

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REVIEW OF THE GENERAL AGREEMENT

Note by the French Delegation

on the establishment of a permanent Trade Organization

It is desirable to strengthen and to confer legal status on the institutions which the contracting parties have so far utilized in a temporary or provisional manner. The Draft Protocol creating an International Trade Organization, prepared by the Executive Secretariat (document L/189) meets this desire. While the draft could be used as a working basis, it would seem, however, that it might be more effective if certain changes and additions were made in it.

1. FUNCTIONS OF THE ORGANIZATION

The provisions mentioned in Article 3 of the Draft Protocol should include particulars relating to:

- (a) the collection, analysis and publication of information relating to international trade, since one of the essential services which an international organization may be expected to render is precisely to supply information and documentation on the matters with which it is set up to deal;
- (b) the study of basic commodity problems.

2. STRUCTURE OF THE ORGANIZATION

The structure proposed in document L/189, which consists mainly of a Conference and an Executive Secretariat, should be strengthened by the addition of an Executive Board, a real directing body whose rôle might well be of capital importance.

The Board, composed of representatives of ministerial rank or high officials, would be authorized by the Conference to follow up the policies of the Organization, and to represent it vis-à-vis other parties including other international organizations. Given a restricted membership, the Board would be able to meet frequently and without loss of time.

In appointing the members of the Board, due account should be taken of geographical and economic criteria, so that, as far as possible, it would be a small but faithful replica of the Conference.

The Board would be a subsidiary body of the Conference from which it would receive the necessary guidance and to which it would render account of its activities.

The proposed secretariat should be called the General Secretariat to avoid confusion with the Executive Board, while it may perhaps not be out of place to insist at this juncture that secretariat staff should have the status of international officials.

3. SETTLEMENT OF DIFFERENCES

As the creation of an international organization presupposes the existence of an international community and a certain spirit of solidarity among its members, the latter should undertake to observe certain rules for the settlement of their trade differences. The Protocol might embody a provision whereby:

Members would refrain from taking any unilateral measures contrary to the provisions of the General Agreement;

Members would, whenever possible, have recourse to arbitration for a settlement of their differences;

when direct consultations or arbitration fail to give satisfactory results, Members would submit their differences to the Conference which would then make appropriate recommendations.

4. ENTRY INTO FORCE OF THE PROTOCOL

The General Agreement on Tariffs and Trade and the Protocol establishing an International Trade Organization would in future constitute a single entity for while on the one hand the implementation of the General Agreement would imply the use of the machinery provided for in the Protocol, on the other hand the acceptance by a country of the provisions of the Protocol would presuppose adherence to the obligations of the General Agreement.

It therefore appears necessary to anticipate that the Protocol would have to be ratified or accepted by all the contracting parties and that accession by a state to the General Agreement would ipso facto signify that state's consent to the Protocol.

In order to avoid any break of continuity in the action taken by the contracting parties, two methods may be envisaged:

Either the Protocol would come into force only when it had been ratified by all the contracting parties, pending which the temporary institutions would continue to be used as before;

or, and this seems preferable, the Protocol would be applied provisionally under a gentleman's agreement until it came into force definitively as the result of the deposit of instruments of ratification by all the contracting parties.

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The foregoing considerations are at the base of the Draft Protocol which, as set out in the following pages, the French delegation has the honour to submit to the contracting parties. This Draft reproduces the main provisions of the Draft prepared by the Executive Secretariat, but for purposes of clarity, the provisions have been rearranged in chapters and sections.

PROTOCOL CONSTITUTING AN INTERNATIONAL TRADE ORGANIZATION

Article I

Pursuant to Article XXV of the General Agreement on Tariffs and Trade (hereinafter referred to as the Agreement), the contracting parties to the Agreement hereby establish the International Trade Organization, (hereinafter referred to as the Organization) to achieve the purposes and objectives set forth in this Protocol.

CHAPTER I

MEMBERSHIP

Article II

The membership of the Organization shall consist of the contracting parties to the Agreement.

CHAPTER II

FUNCTIONS

Article III

The functions of the Organization shall be:

- (a) to collect, analyse and publish information relating to international trade, commercial policy, basic commodity problems and general development of an economic, industrial and agricultural character;
- (b) to give effect to those provisions of the Agreement which require joint action by the contracting parties;
- (c) to encourage and facilitate consultation among Members on all questions relating to the provisions of the Agreement;
- (d) to study questions of international trade and commercial policy, to enter into consultation with the contracting parties, to submit recommendations to them, and to advise and assist them in all matters connected with the implementation of the Agreement;
- (e) to prepare or sponsor agreements between governments with respect to any matter within the scope of the Agreement and to recommend such agreements for acceptance;
- (f) to undertake studies on primary commodities in collaboration with the Economic and Social Council of the United Nations and with the competent intergovernmental organizations;
- (g) generally to facilitate the operation of the Agreement and to discharge such other functions as the Members may from time to time agree to assign to it.

CHAPTER III

STRUCTURE

Article IV

The Organization shall consist of a Conference, an Executive Board and such other subsidiary organs as the Conference may decide to establish. There shall also be a Secretary-General and a staff.

