

GENERAL AGREEMENT ON TARIFFS AND TRADE

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LATIN AMERICAN FREE TRADE AREA

Replies from the Participating Governments to the Questions submitted by Contracting Parties

1. The written questions submitted to the signatories of the Montevideo Treaty were contained in documents L/1177 and L/1177/Add.1 and 2. The written replies to the questions asked in document L/1177 were distributed to contracting parties in document L/1201.

2. Revised replies to the questions in document L/1177 have now been received, together with replies to the questions in documents L/1177/Add.1 and 2. These are reproduced in Part I of the attached document. In submitting their replies the signatories of the Montevideo Treaty have commented as follows:

"The States which are signatories to the Montevideo Treaty have collected in one single document, which they hereby submit to the CONTRACTING PARTIES, the answers to the three questionnaires which have been transmitted on different dates by the Executive Secretary.

"In accordance with the information furnished in due time to the CONTRACTING PARTIES (document L/1230 of 4 June 1960), the signatory States have amended the answers to the first questionnaire (document L/1201), having arrived at a better understanding of these questions after a minute examination of the subsequent questionnaires addressed to them in documents L/1177/Add.1 and Add.2."

3. It will be noted that, while the questions asked in the three questionnaires and the replies thereto have been consolidated under Treaty chapters in Part I of the attached document, it was considered advisable, for purposes of cross-reference etc., to maintain the numbering of the questions which was used in the questionnaires.

4. Part II of the attached document contains a record of questions put orally by contracting parties and replied to orally by the signatories of the Montevideo Treaty during the meeting of the Working Party which was held on 1 and 3 June 1960.

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PART I

INTRODUCTION

The Montevideo Treaty represents a considerable effort by the signatory States in order to reduce trade barriers. It is hoped that the progressive intensification of intra-area trade which would result therefrom will make for a better utilization of the available economic resources of the Area, a resulting increase in the per capita income levels of its peoples, and the expansion of trade with the rest of the world. Bearing these objectives in mind, the signatory States when elaborating the Treaty have always taken into account not only the characteristics of their intra-area trade but also their important economic relations with third countries which they wish to maintain and develop.

The Treaty, which is specially adapted to the conditions and the problems of the countries in the Area, also takes into account the existing disparities between the levels of economic development in the signatory States so as to meet the imperative requirements of an economic expansion to which they are all entitled and which they are endeavouring to achieve jointly.

At this stage, the signatory States wish to reaffirm, as they have already done in the Preamble to the Treaty, their readiness to achieve these objectives, while strictly observing their international commitments. To that effect, those members which are members of the GATT stress their firm intention always to proceed, within the framework of the Association or in their relations with third countries, in conformity with the provisions of the General Agreement, to which the letter and the spirit of the Montevideo Treaty conform.

CHAPTER I

NAME AND PURPOSE

ARTICLE 1

Question 1

Do the Member States propose that the Latin American Free Trade Association be considered as the kind of free-trade area covered by Article XXIV of the GATT?

Answer

Yes.

Question 2

Do the Member States consider that the Montevideo Treaty constitutes an "interim agreement" leading to the formation of a free-trade area or an agreement establishing such an area?

Answer

The Montevideo Treaty is a final agreement establishing a free-trade area within the period and in accordance with the conditions set forth in the Treaty.

Question 3

On what percentage of the trade between the Member States in products originating in their territories will duties be eliminated?

Answer

Article 7 provides that substantially all the trade between the members shall be between 75 per cent and 100 per cent of such trade. The signatory States intend to achieve the highest possible level.

Question 4

Would Member States indicate how the percentage stated in answer to the preceding question is arrived at, indicating whether account has been taken of the removal of monetary charges (arising from multiple exchange rates, prior deposits of import payments, import surcharges, and other non-tariff payments required of importers) levied on imports?

Answer

The percentage indicated in the preceding answer will be computed on the basis of the total value of imports into the Member States originating in the Area, taking into account the elimination of the charges resulting from the specific practices referred to in the question.

