties have not taken that step and are observers in the Council. ... A government which has acceded provisionally to the GATT can become a member of the Council without voting privileges (BISD 9S/7).

“Observers at sessions of the CONTRACTING PARTIES do not automatically have that status at meetings of the Council or its subsidiary bodies ... whenever any non-contracting party has sought observer status in the Council, the request has referred to the possibility of future accession, although as stated by the Chairman at the May 1990 Council meeting, the process relating to the accession of governments to GATT is subject to separate procedures.

⁴⁹L/1200, p. 3.

⁵⁰BISD 9S/7.

⁵¹C/M/257 and Corr.1.

⁵²C/M/1, p. 3; see C/W/7.

⁵³C/M/241 p. 2-3.

⁵⁴C/173, 15 June 1990, p. 2-3.

“A number of governments apply the substantive provisions of the General Agreement on a *de facto* basis and, as such, are among the non-contracting parties invited as observers at sessions. ... In respect of observer status for meetings of the Council, however, these governments are treated like those of other non-contracting parties”.

The Note goes on to state, concerning subsidiary bodies of the Council:

“In a few instances, non-contracting party governments without Council observer status have been invited on an *ad hoc* basis to attend meetings of subsidiary bodies because of a direct involvement in the subject matter under discussion. This practice was followed in the case of the EEC Agreements with Algeria, Jordan, Lebanon and Syria, when the Lomé Agreements were being examined, and in the case of the Caribbean Basin Economic Recovery Act. In such cases, the invitation has been made by the Council itself and not by the subsidiary body concerned.”⁵⁵

The consultations held on observer status resulted in the Decision adopted by the Council on 21 July 1993, on “Observer Status of Governments in the Council of Representatives”:

“*Considering* the desirability to provide for governments wishing to accede to the General Agreement an adequate opportunity to acquaint themselves with the GATT and its activities; and

“*Taking* into account the need to further improve channels of communication and information between such governments and contracting parties;

The Council *decides* the following:

“1. Governments wishing to request Observer status in the Council should address to the CONTRACTING PARTIES a communication in which they express the intent to initiate negotiations for accession to the General Agreement within a maximum period of five years, and provide a description of their current economic and trade policies, as well as any intended future reforms of these policies. They should further indicate their acceptance of obligations or requirements, including financial obligations, that may be determined by the CONTRACTING PARTIES to apply to Observer governments in the Council.

“2. Observer status shall be granted initially for a period of five years. The purpose of observership is to allow a government to better acquaint itself with the GATT and its activities, and to prepare and initiate negotiations for accession to the General Agreement.

“3. During this period an Observer government should provide the CONTRACTING PARTIES with any additional information it considers relevant concerning developments in its economic and trade policies. At the request of any contracting party or the Observer government itself, any matter contained in such information may be brought to the attention of the Council after governments have been allowed sufficient time to examine the information.

“4. (a) If, at the end of five years, an Observer government has not yet initiated a process of negotiation with a view to acceding to the General Agreement, it may request an extension of its status as Observer. In order to do so, it shall submit to the Council a statement of the reasons for which it has not found it possible to initiate accession negotiations, as well as an indication of future plans in this respect. This communication should be accompanied by a comprehensive, up-dated description of its current economic and trade policies.

(b) Upon receiving such a request, the Council shall review the situation, and decide upon the extension of the status of Observer and the duration of such extension.

⁵⁵C/173, 15 June 1990, p. 3-4.

“5. Observer governments shall have access to the main GATT document series⁵⁶ and may participate as observers in Sessions of the CONTRACTING PARTIES and meetings of working parties and other subsidiary bodies of the Council with the exception of the Budget Committee. They may also request technical assistance from the Secretariat in relation to the operation of the GATT system in general, as well as to negotiations on accession to the General Agreement.

“6. Upon their entry into force, the procedures contained in paragraphs 1 to 5 above shall apply as appropriate to all governments which are currently Observers to the Council, including those Observers which apply GATT on a *de facto* basis, except governments which are in the process of active negotiations on accession, or which are already contracting parties to the GATT.”⁵⁷

When this Decision was adopted, the Council Chairman noted that with regard to the observer status of international organizations in the Council, and of governments and international organizations at sessions of the CONTRACTING PARTIES, it was his understanding, on the basis of the consultations he had held, that no further action was required at this stage. He also made the following clarifications: (a) all governments that were currently observers in the Council should provide information under paragraph 1 of the decision, unless they were deemed to have done so recently to a satisfactory extent; (b) the five-year period referred to in paragraph 2 of the decision would not apply retroactively to governments that were currently observers in the Council; and (c) the decision did not affect countries which applied the General Agreement on a *de facto* basis and which were not observers in the Council.⁵⁸ At its October 1993 meeting, the Council adopted a recommendation of the Budget Committee as from 1 January 1994, observer countries be requested to contribute each year, for services provided to them, 50 per cent of the minimum contribution applying to contracting parties. Administrative measures would apply to observers which did not pay.⁵⁹

In the Council in 1992, in discussion of the establishment of a working party on accession of Chinese Taipei to the General Agreement, the Chairman of the Council invited the delegation of Chinese Taipei to attend future meetings of the Council and of other GATT bodies as an observer during the period when the Working Party was carrying out its work. He noted that as part of the understanding reached on this matter, the titles carried by the representative of Chinese Taipei would not have any implication on the issue of sovereignty.⁶⁰

A list of observers in the Council appears in the appendix tables at the end of this book.

4. Election of officers

The Chairman of the Council is elected each year at the Session of the CONTRACTING PARTIES.

5. Establishment of subsidiary bodies

The Decision establishing the Council provided that “The Council may establish such subsidiary bodies as it considers appropriate to carry out its functions in relation to the examination of questions before it, consultations with government, and the drafting of reports to the CONTRACTING PARTIES; the Council may also instruct inter-sessional bodies of the CONTRACTING PARTIES to conduct such activities for it.”⁶¹

⁵⁶A footnote to the decision refers to “L/, C/, C/W/, etc.”.

⁵⁷L/7286.

⁵⁸C/M/265, p. 29.

⁵⁹C/M/267, p. 17; recommendation at L/7310, para. 29.

⁶⁰C/M/259, p. 3-4.

⁶¹BISD 9S/7-8.

6. Procedures

(1) *Rules of procedure*

The Decision establishing the Council provided that pending the adoption by the CONTRACTING PARTIES of permanent rules of procedure, the Council might determine its own provisional rules of procedure.⁶² The Minutes of the Council's first meeting on 19-23 September 1960 state that

"It was agreed that in view of the undesirability of committing the Council to rules of procedure in the initial stages of its existence, the Council would follow, so far as was necessary, the procedures which were followed for sessions of the CONTRACTING PARTIES, subject to such adaptation of these rules as might be required from time to time. At some later date the Council could, if necessary, decide whether it needed its own rules of procedure".⁶³

No decision establishing formal rules of procedure for the Council has been taken to date.

At the June 1993 Council meeting, the Chairman proposed, and the Council accepted, certain supplementary practices to expedite the work of the Council:

"(a) *Statements of support*

"In order to expedite the conduct of Council business, the Chairman would invite delegations that wished to express their support for a given proposal -- such as the adoption of a report, support of a request for observer status, support for current activities such as technical assistance, and so on -- to show their hands, to be duly recorded by name in the Council Minutes as supporting statements; thus, only delegations with dissenting views or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure would only be applied in situations of a routine nature, to avoid undue repetition of points already made, and would not preclude any delegation that so wished from taking the floor.

(b) *Length of statements*

"... Delegations ... should endeavour, to the extent that a situation permitted, to limit their statements to a maximum of 5 minutes. Delegations wishing to develop their position on a particular matter in fuller detail would be invited to circulate a written statement for distribution to Council members, the gist of which, at the delegation's request, could be reflected in the Council Minutes."⁶⁴

At the Fiftieth Session in 1994, the Chairman of the Council noted that "informal consultations held prior to Council meetings aimed to pave the way for achieving agreement on various issues, had ... proved a useful practice which he believed should continue and be intensified, as necessary, in future, within the WTO".⁶⁵

(2) *Convening of and circulation of agenda for meetings*

The Report on Establishment of a Council of the CONTRACTING PARTIES states that "The Group proposes that bi-monthly meetings of approximately one week should be envisaged. Thus, while there are two sessions of the CONTRACTING PARTIES, the Council would meet in January and March, July and September. The Council would probably meet also just before and after each session and it would meet at other times as required, on the call of the Executive Secretary, at ten days' notice".⁶⁶ A Note by the Secretariat on "Airgrams convening Council meetings" provides as follows:

⁶²S/8-9.

⁶³C/M/1, p. 2-3.

⁶⁴C/M/264; see also below under "Other Business".

⁶⁵SR.50/1, p. 4.

⁶⁶L/1200, p. 4.

“For over thirty years, the Council has followed the practice of convening its meetings by an airgram issued at least ten calendar days prior to the date set for the meeting. In the event that the tenth day falls on a weekend or a GATT holiday, the preceding GATT working day is retained for the purpose.

“The ‘ten-day rule’ has been reaffirmed at various times by Council Chairmen and delegations.⁶⁷ While this customary rule of procedure can be amended by the CONTRACTING PARTIES, or waived in specific cases, it has nearly always been adhered to, even on occasions when one or several delegations made urgent requests for convening an additional or ‘emergency’ meeting of the Council at short notice. The notable exception occurred in 1971 when nearly all delegations wanted a meeting to be held immediately to discuss a trade measure of one contracting party, which did not oppose the shortened notice for that particular meeting (cf. C/M/71).

“Requests for items to be placed on the agenda of a forthcoming meeting should be communicated in writing to the Secretariat, together with any accompanying documentation (one or two pages) to be issued in connection with that item, at the latest on the day before the airgram is to be issued. Longer communications intended for circulation as documents should, because of translation and printing requirements, be submitted two to three or more days before the deadline, depending on the nature and length of the text. Delegations should consult with the Council Secretary on a case-by-case basis to ensure that prospective documents can be issued in time.”⁶⁸

(a) *Particular agenda items*

In a number of instances decisions provide for specific items to be on the Council’s agenda.

A Decision of 25 October 1972 provided that “Without prejudice to the legal obligations to notify in pursuance of Article XXIV, the Council decides to invite contracting parties that sign an agreement falling within the terms of Article XXIV, paragraphs 5 to 8, to inscribe the item on the agenda for the first meeting of the Council following such signature, to the extent that the advance notice of ten days prescribed for inclusion of items on the agenda can be observed. Inclusion of the item should allow the Council to determine the procedures for examination of the agreement”.⁶⁹

The Decision of 12 April 1989 concerning “Functioning of the GATT System” provides, concerning the establishment of a trade policy review mechanism, that “Trade policy reviews will be carried out by the Council at periodic special meetings ... The Council will establish a basic plan for the conduct of the reviews ... The Council will establish a programme of reviews for each year in consultation with the contracting parties directly concerned”.⁷⁰

Also, the Decision of 12 April 1989 on “Improvements to the GATT Dispute Settlement Rules and Procedures” includes the following provisions relating to Council business.

- “Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.”⁷¹

⁶⁷[Footnote to this text] “An early reference to this practice in GATT can be found in the rules of procedure of the Intersessional Committee, which preceded the Council (BISD 7S/7)”. See also discussion at page 1100 above; see also, e.g., SR.26/7 p. 70 (statement by Council Chairman that “Under normal circumstances the Council should not accept the inclusion of an item on its agenda unless it was clear that the necessary documentation would be ready a reasonable time in advance of the meeting so as to allow delegations time for serious preparation. Obviously there would be some cases from time to time when urgent action would be needed”).

⁶⁸Spec(91)73, reprinted at 38S/76-77.

⁶⁹C/M/81 p. 16; 19S/13-14.

⁷⁰L/6490, 36S/403, 405, section D.

⁷¹L/6489, 36S/61, 62 para. B.

- "If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise."⁷²
- "In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel ... If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council."⁷³
- "In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties."⁷⁴
- "Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered."⁷⁵
- "The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings."⁷⁶

(b) "Other business"

The Council agenda customarily includes an item for "Other business"; matters raised under this item do not appear in the advance airgram convening the meeting sent to delegations and to capitals. On a number of occasions, including the Council meeting on 11 July 1991, the Chairman has strongly encouraged representatives wishing to have a substantive discussion in the Council on any issues to bring them to the attention of the Secretariat in sufficient time so that they could be placed on the agenda in the airgram, rather than to raise them under "Other Business".⁷⁷ At the June 1993 Council meeting, the Chairman made a statement containing certain proposals designed to expedite Council business, including the conduct of discussions under "Other Business". He proposed, and the Council accepted, that:

"the Chairman would remind delegations at each Council meeting that discussions on substantive issues under 'Other Business' should be avoided, and that the Council should limit itself to taking note of the announcement by the sponsoring delegation, as well as any reactions to such an announcement by other delegations directly concerned;

"the Council Minutes, unless explicitly requested by the delegations concerned, would not reproduce at length the statements made under 'Other Business', but would be limited to an enunciation of the issues raised and a summary of the comments made;

"delegations should provide the Chairman or the Secretary of the Council and other delegations directly concerned, whenever possible, advance notice of 'Other Business' items."⁷⁸

At the November 1994 Council meeting the Council accepted the Chairman's further proposal as follows:

⁷²*Ibid.*, 36S/63, para. F(a). A footnote to this paragraph provides: "References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215)".

⁷³*Ibid.* 36S/64, para. F(b)2.

⁷⁴*Ibid.* 36S/66, para. G.1.

⁷⁵*Ibid.* para. G.2.

⁷⁶*Ibid.*, 36S/67, para. I.3.

