

ARTICLE XXVI

ACCEPTANCE, ENTRY INTO FORCE AND REGISTRATION

I.	TEXT OF ARTICLE XXVI AND ANNEX H	907
II.	INTERPRETATION AND APPLICATION OF ARTICLE XXVI	909
A.	INTERPRETATION AND APPLICATION OF ARTICLE XXVI	909
1.	Paragraph 1: "date of this Agreement"	909
2.	Paragraph 2	910
(1)	"open for acceptance"	910
(2)	Reservations on acceptance	910
(3)	Reservation on acceptance accepted 7 March 1955	911
3.	Paragraph 3	913
(1)	Authentic text	913
(2)	Authentic texts: languages	913
(3)	Working languages of the GATT	915
(4)	Deposit	916
4.	Paragraph 4: acceptance of the General Agreement	916
5.	Paragraph 5	917
(1)	"Territories for which it has international responsibility"	917
(a)	Territorial scope of acceptance	917
(b)	Changes in international responsibility	918
(c)	Territorial claims	918
(d)	Application of Article XXVI:5(b)	919
(e)	Occupied areas	919
(2)	Succession to GATT under Article XXVI:5(c)	919
(a)	"full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement"	919
(b)	"upon sponsorship through a declaration by the responsible contracting party"	920
(c)	"be deemed to be a contracting party"	921
(d)	Terms and conditions of succession to GATT	921
(3)	De facto application of the GATT by newly-independent States pending a decision under paragraph 5(c)	921
6.	Paragraph 6: "this Agreement shall enter into force"	923
7.	Paragraph 7: Registration	924
B.	RELATIONSHIP BETWEEN ARTICLE XXVI AND OTHER ARTICLES	924
1.	Article XXXIII	924
2.	Article XXXV	924
III.	PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS	924
IV.	RELEVANT DOCUMENTS	925

I. TEXT OF ARTICLE XXVI AND ANNEX H

Article XXVI

Acceptance, Entry into Force and Registration

1. The date of this Agreement shall be 30 October 1947.
2. This Agreement shall be open for acceptance by any contracting party which, on 1 March 1955, was a contracting party or was negotiating with a view to accession to this Agreement.

3. This Agreement, done in a single English original and a single French original, both texts authentic, shall be deposited with the Secretary-General of the United Nations, who shall furnish certified copies thereof to all interested governments.

4. Each government accepting this Agreement shall deposit an instrument of acceptance with the Executive Secretary to the CONTRACTING PARTIES, who will inform all interested governments of the date of deposit of each instrument of acceptance and of the day on which this Agreement enters into force under paragraph 6 of this Article.

5. (a) Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary to the CONTRACTING PARTIES at the time of its own acceptance.

(b) Any government, which has so notified the Executive Secretary under the exceptions in subparagraph (a) of this paragraph, may at any time give notice to the Executive Secretary that its acceptance shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Executive Secretary.

(c) If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.

6. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with the Executive Secretary to the CONTRACTING PARTIES on behalf of governments named in Annex H, the territories of which account for 85 per centum of the total external trade of the territories of such governments, computed in accordance with the applicable column of percentages set forth therein. The instrument of acceptance of each other government shall take effect on the thirtieth day following the day on which such instrument has been deposited.

7. The United Nations is authorized to effect registration of this Agreement as soon as it enters into force.

ANNEX H
PERCENTAGE SHARES OF TOTAL EXTERNAL TRADE TO BE USED FOR THE
PURPOSE OF MAKING THE DETERMINATION REFERRED TO IN ARTICLE XXVI

(based on the average of 1949-1953)

If, prior to the accession of the Government of Japan to the General Agreement, the present Agreement has been accepted by contracting parties the external trade of which under Column I accounts for the percentage of such trade specified in paragraph 6 of Article XXVI, Column I shall be applicable for the purposes of that paragraph. If the present Agreement has not been so accepted prior to the accession of the Government of Japan, Column II shall be applicable for the purposes of that paragraph.

	<u>Column I</u> (Contracting parties on 1 March 1955)	<u>Column II</u> (Contracting parties on 1 March 1955 and Japan)
Australia	3.1	3.0
Austria	0.9	0.8
Belgium-Luxembourg	4.3	4.2
Brazil	2.5	2.4
Burma	0.3	0.3
Canada	6.7	6.5
Ceylon	0.5	0.5
Chile	0.6	0.6
Cuba	1.1	1.1
Czechoslovakia	1.4	1.4
Denmark	1.4	1.4
Dominican Republic	0.1	0.1
Finland	1.0	1.0

France	8.7	8.5
Germany, Federal Republic of	5.3	5.2
Greece	0.4	0.4
Haiti	0.1	0.1
India	2.4	2.4
Indonesia	1.3	1.3
Italy	2.9	2.8
Netherlands, Kingdom of the	4.7	4.6
New Zealand	1.0	1.0
Nicaragua	0.1	0.1
Norway	1.1	1.1
Pakistan	0.9	0.8
Peru	0.4	0.4
Rhodesia and Nyasaland	0.6	0.6
Sweden	2.5	2.4
Turkey	0.6	0.6
Union of South Africa	1.8	1.8
United Kingdom	20.3	19.8
United States of America	20.6	20.1
Uruguay	0.4	0.4
Japan	—	2.3
	100.0	100.0

Note: These percentages have been computed taking into account the trade of all territories in respect of which the General Agreement on Tariffs and Trade is applied.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXVI

A. INTERPRETATION AND APPLICATION OF ARTICLE XXVI

1. Paragraph 1: “date of this Agreement”

References to the “date of this Agreement” appear in:

- Articles II:1(b) and II:1(c) (specifying the operative date for the binding of “other duties and charges” with respect to items in regular or preferential schedules of concessions);
- Article II:6 (fixing the base date for par values of currencies, for application of provisions on adjustment of specific duties in the event of a reduction in par value); and
- Articles V:6, VII:4(d), and X:3(c) (permitting retention of measures existing on the “date of this Agreement” with respect to direct consignment requirements, currency conversion for customs valuation purposes, or review of administrative action relating to customs matters).

The date specified in Article XXVI:1, 30 October 1947, applies for the purposes of Article II to concessions made in the round of tariff negotiations held in 1947. The same date applies to the obligations under Articles V:6, VII:4(d) and X:3(c) of the original contracting parties; of the former territories of the original contracting parties which, after attaining independence or commercial autonomy, acceded to the General Agreement under Article XXVI:5(c); and of Chile.

When the modalities of accession to the General Agreement were considered for the first time at the Third Session in Annecy in 1949, the Working Party on this subject decided that in the Annecy Protocol of Terms of Accession, the “date of this Agreement” for the purposes of Article II would be changed “with the object of placing acceding governments in a comparable position to that in which the present contracting parties were at Geneva ...”.¹ The Annecy Protocol of Terms of Accession in October 1949 therefore provided that “In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect

¹Report of the Working Party on “Accession at Annecy,” GATT/CP.3/37, adopted on 9 June 1949, II/148, 153-154, para. 26.

of the Schedules annexed to this Protocol shall be the date of this Protocol".² This approach has guided subsequent protocols of accession and tariff protocols; see the discussion of "date of this Agreement" under Article II.

For the purposes of Articles V:6, VII:4(d) and X:3(c), the Working Party at Annecy decided to substitute the date of the Havana Final Act, 24 March 1948, and this approach was followed for the next group of accessions in the Torquay Protocol of 1951.³ Since the next accession thereafter, which was the accession of Japan in 1955, the standard terms in accession protocols have provided that the "date of this Agreement" for the purposes of these articles shall be the date of the protocol of accession or (where the acceding government had previously acceded provisionally) the date of the declaration on provisional accession.⁴

Hence, the "date of this Agreement" is different for different contracting parties; in the case of concessions under Article II, the "date of this Agreement" may be different for different tariff concessions of the same contracting party. See also the material on "date of this Agreement" under Articles II, V, VII and X.