Question 5

Since four signatory governments of the Montevideo Treaty are parties to the GATT, is it the intention of the Member States to request the CONTRACTING PARTIES to the GATT to approve the formation of the Free Trade Area in accordance with the provisions of Article XXIV:10 of the GATT?

Answer

In view of the fact that the Treaty is in conformity with the provisions of Article XXIV, paragraphs 5-9 of the GATT, and considering that the provisions of the Treaty are mandatory upon the members of the Association, we are of the opinion that Article XXIV, paragraph 10, of the General Agreement need not be resorted to.

Question 6

Does acceptance of the Treaty entail, for the Member States which are not parties to the GATT, any obligations toward third countries similar to those arising out of Article XXIV of the GATT for other members of the Association?

Answer

Although the Treaty only covers commitments undertaken by the Member States as between one another, the members which are contracting parties to the General Agreement are under the obligation to ensure that the operation of the Free Trade Area will conform to Article XXIV and in their relations with the Member States which are not contracting parties to the General Agreement they will endeavour to ensure that the implementation of the Treaty is in conformity with the rules of Article XXIV.

Question 127

Having regard to Articles 15, 54 and 61 and to the seventh paragraph of the Preamble to the Montevideo Treaty, is it the opinion of the Member States that the Treaty may be considered as constituting an "interim agreement" with a view to the formation of a customs union?

Answer

CHAPTER II
PROGRAMME FOR TRADE LIBERALIZATION

ARTICLES 2-13

Question 128

- (a) Are any duties, charges or restrictions in respect of exports imposed by Member States?
- (b) If so, how do Member States intend to reduce and finally eliminate such duties and restrictions?
- (c) Can such duties, charges and restrictions be maintained or be introduced as between Member States in respect of goods listed in the Common Schedule?

Answer

- (a) Yes, in certain cases some countries impose export duties and/or restrictions.
- (b) The export systems applied by the signatory States are of a liberal and non-discriminatory nature. In view of the fact that the export charges or restrictions applied by the Member States are of little significance or are due to very special reasons, for instance, to the need to ensure intra-area supplies and to carry out international agreements, it did not appear necessary to adopt special provisions in this respect.
- (c) Yes. However, it is clear that the Member States will endeavour to avoid that the application of such measures should operate to impair or nullify the liberalization programme.

ARTICLE 2

Question 7

The provisions of the Montevideo Treaty are to be brought into full operation by the end of a twelve-year period. Would the Member States agree:

- (a) to keep the CONTRACTING PARTIES to the GATT informed of the progress made in the implementation of the provisions of the Treaty?
- (b) to keep the CONTRACTING PARTIES to the GATT informed in advance of all important developments and afford an opportunity for discussions of any important issues before final decisions are taken by the institutions of the Association?

Answer

- (a) Yes.
- (b) When the institutions of the Association consider it to be appropriate.

Question 129

Is it intended under this Article that the period within which the Free Trade Area is to be brought into full operation may in no case exceed twelve years from the date of the Treaty's entry into force?

Answer

The signatory States intend strictly to comply with the liberalization programme within the period set forth in Article 2.

ARTICLES 3-8

Question 130

Is it intended that for new intra-area trade, negotiations on the lines of Articles 4, 5, 6 and 7 will take place after the twelve-year transition period? (Article 13 also refers!)

Answer

Negotiations on the lines of Articles 4, 5, 6 and 7 are to take place during the transition period. For the subsequent stage, the Member States will determine what procedures are necessary to secure the best possible implementation of the objectives of the Treaty.

Question 131

Would the Member States give a full explanation of the methods and processes proposed for drawing up the National Schedules and the Common Schedule?

Answer

Articles 4 to 9 inclusive of the Treaty and the Protocol relating to rules and procedures for negotiations contain a detailed explanation of proposed methods and procedures for the establishment of the National Schedules and of the Common Schedule.

Question 132

The second paragraph of Article 8, which refers to "products which are included only in the National Schedules", gives the impression that products can appear in both a National and the Common Schedule at the same time. Is this correct?

Answer

Yes, this interpretation is correct.