⁷⁷38S/76; C/M/251 p. 46-47, C/M/187.

⁷⁸C/M/264.

“the first item of business at a Council meeting would be statements by the Chairman which currently are made under ‘Other Business’;

“statements by delegations under ‘Other Business’ should be limited to very short announcements;

“exceptionally, when a delegation considers it must raise an extremely urgent matter of importance, the Chairman will allow a substantive statement to be made on the matter, which should nevertheless be limited to no more than five minutes; the delegation raising the matter, if it so wishes, may circulate for the record a longer statement in document form;

“all efforts should be made to avoid an extensive debate on any question under ‘Other Business’;

“if the regular Agenda of the Council is exceptionally long and the meeting runs out of time before ‘Other Business’ items have been taken up, the Chairman may defer consideration of these items to the next meeting of the Council, unless a delegation requests otherwise”.⁷⁹

On a very few occasions, discussions have been held in the Council before adoption of the agenda.⁸⁰

(3) *Decision-making, voting and consensus*

Consensus decision-making: The Decision of 4 June 1960 establishing the Council provided that “Pending further consideration by the CONTRACTING PARTIES of the question of voting, no action by the Council, other than action relating to its own procedures, may be taken by an affirmative vote of less than the absolute number of affirmative votes by which such action could have been taken by the CONTRACTING PARTIES under the relevant provisions of the General Agreement and the rules of procedure for sessions of the CONTRACTING PARTIES”.⁸¹ However, the practice in the Council has been to proceed on the basis of consensus.

At the March 1981 Council meeting, in concluding the debate on adoption of the Director-General’s report on working party discussions between the CONTRACTING PARTIES and the European Communities under Article XVI:1 of the possibility of limiting EEC subsidization of sugar exports, and on a draft decision proposed by Australia, the Council Chairman noted

“that in matters of this kind the Council normally proceeded on the basis of consensus. In his view, consensus was understood in GATT to mean that no delegation maintained its objections to a text or attempted to prevent its adoption. He felt that such a consensus did not presently exist in the Council on this matter: he noted that the ten contracting parties in the European Communities were not in agreement with the draft decision as presented by Australia. At the same time, however, he was also very conscious of the weight of opinion expressed by the delegations which had supported either the Australian text as such or its general sense; and he concluded that there was a general desire to arrive at a decision at the present meeting ...”.⁸²

A compromise text was adopted providing for a later review by the Council upon further notification of the EEC sugar regulations.⁸³

During the discussion noted below of the request by the United States for authorization of a panel on “European Economic Community - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-feed Proteins”,⁸⁴ the representative of Australia suggested a solution to the particular problem “in that consensus was not unanimity. His delegation believed that the Chairman could conclude that a consensus

⁷⁹C/COM/5, 16 November 1994, “Council Working Practices - Treatment of ‘Other Business’ Items”.

⁸⁰See C/M/228, p. 2 (Council meeting of February 1989); the discussion that was held (on unilateral measures) is reflected in C/163 of 16 March 1989. See also discussions at May 1988 Council, C/M/220, p. 1, and October 1990 Council, C/M/245, p. 2-3.

⁸¹9S/8; concerning sessions of the CONTRACTING PARTIES see page 1097 above.

⁸²C/M/146, p. 20; discussion of L/5113, Director General’s report to the Council on Article XVI:1 discussions on “EEC - Refunds on Exports of Sugar”, adopted on 10 March 1981, 28S/80.

⁸³*Ibid.*, p. 20-21.

⁸⁴L/6328 (panel request).

existed". The representative of India, supported by Brazil, Mexico, Jamaica and Peru stated that "his delegation had listened with interest to Australia's statement which did appropriately recognize the rights of a contracting party wishing to assert its rights as such. However he could not accept the Australian view that consensus could be determined by the Chairman even if there was no unanimity. If a contracting party chose to contest a consensus and to state as its position that a consensus did not exist, it was then not possible for the Chairman of any GATT body to conclude that a consensus did exist. As long as his assessment was not contested, any chairman could conclude that there was a consensus; but once that consensus was formally disputed, contested or objected to by a contracting party, the consensus could not be said to exist".⁸⁵

The Decision of 12 April 1989 on "Improvements to the GATT Dispute Settlement Rules and Procedures" provides as follows regarding Council decisions on adoption of panel reports:

"The parties to a dispute shall have the right to participate fully in the consideration of a panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided."⁸⁶

During discussion at the April 1992 Council meeting of a request by Egypt for Council approval of a waiver for renegotiation of Egypt's Schedule, Egypt suggested that "if no consensus were possible, the Council should vote to approve the text of the draft waiver decision and to submit it for adoption by the CONTRACTING PARTIES by postal ballot". Many developed and developing contracting parties, including some which supported the waiver request, urged Egypt to reconsider its request so that a decision by consensus could be taken later. The representative of Switzerland stated that "In his view, a vote in the Council was a final recourse, to be taken when all other possibilities for reaching a consensus had been exhausted. That stage had not been reached on the matter at hand. No delegation had stated that it would firmly oppose the granting of the waiver without any reconsideration of its position. One had only heard requests for further information and for further time to consider the matter, and it could not be deduced therefrom that there was no possibility of a consensus. He hoped that all would continue to seek a consensus and not to force the situation by turning immediately to a vote". The representative of Mexico said "it was his understanding that a vote had never been taken in the Council as far back as one could recall. While contracting parties undoubtedly had the right to request a vote, one had to regard this more like an atomic weapon -- to be stored but not used. ... Mexico would be deeply concerned by any recourse to a vote; it would prefer by far that every effort be made in the GATT to reach decisions by consensus first". The representative of Colombia said that "no one would be happy in the end if this matter were put to a vote. While Colombia fully supported Egypt's waiver request, it believed that consensus should remain the way of decision-making in the Council".

The Chairman stated that "While the waiver decision itself would be taken by the CONTRACTING PARTIES in a vote by postal ballot, what was being proposed was that the Council vote on whether or not to approve and to send the draft decision to the CONTRACTING PARTIES for a vote thereon. That would be an extraordinary move, and he called on all to reflect on this". Following consultations with delegations, the Chairman reported that "there was a strong desire amongst Council members, including Egypt, to take a decision on the waiver request on the basis of a consensus".⁸⁷ The decision was so taken.

Representation of the EC: At the June 1988 Council meeting, in discussion of the request by the United States for authorization of a panel on "European Economic Community - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal-feed Proteins",⁸⁸ France stated its opposition to panel establishment, stating that "there was no consensus among the CONTRACTING PARTIES at this stage with regard to the US request". The representative of the EC then agreed to establishment of the panel on behalf of the Community, and stated that "it was fair to commit to the records of the meeting the statement made by France, but, on behalf of the Community, he had said that he accepted a panel. As far as the Community was concerned, a panel would be legally established if the Council followed this consensus. He supported such a decision on behalf of the Community". He further stated that "The Community was present because competence with regard

⁸⁵C/M/222, p. 12.

⁸⁶L/6489, 36S/61, 66, para. G.3.

⁸⁷C/M/256, p. 5-13.

⁸⁸L/6328 (panel request).

to trade policy had in fact been transferred to it by treaties. A contracting party could not raise an objection concerning something which no longer belonged to it as a government. The Community had assumed responsibility for trade policy on behalf of the member States; that was the guarantee and the security for other contracting parties. To take the French views into consideration would put into question all the current Community's obligations and rights. For these reasons, even when France spoke as a contracting party, its views as to trade policies were null and void and could not be taken into account".⁸⁹

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned. The representative of France then said that "while the Chairman had concluded that a panel had been established as requested by the United States, there was no consensus for its establishment. France, as a contracting party, had to oppose its establishment". The Director-General said that "according to practices established a number of years earlier, and not just in the Council, the representative of the Community had the authority to commit the Community to a Council decision". The representative of France noted that "the Director-General had spoken of practices, not of contractual right".⁹⁰

D. COMMITTEE ON TRADE AND DEVELOPMENT

Establishment

The Committee was established on 26 November 1964 during the Second Special Session of the CONTRACTING PARTIES, with the following terms of reference:

Terms of Reference

1. To keep under continuous review the application of the provisions of Part IV of the General Agreement;
2. To carry out, or arrange for, any consultations which may be required in the application of the provisions of Part IV;
3. To formulate proposals for consideration by the CONTRACTING PARTIES in connexion with any matter relating to the furtherance of the provisions of Part IV;
4. To consider any questions which may arise as to the eligibility of a contracting party to be considered as a less-developed contracting party in the sense of Part IV and to report to the CONTRACTING PARTIES;
5. To consider, on the basis of proposals referred to it by the CONTRACTING PARTIES for examination, whether modification of or additions to Part IV are required to further the work of the CONTRACTING PARTIES in the field of trade and development and to make appropriate recommendations; and
6. To carry out such additional functions as may be assigned to the Committee by the CONTRACTING PARTIES.

The Committee took over the functions of Committee III, of the Action Committee, and its subsidiary bodies and of the Working Party on Preferences.⁹¹

At their Thirty-fifth Session (November 1979), the CONTRACTING PARTIES decided that the rôle of the Committee on Trade and Development should be strengthened and should cover, *inter alia*:

1. Work on trade policy and development policies including trade liberalization in areas of special interest to developing countries;

⁸⁹C/M/222, discussion at p. 7-14.

⁹⁰*Ibid.*, p. 15-16.

⁹¹BISD 13S p. 75-76.

2. Primary responsibility for supervision of the implementation of points 1 and 4 of the "Framework" texts;
 3. Examination of protective action by developed countries against imports from developing countries;
 4. Work on structural adjustment and trade of developing countries;
- and
5. Special attention to the special problems of least developed countries.⁹²

It was also agreed that the CONTRACTING PARTIES, through the Committee on Trade and Development, should continue to follow developments with regard to a new round of trade negotiations among developing countries. The Committee has established a Sub-Committee on Trade of Least-Developed Countries and a Sub-Committee on Protective Measures.

The Chairman of the Committee is elected each year at the annual Session of the CONTRACTING PARTIES. The Committee reports annually to the CONTRACTING PARTIES, which adopts its report. The responsibilities and activities of the Committee are further discussed in the chapter on Part IV.

The WTO Agreement provides for a Committee on Trade and Development, which was duly established by the WTO General Council at its first meeting on 31 January 1995, with terms of reference as agreed by the Preparatory Committee for the WTO the previous December.⁹³ See the chapter on Part IV. The Committee is also one of the bodies named in the Decision of 8 December 1994 on "Avoidance of Procedural and Institutional Duplication"; see page 1091 above.

E. WORKING PARTIES

1. Establishment, terms of reference and operation

Working parties may be convened either by the CONTRACTING PARTIES or by the Council. Paragraph 6 of the Annex to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 1979, provides:

"Concerning the customary elements of the procedures regarding working parties ... the following elements have to be noted:

"... working parties are instituted by the Council upon the request of one or several contracting parties. The terms of reference of working parties are generally "to examine the matter in the light of the relevant provisions of the General Agreement and to report to the Council". Working parties set up their own working procedures. The practice for working parties has been to hold one or two meetings to examine the matter and a final meeting to discuss conclusions. Working parties are open to participation of any contracting party which has an interest in the matter. Generally, working parties consist of a number of delegations varying from about five to twenty according to the importance of the question and the interests involved. The countries who are parties to the dispute are always members of the Working Party and have the same status as other delegations. The report of the Working Party represents the views of all its members and therefore records different views if necessary. Since the tendency is to strive for consensus, there is generally some measure of negotiation and compromise in the formulation of the Working Party's report. The Council adopts the report. The reports of working parties are advisory opinions on the basis of which the CONTRACTING PARTIES may take a final decision".⁹⁴

⁹²L/4884/Add.1/Annex VI, "GATT Work Programme", proposal by the Director-General adopted on 29 November 1979, 26S/219, 221, para. 5.

⁹³WT/L/46.

⁹⁴L/4907, adopted on 28 November 1979, 26S/210, 216-217, para. 6(i).

As noted above at page 1108, in March 1981 the Council adopted the Director-General's report on a working party which had discussed with the EC the possibility of limiting subsidization of sugar. At the July 1981 Council meeting, a number of delegations sought to have this review conducted by reconvening the working party. The representative of the United States "sought clarification on the following points: (1) In dealing with matters of a highly technical nature, had it been the practice of the Council to establish working parties? (2) If one or several contracting parties asked for the establishment of a working party, was it in the tradition of GATT to grant such a request? The Chairman replied that it had been the practice of the Council to establish working parties when dealing with matters of a highly technical nature, as well as in some cases with matters of a more general nature. As for the establishment of a working party, he stated that this was closely linked to the issue of the terms of reference for that working party".⁹⁵

In the same Council meeting the representative of Australia, referring to paragraph 10 of the 1979 Understanding, "noted that ... the principle was clear: The CONTRACTING PARTIES would decide to establish a working party if this were requested by a contracting party. This view was supported by past GATT practice".⁹⁶ "The representative of India endorsed the Australian view and said that it would set a very bad precedent if the Council decided not to set up a working party when a serious request for doing so had been made. He stressed that this would have a particularly adverse impact for contracting parties not possessing retaliatory power". At its September 1981 meeting, the Council decided to establish a Working Party.⁹⁷

See also the discussion at the May 1988 Council meeting on the "right to a working party" in connection with the United States request for a working party on the relationship of internationally-recognized labour standards to international trade.⁹⁸

Paragraph 2(c) of the Decision of 8 December 1994 on "Avoidance of Procedural and Institutional Duplication" provides that "The Working Parties established under the GATT 1947 to examine a regional agreement or arrangement shall coordinate their activities with Working Parties of the WTO that examine the same regional agreement or arrangement." Footnote 1 to that paragraph provides that "The Working Parties of the WTO include Working Parties originating from decisions of the CONTRACTING PARTIES to the GATT 1947 that were adopted before the entry into force of the WTO Agreement and therefore form part of the GATT 1994."⁹⁹ See page 1091 above.