2. Paragraph 2

(1) "open for acceptance"

Article XXVI provides for definitive acceptance of the General Agreement by those contracting parties specified in Article XXVI:2. All others must accede under Article XXXIII. Protocols of accession provide that the acceding government, having become a contracting party by agreeing to apply provisionally the General Agreement, will have the right to accede definitively to the General Agreement on the terms specified in the accession protocol; see also below at page 916. This formulation dates from the Third Session, held at Annecy in 1949, which first considered the modalities of accession to the General Agreement. The Annecy Protocol of Terms of Accession has served as the model for all subsequent accession protocols. The 1949 Report on "Accession at Annecy" notes that "Upon the entry into force of the General Agreement, under Article XXVI, an acceding government will be entitled to accede definitively to the Agreement in much the same way as a present contracting party can accept it definitively under that article".⁵ Concerning the Annecy Protocol, the Working Party Report notes:

"Paragraph 8(a) of the protocol provides for accession to the Agreement when it enters into force pursuant to Article XXVI or thereafter. By the deposit of an instrument of accession, the acceding governments may accede, upon the terms of the protocol, to the Agreement in the form in which it enters into force pursuant to Article XXVI. This may or may not be identical with that provisionally applied by acceding governments ...

"The procedure for such definitive accession is similar to the procedure contained in Article XXVI ... it envisages that the deposit of an instrument of accession may take place either prior to or following the entry into force of the Agreement, but that such accession would not take effect until the definitive entry into force of the Agreement."⁶

The General Agreement has been accepted definitively only by Liberia and Haiti, and Liberia subsequently withdrew. Instead, the General Agreement is applied provisionally by contracting parties under the Protocol of Provisional Application or subsequent Protocols of Accession to the General Agreement; see the chapter of this Index on provisional application.

(2) *Reservations on acceptance*

During the negotiation of the General Agreement in the Tariff Agreement Committee at Geneva in 1947, the initial proposal, to have a protocol of signature of the General Agreement, was deleted in favour of adoption

²Annecy Protocol, dated 10 October 1949, I/79, 81, para. 5(a).

³Annecy Protocol, *ibid.*, I/81, para. 5(b); Torquay Protocol, dated 21 April 1951, I/86, 88, para. 5(b).

⁴E.g. Protocol for the Accession of Bolivia, L/6562, 37S/5.

⁵GATT/CP.3/37, adopted on 9 June 1949, II/148, 150-151, para. 15.

⁶*Ibid.*, II/154, paras. 29-30.

of the Protocol of Provisional Application combined with changes in the text of the General Agreement. It was stated in this connection that:

“... there being no provision for signature of the Agreement, there is, of course, no occasion for any country to reserve its position upon signature. However, it would still be open for any country to reserve its position upon acceptance of the Agreement. ... In that event, of course, the acceptance, to be valid under international law ... must be then agreed to by the other countries which have then accepted the Agreement...”

“... signature of the Protocol of Provisional Application ... commits the signatory Government, and it is on a par with the acceptance of the Trade Agreement. Therefore, any reservations to the signature of the Protocol of Provisional Application must be accepted and agreed to by all other countries signing the Protocol of Provisional Application. ... I should not think it would be necessary for any country to reserve its position with respect to the signature of the Protocol because, after all, it is a protocol of *provisional* application. Part I of the Agreement, that is the tariff part, is to be applied provisionally, and Part II, that is the general provisions, with respect to which I think most of the reservations apply, is to be applied to the fullest extent not inconsistent with existing legislation.”⁷

See also Article XXXIII (concerning reservations to accession protocols) and Article XXX (concerning reservations to protocols of amendment).

(3) *Reservation on acceptance accepted 7 March 1955*

During the Review Session of 1954-55, discussions took place regarding the possibility of definitive application of the General Agreement within an institutional framework including the establishment of an Organization for Trade Cooperation. In response to concerns expressed by certain contracting parties regarding existing legislation, the Working Party on Organizational and Functional Questions recommended “that it should be open to contracting parties to accept the definitive application of the Agreement under the provisions of Article XXVI subject to a reservation in respect of existing legislation similar to that covering such legislation in the Protocol of Provisional Application and other Protocols. Such a reservation would have to be accepted by all the contracting parties. Accordingly the Working Party proposed that the contracting parties should, at this Session, agree unanimously that acceptance subject to such a reservation will be valid”.⁸ The “Resolution of 7 March Expressing the Unanimous Agreement of the Contracting Parties to the Attaching of a Reservation on Acceptance Pursuant to Article XXVI”⁹ provides that “The contracting parties unanimously agree

“1. that an acceptance pursuant to Article XXVI shall be valid even if accompanied by a reservation to the effect that Part II of the General Agreement will be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947 or, in the case of a contracting party which since 30 June 1949 has acceded to the Agreement, the date of the Protocol providing for such accession,

“2. that any contracting party attaching such a reservation shall submit as soon as possible after its acceptance of the General Agreement pursuant to Article XXVI a list of the principal legislative provisions covered by such reservation,

“3. that the CONTRACTING PARTIES shall review annually progress made in bringing such legislation into conformity with the General Agreement,

“4. that three years from the entry into force of the General Agreement under Article XXVI the CONTRACTING PARTIES shall review the situation then prevailing with respect to such reservations with a view to assessing the progress achieved towards the full application of the General Agreement by all contracting parties and to make appropriate recommendations”.

⁷EPCT/207 (statement of J.M. Leddy); see also EPCT/TAC/PV/21, EPCT/TAC/PV/17 p. 20ff.

⁸L/327, adopted 28 February, 5 and 7 March 1955, 3S/231, 248 para. 53; see generally paras. 53-58.

⁹3S/48.

The following interpretations of this Resolution are provided in the Report of the Working Party on “Organizational and Functional Questions”¹⁰ and in summary records from the Review Session.

- The phraseology used in the Resolution is the same as that employed in the Protocol of Provisional Application and is subject to the same interpretation regarding the mandatory character of the legislation.¹¹
- “... the reservation would provide to a contracting party a defence against the charge that it was acting inconsistently with the General Agreement only to the extent to which the legislation in question was in fact covered by the terms of the reservation. It was open to any contracting party to submit this matter to the judgment of the CONTRACTING PARTIES under the appropriate procedures of the Agreement or in the course of the review provided for in the [Resolution].”¹²
- “The formula suggested ... does not set any fixed time-limit for the duration of a reservation, but the general intent of the [Resolution] and the detailed procedures proposed are directed towards securing as early as possible complete conformity between the legislation of contracting parties and their obligations under the General Agreement ...”¹³
- “It was the understanding of the Working Party that the annual review provided for in paragraph 3 ... would afford an opportunity for consultations regarding any special difficulties of any contracting party arising out of the operation of the legislation of another contracting party covered by the Reservation. The words ‘appropriate recommendations’ in paragraph 4 were intended to mean that the CONTRACTING PARTIES could make whatever recommendations were indicated in the circumstances existing at the time, taking into account any inequities which would result from the maintenance of the situation. It was also clear that the acceptance of the Resolution would not deprive any contracting party of resort to Article XXIII in accordance with paragraph 1(b) or (c) thereof.”¹⁴

The CONTRACTING PARTIES agreed that the following interpretation proposed by New Zealand was correct:

- “(i) that the purpose of the reservation procedures was to give contracting parties with legislation inconsistent with the Agreement a breathing space within which to bring that legislation into conformity with the Agreement without the need for recourse to transitional period procedures;
- “(ii) that the provision in paragraph 3 would permit the CONTRACTING PARTIES annually to review the progress made in bringing such legislation into conformity with the Agreement, with a view to assessing the progress achieved towards the full application of the Agreement by all contracting parties, and to making appropriate recommendations.
- “(iii) that, in the review mentioned in paragraph 4 of the situation prevailing at the end of three years with respect to the Resolution, the CONTRACTING PARTIES would then decide what further recommendations – over and above those which might have been made following annual reviews – would be appropriate to ensure the equal acceptance by all contracting parties of the obligations of the General Agreement.”¹⁵

See also the discussion of reservations in accession protocols under Article XXXIII.