Question 133

- (a) Is the Common Schedule made up of items which appear in all the National Schedules?
- (b) Is it the intention that the products listed in National Schedules will have been entirely transferred to the Common Schedule at the end of the four three-year periods?

Answer

- (a) Not necessarily during the transition period. At the end of the twelve-year period, the products included in the Common Schedule will, of necessity, have to be included in each National Schedule.
- (b) Not necessarily entirely transferred, but a number equivalent to substantially all the intra-area trade.

Question 134

Could the Member States undertake to make available to the CONTRACTING PARTIES to the GATT all National Schedules and Common Schedules as and when they are compiled, together with information about any measures taken concerning them.

Answer

The signatory States have no objection to providing the CONTRACTING PARTIES with all possible information concerning the negotiations and the results thereof.

ARTICLE 3

Question 8

Will the restrictions, duties and other charges imposed by the Member States on goods not subject to the complete elimination of restrictions, duties and other charges at the end of the transition period (and thus not in the Free Trade Area) be non-discriminatory among Member States and with regard to third countries? If this is not the case, how do the Member States reconcile this discrimination with Article 18 of the Montevideo Treaty and Article I of the GATT?

Answer

They will not be discriminatory within the Area. Vis-à-vis third countries, each Member State will have to take account of its international commitments.

Question 9

Would the Member States indicate whether "substantially all their reciprocal trade" in this Article means "substantially all the trade between the constituent territories" of the Free Trade Area?

Answer

Yes. (See answer to question 4.)

Question 10

Would the Member States supply all available information concerning "other charges of equivalent effect", indicating those which are actually in force in the Member States?

Answer

Such information will be supplied in due time.

Question 11

Are prior deposits covered by the term "restrictive regulations"? If so, do the parties to the Treaty envisage a time when products of the Area will be imported into Member States free of deposit, while imports from outside the Area will be subject to prior deposits?

Answer

No; prior deposits, as regards their financial implications, which are considered to be charges as per Article 3. paragraph 2 of the Treaty, are not covered by the term "restrictive regulations".

Question 12

In Mexico, importers in certain circumstances have to produce evidence of compensating exports. Is it envisaged that importers in Mexico of goods from the Area will be relieved of these obligations?

Answer

Yes, when they have equivalent effects to duties, charges or other restrictive regulations.

Question 13

Can it be assumed that the obligation to eliminate duties, charges etc., does not affect the exchange auction system in Brazil?

Answer

This obligation does not affect the exchange auction system in Brazil as such (see answer to question 135(a)).

Question 14

Do the provisions of this Article apply to quantitative restrictions now maintained by Member States for the purpose of safeguarding their balances of payments?

Answer

Yes, this Article provides for the elimination of restrictions, irrespective of their nature or purpose, in respect of substantially all intra-area trade.

Question 15

What protection could a Member State expect from the Treaty against deflections of trade resulting from the fact that the Member State concerned was maintaining quantitative restrictions toward countries outside the Area, while applying the provisions of this Article to other Member States only?

Answer

One of the objectives of the Latin America Free Trade Association is to expand trade as between the Member States. If there is any deflection of trade which is deemed to affect any Member States, the provisions of the Treaty relating to difficulties in the conduct of general trade will be applied.

Question 16

- (a) Will Member States, acting in conformity with the provisions of this Article, be required to accomplish the gradual elimination of "restrictive regulations" other than customs duties and other charges even though these restrictions may have been permitted under Articles XI, XII, XIII, XIV, XV, or XX of the GATT?
- (b) If so, is it intended that such restrictions be eliminated in the case of imports from other contracting parties to the GATT as well as from parties to the Montevideo Treaty? If not, what restrictions now maintained will be eliminated pursuant to this Article, and to what extent will this elimination be extended to imports from other contracting parties to the GATT as well as from parties to the Montevideo Treaty?

Answer

- (a) Yes, with the exception provided for under Article 53.
- (b) The Treaty does not cover this point. In conformity with Article XXIV of GATT, the Free Trade Area provides essentially for the elimination of such restrictions as between the Member States. Vis-à-vis third countries, the signatory States will conform to their obligations arising out of international agreements.