2. Termination and reconvening of working parties

In the July 1981 Council discussion of the possibility of reconvening the working party under Article XVI on the possibility of limiting subsidization of sugar, in response to questions,

"The Chairman said that the existence of a working party was related to its terms of reference. In normal GATT practice, when a working party fulfilled its mandate, it ceased to exist when the Council adopted its report. However, when adopting a report, the Council could nevertheless decide to continue the existence of a working party with new or modified terms of reference. He recalled that, in the instance under discussion, the Director General had been invited to organize discussions in a working party and to submit a report to the Council within a stated time period, which had been accomplished. He said that while the Council might not be able to revive a defunct working party in the strictly legal sense, clearly it could decide to establish a new working party with similar or identical terms of reference. ...

"The Chairman said that it was up to the Council to decide what it meant by an earlier decision. Whereas nothing would prevent the Council from establishing a new working party to perform the same work, the Council could also interpret its earlier decision so as to continue the mandate of the old Working Party".¹⁰⁰

⁹⁵C/M/149, p. 6.

⁹⁶C/M/149, p. 8.

⁹⁷C/M/150, p. 22.

⁹⁸L/6196, L/6243, C/M/220.

⁹⁹PC/II, L/7582.

¹⁰⁰C/M/149, p. 5-6.

In November 1971 the Council agreed to the establishment of a Group on Environmental Measures and International Trade, “as standby machinery which would be ready to act only when and if the need arose ... whose main functions would be: 1. to examine upon request any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment especially with regard to the application of the provisions of the General Agreement taking into account the particular problems of developing countries; 2. to report to the Council”.¹⁰¹ In December 1990 it was proposed that the Group, which had not met hitherto, be convened during 1991.¹⁰² After debate in the Council and informal consultations, the Group was convened on the basis of a specific agenda to be adopted by it, and with a membership open to any contracting party which wished to participate.¹⁰³

F. PRINCIPAL STANDING BODIES ESTABLISHED IN THE GATT

At the Forty-fourth Session of the CONTRACTING PARTIES, the Chairman of the Council made the following suggestion regarding the appointment of presiding officers of standing bodies, in the form of a statement for the record.

“I suggest that in future, at the first Council meeting each year, on the basis of a consensus which would have emerged from consultations, the Council Chairman should propose the names of the presiding officers of the Committee on Balance-of-Payments Restrictions, the Committee on Budget, Finance and Administration and the Committee on Tariff Concessions for the current year. This would not preclude the re-appointment of an incumbent.

“The Council Chairman would have formally announced beforehand, at a Council meeting or by means of a document, his intention to carry out consultations, open to all delegations, and he would have conducted them so as to ensure the transparency of the process.”

The CONTRACTING PARTIES took note of this suggestion.¹⁰⁴

Paragraph 2 of the Decision of 8 December 1994 on “Avoidance of Procedural and Institutional Duplication” provides that:

- “(a) The following Committees established under the GATT 1947 or a Tokyo Round Agreement shall coordinate their activities with the corresponding Committees established under the WTO Agreement:

Committee on Trade and Development,
Committee on Balance-of-Payments Restrictions,
Committee on Anti-Dumping Practices,
Committee on Customs Valuation,
Committee on Import Licensing,
Committee on Subsidies and Countervailing Measures,
Committee on Technical Barriers to Trade.

- “(b) The Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures of the GATT 1947 shall coordinate their activities with the WTO Committee on Market Access proposed to be established. ...”¹⁰⁵

¹⁰¹C/M/74 p. 3-4 (decision); L/3622/Rev.1 (terms of reference, chairman and membership).

¹⁰²MTN.TNC/W/47; see also documents L/6809, L/6859, Spec(91)13, 20 and 21 and Spec(91) documents listed on page 2 of C/M/250; and discussion in SR.46/2 p. 5-9, C/M/247 p. 19-30, C/M/248 p. 17-26, C/M/249 p. 28-30, C/M/250 p. 2-22, C/M/251 p. 3-11.

¹⁰³C/M/252, p. 24-31; see also statements at Spec(91) 21, 39, 45, 46, 48, 50, 54, 55, 56.

¹⁰⁴SR.44/2, p. 15-16.

¹⁰⁵PC/11, L/7582; see further at p. 1091 above.

1. Committee on Balance-of-Payments Restrictions

Establishment and terms of reference: Prior to 1958, consultations under the balance-of-payments articles of the General Agreement were conducted in a series of working parties established by the CONTRACTING PARTIES for that purpose. In 1958 the CONTRACTING PARTIES established the Committee, on the recommendation of the then Working Party on Balance-of-Payments Restrictions, with the following terms of reference:

“To conduct the consultations under Article XII:4(b) and Article XVIII:12(b) and any such consultations as may be initiated during the year under Article XII:4(a) or Article XVIII:12(a).”¹⁰⁶

Paragraph 4 of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes provides that “all restrictive import measures taken for balance-of-payments purposes shall be subject to consultation in the GATT Committee on Balance-of-Payments Restrictions”. Concerning the activities of the Committee, see the discussion of balance-of-payments consultations under Article XII. The Committee reports to the Council on each balance of payments consultation and each meeting.

On 31 January 1995, the WTO General Council established the WTO Committee on Balance-of-Payments Restrictions and agreed on its terms of reference.¹⁰⁷

2. Committee on Budget, Finance and Administration

Prior to 1962, the GATT budget was examined by an *ad hoc* working party appointed each year by the CONTRACTING PARTIES for that purpose. In May 1962, this earlier practice was discontinued when the Council appointed a Committee on Budget, Finance and Administration, the terms of reference and operations of which are discussed below at page 1125.¹⁰⁸ The Committee and earlier working parties have examined the budget, the accounts and administration issues.¹⁰⁹

The members of the Committee are appointed by the Council. At the July 1991 meeting of the Council, in a discussion concerning the membership of the Budget Committee, one representative stated that “... while there were no formal arrangements for membership on the Committee, the tradition had been to keep it small and efficient. There had also been a tradition of rotation, such as between Belgium and the Netherlands; he was also aware that two other contracting parties were also consulting with a view to rotation. One should also perhaps recall that observers were welcome in the Committee, had access to its documents and were allowed full participation in its meetings”.¹¹⁰

The Committee reports to the Council on a periodic basis. On 31 January 1995 the WTO General Council established the WTO Committee on Budget, Finance and Administration and agreed on its terms of reference.¹¹¹ Concerning financial and budget procedures, and the operation of the Committee and the corresponding WTO Committee during the period of transitional co-existence of the GATT 1947 and the WTO, see at page 1125 and following.

3. Committee on Tariff Concessions

Pursuant to the GATT Work Program adopted by the CONTRACTING PARTIES at their Thirty-Fifth Session in November 1979, the Committee was established by the Council on 29 January 1980 with a mandate to “supervise the task of keeping the GATT schedules up to date; supervise the staging of tariff reductions; provide a forum for discussion of questions relating to tariffs; and to report periodically to the Council”.¹¹² The Committee reports annually to the Council. Further concerning the activities of the Committee, see the discussion

¹⁰⁶L/931; BISD 7S/94. The terms of reference of the Committee and its membership appear in L/6526/Rev.2.

¹⁰⁷WT/L/45.

¹⁰⁸C/M/10, p.15.

¹⁰⁹See, e.g., Decision on “Quality of Air on GATT Premises”, in L/7198/Rev.1, Report of the Committee, dated 30 April 1993, adopted by the Council on 12 May 1993.

¹¹⁰C/M/251 p. 21.

¹¹¹WT/L/44.

¹¹²C/M/138, item no. 11(a); BISD 26S/220.

of Schedules under Article II. On 31 January 1995, the WTO General Council established the WTO Committee on Market Access and agreed on its terms of reference.¹¹³

4. Consultative Group of Eighteen

The Consultative Group of Eighteen (CG-18) was established by Decision of the Council of 11 July 1975, initially as a temporary body.¹¹⁴ In the Group's report to the Council in 1979 it recommended that it should be established as a permanent body. Its mandate, as agreed by the Council on 22 November 1979, is as follows:

“The task of the Group is to facilitate the carrying out, by the CONTRACTING PARTIES, of their responsibilities, particularly with respect to:

- “(a) following international trade developments with a view to the pursuit and maintenance of trade policies consistent with the objectives and principles of the General Agreement;
- “(b) the forestalling, whenever possible, of sudden disturbances that could represent a threat to the multilateral trading system and to international trade relations generally; and action to deal with such disturbances if they in fact occur;
- “(c) the international adjustment process and the co-ordination, in this context, between the GATT and the IMF.

“In the pursuit of its task, the Group shall take into account the special characteristics and requirements of the economies of the developing countries and their problems.

“The Group shall not impinge upon the competence or authority of the CONTRACTING PARTIES or of the Council and shall not assume, or detract from, any of the decision-making responsibilities of these two bodies or of the permanent GATT Committees.

“The Group's membership shall be balanced and broadly representative, due regard being had to rotation of membership as appropriate. ... The Group shall submit once a year a comprehensive account of its activities to the Council”.¹¹⁵

The 1979 Report of the CG-18 states that “It is strongly believed in the Group that the GATT should have at its disposal a small but representative group which would permit existing and emerging trade policy issues to be discussed in confidence among responsible officials from capitals and thus facilitate a concertation of policies in the trade field”.¹¹⁶ The Director-General, as Chairman of the Group, has presented its reports, prepared on his own responsibility, to the Council. These reports have been reproduced in the BISD series. At the Forty-fifth Session in December 1989, the CONTRACTING PARTIES agreed to the Director-General's suggestion to the Council that the Group remain in suspense for 1990, with the understanding that if for any reason a meeting appeared to be desirable, he would convene it. Before doing so, he would request the Council to take the necessary decision on behalf of the CONTRACTING PARTIES on the composition of the Group.¹¹⁷ The Group did not meet in 1991 and 1992.

See also the Secretariat Note of 1987 on “The History of the Consultative Group of Eighteen”.¹¹⁸

¹¹³WT/L/47.

¹¹⁴C/M/107, L/4204; see also earlier documents submitted by the Director-General, L/4048, L/4189.

¹¹⁵C/M/107, BISD 22S/15-16 (Decision establishing CG-18); BISD 26S/289-90 (revised mandate). Reports of the CG.18 appear at BISD 25S/37; BISD 26S/284 OTHERS

¹¹⁶L/4869, 26S/284, 285, para. 12.

¹¹⁷C/M/246.

¹¹⁸MTN.GNG/NG14/W/5, dated 9 June 1987.

G. DOCUMENTATION

1. Document issuance and circulation

All GATT documents, with a few exceptions, are issued as “Restricted” documents. Documents issued as unrestricted documents include Decisions of the CONTRACTING PARTIES, documents in the INF/ series and a few others. Restricted documents are issued by the Secretariat only to representatives of contracting parties and of those governments and international organizations which are invited to send observers to meetings of various GATT bodies.

In 1955, the Executive Secretary noted that a representative of a contracting party had called his attention to the necessity for using the reports of Review Session Working Parties in connection with legislative consideration of amendments to the General Agreement, and observed that “The classification ‘RESTRICTED’ should not, however, prevent a government from revealing to its appropriate legislative authorities any portion of a working party report which it considers necessary for the adequate understanding of the amendments. It is recognized that, where it is the practice to publish legislative hearings, this may result in the publication of certain parts of the Working Party reports before the normal date on which the complete document would be derestricted and become available for general public use. The Executive Secretary has so informed the contracting party concerned and invites other contracting parties to be guided by the same interpretation”.¹¹⁹

The Decision of 21 July 1993 on “Observer Status of Governments in the Council of Representatives” provides that “Observer governments shall have access to the main GATT document series”.¹²⁰

2. Derestriction procedures

Early Sessions of the CONTRACTING PARTIES provided, as a routine item of closing business, for derestriction after the end of the Session, of all session documents, including any other issued since the close of the previous Session, with a few exceptions such as the summary records of the current Session.¹²¹ Procedures for the derestriction of documents were adopted at the Fourth, Sixth, Fourteenth and Twenty-third Sessions of the CONTRACTING PARTIES.¹²² In 1967, a consolidation of the procedures in force was set out in L/2737, as follows:

- “1. Documents in the L/, COM.II/, COT/, BOP/ and C/ series (respectively: Limited Distribution, Committee II, Cotton and Textiles Committee, Committee on Balance-of-Payments Restrictions and Council) are derestricted sixty days after the close of each session of the CONTRACTING PARTIES, and sixty days after any half-year in which no session is held. Decisions adopted by the CONTRACTING PARTIES during sessions or by postal ballots, are published in the L/ series as unrestricted documents.”¹²³
- “2. Documents in the COM.TD/ series (Committee on Trade and Development) are derestricted after each meeting of the Committee on Trade and Development, subject to a fifteen-day period after circulation of the list of documents proposed for derestriction.
- “3. Documents in the SR.../ series (summary records of sessions) are derestricted at the end of the second following session.
- “4. Documents in the C/M/ series (Minutes of the Council of Representatives) and selected documents in the SECRET/ series are derestricted at the end of each session of the CONTRACTING PARTIES, with a delay of two years.

¹¹⁹Spec/203/55, dated 21 March 1955.

¹²⁰L/7286, para. 5; a footnote to this paragraph refers to “L/, C/, C/W/, etc.”.