¹⁰L/327, adopted on 28 February and 5-7 March 1955, 3S/231.

¹¹*Ibid.*, 3S/249-250, para. 58.

¹²*Ibid.*, 3S/249, para. 57.

¹³*Ibid.*, 3S/249, para. 56.

¹⁴*Ibid.*, 3S/248-249, para. 55.

¹⁵SR.9/46, p. 4.

3. Paragraph 3

(1) *Authentic text*

The standard text of accession protocols provides that

“The provisions of the General Agreement to be applied to contracting parties by [...] shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended and otherwise modified by such instruments as may have become effective on the day on which [...] becomes a contracting party.”¹⁶

(1) *Authentic texts: languages*

Text of the General Agreement: Under Article XXVI, the texts of Parts I through III of the General Agreement and the annexes thereto are authentic both in English and in French. When Part IV of the General Agreement was drawn up, the Protocol Amending the General Agreement on Tariffs and Trade to Introduce a New Part IV on Trade and Development provided for authentic texts in English, French and Spanish.¹⁷ The Secretariat prepared and published on its own responsibility a Spanish translation of the text of the General Agreement in Volume IV of the Basic Instruments and Selected Documents series, but as no authentic Spanish text was ever agreed for Parts I through III of the General Agreement, Parts I-III of this text had no formal status. A Spanish language text of the Havana Charter had been finalized in October 1949 and deposited with the Secretary-General of the United Nations as one of the authentic texts of the Charter.¹⁸

During the legal drafting process for the Uruguay Round, participants working on the French and Spanish texts of the Final Act noted a lack of concordance between the French and Spanish versions of the Uruguay Round texts and the French and Spanish texts respectively of the General Agreement. They also noted a number of instances of a lack of concordance between the English, French and Spanish texts of the General Agreement. Upon discussion participants concluded that the preferable course would be to conform the French and Spanish texts of the General Agreement to the linguistic usage reflected in the English language text and the Uruguay Round Agreements. In addition, Spanish-speaking delegations sought to establish an authentic text of Parts I-III of the General Agreement in Spanish. Participants decided to implement these objectives directly in the text of the General Agreement that would be incorporated into Annex 1A of the WTO Agreement, with certain other legal instruments, as the “General Agreement on Tariffs and Trade 1994” (or “GATT 1994”). With the agreement of participants, lists of agreed rectifications to the authentic French text, and of corrections to Parts I-III of the Spanish text published as Volume IV of the BISD, were drawn up by the Translation and Documentation Division of the Secretariat and were circulated as annexes to document MTN.TNC/41, a Decision of the Trade Negotiations Committee (TNC) on “Corrections to be Introduced in the General Agreement on Tariffs and Trade”. In this Decision, the TNC:

“*Noting* the need to ensure improved concordance between the French-language text of the General Agreement on Tariffs and Trade 1994 and other texts in the Final Act, and the desirability of introducing corresponding corrections in the French-language text of the General Agreement on Tariffs and Trade 1947;

“*Noting further* that the text of the General Agreement on Tariffs and Trade 1994 will be authentic in the Spanish language for all Parts of that agreement; and that it is desirable to make a corresponding Spanish language text of the General Agreement on Tariffs and Trade 1947 authentic in all parts;

¹⁶See, e.g., Ancey Protocol of Terms of Accession, I/79, 81, para. 6; Protocol for the Accession of Costa Rica, L/6626, 37S/7.

¹⁷13S/2, 10. The Spanish text was not ready at the time of the Final Act of the Second Session, which provided for later authentication of the Spanish text. See: C/M/24; L/2328 (Spanish text); L/2328/Add.2 (text incorporating comments); L/2401; SR.22/7 p. 89; L/2424, decision adopted at the Twenty-second Session on 22 March 1965.

¹⁸The Spanish translation was prepared by the government of Cuba, was redrafted by a committee of interested governments in September 1948, and was further redrafted on the basis of comments and finalized in a drafting committee which met in September-October 1949. See further ICITO/1/21 and ICITO/1/25. Chinese and Russian translations of the Charter, prepared by the United Nations translation services, were not finalized; copies are on deposit in the GATT Library.

“Decides to invite the CONTRACTING PARTIES:

- “(a) to initiate as soon as possible the procedures required for the correction of the French-language text of the General Agreement on Tariffs and Trade 1947 in accordance with the list in Annex A to this Decision;
- “(b) to correct the Spanish-language text of the General Agreement on Tariffs and Trade in Volume IV of the Basic Instruments and Selected Documents in accordance with the list in Annex B to this Decision; and
- “(c) to initiate as soon as possible the procedures required for the authentication of a Spanish-language text of the General Agreement on Tariffs and Trade 1947 as so corrected.”¹⁹

The TNC adopted this Decision on 30 March 1994 when it approved the Final Act of the Uruguay Round. The text that defines GATT 1994, which appears in Annex 1A of the WTO Agreement and was approved on the same day, included a Paragraph 2(c) as follows:

- “(i) The text of GATT 1994 shall be authentic in English, French and Spanish.
- “(ii) The text of GATT 1994 in the French language shall be subject to the rectifications of terms indicated in Annex A to document MTN.TNC/41.
- “(iii) The authentic text of GATT 1994 in the Spanish language shall be the text in Volume IV of the Basic Instruments and Selected Documents series, subject to the rectifications of terms indicated in Annex B to document MTN.TNC/41.”²⁰

The corrected and authentic French and Spanish texts of the GATT 1994, including the rectifications in MTN.TNC/41, appear in *The Results of the Uruguay Round of Trade Negotiations: The Legal Texts*, published by the Secretariat.

On 10 May 1994, after the 15 April 1994 signing of the Final Act at Marrakesh, the GATT Council adopted a decision which included operative clauses identical to those of the decision in document MTN.TNC/41, as well as the same lists of rectifications and corrections as in that document.²¹ The Secretary-General of the United Nations, who is the depositary of Parts I-III of the GATT 1947, is responsible for conducting rectification of texts and authentication of new language texts. However, as of early 1995 the process of rectification of the French text and authentication of a corrected Spanish text of the GATT 1947 had not been initiated. In consequence, there remained differences between the French language text of the GATT 1947 and the French language text included in the GATT 1994, and between the Spanish language text hitherto published in Volume IV of the BISD and the Spanish language text included in the GATT 1994.

Authentic text of Schedules: During discussions on the draft General Agreement at Geneva in 1947 it was agreed that “each Schedule would be authentic in either English or French or in both languages, at the option of the country whose Schedule was concerned. The way it was decided to provide for this was to put in parentheses at the top of the Schedule the words: ‘Authentic in the English text only’ or ‘Authentic in the French text only,’ if it was to be authentic only in one of these two languages. For that reason it was not considered necessary” to refer to the authentic language of Schedules in Article II or in the paragraph corresponding to the present Article XXVI:3.²² The standard text of accession protocols now provides that the English, French and Spanish texts of the protocol will each be authentic, “except as otherwise specified with respect to the Schedule annexed thereto”.²³ Tariff protocols such as the Geneva (1992) Protocol provide that “The Schedules annexed hereto are

¹⁹TNC/41, adopted on 30 March 1994; text also provides for immediate derestriction of the Decision and its annexes (including rectifications to the French and Spanish texts of the General Agreement) on adoption.

²⁰“General Agreement on Tariffs and Trade 1994”, in Annex 1A of Agreement Establishing the World Trade Organization, para. 2(c)(i)-(iii).

²¹L/7457, Decision of 10 May 1994 on “Corrections to the French and Spanish Language Texts of the General Agreement”.

²²EPCT/TAC/PV/25, p. 13-14.