SECTION I

THE CONFERENCE

Article V

The Conference shall consist of the Members of the Organization.

Article VI

At meetings of the Conference each Member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the Agreement, decisions of the Conference shall be taken by a majority of the votes cast.

Article VII

The Conference shall meet in regular annual session and shall annually elect its Chairman and other officers. It shall also meet in such special sessions as may be convened in accordance with the rules of procedure.

Article VIII

The Conference shall establish its own rules of procedure.

Article IX

The Conference shall carry out the functions of the Organization as defined in Article III.

Article X

The Conference shall approve the accounts and the budget of the Organization. It shall apportion the expenditure of the Organization among the Members in accordance with a scale of contributions to be fixed by the Conference and shall take necessary measures to ensure that the contributions are paid promptly by all Members.

Article XI

In exceptional circumstances, not elsewhere provided for in the Agreement, the Conference may waive an obligation imposed upon a contracting party by the Agreement; provided 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 Members.

SECTION II

EXECUTIVE BOARD

Article XII

The Executive Board shall consist of fifteen Members¹ of the Organization selected by the Conference so that the Board shall be representative of the broad geographical areas to which the Members of the Organization belong, as well as of the different types of economies or degrees of economic development to be found within the membership of the Organization.

Article XIII

At intervals of three years the Conference shall determine, by a two-thirds majority of the Members present and voting, the six Members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade. The Members so determined shall be declared members of the Executive Board.

The other members of the Executive Board shall be elected by the Conference by a two-thirds majority of the Members present and voting.

If on two consecutive ballots no member is elected, the remainder of the election shall be decided by a majority of the Members present and voting.

Article XIV

Each member of the Executive Board shall have one vote.

Decisions of the Executive Board shall be made by a majority of the votes cast.

Article XV

The Executive Board shall adopt rules of procedure, which shall include rules for the convening of its sessions and which may include rules appropriate for the carrying out of its functions during the intervals between its sessions. The rules of procedure shall be subject to confirmation by the Conference.

¹ The figure "fifteen" has been chosen solely for purposes of guidance. The Havana Charter provided for eighteen members, but it seems logical to reduce that number in view of the fact that the contracting parties to the General Agreement are less numerous than the signatories of the Havana Charter were intended to be.

The Executive Board shall annually elect its Chairman and other officers, who shall be eligible for re-election.

Any Member of the Organizations which is not a member of the Executive Board shall be invited to participate, without the right to vote, in the discussion by the Board of any matter of particular concern to it.

Article XVI

The Executive Board shall be responsible for the execution of the policies of the Organization and shall exercise the powers and perform the duties assigned to it by the Conference.

The Executive Board may make recommendations to the Conference, or to intergovernmental organizations, on any subject within the scope of the General Agreement.

The Executive Board shall submit to the Conference each year a report on its work and on the execution of such tasks as may be entrusted to it.

SECTION III

THE SECRETARY-GENERAL AND THE SECRETARIAT

Article XVII

The Conference shall appoint a Secretary-General as chief administrative officer of the Organization. The powers, duties, conditions of service and terms of office of the Secretary-General shall conform to regulations approved by the Conference.

Article XVIII

The Secretary-General shall appoint such members of the staff as may be required and shall fix their duties and conditions of service in accordance with regulations approved by the Conference.

Article XIX

The Secretary-General and the members of the secretariat shall have the status of international officials. In carrying out their duties they shall neither solicit nor accept instructions from any government or any authority outside the Organization. They shall refrain from any act incompatible with their position as international officials. Member States shall respect the international status of these officials and shall not seek to influence them in the carrying out of their duties.

CHAPTER IV

SETTLEMENT OF DIFFERENCES

Article XX

Members, conscious of the solidarity which unites them, shall undertake to seek peaceful procedures for the settlement of their trade differences. They shall refrain from any unilateral action contrary to the provisions of the General Agreement. They shall, whenever possible, have recourse to arbitration for the settlement of their differences. When Members are unable to reach a satisfactory settlement by direct consultations or by arbitration, they shall submit the matter to the Conference which shall make appropriate recommendations.

CHAPTER V

GENERAL PROVISIONS

Article XXI

The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement approved by the Conference.

Article XXII

The Organization shall make arrangements with other intergovernmental organizations which have related responsibilities to provide for effective cooperation and the avoidance of unnecessary duplication of activities.

Article XXIII

The Organization may make suitable arrangements for consultation and cooperation with non-governmental organizations concerned with matters within the scope of the Agreement.

Article XXIV

The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

Article XXV

The Organization shall enjoy in the territory of each of the Members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

Article XXVI

The representatives of the Members and officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connexion with the Organization.

Article XXVII

This Protocol shall come into force as soon as all the contracting parties to the General Agreement on Tariffs and Trade have deposited their instruments of ratification with the Secretary-General of the United Nations.

As from 19 January 1955, all states acceding to the General Agreement on Tariffs and Trade shall be considered as adhering ipso facto to this Protocol.

(A separate agreement may provide for the immediate entry into force of the Protocol on a provisional basis, pending the deposit of the instruments of ratification.)