¹²¹GATT/CP.3/SR.42; derestriction agreed with the exception of documents originally classified as “secret”, documents of working parties (except those issued as numbered GATT documents), and documents for which any contracting party has requested that restricted status be continued; see also CP.3/76, CP.3/SR.41 p. 4.

¹²²GATT/CP.45; GATT/CP.47+Add.1-4; GATT/CP.4/4, GATT/CP.4/SR.4 p. 6; GATT/CP.6/11, GATT/CP.6/SR.25, p. 2; W.14/3, SR.14/8 p. 107, INF/73, L/2238; INT(65)695, C/M/10, C/W/41, L/2564 +/Rev.1 +/Add.1, SR.23/11 p. 171.

¹²³At the Second Session of the CONTRACTING PARTIES in 1948, “the Chairman proposed that the Secretariat should be authorized to issue the Decisions taken by the CONTRACTING PARTIES as unrestricted documents. The proposal was approved”. GATT/CP.2/SR.25 p. 5.

“The secretariat gives advance notice to contracting parties and intergovernmental organizations of the documents due for derestriction and fixes the date for the derestriction to take place. Any document, or any item in a summary record or Council minute, remains restricted at the request of a contracting party or an intergovernmental organization. A list of newly-derestricted documents is issued by the secretariat shortly after each date fixed for derestriction.

“All documents in series other than those mentioned in paragraphs 1 to 4 remain restricted, with the following exceptions:

“COM.I/, COM.III/, and AC/ series, now discontinued, have been derestricted. INF/ series and GATT press releases are not subject to restriction”.

Document series which have come into existence since 1967 have been submitted to the CONTRACTING PARTIES for periodic derestriction, with some exceptions. The procedure in recent years has been for the Secretariat to propose a list of documents for derestriction twice a year, allowing governments and intergovernmental organizations sixty days to request that a document or portion thereof remain restricted. Occasionally documents have been derestricted outside of these twice-yearly exercises at a contracting party's request, subject to the same 60-day requirement,¹²⁴ or immediately upon decision at a Council meeting.¹²⁵ Decisions on derestriction or derestriction practices have also been made with respect to types of documents, document series or a specific document.¹²⁶ A list of documents recently derestricted and those remaining restricted is issued twice a year in the INF/ series.

A series of consultations on document derestriction were conducted in the GATT Council in 1993-94. At the Fiftieth Session in December 1994, the Chairman noted that delegations had been unable to reach consensus before the last meeting of the Council in 1994, as some were interested primarily in the treatment of documents to be issued in the future under the auspices of the WTO, while others thought that any change in procedures should not apply to past GATT documents, given expectations of confidentiality when those documents were issued. A number of delegations had therefore proposed that informal consultations be held to establish procedures for issuance and derestriction of WTO documents; in the light of such consultations procedures for issuance and derestriction of GATT 1947 documentation could then be reviewed.¹²⁷

3. Panel reports and the roster of non-governmental panelists

At its meeting on 4 May 1988, “the Council agreed that in future, panel reports would be derestricted upon their adoption by the Council or the CONTRACTING PARTIES unless, prior to adoption, a party to the dispute had informed the Council Chairman or CONTRACTING PARTIES' Chairman that it opposed derestriction in that particular case. The Secretariat would check with the parties to a dispute prior to the Council meeting or CONTRACTING PARTIES' Session in this connection”.¹²⁸ At its meeting on 21 June 1994, the Council agreed that the roster of non-governmental panelists would be issued henceforth as an unrestricted document in the L/ series.¹²⁹

4. Documents associated with negotiating rounds

Eight negotiating rounds have been conducted in the GATT: 1947 (Geneva), 1949 (Annecy), 1950 (Torquay), 1956 (Geneva), 1960-61 (Dillon Round), 1962-67 (Kennedy Round), 1974-79 (Tokyo Round) and the Uruguay Round. Essentially all documents relating to these rounds remain restricted. Uruguay Round

¹²⁴See, e.g., INF/234 (derestriction of L/6175, Panel report on United States - Taxes on Petroleum and Certain Imported Substances).

¹²⁵See, e.g., Council derestriction (C/M/245 p. 17-18) of “United States - Countervailing duties on fresh, chilled and frozen pork from Canada”, DS7/R, 38S/30, at the request of Canada; Council derestriction (C/M/275, p. 10-12) of document C/189, proposal on derestriction, at request of United States.

¹²⁶See 30 March 1994 decision of the Uruguay Round Trade Negotiations Committee on “Derestriction of Certain Uruguay Round Documents”, MTN.TNC/42; decision of 30 November 1994 by the Preparatory Committee for the WTO on “Derestriction of Documents of the Preparatory Committee and its Subsidiary Bodies”, PC/4; decision to immediately derestrict the Report by the Chairman of the Group on Environmental Measures and International Trade (L/7402) “in view of the public misperception about the role of the GATT in the field of the environment”, SR.49/3 p. 6.

¹²⁷SR.50/2 p. 2-3; see also C/M/275, p. 10-12.

¹²⁸C/M/220, 35S/331.

¹²⁹C/M/273, p. 16.

documentation, too, has been issued in restricted document series; on 30 March 1994, the Uruguay Round Trade Negotiations Committee decided on derestriction procedures for Uruguay Round documents.¹³⁰

5. Documents of bodies established under separate agreements

When the Committees administering the Tokyo Round Agreements were first convened in early 1980 and 1981, each of those bodies decided that working documents and minutes would never be derestricted and that the secretariat should make a proposal annually regarding other documents to be derestricted at the end of the year and that these documents would be derestricted if no delegation objected to the proposal.¹³¹ Under these procedures, the bodies mentioned thereunder propose a list of documents for derestriction annually. On occasion a document has also been derestricted by a decision of the body issuing it.¹³² Certain other bodies of limited membership have also established their own document derestriction policies.¹³³

IV. INSTITUTIONAL ISSUES IN TRADE NEGOTIATIONS

Trade negotiations in the GATT have generally been conducted under the supervision of a Trade Negotiations Committee (earlier, a Tariff Negotiations Committee). The General Agreement does not require individual contracting parties to participate in GATT-sponsored negotiations. The CONTRACTING PARTIES may invite non-contracting parties to participate. Almost all past rounds of negotiations have also provided the opportunity for negotiations on accession by one or more governments. See under Article XXVIII *bis* above; see also the 1985 Secretariat Note on the "Launching and Organization of Trade Negotiations in the GATT"¹³⁴ and Secretariat Notes on negotiating procedures in the Dillon, Kennedy and Tokyo Rounds.¹³⁵

The Uruguay Round was launched by a conference of Ministers meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este, Uruguay. The Ministerial Declaration of 20 September 1986 on the Uruguay Round established a Trade Negotiations Committee to carry out the negotiations, and provided in two parts for the launching of negotiations on trade in goods and in services, respectively, conducted within a Group for Negotiations on Goods and a Group for Negotiations on Services each reporting to the Trade Negotiations Committee.

As for participation, the Ministerial Declaration provided that the negotiations would be open to: (i) all contracting parties; (ii) countries having acceded provisionally; (iii) countries applying the GATT on a *de facto* basis having announced, not later than 30 April 1987, their intention to accede to the GATT and to participate in the negotiations; (iv) countries that had already informed the CONTRACTING PARTIES, at a regular meeting of the Council of Representatives, of their intention to negotiate the terms of their membership as a contracting party; and (v) developing countries that had, by 30 April 1987, initiated procedures for accession to the GATT with the intention of negotiating the terms of their accession during the course of the negotiations. Participation in negotiations relating to the amendment or application of GATT provisions or the negotiation of new provisions would be open only to contracting parties.¹³⁶ On 5 July 1993, the TNC agreed that by analogy, and *mutatis mutandis*, the Decision referred to above on page 1094 regarding the contracting party status of Yugoslavia would apply to the Uruguay Round and to the Trade Negotiations Committee.¹³⁷ As of the 15 April 1994 Marrakesh Ministerial Meeting concluding the Uruguay Round, there were 125 countries and territories

¹³⁰See 30 March 1994 decision of the Uruguay Round Trade Negotiations Committee on "Derestriction of Certain Uruguay Round Documents", MTN.TNC/42. The PREP.COM(86)/ document series which preceded the Round was derestricted in March 1987 through the regular document derestriction process. L/6122, INF/230.

¹³¹ADP/M/2 p. 10; AIR/W/16; GPR/M/1; LIC/M/2; SCM/M/3 p. 3; TBT/M/2.

¹³²Decision of Committee on Subsidies and Countervailing Measures to derestrict adopted panel report on "Canadian countervailing duties on grain corn from the United States" in SCM/140 and Corr.1, SCM/M/59 p. 34.

¹³³See COM.TEX/W/26 (Textiles Committee); see also CPC/46, CPC/W/60 Annex II (Committee of Participating Countries).

¹³⁴Spec(85)46, dated 26 September 1985.

¹³⁵Notes on "Rules and Procedures for the Dillon and Kennedy Rounds", MTN/W/8; "Use of Computer Facilities in the Multilateral Trade Negotiations", MTN/W/12; "Accreditation of Delegations to the Multilateral Trade Negotiations", MTN/W/26; Notes on "Tariff Negotiations in the Kennedy and Tokyo Rounds", MTN.GNG/NG1/W/1; and "Data Base and Relevant Work Undertaken on Negotiating Techniques", MTN.GNG/NG2/W/1.

¹³⁶Min.Dec, agreed on 20 September 1986, 33S/19, 26-27.

¹³⁷MTN.TNC/30, p. 3-4, paras. 15-16.

participants in the Round.¹³⁸ On 28 July 1993, the TNC further agreed that the countries and territories which are negotiating accession to GATT but are not presently participating in the Uruguay Round, may, upon request, be associated with the activities of the Uruguay Round; these countries and territories would be invited to be present, without participating in the deliberations, at formal meetings of Uruguay Round bodies, would have access to minutes of meetings where they were present, but would not be entitled to table offers or other documentation for circulation to participants. As of 15 April 1994 there were 19 such countries or territories.¹³⁹

V. THE INTERIM COMMISSION FOR THE INTERNATIONAL TRADE ORGANIZATION (ICITO)

1. Establishment and membership

The Interim Commission for the International Trade Organization (ICITO) was established by a Resolution of the United Nations Conference on Trade and Employment (the Havana Conference) “considering that pending the establishment of the Organization certain interim functions should be performed”.¹⁴⁰ The Annex to this Resolution provides for the membership and functions of ICITO and provides in paragraph 9 that “The Commission shall cease to exist upon the appointment of the Director-General of the Organization, at which time the property and records of the Commission shall be transferred to the Organization”.

The Havana Conference Resolution Establishing an Interim Commission for the International Trade Organization provides that the Commission shall consist of “the governments the representatives of which have approved this resolution and which are entitled to original membership of the Organization under Article 71 of the [ITO] Charter”. The fifty-two delegations which approved the resolution are listed in the note below.¹⁴¹ Under Article 71 of the Charter the governments which were entitled to original membership were those States and customs territories invited to the United Nations Conference for Trade and Employment in Havana.

The Interim Commission itself has met only once, on 20 March 1948 during the Havana Conference. The Annex to the Havana Conference Resolution provides that “the Commission shall elect an Executive Committee of eighteen members to exercise any or all of its functions as the Commission may determine on electing the Committee”. At its first meeting, the Commission elected its Executive Committee consisting of: Australia, Benelux Union, Brazil, Canada, China, Colombia, Czechoslovakia, Egypt, El Salvador, France, Greece, India, Italy, Mexico, Norway, Philippines, United Kingdom and United States.¹⁴² The Executive Committee membership has not changed since that election except for the deletion of the Czech and Slovak Federal Republic when it ceased to exist on 31 December 1992; seventeen members remain.

¹³⁸MTN.TNC/MIN(94)/INF/1 (list of participants). Participants as of 15 April 1994 were: Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cameroon, Canada, Central African Rep, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Egypt, El Salvador, European , Communities, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Republic of Korea, Kuwait, Lesotho, Liechtenstein, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Singapore, Slovak Republic, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Zaire, Zambia, Zimbabwe.

¹³⁹MTN.TNC/32, p. 13, para. 40-41 (decision); MTN.TNC/MIN(94)/INF/1 (list of associated countries and territories). The 19 associated countries or territories were: Albania, Armenia, Belarus, Bulgaria, Croatia, Ecuador, Estonia, Jordan, Latvia, Lithuania, Moldova, Mongolia, Nepal, Panama, Russian Federation, Saudi Arabia, Slovenia, Ukraine, Chinese Taipei.

¹⁴⁰Resolution Establishing an Interim Commission for the International Trade Organization, adopted upon signing of Havana Conference Final Act 24 March 1948, in *Havana Conference Final Act and Related Documents*, E/CONF.2/78 or ICITO/I/4. The Resolution was drafted by a Working Party of the Sixth Committee of the Havana Conference; see Havana Reports p. 158-159.

¹⁴¹Afghanistan, Argentina, Australia, Austria, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Haiti, India, Republic of Indonesia, Iran, Iraq, Italy, Lebanon, Liberia, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Peru, Philippines, Poland, Southern Rhodesia, Sweden, Syria, Transjordan, Turkey, South Africa, United Kingdom, United States, Uruguay, Venezuela. E/CONF.2/78 or ICITO/I/4, p. 69.

¹⁴²“It was agreed that the election of the Executive Committee should proceed along the lines of Article [78 of the Charter] and the Annex thereto”. ICITO/I/SR.1 p. 1.