²³See, e.g. Protocols for the Accession of Bolivia, L/6562, 37S/5, 6, para. 10, or Costa Rica, L/6626, 37S/7, 9, para. 12.

authentic in the English, French or Spanish language as specified in each Schedule”.²⁴ No Schedule done in a language other than English, French or Spanish has ever been made authentic.

Practice since 1979: With two exceptions the Tokyo Round Agreements of 1979 were done in English, French and Spanish, each text being equally authentic. The Agreement on Trade in Civil Aircraft was initially done in English and French; a Spanish text was added in 1986. Also, the 1979 Agreement on Government Procurement provided that the lists of entities attached thereto would be authentic in English, French or Spanish as specified.²⁵ Since 1984, authentic texts of agreements and protocols under the auspices of the GATT have been done in three languages, English, French and Spanish. The text of the WTO Agreement and of the agreements in Annexes I through 4 thereof are authentic in English, French and Spanish. In conformity with earlier practice the Marrakesh Protocol to the GATT 1994 provides in paragraph 8 that “The Schedules annexed hereto are authentic in the English, French or Spanish language as specified in each Schedule”. Also, commitments on market access annexed to the General Agreement on Trade in Services, and the Appendices listing entity coverage of the 1994 Agreement on Government Procurement are authentic as specified in English, French or Spanish.

For examples of *interpretation of the meaning of a provision in the light of the different authentic texts* thereof, see, e.g., the Panel Report on “Italian Discrimination against Imported Agricultural Machinery”,²⁶ the Report of the Group of Experts on Anti-dumping and Countervailing Duties²⁷, a Note by the Executive Secretary on “Article XXIV:5(a) – Interpretation of the word ‘applicable’”²⁸, the Working Party Report on “EEC – Association with Malta”²⁹, and the Panel Report on “United States – Procurement of a Sonar Mapping System”.³⁰ There have in addition been discussions of the differences between authentic texts of the General Agreement or associated legal instruments.³¹

(3) *Working languages of the GATT*

The negotiation of the Havana Charter and the General Agreement was conducted in English and French, and since that time these two languages have been working languages of ICITO and the GATT. Rule 33 of the Rules of Procedure of the CONTRACTING PARTIES provides that “Subject to the provisions of Rule 34, English and French shall be the working languages”. Rule 34 provides that “A decision, by unanimous agreement, may be taken at any meeting to adopt a rule of procedure regarding interpretations of a more simple character than rule 33”.³² Since the beginning of the GATT, all GATT documents have been issued in both English and French and interpretation from and into English and French has been provided for all formal meetings.

At the Seventeenth Session in November 1960, the representative of Uruguay on behalf of the Spanish-speaking contracting parties urged that the Spanish language be introduced on a progressive basis. On the basis of a study by the Budget Working Party it was agreed to introduce for the year 1961 simultaneous interpretation from Spanish into English and French during plenary meetings of the CONTRACTING PARTIES and the Council, and translation of some texts from Spanish into English and French.³³ At the Nineteenth Session in November 1961, the CONTRACTING PARTIES approved the introduction of simultaneous interpretation at all meetings of committees and working groups from and into English and French and from Spanish into English and French.³⁴ During the period 1962-1979 the use of Spanish was gradually expanded as the budget permitted. As of 1979,

²⁴L/6987, para. 5.

²⁵26S/55.

²⁶L/833, adopted on 23 October 1958, 7S/60, 63, para. 11: “the slight difference of wording which existed between the French and the English texts of paragraph 4 of Article III. The French text which had been submitted to the Italian Parliament for approval provided that the imported products ‘ne seront pas soumis à un traitement moins favorable’ whereas the English text reads ‘the imported product shall be accorded treatment no less favourable’”.

²⁷L/978, adopted 13 May 1959, 8S/145, 149, para. 14: “the like product” vs. “un produit similaire”.

²⁸L/1919, dated 14 November 1962.

²⁹L/3665, adopted on 29 May 1972, 19S/90, 95, para. 17.

³⁰GPR.DS1/R, dated 23 April 1992 (unadopted), para. 4.18 (interpretation using English, French and Spanish texts of Agreement on Government Procurement).

³¹See, e.g., W.9/239 (Note by the Legal and Drafting Committee on “Drafting Improvements Applicable to the French Text”); Spec/84/55 (Note on differences between authentic texts of Article VII:3), VAL/W/53 (comments of Australia on linguistic consistency between different authentic texts of Article 8.1(b) of the Agreement on Implementation of Article VII).

³²12S/15.

³³SR.17/4 p. 43-45, L/1355, L/1367; proposal in Budget Working Party report in L/1370, approved at SR.17/10, p. 132-135.

³⁴W.18/4, SR.18/4 p. 39; proposal in Budget Working Party report at L/1562 p. 4-5, approved at C/M/18, SR.19/12 p. 212.

interpretation into Spanish was provided at meetings of the CONTRACTING PARTIES, the Council and the Committee on Trade and Development and for other meetings where many Spanish language experts were present. Publications of the GATT, as well as documents containing decisions, legal texts and reports of committees, working parties or panels, were also issued in Spanish. During the Tokyo Round, most of the Tokyo Round technical documents were also issued in Spanish, and interpretation from and into Spanish was also provided for formal MTN meetings.

After the close of the Tokyo Round negotiations in 1979, the budget estimates for 1980 were established “so as to continue to provide the same services for the implementation of the results of the negotiations, as well as for the other operational activities of the GATT”.³⁵ This practice has been continued to the present. Since 1983, all GATT documents have been distributed in English, French and Spanish. All Uruguay Round documents have been issued in English, French and Spanish and interpretation from and into all three languages has been provided for all formal meetings of Uruguay Round negotiating groups.

(4) Deposit

All GATT legal instruments from 1948 until 1 February 1955, including Parts I-III of the General Agreement and the Protocol of Provisional Application, were deposited with the Secretary-General of the United Nations, who continues to handle depositary functions for them. For all later instruments, including the Part IV Protocol and the Tokyo Round Agreements, depositary functions have been entrusted to the Executive Secretary (later, the Director-General) to the CONTRACTING PARTIES. The Secretariat has registered these agreements, has taken care of formalities regarding accession and participation, and has prepared the loose-leaf *Status of Legal Instruments* published by the GATT. All GATT legal instruments have been published in the United Nations Treaty Series.

On 8 and 9 December, the Preparatory Committee for the WTO, the GATT CONTRACTING PARTIES and the Executive Committee of the Interim Commission of the International Trade Organization (ICITO) adopted an 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. Paragraph 5 of this agreement provides that “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.”³⁶

4. Paragraph 4: acceptance of the General Agreement

Paragraph 4 provides for deposit of instruments of acceptance of the General Agreement. When the modalities of accession to the GATT were first considered in 1949, standard terms were drafted for the Annex Protocol of Terms of Accession, so that this instrument would provide not only for provisional application of the General Agreement by the acceding government, but would also confer on that government a right to accede to the General Agreement under Article XXVI. The 1949 Report of the Working Party on “Accession at Annecy” notes that

“By the deposit of an instrument of accession, the acceding governments may accede, on the terms of the protocol, to the Agreement in the form in which it enters into force pursuant to Article XXVI. This may or may not be identical with that provisionally applied by the government under paragraph 1 of the Protocol.

“The procedure for such definitive accession is similar to the procedure for acceptance contained in Article XXVI ... It envisages that the deposit of an instrument of accession may take place either prior to or following the definitive entry into force of the Agreement, but that such accession would not take effect until the definitive entry into force of the Agreement.”³⁷

³⁵C/M/136, p. 15; L/4852.

³⁶PC/9, L/7580, ICITO/39.

³⁷Report adopted on 9 June 1949, GATT/CP.3/37, II/148, 154, paras. 29-30.

See, for instance, paragraph 8 of the Annecy Protocol, which provides:

“(a) Any acceding government ... may, on or after the date on which the General Agreement enters into force pursuant to Article XXVI thereof, accede to that Agreement upon the terms of this Protocol by deposit of an instrument of accession with the Secretary-General of the United Nations. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever shall be the later.