The Executive Committee met on 20 March 1948 at the Havana Conference, then at Geneva from 25 August to 15 September 1948 during the Second Session of the CONTRACTING PARTIES, and in the summer of 1949 during the Third Session of the CONTRACTING PARTIES. A third session was scheduled for September 1949, on which date the Charter provided that (if the Charter had not entered into force) the Secretary-General of the United Nations would invite those governments which had deposited instruments of acceptance of the Charter to enter into consultation to determine whether and on what conditions they desired to bring the Charter into force.¹⁴³ In view of the delay in receiving acceptances of the Havana Charter¹⁴⁴, in August 1949 the Executive Committee agreed to postpone this meeting until a date when the entry into force of the Charter and the holding of the first ITO Conference were more imminent.¹⁴⁵ On 6 December 1950 the United States Department of State issued a statement of policy indicating that the Havana Charter would not be submitted again to the United States Congress. It subsequently became evident that the establishment of the ITO would be indefinitely postponed.¹⁴⁶

Since 1950, the Executive Committee of ICITO has met only four times. The meetings on 29 March 1968, 4 August 1980, and 10 June 1993 were held to replace the Executive Secretary and confirm the appointment of the GATT Director-General designate as his successor.¹⁴⁷ For instance, at the June 1993 meeting it was agreed that the appointment of Mr. Peter Sutherland as Executive Secretary of ICITO would be coterminous with his tenure as Director-General to the CONTRACTING PARTIES to the GATT. The final meeting of the Executive Committee, held on 9 December 1995, adopted the Transfer Agreement reprinted *in extenso* at page 1123.

2. Functions

Paragraph 2 of the Annex to the Havana Conference Resolution provided that the Commission was to have the following functions, which bore on preparation for the first Conference of the ITO:

- “(a) to convoke the first regular session of the Conference of the Organization (hereinafter referred to as “the Conference”) not less than four months and, as far as practicable, not more than six months after the receipt of the last acceptance needed to bring the Charter into force;
- “(b) to submit the provisional agenda for the first regular session of the Conference, together with documents and recommendations relating to all matters upon this agenda, including (i) proposals as to the programme and budget for the first year of the Organization;¹⁴⁸ (ii) studies regarding selection of headquarters of the Organization;¹⁴⁹ (iii) draft financial and staff regulations.¹⁵⁰
- “(c) to prepare, in consultation with the United Nations, a draft agreement of relationship as contemplated in paragraph 1 of Article 86 of the Charter¹⁵¹ for consideration by the first regular session of the Conference;

¹⁴³Havana Charter, Article 103:2(b). This date is also referred to in Article XXIX:3 of the General Agreement: see the chapter on Article XXIX.

¹⁴⁴A Secretariat Note on “Interim Arrangements and Postponement of ITO” (Sec/36/53 (mid-1953)) states that “By the end of 1950 the Havana Charter had been accepted by Liberia and - conditional upon acceptance by the United Kingdom and the United States - by Australia. The Swedish Riksdag authorized Sweden’s adherence at the discretion of the Foreign Minister. No acceptances had been deposited with the Secretary-General of the United Nations”.

¹⁴⁵ICITO/1/21. The CONTRACTING PARTIES decided on 21 March 1950 that the meeting referred to in Article XXIX:3 “shall be held at such time as may subsequently be decided by the CONTRACTING PARTIES”. Decision at GATT/CP.4/29, GATT/CP/61 p. 8; adoption at GATT/CP.4/SR.17 p. 7. The Decision of 24 October 1953 by the CONTRACTING PARTIES to convene the Review Session in October 1954 provided that “the review referred to in this Decision shall be deemed to fulfil the requirements of paragraph 3 of Article XXIX”. 2S/28, 30.

¹⁴⁶Sec/36/53. The US announcement of its decision not to resubmit ITO to Congress appears in GATT/CP/86 dated 7 December 1950.

¹⁴⁷ICITO/1/36, ICITO/1/37, ICITO/1/38.

¹⁴⁸See ICITO/EC.1/5, ICITO/EC.2/14 and Annex B thereto.

¹⁴⁹See ICITO/EC.2/SR.10 p. 13-15 (discussion of site).

¹⁵⁰See ICITO/EC.2/10 (draft regulations), ICITO/EC.2/14 Annex C p. 75 (revision), ICITO/EC.2/SR.13 p. 7 (approval).

¹⁵¹This paragraph requires the conclusion of a specialized agency agreement with the United Nations. See below at page 1131.

- “(d) to prepare, in consultation with inter-governmental organizations other than the United Nations, for presentation to the first regular session of the Conference, documents and recommendations regarding the implementation of the provisions of paragraphs 1 and 3 of Article 87 of the Charter¹⁵²;
- “(e) to prepare, in consultation with non-governmental organizations, for presentation to the first regular session of the Conference, recommendations regarding the implementation of the provisions of paragraph 2 of Article 87 of the Charter¹⁵³;
- “(f) to prepare, with a view to recommendation by the Economic and Social Council to the first regular session of the Conference, the Annex referred to in paragraph 3 of Article 90 of the Charter¹⁵⁴;
- “(g) to carry out the functions and responsibilities referred to in the following documents of the United Nations Conference on Trade and Employment: 1. Paragraph 2 of the Final Act of the United Nations Conference on Trade and Employment. ...¹⁵⁵ 2. The Resolution of the Conference regarding the relation of the International Trade Organization and the International Court of Justice. ...¹⁵⁶ 3. The Resolution of the Conference relating to Economic Development and Reconstruction. ...¹⁵⁷ 4. The Report of Sub-Committee G of the Third Committee on the Proposal made by the Delegation of Switzerland ... together with the sections relating to that matter in the Report of the Third Committee ...¹⁵⁸;
- “(h) to enter into consultations with the Secretary-General of the United Nations regarding the expenses incurred by the Preparatory Committee of the [Havana Conference] and by that Conference, and, in the light of such consultations, to present a report to the first regular session of the Conference;¹⁵⁹
- “(i) generally to perform such other functions as may be ancillary and necessary to the effective carrying out of the provisions of this annex.”

¹⁵²See references on page 1132 below.

¹⁵³See references on page 1133 below.

¹⁵⁴The reference is to an ITO Annex to the United Nations General Convention on the Privileges and Immunities of the Specialized Agencies (33 UNTS 261); see page 1129 below.

¹⁵⁵This paragraph provides that “The authentic text of the Charter in the Chinese, Russian and Spanish languages will be established by the Interim Commission of the International Trade Organization, in accordance with the procedure established by the Conference”. See ICITO/EC.2/5, ICITO/EC.2/15. Texts of the Charter in these languages are on deposit in the GATT Library. An authentic Spanish language text of the Charter was finalized by the ICITO Executive Committee; see the material on authentic texts under Article XXVI in this book.

¹⁵⁶In this Resolution, the Conference “Resolves that the Interim Commission on the International Trade Organization, through such means as may be appropriate, shall consult with appropriate officials of the International Court or with the Court itself, and after such consultation report to the first regular session of the Conference of the [ITO] upon the questions of: (a) whether [the procedures in Chapter VIII of the Charter for review of legal questions arising out of decisions and recommendations of the Organization] need to be changed to ensure that decisions of the Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment; and (b) whether an amendment should be presented to the Conference pursuant to and in accordance with the provisions of [Annex N of the Charter]”. E.CONF.2/78 or ICITO/I/4, p. 71. On ICITO implementation of this mandate see ICITO/EC.2/3, ICITO/EC.2/15, ICITO/EC.2/SR.3 p. 3-6, ICITO/EC.2/SR.11 p. 1-9, ICITO/EC.2/SR.12 p. 1-2.

¹⁵⁷This Resolution directed the ICITO “to examine (i) the powers, responsibilities and activities in the field of industrial and general economic development and reconstruction of the United Nations, of the specialized agencies and of other inter-governmental organizations, including regional organizations; (ii) the availability of facilities for technical surveys or studies of: the natural resources of under-developed countries; or the possibilities of their industrial development, whether general or in relation to the processing of locally produced raw materials or other particular industries; or for the improvement of their systems of transportation and communications; or with respect to the manner in which investment of foreign capital may contribute to their economic development; and in the light of this examination to report to the Organization upon (a) the structure and administrative methods, (b) the working relations with the United Nations, the specialized agencies and other inter-governmental organizations including regional organizations[,] which will enable the [ITO] most effectively to carry out its positive functions for the promotion of the economic development and reconstruction of Members”. E/CONF.2/78 or ICITO/I/4 p. 74. On implementation see ICITO/EC.2/7 and annexes, ICITO/EC.2/20, ICITO/EC.2/SR.3 p. 6-11, ICITO/EC.2/SR.15 p. 7, ICITO/EC.2/SR.16.

¹⁵⁸The Sub-Committee in question was unable to accept a Swiss proposal (E/CONF.2/C.3/11, Havana Reports p. 102) but recommended that ICITO “invite the Swiss Government to participate in a study of the problems facing the Swiss economy with a view to submitting to the first Conference of the Organization a report as to the measures for dealing with the Swiss problem which could be taken in accordance with the procedures established in the Charter”. Havana Reports, p. 44-45; see also *ibid.* p. 102-105. On implementation see ICITO/EC.2/9, ICITO/EC.2/18, ICITO/EC.2/SR.4 p. 1-5, ICITO/EC.2/SR.15 p. 1-2.

¹⁵⁹Concerning the consultations see ICITO/EC.1/SR.2 p. 2, ICITO/EC.2/4, ICITO/EC.2/14/Add.1, ICITO/EC.2/SR.9 p. 1-11, ICITO/EC.2/SR.14 p. 1-4.

The Sixth Committee of the Havana Conference “agreed that the performance of the functions specified in subparagraphs 2(c), (d) and (e) of the Annex to the Havana Conference Resolution could not result in the increase of the obligations or the decrease of the rights of Members under the Charter”.¹⁶⁰

At the first and only meeting of the Interim Commission itself, it was agreed that the Commission should delegate all its powers to the Executive Committee including the power to replace the Executive Secretary if this should become necessary.¹⁶¹ No later meetings of the Interim Commission were held.

A 1953 Secretariat Note states: “The main task of the Interim Commission was to prepare the ground for the first session of ITO, including a plan of work for the first year of the Organization, the budget, the site for ITO headquarters, relations with the United Nations, the specialized agencies and other inter- and non-governmental organizations. The bulk of this task - so far as events could be foreseen - was completed in 1949, and since that time the secretariat of the ICITO has been almost entirely occupied with the performance of duties for the Contracting Parties to the General Agreement on Tariffs and Trade”.¹⁶²

3. Procedures

Rules of Procedure were adopted at the Interim Commission’s first meeting and revised at the second session of the Executive Committee.¹⁶³ The Chairman of the Executive Committee was elected at each meeting thereof.

4. Budget

In the course of arrangements for certain administrative services to be performed on a reimbursement basis by the Secretariat of the United Nations during the early years of the GATT, the Executive Secretary of ICITO agreed “that the administration, financial and personnel regulations of the United Nations shall, where appropriate, apply to the Secretariat of the Interim Commission”.¹⁶⁴

The ICITO budget in 1948-50 was financed by contributions from the CONTRACTING PARTIES and by advances from the Working Capital Fund of the United Nations. In 1953 ICITO was paid by the CONTRACTING PARTIES for services rendered prior to 1951 and repaid the same amount to the United Nations, liquidating its outstanding balance. A Note to this effect from the Executive Secretary of 5 October 1954 also stated that “As all current expenditure of ICITO is automatically repaid by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade, all financial operations of ICITO are now self-liquidating and it therefore appears unnecessary to issue any further statement on the accounts or the financial position of the ICITO”.¹⁶⁵

5. Secretariat

The Havana Conference Resolution provides that “the Commission shall elect an Executive Secretary who shall be its chief administrative officer. The Executive Secretary shall appoint the staff of the Commission observing, as far as possible, the principles of paragraph 2 of Article 85 of the Charter ... The Executive Secretary shall also perform such other functions and duties as the Commission shall determine”. Paragraph 2 of Article 85 of the Charter provides: “The selection of the members of the staff, including the appointment of the Deputy Directors-General, shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity”.

¹⁶⁰Havana Reports p. 158.

¹⁶¹ICITO/1/SR.1 p. 3.

¹⁶²Sec/36/53, p. 2.

¹⁶³ICITO/EC.1/3, based on the final Rules of Procedure for the Havana Conference (E/CONF.2/2/Rev.4) with necessary modifications, adopted on 20 March 1948 (ICITO/1/SR.1 p. 1), revisions ICITO/EC.2/6 and Rev.1, adopted ICITO/EC.2/SR.1 p. 3-11.

¹⁶⁴ICITO/EC.2/5 p. 3.

¹⁶⁵ICITO/1/35.

The preparatory work of the Charter states that “It was agreed that under the second sentence of paragraph 3 of the annex to the resolution the Executive Secretary of the Commission might ... be authorized to make available to the Contracting Parties to the General Agreement on Tariffs and Trade acting jointly in accordance with Article XXV thereof, at their request, the services of the staff upon terms to be agreed”.¹⁶⁶ The CONTRACTING PARTIES adopted at their Second Session in September 1948 a Resolution requesting ICITO to furnish secretariat services to them. The Executive Committee of ICITO met at that time and approved financial arrangements which conferred authority on the Executive Secretary of ICITO to provide secretariat services to the CONTRACTING PARTIES. It was also agreed that the CONTRACTING PARTIES would reimburse ICITO for the services so rendered.¹⁶⁷ The second Report on Continuing Administration of the General Agreement adopted 24 October 1951 recommended “that the CONTRACTING PARTIES decide that the usual functions of a secretariat continue to be carried out, pending further consideration at a later session, by the Executive Secretary of the Interim Commission for an International Trade Organization”.¹⁶⁸

This arrangement between ICITO and the CONTRACTING PARTIES has continued to the present day. As from 1 January 1951, the ICITO Secretariat has worked exclusively for the CONTRACTING PARTIES and the CONTRACTING PARTIES have borne the entire cost of the ICITO Secretariat.¹⁶⁹ The Chairman of the Executive Committee of ICITO stated at its most recent meeting that “From a legal point of view, it was therefore the Executive Secretary of ICITO who provided secretariat services to the CONTRACTING PARTIES. Although in the course of over forty years of practical developments this subtle legal distinction had virtually been ignored, it was imperative that the function of Director-General to the CONTRACTING PARTIES to the GATT and that of Executive Secretary of ICITO be exercised by the same person, so as to enable the secretariat to engage in contractual transactions, and to participate in the United Nations Joint Staff Pension Fund”.¹⁷⁰

In 1955 the CONTRACTING PARTIES adopted a decision enabling ICITO staff to participate in the United Nations Joint Staff Pension Fund.¹⁷¹ The regulations of the Pension Fund were amended by a United Nations General Assembly Resolution to permit the admission of ICITO staff,¹⁷² an agreement was concluded between the Secretary-General of the United Nations and the Executive Secretary of ICITO on 20 May 1957, and the staff of ICITO were admitted to the UNJSPF as from 1 July 1957. ICITO staff disputes regarding non-pension fund matters are submitted to the IBO Administrative Tribunal and disputes regarding pension matters are submitted to the UN Administrative Tribunal.

6. Termination of ICITO and transfer of ICITO and GATT assets, liabilities, records, staff and functions to the WTO

The CONTRACTING PARTIES at their Sixth Special Session on 8 December 1994 and the Executive Committee of ICITO at its final meeting on 9 December 1994 each approved a Decision on “Transitional Arrangements: Transfer Agreement between GATT 1947, ICITO and the WTO”.¹⁷³ The Decision was also agreed to by the Preparatory Committee for the WTO, and was endorsed by the General Council of the WTO at its first meeting on 31 January 1995.¹⁷⁴ The “Agreement on the Transfer of Assets, Liabilities, Records, Staff and Functions from the Interim Commission of the International Trade Organization and the GATT to the World Trade Organization”, attached to this Decision, provides as follows:

“The CONTRACTING PARTIES to the General Agreement on Tariffs and Trade (hereinafter referred to as the ‘GATT 1947’), the Executive Committee of the Interim Commission of the International Trade Organization ... and the Preparatory Committee for the World Trade Organization ...

¹⁶⁶Havana Reports p. 158-159.

¹⁶⁷GATT/CP.2/41, GATT/CP.2/SR.24 p. 8-9, ICITO/EC.2/16.

¹⁶⁸GATT/CP.6/41, II/205, 208.

¹⁶⁹ICITO/1/29, ICITO/1/30.

¹⁷⁰ICITO/1/38 p. 2, repeating similar statement in ICITO/1/37.

¹⁷¹SR.10/18 p. 202; see also documents on the question of affiliation of the staff to the United Nations Joint Pension Fund, at L/452/Add.1, L/509, L/527, L/576.

¹⁷²General Assembly Resolution 874(IX); L/694. See also discussions in the Fifth Committee of the General Assembly, A/C.5/SR.536. GATT is represented in the United Nations Joint Staff Pension Board (UNJSPB).

¹⁷³PC/9, L/7580; Agreement, duly signed and executed, also issued as ICITO/1/39.

¹⁷⁴WT/L/36, WT/GC/M/1.

“Noting that:

“Articles VI:1 and XVI:2 of the Marrakesh Agreement Establishing the World Trade Organization ... provide that there shall be a Secretariat of the WTO and that, to the extent practicable, the Secretariat of the GATT 1947 shall become the Secretariat of the WTO;

“the duties of the Secretariat of the GATT 1947 are presently being performed by the staff of the ICITO;

“the Director-General of the WTO, according to Article VI:3 of the WTO Agreement, will be able to appoint the members of the staff of the WTO Secretariat only after the Ministerial Conference or General Council of the WTO has adopted regulations governing the duties and conditions of service of the staff;

“Recalling that paragraph 8 (a) of the Ministerial Decision on the Establishment of the Preparatory Committee adopted on 14 April 1994 authorizes the Preparatory Committee to take, as appropriate, decisions in advance of the establishment of the WTO, *inter alia*, on financial regulations, the budget estimates for the first year of operation of the WTO, the transfer of the property of the ICITO and the GATT 1947 to the WTO, and the terms and conditions of the transfer of ICITO staff to the Secretariat of the WTO;

“Agree as follows:

“1. As from the date of entry into force of the WTO Agreement, all assets and liabilities of the GATT 1947 and the ICITO shall be assets and liabilities of the WTO. The assets and liabilities of the GATT 1947 and the ICITO shall include the assets held and the liabilities incurred in the name of ICITO/GATT.

“2. The Director-General of the WTO, acting in accordance with the provisions of Articles VI:3 and XVI:2 of the WTO Agreement, shall appoint the members of the staff of the Secretariat of the WTO on or before 30 June 1995, provided that the General Council of the WTO has adopted prior to that date regulations governing the duties and conditions of service of the members of the staff of the WTO Secretariat, including regulations on contract of employment policy, salaries and pensions.

“3. The staff of the ICITO shall perform the duties of the Secretariat of the WTO until the appointment of the staff of the Secretariat of the WTO. The staff of the ICITO shall continue to perform the duties of the GATT 1947 Secretariat and those of the Secretariat of the bodies established under the Tokyo Round Agreements until the appointment of the staff of the Secretariat of the WTO; thereafter these duties shall be performed by the Secretariat of the WTO.

“4. The ICITO is herewith dissolved as of the date on which the members of the Secretariat of the WTO are appointed. On that date the records of the ICITO shall be transferred to the WTO.

“5. The Director-General of the WTO shall perform the depositary functions of the Director-General of the GATT 1947 after the date on which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. On that date the records of the GATT 1947 shall be transferred to the WTO.

“6. There shall be a common budget for the GATT 1947 and the WTO from the date of entry into force of the WTO Agreement until the date as of which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. During that period the basis for assessment of the contracting parties to the GATT 1947, of the Members of the WTO and of contracting parties that are also Members of the WTO shall be the same, and a single payment to the WTO shall be due by all contracting parties to the GATT 1947 and Members of the WTO.

“7. The Director-General of the GATT 1947 and, after the date of the entry into force of the WTO Agreement, the Director-General of the WTO are herewith authorized to take, in consultation with the Committees on Budget, Finance and Administration of the GATT 1947 and the WTO, the necessary actions to adjust the contractual arrangements of the ICITO and of the GATT 1947, including the arrangements on financial and personnel matters, to the changes provided for under paragraphs 1 to 6 above.

“8. This Agreement shall initially apply until the date of the first meeting of the General Council of the WTO. It shall remain in force beyond that date provided that it is approved by the General Council of the WTO.

“9. The text of this Agreement, done in a single copy, in the English, French and Spanish languages, each text being authentic, shall be deposited with the Director-General of the GATT 1947.”

VI. BUDGET

A. FINANCIAL AND BUDGET PROCEDURES

Rule 15 of the Rules of Procedure of the CONTRACTING PARTIES provides that “The usual duties of a secretariat shall, by agreement with the Interim Commission for the International Trade Organization, be performed by the Executive Secretary of the Interim Commission on a reimbursable basis”. The services performed by the Secretariat of the ICITO have been therefore reimbursed from the budget of the CONTRACTING PARTIES. See the material directly above on the budget, financial procedures and Secretariat of ICITO.

Prior to 1962, the GATT budget was examined by an *ad hoc* working party appointed each year by the CONTRACTING PARTIES for that purpose. In May 1962, this earlier practice was discontinued when the Council appointed a Committee on Budget, Finance and Administration of fourteen members.¹⁷⁵ The current terms of reference of the Budget Committee are as follows:

- (i) “To examine any questions arising in connection with the audited accounts, proposals for the budgets of the GATT and of the International Trade Centre UNCTAD/GATT, and the financing thereof.
- (ii) “To study any financial and administrative questions which may be referred to it by the Council or submitted to it by the Director-General, and undertake such other studies as may be assigned to it by the Council”.¹⁷⁶

The Budget Committee makes recommendations to the CONTRACTING PARTIES through the Council regarding adoption of the draft budget, and the CONTRACTING PARTIES then take a decision on the budget according to the usual procedures. With regard to the accounts of the GATT, the Committee examines reports submitted to it by the Director-General and the External Auditor. The Committee submits annually to the CONTRACTING PARTIES, through the Council, its recommendation regarding approval of the audited accounts for the past fiscal year. The Council has exceptionally and for emergency reasons taken decisions on recommendations of the Budget Committee.¹⁷⁷ The Committee has on occasion made recommendations on administrative matters.

Paragraph 6 of the Agreement on the Transfer of Assets, Liabilities, Records, Staff and Functions from ICITO and GATT to the WTO, cited *in extenso* in the preceding section, provides that “There shall be a common budget for the GATT 1947 and the WTO from the date of entry into force of the WTO Agreement until the date as of which the legal instruments through which the contracting parties apply the GATT 1947 are terminated. During that period the basis for assessment of the contracting parties to the GATT 1947, of the Members of the WTO and of contracting parties that are also Members of the WTO shall be the same, and a single payment to the WTO shall be due by all contracting parties to the GATT 1947 and Members of the WTO.” At their Fiftieth Session on 9 December 1994, the Contracting Parties decided as following concerning the future treatment of the budget of the GATT 1947:

“... given that:

“– the WTO Secretariat will service all agreements, through a single budget;

¹⁷⁵C/M/10, p.15. In 1963 and 1964, the Council appointed a Budget Committee based on a proposal by the Council Chairman, and in 1965 through 1967 the Council agreed on composition, chairmanship and terms of reference of the Budget Committee.

¹⁷⁶L/5964/Rev.5.

¹⁷⁷C/M/251 p. 17-19, July 1991, adopting Budget Committee report in L/6870.

- “– there is to be a common assessment system with a single payment from each Member or GATT 1947 contracting party;
- “– there are practical problems for some participants in achieving ratification of the WTO by 1 January 1995;
- “– the Final Act will remain open for acceptance for a period of two years following its entry into force;
- “– that at different times during this period of two years some participants will change their status in respect of the WTO and GATT 1947;
- “... during the period in which the Final Act is open for acceptance:
 - “– the WTO Committee on Budget, Finance and Administration and the GATT 1947 Committee on Budget, Finance and Administration will meet in joint session with the same Chairman and a common agenda;
 - “– members of both the GATT 1947 Committee and the WTO Committee may participate fully on all agenda items;
 - “– until agreed otherwise, it shall be understood that matters relating to the ITC are dealt with on the understanding that they do not preempt the final position of the WTO in respect of the ITC;
 - “– this arrangement shall be reconsidered before the end of the period during which the Final Act is open for acceptance.”¹⁷⁸

B. RESOURCES

Since the adoption of the first contribution scale at the Second Session in September 1948, contributions of the contracting parties to the GATT budget for the year to come have been allocated on the basis of the volume of foreign trade in that year, estimated on the basis of a representative period.¹⁷⁹ A Working Party at the Third Session stated the view that “the best practical method would be to assess the contributions on the basis of the volume of the foreign trade of the Contracting Parties. This criterion was a simple one and was considered to be appropriate in the case of a group which is concerned with foreign trade”.¹⁸⁰

A footnote to the scale of contributions included in the 1992 report of the Committee on Budget, Finance and Administration states that “The contribution of each contracting party and associated government is calculated on the basis of its share in the total trade of the contracting parties and associated governments. The shares of the contracting parties in the total trade are computed on the basis of foreign trade figures for the last three available years. The scale of contributions also includes a minimum percentage contribution of 0.03 per cent for countries whose trade value is 0.03 per cent or less of the total trade of the contracting parties and associated governments”.¹⁸¹ The present minimum budget contribution percentage was decided in 1988.¹⁸² The level of the minimum contribution has been set at 31,320 Swiss francs for 1994.¹⁸³

¹⁷⁸PC/6, L/7577, Annex I, para. 6, adopted on 8 December 1994 by the Preparatory Committee for the WTO and on 9 December 1994 by the CONTRACTING PARTIES.

¹⁷⁹GATT/CP.2/41, adopted CP.2/SR.24 p. 8-9; shares at that time were based on the figures in Annex H of GATT, which reflected total external trade based on the average of 1938 and the latest twelve months for which figures were available (see I/67).

¹⁸⁰GATT/CP.3/WP.9 Budget/4/Rev.1, 3 August 1949.

¹⁸¹L/7105, adopted on 3 December 1992, BISD 39S/8. Closely similar statements appear in every budget report since L/596 (1957). Budget shares have been adjusted when the territory of a contracting party has diminished or enlarged. See GATT/CP.4/9/Add.2 (adjustment to contribution of Netherlands following accession of Indonesia under Article XXVI), L/3793 (adjustment to contribution of Pakistan following independence of Bangladesh), L/5986 (adjustment to contribution of United Kingdom following accession of Hong Kong as a contracting party), L/7455 (prospective adjustment to contribution of Switzerland after 1994 succession of Liechtenstein to separate contracting party status, since former Swiss had been based on statistics including those of Liechtenstein). However, see reservation of Germany regarding calculation of its budget share after reunification, C/M/251 p. 18, L/7105.

¹⁸²See recommendations in the 12 September 1988 Report of the Committee on Budget, Finance and Administration, L/6384.

¹⁸³Report of the Committee on Budget, Finance and Administration, PC/6, L/7577, adopted by the CONTRACTING PARTIES on 9 December 1994.