“(b) Accession to the General Agreement pursuant to [sub-paragraph (a)] shall, for the purpose of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph [4] of Article XXVI thereof.”³⁸

5. Paragraph 5

(1) “Territories for which it has international responsibility”

(a) Territorial scope of acceptance

Paragraph 1 of the Protocol of Provisional Application provides that, in respect of Belgium, France, the Netherlands, and the United Kingdom, acceptance is limited to their metropolitan territories. Acceptance by the other governments listed in paragraph 1 (Australia, Canada, Luxembourg, and the United States) is not subject to that express limitation. Paragraph 2 provides that the governments named in paragraph 1 shall make effective provisional application of the General Agreement in respect of any of their other territories other than their metropolitan territories after giving notice thereof to the Secretary-General of the United Nations.³⁹ Notices under paragraph 2 were received from Australia (on behalf of Papua New Guinea), Belgium (on behalf of the Belgian Congo), France (on behalf of all overseas territories of the French Union listed in Annex B except Morocco), the Netherlands (on behalf of its overseas territories), and the United Kingdom (on behalf of Newfoundland, the Mandated Territory of Palestine, all territories for the international relations of which it is responsible except Jamaica, and later on behalf of Jamaica).⁴⁰

See also statements concerning territorial application and/or territorial scope of acceptance in accession protocols e.g. of Japan⁴¹, Portugal⁴² and Spain.⁴³

In a number of instances, governments have invoked or disinvoked Article XXXV in respect of territories for which they had international responsibility at the time and in respect of which they had agreed to apply provisionally the General Agreement under paragraph 2 of the Protocol of Provisional Application.⁴⁴

³⁸I/79, para. 7. See also the identical provisions in the Protocols for the Accession of Costa Rica, El Salvador, Tunisia and Venezuela, 37S/7, para. 9; 37S/27, para. 7; 37S/41, para. 7; and 37S/72, para. 7.

³⁹Concerning territorial application of the General Agreement to territories for which the United States has international responsibility other than the customs territory of the United States, see discussion at GATT/CP.3/SR.5 p. 5, and note by the United States dated 13 September 1949, GATT/CP/33.

⁴⁰Status of Legal Instruments, p. 1-2.2. See also discussion at CP.3/SR.5 p. 4. Concerning the notification by the United Kingdom in 1962 that the General Agreement was to be applied provisionally in respect of Jamaica (L/1809), see also L/3485, Report of the Panel on “Jamaica - Margins of Preference”, adopted 2 February 1971, 18S/183. See also L/3800, notice by the United Kingdom concerning its continuing representation of Hong Kong after UK accession to the EC 1 January 1973; and MTN.GNS/W/159/Corr.1 of 4 March 1993, concerning the legal régime governing relations between the European Economic Community, the Netherlands and Aruba.

⁴¹4S/7, para. 1(d) (exception from the application of GATT under certain circumstances for islands referred to in the Treaty of Peace with Japan).

⁴²11S/20, 24, para. 11 (acceptance “in respect of all Portugal’s separate customs territories”).

⁴³12S/27, 28 para. 3 (acceptance in respect of the customs territories listed in Annex B to the Protocol, i.e. (1) territory in the Peninsula and Balearic Islands, Canary Islands, and Ceuta and Melilla; (2) Ifni and Sahara; and (3) Fernando Po and Rio Muni. These territorial units into which the National Territory is divided are considered customs territories for the sole purpose of the General Agreement).

⁴⁴See, e.g., L/3396 (disinvocation of Article XXXV by the United Kingdom in respect of certain territories for which it had international responsibility).

The final provisions of the Tokyo Round multilateral trade agreements provide that “In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.”⁴⁵ On 17 December 1979 the United Kingdom accepted six of these agreements on behalf of the territories for which it has international responsibility except for Antigua, Bermuda, Brunei, Cayman Islands, Montserrat, St. Kitts-Nevis, Sovereign Base Areas Cyprus and the British Virgin Islands.⁴⁶ On 23 April 1986 Hong Kong was deemed to be a contracting party to the GATT in accordance with Article XXVI:5(c) (see below); having declared its intention to continue to accept each of these agreements, Hong Kong became a party to each of them in its own right with effect from 23 April 1986.⁴⁷ The Netherlands accepted the Agreement on Technical Barriers to Trade and the Agreement on Civil Aircraft “in respect of the Kingdom as a whole including the Netherlands Antilles”.⁴⁸ In August 1994 the Committee on Government Procurement approved accession by the Netherlands to the Agreement on Government Procurement with respect to Aruba.⁴⁹

In October 1990, Germany informed contracting parties of the Treaty of German Unity signed 3 October 1990, through which the German Democratic Republic acceded to the Federal Republic of Germany, forming one State which as a single contracting party remained bound by the provisions of the General Agreement.⁵⁰

Paragraph 3 of the accession protocol of Switzerland provides: “For the purposes of the territorial application of this Protocol, the customs territory of Switzerland shall be deemed to include the territory of the Principality of Liechtenstein as long as a customs union treaty with Switzerland is in force.”⁵¹ On 29 March 1994, the Swiss authorities informed the Secretariat that while Switzerland had accepted its accession protocol on behalf of the territory of Liechtenstein, the Principality of Liechtenstein possesses full autonomy with respect to its external commercial relations and the other matters provided for in the General Agreement; as Liechtenstein also made a request under Article XXVI:5(c) on the same date, Liechtenstein was deemed to be a contracting party as of 29 March 1994, and succeeded to the Schedule concessions of Switzerland.

See also the material on paragraph 2 of the Protocol of Provisional Application in this Index.

b) *Changes in international responsibility*

In 1947, the Government of the United Kingdom negotiated on behalf of Newfoundland, as a separate customs territory for which the United Kingdom had international responsibility; the concessions accorded thereby constituted Section B of Schedule XIX. When Newfoundland became a part of the customs territory of Canada, in 1949, the CONTRACTING PARTIES approved a Declaration of 11 August 1949, providing that “Section B shall be deemed to be no longer a part of Schedule XIX”.⁵² Newfoundland has since that date been subject to the obligations of Canada under the General Agreement.

(c) *Territorial claims*

At the Nineteenth Session in 1961, in connection with consideration of the draft protocol for the accession of Portugal, the representative of India sought clarification of the relationship between Portugal and certain customs territories referred to therein as overseas provinces of Portugal. “The Executive Secretary stated that he was satisfied that in adopting the text which was proposed for paragraph 3, the CONTRACTING PARTIES would not be taking any position with respect to the international status of these territories. Contracting parties were

⁴⁵See, e.g., Article IX:1(e) of the Agreement on Government Procurement, 26S/33, 52.

⁴⁶Agreement on Import Licensing; Agreement on Technical Barriers to Trade; Agreement on Government Procurement; Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (“Subsidies Code”); Agreement on Implementation of Article VI of the GATT (“Anti-Dumping Code”); Agreement on Implementation of Article VII of the GATT (“Customs Valuation Code”).

⁴⁷*Status of Legal Instruments*, p. 16-2.3, 16-3.3, 16-4.5, 16-5.2, 16-9.3, 16-10.3.

⁴⁸*Status of Legal Instruments* p. 16-3.3, 16-6.2.

⁴⁹GPR/77, Decision of the Committee, circulated 24 August 1994. See GPR/W/136, Secretariat Note on Accession of the Kingdom of the Netherlands with respect to Aruba, dated 20 July 1994, including proposed decision on accession and list of entities of Aruba to be included in Annex I of the Agreement. The Agreement already applied to the European territory of the Netherlands by virtue of the acceptance of the Agreement by the European Economic Community.

⁵⁰L/6747.

⁵¹14S/6, 7-8.