During discussion of the budget at the October 1988 Council meeting, the representative of the United Kingdom stated that "GATT was unusual among international institutions in that its subject matter, trade, could be used as a basis for providing a formula for its own funding. Adoption of this new budgetary package reconfirmed contracting parties' commitment to the principle of payment according to trade share ... The maintenance of a minimum contribution in no way undermined the principle in GATT of payment according to trade share. Any contracting party, by its very membership of and participation in the organization, entailed certain basic financial costs. Having a minimum contribution merely reflected that fact".¹⁸⁴

Since 1956 the GATT has maintained a Working Capital Fund, constituted of advances made by contracting parties, which are carried to the credit of the contracting parties which have made them; and other sums as decided by the CONTRACTING PARTIES, which are credited to the organization.¹⁸⁵ A government acceding to the General Agreement is required to make an advance to the Working Capital Fund in accordance with the scale of contributions applicable to the budget in the year of its accession. The minimum advance to the Working Capital Fund amounts to 0.5 per cent of the principal of the Fund for countries whose share of the total trade of the contracting parties and associated governments is 0.5 per cent or less.¹⁸⁶

At their Second Special Session in 1964, the CONTRACTING PARTIES adopted a recommendation of the Council "that in all cases where governments are in arrears for two years, the Executive Secretary, on behalf of the CONTRACTING PARTIES, should inform such governments of the CONTRACTING PARTIES' concern that such a situation exists and invited them to inform the CONTRACTING PARTIES through him of the steps they intend to take to fulfil their financial obligations. The Executive Secretary should communicate to the Council and/or the CONTRACTING PARTIES the replies received".¹⁸⁷ See also the discussion of arrears at the Council meetings of October 1987¹⁸⁸, October 1988¹⁸⁹ and June 1994.¹⁹⁰ At the Fiftieth Session in December 1994 the CONTRACTING PARTIES approved administrative measures to be applied to contracting parties which since 1989 had accumulated more than three years arrears in the payment of their contributions.¹⁹¹

In October 1993 the Council adopted a Budget Committee recommendation that as from 1 January 1994 observer governments be invited to contribute, for services provided to them, 50 per cent of the minimum contribution applying to contracting parties. Administrative measures would be applied to observers which do not pay.¹⁹² In December 1994 at the Fiftieth Session the CONTRACTING PARTIES approved a Decision on "Financial obligations of states or separate customs territories that are observers to the WTO", under which the specified contribution is not voluntary but mandatory; however, the preface to that Decision provides that "These financial obligations will not apply to the States or separate customs territories which are GATT 1947 contracting parties, in the process of ratification of the WTO Agreement, but have not yet become Members."¹⁹³ See also at page 1104 above.

VII. SECRETARIAT

Rule 15 of the Rules of Procedure of the CONTRACTING PARTIES provides that "The usual duties of a secretariat shall, by agreement with the Interim Commission for the International Trade Organization, be performed by the Executive Secretary of the Interim Commission on a reimbursable basis". As from 1 January

¹⁸⁴C/M/226.

¹⁸⁵The Working Capital Fund was created by the Resolution on the Budget for 1956 (L/596) and replaced a Cash Reserve set up on 27 November 1950 (GATT/CP.5/10, GATT/CP.5/13, GATT/CP/84, discussion at GATT/CP.5/SR.3). The rules governing the use of the Fund were modified by Decisions in 1958, 1960, 1965, and 1967; see Spec(65)82, and L/5009, Secretariat Note on "Working Capital Fund" dated 30 July 1980 (including text of rules governing the Fund).

¹⁸⁶See, e.g., L/7091, "Assessment on Namibia of Additional Contribution to the 1992 Budget and Advance to the Working Capital Fund", 28 September 1992.

¹⁸⁷Recommendation at C/M/23, adopted 18 November 1964, 2SS/SR.2 p. 9; see also L/2269 and L/2305.

¹⁸⁸Council meeting convened on 29 October 1987 to discuss request by Director-General for authorization to make bank overdrafts if expected contributions were not received by 28 October 1987; see GATT/AIR/2497, draft decision (not adopted) in C/151, Spec(87)52, C/M/214.

¹⁸⁹See discussion of proposals regarding budgetary arrears in connection with the 1988 Reports of the Committee on Budget, Finance and Administration (L/6384 and L/6408), at C/M/226.

¹⁹⁰Report of Working Group on Arrears, Spec(94)21; L/7483; C/M/273 p. 16-17.

¹⁹¹Recommendation in paragraphs 7(a), (b), (d), (e) of PC/7, L/7578, approved 9 Dec 1994, SR.50/2 p. 2.

¹⁹²C/M/267, p. 17; recommendation of Committee on Budget, Finance and Administration in L/7310, para. 29.

¹⁹³Para. 4 of PC/9, L/7579, approved on 9 Dec 1994, SR.50/2 p. 2.

1951, the ICITO Secretariat has worked exclusively for the CONTRACTING PARTIES and the CONTRACTING PARTIES have borne the entire cost of the ICITO Secretariat.¹⁹⁴

The multilateral trade agreements reached in the Tokyo Round generally provide that they will be serviced by the GATT Secretariat.¹⁹⁵

Article XVI:1 of the WTO Agreement provides that "To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO ...". See also above at page 1123 concerning the transfer agreement between the CONTRACTING PARTIES to GATT 1947, ICITO and the WTO.

A. DIRECTOR-GENERAL (EXECUTIVE SECRETARY)

The Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade serves simultaneously as the Executive Secretary of the Interim Commission. Before 1965, the Director-General was referred to as the "Executive Secretary". The CONTRACTING PARTIES decided on 23 March 1965 that

"... whenever the words "Executive Secretary" have been heretofore used in any decision, document or action taken or issued by virtue of the authority of the CONTRACTING PARTIES, such words shall hereafter be deemed to read "Director-General" and shall mean Director-General to the CONTRACTING PARTIES. ... The Director-General shall have all the duties, powers, privileges and responsibilities heretofore granted the Executive Secretary by the CONTRACTING PARTIES or by virtue of the authority of the CONTRACTING PARTIES, including but not limited to the functions of the Executive Secretary as Depositary Agent under all protocols and other instruments of the CONTRACTING PARTIES".¹⁹⁶

The same decision provided that where this change would have required a protocol of amendment or action other than a decision of the CONTRACTING PARTIES, such duties or powers, including but not limited to those conferred upon the Executive Secretary by the General Agreement, shall be exercised by the person holding the position of Director-General, who shall for this purpose also hold the position of Executive Secretary.

The CONTRACTING PARTIES on 26 November 1986 approved a report by their Chairman to the effect that consultations with contracting parties had resulted in consensus on the following statement:

"The Director-General should be appointed by the CONTRACTING PARTIES at a regular Session for a term of office of four years. The CONTRACTING PARTIES may reappoint the Director-General for a further term not exceeding four years. The decision to appoint the Director-General for a first term should be taken after a process of consultation to be conducted by the Chairman of the CONTRACTING PARTIES and to be started by an announcement at the Council of Representatives not less than six months before the Session of the CONTRACTING PARTIES where the appointment is made.

"Consultations about the reappointment of the Director-General should be conducted by the Chairman of the CONTRACTING PARTIES after an announcement has been made at a meeting of the Council of Representatives, not less than six months before the termination of the first term of office of the Director-General.

"In the event of a vacancy during the term of office of the Director-General, the Chairman of the CONTRACTING PARTIES should conduct as rapidly as possible consultations on the appointment of a new Director-General. The new Director-General should be appointed by the CONTRACTING PARTIES within six months from the date of the vacancy, if necessary at a special Session convened for the purpose. The Council of Representatives will designate one of the Deputy Directors-General as Acting Director-General until the appointment of a new Director-General".¹⁹⁷

¹⁹⁴ICITO/1/29, ICITO/1/30.

¹⁹⁵A provision to this effect appears in the final provisions or institutional provisions of each of these agreements.

¹⁹⁶13S/19.

¹⁹⁷L/6099, approved on 26 November 1986, 33S/55-56.

The report also notes that "I wish to underline that I am reporting on the results of my consultations in the form of a statement. This means that there will be a reasonable amount of flexibility in the future application of the procedures forming part of this statement".¹⁹⁸ At the Fifth Special Session of the CONTRACTING PARTIES, convened on 9 June 1993 to appoint the new Director-General, the Chairman noted that in view of the particular circumstances it had not been possible to follow this statement in every detail; that the deviations were in the nature of the "flexible application" cited in the 1986 report; and that the 1986 procedures would remain unchanged for future use, until they were modified. The appointment of Mr. Peter Sutherland as Director-General was then approved by acclamation.¹⁹⁹

Article XVI:2 of the WTO Agreement provides that "... the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of the Agreement, shall serve as Director-General of the WTO". Accordingly, Mr. Sutherland served as the first Director-General of the WTO. On 24 March 1995, the WTO General Council agreed to formally appoint Mr. Renato Ruggiero as Director-General of the WTO for one four-year term effective 1 May 1995. The General Council also took note of certain other understandings reached during the consultations leading to this appointment, and authorized the Chairman to undertake consultations at the appropriate time on the development of procedures for the appointment in future of a Director-General.²⁰⁰ On 24 March 1995, Mr. Ruggiero was also appointed by consensus at a Seventh Special Session of the CONTRACTING PARTIES.

B. DEPUTY DIRECTORS-GENERAL

On 15 April 1987 the Council approved the following Procedures for Future Appointment of the Deputy Directors-General:

"The Deputy Directors-General are to be appointed by the Director-General for renewable terms of three years. The Director-General is to announce at a meeting of the Council that he will hold consultations on the appointment or reappointment of a Deputy Director-General. Such consultations will start not less than three months before the expiration of the term of office of the Deputy Director-General. After the termination of the consultations, the Director-General will inform the Council of his decision concerning the appointment".²⁰¹

At the Fifth Special Session in 1993 it was agreed to establish a third Deputy Director-General post.²⁰² On 15 July 1993 the Director-General informed the Council that he had decided to appoint Mr. Anwarul Hoda, Mr. Warren Lavorel and Mr. Jesús Seade as Deputy Directors-General in accordance with these procedures.²⁰³

VIII. PRIVILEGES AND IMMUNITIES

Article 90 of the Havana Charter provided, concerning the status of the International Trade Organization in the territory of Members of the ITO:

- "1. The Organization shall enjoy in the territory of each of its Members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.
- "2. The representatives of Members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization".

In addition, it provided for the legal capacity of the Organization, as well as these privileges and immunities, to be defined by the General Convention on Privileges and Immunities of the Specialized Agencies,

¹⁹⁸*Ibid.*

¹⁹⁹5SS/SR/1, p. 1.

²⁰⁰WT/GC/M/2.

²⁰¹L/6161, approved on 15 April 1987, 34S/173.

²⁰²5SS/SR/1, p. 3.

²⁰³C/185; C/M/265, p. 35.

as supplemented by an annex relating to the International Trade Organization.²⁰⁴ The Convention on Privileges and Immunities of the Specialized Agencies²⁰⁵ contains provisions regarding juridical personality; property, funds and assets; communications facilities; privileges and immunities for the representatives of members; privileges and immunities of officials; limitations of rights of residence; the United Nations *laissez-passer*; settlement of disputes; and final provisions. As noted above, the Resolution of the Havana Conference Establishing an Interim Commission for the International Trade Organization mandated the Interim Commission, *inter alia*, “to prepare, with a view to recommendation by the Economic and Social Council to the first regular session of the Conference, the Annex referred to in paragraph 3 of Article 90 of the Charter”.

During the negotiation of the Agreement on the Organization for Trade Cooperation in the Review Session of 1954-1955, complete integration of the OTC and the GATT into the United Nations Organization was considered and rejected (see below). In consequence, Article 10(d) of the OTC Agreement provided that privileges and immunities to be accorded to the OTC, its officials and the representatives of OTC members would be “similar to” those accorded by each OTC member to specialized agencies of the United Nations, to their officials and to the representatives of their members under the Convention on Privileges and Immunities of the Specialized Agencies or under similar arrangements.²⁰⁶

The Agreement on the Privileges and Immunities of the United Nations Organization concluded 11 June 1946 between the Swiss Federal Council and the Secretary-General of the United Nations²⁰⁷, was applied by analogy to the ICITO and its personnel by decision of the Federal Council 20 May 1948.²⁰⁸ This Agreement contains provisions regarding juridical personality of the United Nations Organization; property, funds and assets of the Organization; communications facilities of the Organization; privileges and immunities for the representatives of Members of the Organization; privileges and immunities of officials of the Organization and experts on mission for the Organization; the United Nations *laissez-passer*; settlement of disputes; and final provisions.

The Swiss authorities decided in 1956 to continue to accord to the ICITO the same status as that from which the European Office of the United Nations benefits under this Agreement. This special juridical status was continued taking into account the assumption that whenever the ITO would be created it would become a specialized agency of the United Nations and would, if it decided to have its headquarters in Switzerland, conclude an agreement with the Federal Council definitively establishing its legal status in Switzerland.²⁰⁹

The federal authorities of Switzerland and the Director-General of GATT, acting in the name of and on behalf of the CONTRACTING PARTIES, agreed on 18 August 1977 to apply to GATT, by analogy, the Agreement on the Privileges and Immunities of the United Nations Organization concluded 19 April 1946 between the Swiss Federal Council and the Secretary-General of the United Nations. This agreement had been approved by the Council of Representatives at its meeting on 26 July 1977.²¹⁰

By virtue of the relationship between ICITO and the United Nations, ICITO personnel on mission outside the territory of Switzerland have been accorded the privileges and immunities of personnel of the United Nations, and travel under United Nations *laissez-passer*.

²⁰⁴This provision originated in a suggestion by the Secretariat to the Havana Conference based on a Resolution of the United Nations General Assembly. E.CONF.2/C.6/12 p. 15-16; see also text of letter from United Nations Secretary-General and text of General Convention in E/CONF.2.C.6/16.

²⁰⁵33 UNTS 261; approved by the General Assembly 21 November 1947, Resolution 179(II); *Official Records of the Second Session of the General Assembly*, Resolutions (A/519) p. 112. As of 31 December 1991 there were seventeen annexes to this Convention relating to various specialized agencies of the United Nations, and the Convention had entered into force for 94 Members of the United Nations with respect to one or more of these specialized agencies. (*Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1991*, UN Doc. ST/LEG/SER.E/10 p. 43-53 (1992)).

²⁰⁶Agreement on the Organization for Trade Cooperation, BISD Vol.I (Revised).

²⁰⁷1 UNTS 163; subsequently modified by exchange of letters of 5/11 April 1963. The name of this agreement before its amendment in 1963 was the Interim Arrangement on the Privileges and Immunities of the United Nations Organization.

²⁰⁸Letter dated 31 May 1948 from Département politique fédéral, Berne, to E. Wyndham White, Executive Secretary of ICITO. See also GATT/CP.6/17, Note dated 12 September 1951 on “Geneva as a Permanent Site for the GATT”.

²⁰⁹Exchange of letters of 7/10 August 1956 between Minister P. Micheli, Département politique fédéral, Berne, and Mr. E. Wyndham White, Executive Secretary, ICITO.

²¹⁰Approval C/M/122; see also C/100. Text of agreement is reprinted in L/4551, 24S/8-9.

IX. RELATIONSHIP WITH OTHER ORGANIZATIONS

A. UNITED NATIONS

Paragraph 1 of Article 86 of the ITO Charter would have required that the ITO be brought into relationship with the United Nations through a specialized agency agreement with the Economic and Social Council under Article 63 of the United Nations Charter. The Executive Committee of ICITO prepared and approved a specialized agency agreement for the ITO, but the ITO never entered into force.²¹¹

In their Fifth and Sixth Sessions in 1950 and 1951, when it had become apparent that ratification of the ITO Charter would be indefinitely postponed, the CONTRACTING PARTIES discussed the arrangements for continuing administration of the General Agreement. It was proposed that secretariat and conference services be provided by the United Nations and that the Secretariat staff be administratively under the control of the Secretary-General of the United Nations. Contracting parties which were not UN members would make separate contributions to the United Nations. In discussions of this proposal, the concerns were expressed that financial contributions to the work of the CONTRACTING PARTIES would be made by non-contracting parties; that the CONTRACTING PARTIES would lose their independence; and that an dissatisfied individual contracting party could appeal to the Economic and Social Council, with the result that discussions in the CONTRACTING PARTIES would be duplicated in ECOSOC. The Chairman noted that all representatives that had spoken, other than that of its sponsor, had expressed doubts about the proposal.²¹²

As a result of the discussion, the CONTRACTING PARTIES instructed the Executive Secretary to consult with the Secretary-General of the United Nations in 1952 concerning arrangements with the UN. These consultations resulted in an exchange of letters in August 1952 in which the Secretary-General was notified of the nature of the arrangement between ICITO and the CONTRACTING PARTIES, and confirmed therein that “the existence of this arrangement, coupled with the close working arrangements which exist between the United Nations Secretariat and the Secretariat of the Interim Commission renders it unnecessary to make separate or formal agreements relating to the work of the General Agreement”.²¹³ This exchange has defined the relationship between the CONTRACTING PARTIES and the United Nations, in which the GATT is treated as a specialized agency on a *de facto* basis. The GATT has not concluded a specialized agency agreement with the United Nations, nor has it been brought into any other formal relationship with the United Nations. It has however been the policy of the CONTRACTING PARTIES “to avoid passing judgment in any way on essentially political matters and to follow decisions of the United Nations on such questions”.²¹⁴

The issue of relations with the United Nations was considered during the drafting of the Agreement on the Organization for Trade Cooperation in the Review Session of 1954-55. The Secretary-General of the United Nations had informally put forward the view that a closer relationship than specialized agency status was desirable; “he hoped that the possibility of complete integration into the United Nations as a subordinate body would be carefully considered by the CONTRACTING PARTIES”.²¹⁵ The Executive Secretary of the CONTRACTING PARTIES stated concerning specialized agency status that “The Agreement is a treaty embodying specific rights and obligations on the parties to it in the field of commercial policy. In this respect it differs from those specialized agencies, which operate under Charters providing for general co-operation and co-ordination in various fields but without creating treaty rights and obligations such as those provided for in GATT. If it could be argued that the effect of specialized agency status would in any way subject the decisions of the CONTRACTING PARTIES to appeal, or even to the influence of an external body, then it would be necessary carefully to consider entering into such status”.²¹⁶ The report of the group which considered this issue indicates that it “felt unable to

²¹¹See ICITO/EC.2/2/Add.1 (draft), ICITO/EC.2/14 and Annex A, ICITO/EC.2/21 (revision), ICITO/EC.2/SR.4 p. 5-8, ICITO/EC.2/SR.5 p. 1-5, ICITO/SR.13 p. 3 (approval of draft).

²¹²GATT/CP.6/13 (Secretariat Note concerning proposal by the United States); GATT/CP.6/SR.3 (discussion of proposal and summing-up by Chairman).

²¹³CP.6/41 (mandate for consultations), G/16 (note reporting on consultations); Exchange of letters 11/25 August 1952 between Trygve Lie and Eric Wyndham White.

²¹⁴SR.22/3, p. 21-22 (discussion in 1965 of request from Government of the Republic of China (now referred to as “Chinese Taipei”) to be represented by observers at sessions of the CONTRACTING PARTIES). See also the material on territorial claims, under Article XXVI; also, the reference to a United Nations General Assembly resolution on the status of Yugoslavia, above at page 1094.

²¹⁵W.9/100, “Report by the Chairman of Sub-Group A on Organizational Questions”, p. 2-3.

²¹⁶W.9/65, “Statement by the Executive Secretary regarding Specialized Agency Status”.

share these views of the Secretary-General, and in the light of them felt, indeed, that the CONTRACTING PARTIES might wish to adopt a somewhat more cautious attitude to the suggestion that the Organization aim at a specialized agency relationship".²¹⁷ Accordingly, the Agreement on the OTC permitted, but did not require, conclusion of a specialized agency agreement with the United Nations.²¹⁸ This Agreement never entered into effect.

As a result, arrangements of a practical nature have developed over the years covering exchange of information and documents, resolutions of the United Nations, reciprocal representation and coordination. The Secretary-General of the United Nations or his representative is invited to attend sessions of the CONTRACTING PARTIES, the Council and regular GATT committees and working parties; the Director-General of GATT or his representative is invited to attend plenary meetings of the General Assembly, its committees, and meetings of the Economic and Social Council and, as appropriate, its subsidiary bodies. As regards the Economic and Social Council the question of GATT participation under the new rules of procedure of the Council was discussed during the fifty-ninth session of the Council in July 1975. It was agreed that GATT should continue to participate on the same footing as before.²¹⁹ The same arrangements also apply to the Regional Economic Commissions. The GATT participates in the work of the Administrative Committee on Coordination, and in bodies established by it such as the Consultative Committee on Administrative Questions (CCAQ). It also participates in the work and shares in the costs of the International Civil Service Commission (ICSC). The GATT statistical service cooperates with the United Nations Statistical Services and shares in the costs of the International Computing Centre.

The 1976 Report of the Consultative Group of Eighteen notes that the Group had "discussed developments in, and secretariat action with respect to, various United Nations bodies, such as the Task Force on the Implementation of General Assembly Resolution 3362 and the *Ad Hoc* Committee on Restructuring of the Economic and Social Sectors of the United Nations System ... In the light of these discussions, the Group confirmed the general approach adopted by the Director-General in relation to the activities of these various bodies, and also endorsed his comprehensive statement to the *Ad Hoc* Committee which stressed the distinctive contractual nature of the GATT and the important implications this had both for relations between contracting parties and between the GATT and other international institutions".²²⁰

B. INTERGOVERNMENTAL ORGANIZATIONS

Paragraph 1 of Article 87 of the Havana Charter mandated the ITO to make arrangements for effective co-operation and the avoidance of unnecessary duplication in the activities of intergovernmental organizations; paragraph 3 of that Article authorized the Director-General of the ITO to make an agreement to bring such an organization under the ITO whenever deemed desirable by the Conference and the competent authorities of any such organization whose purposes and functions lay within the scope of the Charter.²²¹

Although Article XV of the General Agreement provides for a special role for the International Monetary Fund in the administration of the balance-of-payments provisions of the General Agreement, the CONTRACTING PARTIES have never entered into a formal agreement with the Fund. Concerning institutional relations with the IMF, see Article XV.

²¹⁷W.9/100, "Report by the Chairman of Sub-Group A on Organizational Questions", p. 2-3.

²¹⁸Agreement on the Organization for Trade Cooperation, Article 11(b), BISD Vol.I (Revised); Report on Organizational and Functional Questions, L/327, BISD 3S/231, 237; see also discussion at SR.9/38 p. 3-5.

²¹⁹E/SR.1973, 23 July 1975; see also papers submitted to the Ad Hoc Committee on Restructuring of the Economic and Social Sectors of the United Nations System, L/4306 and Add.1.

²²⁰L/4429, 23S/38, 40, para. 10.

²²¹The Executive Committee of ICITO in 1948 drafted such an agreement with the International Monetary Fund; see ICITO/EC.2/2/Add.2 (draft), ICITO/EC.2/14 Annex A (revision), discussion at ICITO/EC.2/SR.5 p. 5-8, approved with amendments at ICITO/EC.2/SR.14 p. 2. Concerning relations and agreements with other inter-governmental organizations see drafts at ICITO/EC.2/2 and ICITO/EC.2/21, discussion at ICITO/EC.2/SR.5 p. 8-10, ICITO/EC.2/SR.6 p. 1-9, ICITO/EC.2/SR.7 p. 1-12, ICITO/EC.2/SR.13 p. 3-5.

C. NON-GOVERNMENTAL ORGANIZATIONS

Paragraph 2 of Article 87 of the Havana Charter authorized the ITO to make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Charter.²²²

The Rules of Procedure for Sessions of the CONTRACTING PARTIES have not provided for observer status for non-governmental organizations.²²³ In connection with the Working Party set up in the sixth session to examine resolutions of the International Chamber of Commerce on certain customs facilitation matters, it was decided that if no action were taken in the absence of rules pertaining thereto, the Working Party could ask the International Chamber of Commerce to give evidence if they should consider this desirable. The Report of the ensuing Working Party notes that “The working party decided to invite the International Chamber of Commerce to send representatives to one meeting of the working party to make a statement regarding the contents of these three resolutions and to answer questions on points which, after a preliminary examination by the working party, might require clarification”.²²⁴ A Note of 15 June 1990 by the Secretariat on “Observer Status in GATT” states as follows: “International non-governmental organizations (NGOs) do not have ‘consultative status’ in GATT: none have been admitted as observers at sessions”.²²⁵ See also the discussion of observer status above at page 1095.

X. OTHER RELEVANT DOCUMENTS

A. PREPARATORY WORK AND INTERNATIONAL TRADE ORGANIZATION

Concerning the institutional aspects of the International Trade Organization, the relevant articles in the U.S. Suggested Charter are Articles 50 through 77: in the London Draft Charter Articles 61 to 85 and 87, in the New York Draft Charter Articles 61 to 84 and 87, in the Geneva Draft Charter Articles 68 to 88, and in the Havana Charter Articles 71 to 91. See also discussions in the Second, Third, Fifth and Sixth Sessions of the CONTRACTING PARTIES on continuing administration of the General Agreement.

B. REVIEW SESSION AND ORGANIZATION FOR TRADE COOPERATION

The Review Session of 1954-55 gave extensive consideration to the organizational aspects of the GATT and proposed a Protocol of Organizational Amendments to the GATT, including an Agreement on the Organization for Trade Cooperation. Further information can be found in the report of the Review Working Party on Organizational and Functional Questions and associated documents.²²⁶

²²²Concerning ICITO implementation of this paragraph see ICITO/EC.2/II, ICITO/EC.2/SR.2, ICITO/EC.2/SR.8 p. 1-8, ICITO/EC.2/SR.13 p. 5-6. Concerning consultation with non-governmental organizations during the Havana Conference process see, *inter alia*, EPCT/45/Rev.1, EPCT/113.

²²³See GATT/CP.2/SR.4 p. 1-2 (discussion of non-governmental organizations in the context of draft rules corresponding to the present Rules 8 and 9); see also Note by the Executive Secretary, “Relations between the Contracting Parties and Non-governmental Organizations”, MGT/68/51.

²²⁴GATT/CP.6/SR.5, p. 8 (decision); Report of the Working Party on “Customs Treatment of Samples and Advertising Material, Documentary Requirements for the Importation of Goods, and Consular Formalities - Resolutions of the International Chamber of Commerce”, GATT/CP.6/36, adopted on 24 October 1951, II/210; see also later report at 1S/100, para. 1.

²²⁵C/173, p. 2; see also Note by the Secretariat of 27 June 1984 on the same subject, C/129 and supplements.

²²⁶Discussions: SR.9/18, 19, 23, 38, 39, 41, 44, 46, 47; Reports: W.9/123, 158, 197, 198+Add.1, 215+Corr.1; L/327 (3S/231). Other: GATT/183, 179; L/261/Add.1, 270, 272, 276, 283, 290, 292, 276, 299, 314; W.9/27, 38, 65, 93, 135; Spec/107/55; Draft texts: L/189+Add.1, 276, 290, 292; W.9/100, 123, 215+Corr.1; Sec/151/54, 164/54; Spec/12/55, 48/55, 63/55, 86/55.