⁵²Declaration at II/14; see also GATT/CP/26 (notification by UK), GATT/CP/75 (draft declaration), GATT/CP.3/SR.40 p. 8 (approval).

concerned only with what was relevant to the General Agreement, which were the trading arrangements proposed with respect to these territories and not their status in international law. Therefore, the approval of this protocol would not, in his view, in any way affect or conflict with whatever decisions might be taken or had been taken by the General Assembly of the United Nations, on these legal matters. The Chairman stated that in his view no conflict arose between the terms of the protocol and the United Nations resolution.”⁵³

In 1965, in response to the issuance of a list of countries and territories where the General Agreement was effective, the US took the formal position that “it does not recognize any of the claims of sovereignty which have been asserted over territory in Antarctica nor does it recognize any basis for any country to apply such an agreement as the General Agreement on Tariffs and Trade to that area. Moreover, the Government of the United States of America reserves all the rights of the United States of America with respect to Antarctica. It calls attention, in that connexion, to Article IV of the Antarctic Treaty, signed at Washington on 1 December 1959.”⁵⁴

See also the material under Article XXV on political questions.

d) *Application of Article XXVI:5(b)*

The 1971 Panel Report on “Jamaica – Margins of Preference” notes that in 1948, the government of the United Kingdom gave notice (under paragraph 2 of the Protocol of Provisional Application) of its intention to apply the General Agreement provisionally to all of the territories for the international relations of which it was responsible, except for Jamaica. In 1962, United Kingdom, in a communication received on 2 July, gave notice that the General Agreement was to be applied provisionally also to Jamaica. In accordance with paragraph 2 of the Protocol of Provisional Application and Article XXVI:5(b), this notification was effective as from 1 August 1962.⁵⁵

(e) *Occupied areas*

Until the Review Session amendments agreed in 1954-55, an interpretative note to Article XXVI provided that “Territories for which the contracting parties have international responsibility do not include areas under military occupation”. A Final Note provided that “The applicability of the General Agreement on Tariffs and Trade to the trade of contracting parties with the areas under military occupation has not been dealt with and is reserved for further study at an early date. Meanwhile, nothing in this Agreement shall be taken to prejudice the issues involved. This, of course, does not affect the applicability of the provisions of Articles XXII and XXIII to matters arising from such trade”.⁵⁶ These provisions were deleted effective 7 October 1957; see section III below.

(2) *Succession to GATT under Article XXVI:5(c)*

Of the 128 GATT contracting parties as of 1 January 1995, 63 have succeeded to contracting party status on the basis of Article XXVI:5(c). A list of these contracting parties appears in the appendix tables at the end of this book.

(a) *“full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement”*

The preparatory work of the General Agreement indicates that it was intended that the “responsible contracting party” should certify that the customs territory in question “had the right *de jure* and/or *de facto* to act on its own behalf and to fulfil” its obligations.⁵⁷ During the negotiation of the General Agreement in 1947, an ad-hoc Sub-committee examined the situation of Burma, Ceylon and Southern Rhodesia (now Myanmar, Sri Lanka and Zimbabwe). In response to a request by the Sub-committee, the United Kingdom submitted

⁵³SR.19/12, p. 195-196. See also discussion of political questions and the representation of China at SR.22/3, p. 1-2.

⁵⁴L/2428, dated 8 April 1965 (responding to L/2337, reprinted at 14S/1).

⁵⁵Panel Report in L/3485, adopted on 2 February 1971, 18S/183, 184, para. 3; see also L/1809.

⁵⁶L/74; concerning the inclusion of these provisions in the General Agreement see EPCT/W/311, EPCT/W/340 and Rev.1, and discussion of Notes at EPCT/TAC/PV/22 p. 52-65, EPCT/TAC/PV/24 p. 2-26, EPCT/TAC/PV/28 p. 21-40.

⁵⁷EPCT/TAC/PV/22, p. 22.

information on certain specific matters relating to the autonomy in commercial policy of these territories and made a Declaration to the Tariff Agreement Committee establishing the ability of these three territories to enter into and fulfil all obligations under the General Agreement. The Sub-Committee agreed to recommend that Burma, Ceylon and Southern Rhodesia be admitted to participate as full contracting parties, and also recommended consequential changes to the Preamble, the provisions on acceptance which became Article XXVI:5, and the accession provisions in Article XXXIII.⁵⁸

Declarations concerning the autonomy in commercial matters of customs territories under the international responsibility of another State were made in the case of Hong Kong, Lesotho, Liechtenstein and Macau.⁵⁹

(b) *“upon sponsorship through a declaration by the responsible contracting party”*

The Sub-committee which drafted this provision during the negotiation of the General Agreement in Geneva in 1947 “thought this was necessary ... because the other contracting parties must have sufficient information to be able to judge the legal ability of such separate customs territory”.⁶⁰

Before 1963, it was customary to refer requests under Article XXVI:5(c) to the CONTRACTING PARTIES, even though accession under Article XXVI:5(c) is automatic providing that the stated conditions are fulfilled. At its meeting of April/May 1963, the Council agreed to a Secretariat proposal for a simplified procedure for the admission of newly-independent States. The minutes of that meeting note that

“Article XXVI:5(c) provided that if certain conditions were fulfilled, the admission of such States would follow automatically, and it was therefore considered that if requests were received at a time when no session was to be held it would be unfortunate if mere formalities were to cause delay in the admission of the new contracting parties. It was now proposed that when a request for admission under Article XXVI:5(c) was received the matter could be dealt with by a certification by the Executive Secretary to the effect that the conditions of Article XXVI:5(c) had been fulfilled in respect of a certain State, and advising that the State had therefore become a contracting party and had acquired the rights and obligations of the General Agreement. These certifications would be brought to the notice of the Council or the CONTRACTING PARTIES when next in session so that note could be taken of them and a welcome extended to the new contracting parties.”⁶¹

This procedure of certification has been followed since 1963. The rights and obligations of contracting parties succeeding to contracting party status under Article XXVI:5(c) date from the date of independence of the newly-independent State or the date of receipt of certification of a territory’s autonomy in the conduct of its external commercial relations.

In instances where pre-existing concessions in schedules related to the territory of the newly-independent State or newly-autonomous territory, such concessions have been continued, and a new Schedule for the new contracting party comprising those concessions has been established by using the procedure of certification of changes to schedules to the General Agreement. Paragraph 5 of the Decision of 26 March 1980 on “Procedures for Modification and Rectification of Schedules of Tariff Concessions” states that “The procedure of Certification under this Decision may be applied for the establishment of consolidated Schedules or of new Schedules under paragraph 5(c) of Article XXVI, wherein all changes are modifications or rectifications [of a purely formal character]”.⁶²

⁵⁸EPCT/198, report of the Sub-committee, and attached Declaration and statement of sponsorship of Burma, Ceylon and Southern Rhodesia by UK Government.

⁵⁹Hong Kong: L/5986, 34S/27 (certification incorporating communication by the United Kingdom). Lesotho: L/2701 (communication from the United Kingdom), 4 October 1966. Liechtenstein: L/7440 (statements dated 29 March 1994 from both Switzerland and Liechtenstein concerning commercial autonomy of Liechtenstein). Macau: L/6806 (certification by the Director-General incorporating a communication by Portugal); see also L/6807 (communication from the government of the People’s Republic of China).

⁶⁰EPCT/TAC/PV/22, p. 22, discussing EPCT/198.

⁶¹C/M/15, p. 7 (approval of procedure proposed by the Executive Secretary in C/30).

⁶²L/4962, Decision of 26 March 1980, 27S/25, 26, para. 5.

(c) *“be deemed to be a contracting party”*

In the first full draft of the General Agreement (EPCT/135) the separate customs territory was “entitled to appoint a representative” to the CONTRACTING PARTIES. In the revised text of 30 October 1947, the word “deemed” was used intentionally in order to make clear that such territory could either act in its own right as a full contracting party and be represented by a separate delegate (as in the case of Burma, Ceylon and Southern Rhodesia during the negotiation of the General Agreement in 1947) or continue to be represented by the metropolitan contracting party acting on behalf of such customs territory.⁶³

(d) *Terms and conditions of succession to GATT*

The Report of the Working Party on “Article XXXV - Application to Japan” pointed out “that there could be no doubt that a government becoming a contracting party under Article XXVI:5(c) does so on the terms and conditions previously accepted by the metropolitan government on behalf of the territory in question. Consequently, if Article XXXV had been invoked in respect of that territory (or if that territory had not been specifically excluded from such invocation), it would continue to be valid unless expressly disinvoked by the succeeding government. If this were clearly understood, it would then be unnecessary for the new government to take an immediate decision on whether the invocation should or should not be maintained”.⁶⁴

The 1971 Panel Report on “Jamaica – Margins of Preference” includes the following finding:

“The Panel held that since Jamaica had acceded to the General Agreement on Tariffs and Trade under the provisions of Article XXVI:5(c) it had acquired the rights and obligations which had previously been accepted by the United Kingdom in respect of the territory of Jamaica. This meant that Jamaica assumed the rights and obligations involved in the application to it of the General Agreement by the United Kingdom before Jamaica became independent. On 6 August 1962, the day Jamaica became independent, Article I:4 formed part of the General Agreement as it had been applied by the United Kingdom on behalf of the territory of Jamaica. The provision of Article I:4 establishing 10 April 1947 as the base date for permissible margins of preference was therefore applicable to Jamaica.”⁶⁵

(3) *De facto application of the GATT by newly-independent States pending a decision under paragraph 5(c)*

The concept of *de facto* application of the General Agreement arose as a means to provide some time for governments of newly-independent territories to consider their future commercial policy and the question of their relations with the General Agreement, while continuing the pre-existing arrangements governing the trade relations between the newly-independent country and the contracting parties to the GATT. The Recommendation of 1 November 1957 on “Procedures for Sponsorship under Article XXVI:5(c)”⁶⁶ provided that as soon as a customs territory in respect of which a contracting party had accepted the Agreement, or had made effective the provisional application of the Agreement, acquired full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement, the responsible contracting party should notify the Secretariat. The CONTRACTING PARTIES would then set a “reasonable period” during which the contracting parties would continue to apply *de facto* the General Agreement in their relations with that territory on a basis of reciprocity, pending accession under Article XXVI:5(c).⁶⁷ A Recommendation of 18 November 1960 set the period of *de facto* application at two years from the acquisition of autonomy.⁶⁸ Later Recommendations provided for prolongation of the period of *de facto* application for such territories.⁶⁹

⁶³EPCT/TAC/PV/22, pp. 21-22.

⁶⁴L/1545, adopted on 7 December 1961, 10S/69, 73, para. 19.

⁶⁵L/3485, adopted on 2 February 1971, 18S/183, 187, para. 13.

⁶⁶6S/11.

⁶⁷See Recommendation of 22 November 1957 on “Application of the General Agreement to Laos, Cambodia and Tunisia”, 6S/10 (recommending that this “reasonable period” should end in the case of Laos and Cambodia two weeks after the commencement of the Thirteenth Session and in the case of Tunisia two weeks after the commencement of the Fourteenth Session); Recommendation of 19 November 1959 on “Application of the General Agreement to Guinea”, 8S/8 (fixing end of “reasonable period” in the case of Guinea at two weeks after commencement of last session of the CONTRACTING PARTIES in 1961).

⁶⁸Recommendation of 18 November 1960 on “Application of the General Agreement to Territories which Acquire Autonomy in

Considering that prolongations of the *de facto* régime had frequently been requested and that they had always been granted, the CONTRACTING PARTIES adopted the Recommendation adopted 11 November 1967 on "Application of the General Agreement to Territories which acquire Autonomy in Commercial Matters", in which the CONTRACTING PARTIES, *inter alia*,

"Considering that paragraph 5(c) of Article XXVI of the General Agreement provides that if a customs territory, in respect of which a contracting party has accepted the Agreement, 'acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement', such territory may be 'deemed' to be a contracting party;

"Considering that the CONTRACTING PARTIES have recognized that the governments of territories which acquire such autonomy will normally require some time to consider their future commercial policy and the question of their relations with the General Agreement and that it is desirable that meanwhile the provisions of the Agreement should continue to be applied between such territories and the contracting parties, and accordingly, recommended, on 8 November 1960, that contracting parties should continue to apply *de facto* for a period of two years, the General Agreement in their relations with any such territory, provided that the territory continued to apply *de facto* the Agreement to its trade with contracting parties; and

"Considering that many such territories have requested repeated prolongations of this arrangement for the *de facto* application of the Agreement to their trade and that the CONTRACTING PARTIES have granted all such requests;

"Recommend that contracting parties should continue to apply *de facto* the General Agreement in their relations with each territory which acquires full autonomy in the conduct of its external commercial relations and in respect of which a contracting party had accepted the Agreement, provided such territory continues to apply *de facto* the Agreement to its trade with the contracting parties."⁷⁰

The Recommendation of 1967 does not have a time-limit. The Director-General is requested to submit a report on its application after three years. The most recent such report was submitted in June 1991⁷¹. A list of countries with respect to which the Recommendation was applicable as of April 1993 appears in the Appendices to this Index.

Letters have been addressed to the governments concerned, upon their independence, advising them that the Recommendation is applicable to their trade relations with the contracting parties and seeking their confirmation that they will reciprocate in applying the General Agreement on a *de facto* basis. The governments are regularly kept informed about GATT activities and receive all GATT documents and publications. They are also invited to be represented by observers at the annual sessions of the CONTRACTING PARTIES.

Commercial Matters," 9S/16, 17: "... contracting parties should continue to apply *de facto* the General Agreement in their relations with any territory which has acquired full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement, for a period of two years from the date on which such autonomy was acquired ..." See also W.17/10, Secretariat Note of 12 November 1960 on "Article XXVI:5(c)"; L/1405, Secretariat Note of 10 January 1961 on "Application of the General Agreement to Territories which Acquire Autonomy in Commercial Matters"; and L/1458, Secretariat Note of 3 May 1961 on "Commercial Policy Problems of Newly Independent States".

⁶⁹Recommendation of 9 December 1961, 10S/17 (extending time-limit for one year for any State to which the previous Recommendation was applicable and which requested an extension), approval at SR.19/12, p. 199, Secretariat draft at W.19/19; Decision on "Newly-independent African States" of 14 November 1962, 11S/53 (extension until close of last Session in 1963, for Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Dahomey, Gabon, Madagascar, Mali, Mauritania, Niger, Senegal, Togo, Upper Volta and Zaïre); Decision of 2 March 1964, 12S/34 (extension until end of Twenty-second Session for Zaïre and Mali), Decision of 22 March 1965, 13S/12 (extension until end of Twenty-third Session for Algeria, Mali, Rwanda and Zaïre) Decision of 6 April 1966, 14S/12 (extension until end of Twenty-fourth Session for Algeria, Mali and Zaïre; determination that 1960 Recommendation applied in respect of Singapore and Zambia until 24 October 1966).

⁷⁰15S/64. See also L/2757, Secretariat Note of 8 March 1967 on "Territories which Acquire Commercial Autonomy".

⁷¹L/6866. Earlier reports were submitted to the Council in November 1970 (L/3457), November 1973 (L/3948), October 1976 (L/4427), October 1979 (L/4846 and Add.1), July 1982 (L/5345) July 1985 (L/5823), and June 1988 (L/6349).

The CONTRACTING PARTIES have never defined the meaning of *de facto* application. However, the following practices have evolved in regard to this form of association with the General Agreement⁷²:

- The countries applying the General Agreement on a *de facto* basis are expected to observe the substantive provisions of the General Agreement. However, they do not apply the procedural provisions of the General Agreement. Thus, when these countries impose import restrictions for balance of payments purposes, they do not notify the GATT and do not consult in the GATT Balance-of-Payments Committee under Article XVIII:B. They also do not notify the trade measures they take for development purposes under Article XVIII:C, emergency actions under Article XIX, or the formation of customs unions and free-trade areas under Article XXIV. They are expected to apply the schedule of concessions which the metropolitan government had agreed to apply to their territory; however, they do not notify any modifications of their tariff schedules under Article XXVIII. The contracting parties granting GATT treatment to a country applying the General Agreement on a *de facto* basis determine themselves whether the conditions stipulated in these provisions are met.
- Each contracting party decides whether or not to apply the provisions of the General Agreement to a country which applied the General Agreement on a *de facto* basis. The contracting parties do not inform the GATT of their decision.
- The CONTRACTING PARTIES do not assist in the resolution of disputes on the interpretation or application of the General Agreement that might arise between contracting parties and countries applying the General Agreement on a *de facto* basis. Article XXIII:2 is not applied to such disputes.⁷³
- The countries applying the General Agreement on a *de facto* basis are treated as non-contracting parties for organizational purposes. They are invited to be represented as observers at the annual sessions of the CONTRACTING PARTIES. They do not attend other GATT meetings unless they have requested and obtained observer status, and they do not contribute to the GATT budget.

The legal aspects of *de facto* application of the General Agreement are presented in a Secretariat Note of 28 June 1984 on "De facto Application of the General Agreement".⁷⁴ A Secretariat Note of 1988 lists the countries that have succeeded to the status of contracting parties under Article XXVI:5(c) after having applied the General Agreement on a *de facto* basis.⁷⁵

6. Paragraph 6: "this Agreement shall enter into force"

Paragraph 6 provides for entry into force of the General Agreement thirty days after the deposit of instruments of acceptance on behalf of governments among the thirty-four governments listed in Annex H, representing 85 per cent of total external trade, computed in accordance with the percentages in Annex H. The 30 October 1947 text of the General Agreement listed twenty governments in Annex H, with percentages based on an average of 1938 and the latest twelve months for which figures were available; Annex H was revised at the Review Session to reflect changes in GATT membership and to update the trade percentages.⁷⁶

The CONTRACTING PARTIES have considered the question of definitive application of the General Agreement on several occasions, for instance during the Review Session in 1955⁷⁷, during the Twenty-second Session in 1965⁷⁸, in 1977⁷⁹ and in 1990.⁸⁰

⁷²See C/130.

⁷³See also VAL/M/8, p. 2, for a Secretariat legal opinion on this issue, and the chapter herein on Article XXIII.

⁷⁴C/130.

⁷⁵MTN.GNG/NG7/W/40/Rev.1.

⁷⁶L/327, Report of the Review Working Party on "Organizational and Functional Questions", adopted 28 February, 5 and 7 March 1955, 3S/231, 251, para. 68.

⁷⁷See 3S/247-250.

⁷⁸See the Secretariat Note in L/2375.

⁷⁹See 24S/61-62 and EEC memorandum proposing definitive application of the General Agreement under Article XXVI, CG.18/W/20.

⁸⁰MTN/GNG/NG7/W/70, W/71.

Only one of the current contracting parties, Haiti, has accepted the General Agreement (on 7 March 1952). Liberia accepted the General Agreement on 17 May 1950, but withdrew from the General Agreement on 13 June 1953. Hence, the General Agreement has never entered into force pursuant to paragraph 6 and continues to be applied by contracting parties “provisionally” under the 1947 Protocol of Provisional Application and subsequent Protocols of Accession.

The WTO Agreement provides in its Article II:2 that the agreements and associated legal instruments included in Annexes 1A, 2 and 3 are integral parts of that Agreement and binding on all Members. A Member that has accepted or acceded to the WTO Agreement is thus bound definitively by “GATT 1994”, as defined in Annex 1A of the WTO Agreement. On 8 December 1994, at their Sixth Special Session, the CONTRACTING PARTIES adopted a Decision on “Transitional Co-existence of the GATT 1947 and the WTO Agreement”, which provides *inter alia*:

“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.”⁸¹

Unless the requisite number of acceptances have been received by that date, the provisional application of the GATT 1947 will terminate without the General Agreement ever having entered into force.

7. Paragraph 7: Registration

Article 102 of the Charter of the United Nations provides as follows.

“1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into effect shall as soon as possible be registered by the [United Nations] Secretariat and published by it.

“2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.”

The General Agreement was registered with the United Nations on 30 May 1950.⁸² Protocols associated with the General Agreement and agreements and arrangements made under the auspices of the GATT have been registered with the United Nations by the Secretariat and published in the United Nations Treaty Series. Information on their registration and UNTS citations can be found in the GATT publication on *Status of Legal Instruments*.

B. RELATIONSHIP BETWEEN ARTICLE XXVI AND OTHER ARTICLES

1. Article XXXIII

See the discussion under Article XXXIII.

2. Article XXXV

See the reference to the Report of the Working Party on “Article XXXV – Application to Japan” above on page 921.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Havana Charter and 30 October 1947 text of the General Agreement: No strict equivalency exists between most of the final provisions of the General Agreement and those of the Havana Charter. The Charter provided for

⁸¹PC/12, L/7583.

⁸²No. 814, 55 UNTS 187, UN Sales No. 1947.II.10 - Vol. I.

participation not by governments but by States. However, the Charter too had provisions on acceptance, entry into force, and registration (Article 103), and deposit, date of the Charter and authentic languages (Article 106).

The 30 October text of the General Agreement included an Interpretative Note *Ad* Article XXVI, as follows: "Territories for which the contracting parties have international responsibility do not include areas under military occupation". It also included a Final Note on areas under military occupation; see page 919 above. These provisions were deleted in the Review Session of 1954-55.

Amendments agreed in 1949: Paragraph 4 of the Article was amended in 1949 to conform to the treatment of territorial application in the accession protocols agreed at Annecy, which aligned the treatment of territorial application with that in the Protocol of Provisional Application. It was also pointed out that "the present form of Article XXVI might frustrate the entry into force of the Agreement" by enabling a territory which was a separate customs territory and did not possess full autonomy in external commercial relations to withhold its consent and thus delay indefinitely the acceptance of the country which was internationally responsible for it. The new text was modelled on Article 104 of the Havana Charter.⁸³

Amendments agreed in the Review Session: In the Review Session in 1954-1955 additional amendments to Article XXVI were agreed. References to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment were deleted; this involved the introduction of new paragraphs 1 and 2 and amendments in paragraph 6 (formerly 5). References to deposit of acceptances were amended to substitute the Executive Secretary to the CONTRACTING PARTIES for the Secretary-General of the United Nations. At the same time the interpretative note on areas under military occupation was deleted and Annex H was revised.⁸⁴ These changes were effected through the Protocol Amending the Preamble and Parts II and III, which entered into force on 7 October 1957.

IV. RELEVANT DOCUMENTS

Geneva

Discussion: EPCT/TAC/SR.12, 13, 16
EPCT/TAC/PV/22, 24, 25, 26, 28
Reports: EPCT/135, 189, 196, 198, 199,
205, 209, 214/Add.1/Rev.1, 215,
224, 233
Other: EPCT/207
EPCT/W/273, 274, 276, 277, 285,
312, 316

Review Session

Discussion: SR.9/38, 46, 47
Reports: W.9/198+Add.1, W.9/236, L/327,
3S/231
Other: L/189+Add.1, L/273, 275, 276,
282
W.9/62, 195, 236
Spec/59/55, 82/55, 119/55

CONTRACTING PARTIES

Discussion: GATT/1/SR.3-11
GATT/CP.2/SR.4-6, 15-18, 20
GATT/CP.3/SR.5, 31, 33
GATT/CP.5/SR.24, 25
GATT/CP.6/11
Reports: GATT/1/21, 35
GATT/CP.2/22/Rev.1, 27
GATT/CP.3/37, 49
GATT/CP.4/11
GATT/CP.5/9

⁸³Protocol Modifying Article XXVI, Vol.II/155, para. 32.

⁸⁴See Secretariat proposals in L/189, text proposed by Legal and Drafting Committee in W.9/236.