Question 17

Member States of the Montevideo Treaty who are members of the International Monetary Fund or contracting parties to the GATT have broad international obligations for the removal of quantitative restrictions and the elimination of discrimination in the application of such restrictions:

- (a) Would it be appropriate conduct for such a contracting party to relax quantitative import restrictions, including import prohibitions, on intra-area trade without at the same time relaxing such restrictions on trade with third countries?
- (b) Is it anticipated that the provision for gradual elimination of such quantitative import restrictions under this Article could inhibit a Member State from removing immediately quantitative restrictions inconsistent with that Member State's broader international commitments?

Answer

- (a) We are of the opinion that this would be appropriate to the extent that the reasons which have justified the imposition of restrictions were persisting.
- (b) No.

Question 135

- (a) Does the phrase "such duties, charges and restrictive regulations" in the first paragraph of this Article cover multiple exchange practices?
- (b) Is it to be inferred that, in the case of a country in which a multiple exchange system is practised, the exchange differentials would have to be eliminated and a single rate system adopted?
- (c) If so, would the Member State concerned be free to continue to apply a multiple exchange system in respect of countries outside the Area?

Answer

- (a) This phrase does not cover multiple exchange practices as such, but that part of their effects which is equivalent to "such duties and charges" or "restrictive regulations as may ..." is covered.
- (b) and (c) The Treaty does not include any agreement to that effect.

Question 136

- (a) What are the "fees or similar charges" referred to in the third paragraph of this Article?
- (b) What are the "services" to which this provision is applicable?

Answer

(a) and (b) Those which are generally accepted as such in international practice.

Question 221

This Article provides that the Member States shall eliminate gradually, on substantially all their reciprocal trade, duties, charges and restrictive regulations of any kind on imports originating in the territory of any Member State. Are there any particular products or groups of products in respect of which it is not expected that customs duties will be eliminated?

Answer

Any product can be included in the liberalization programme. It is not possible at present to indicate what are the items in respect of which customs duties will not be eliminated at the end of the twelve-year period.

ARTICLE 4

Question 18

Does the Montevideo Treaty contain provisions which the Member States consider constitute a "plan and schedule" complying with the provisions of the GATT? If not, is it the intent of the Member States to supply to the CONTRACTING PARTIES to the GATT such a "plan and schedule"?

Answer

Chapter II of the Treaty includes a schedule, the implementation of which will ensure the full establishment of the Free-Trade Area.

Question 19

How will the Member States ensure that there will be a progressive, regular reduction, within the period mentioned in Article 2, in duties, charges and other restrictive regulations affecting intra-area trade in products listed in the Common Schedule?

Question 20

Does the clause in sub-paragraph (b) of this Article, which reads "in compliance with the process of the gradual reduction provided for in Article 5", constitute a commitment on the part of each of the Member States to include annually in their respective National Schedules commodities listed in the Common Schedule? If not, what assurance is there that there will be progressive and regular reductions in duties, charges and other restrictions on commodities listed in the Common Schedule during the twelve-year period mentioned in Article 2?

Question 21

Does the Treaty contemplate the gradual addition to the Common Schedule of items appearing on the National Schedules?

Answer to questions 19, 20 and 21

The National Schedules and the Common Schedules are independent from one another but their co-ordinated operation will secure the achievement of the liberalization programme.

The National Schedules incorporate the fulfilment of individual commitments to eliminate duties, charges and other restrictive regulations on substantially all imports into the territory of each member from other members in the Area.

The Common Schedule incorporates products which, at the expiry of the twelve-year period, must be entirely free from duties, charges and other restrictive regulations.

At the expiry of the twelve-year period all the products included in the Common Schedule must be included in each National Schedule.

Question 22

Will the Member States inform the CONTRACTING PARTIES to the GATT of the results of the periodic negotiations provided for in this Article?

Answer

Yes.

Question 137

Article 5 refers to rules, methods of calculation and procedures for a gradual yearly reduction in "duties and charges" imposed by the Member States. No similar provision is specified in respect of a reduction in "restrictive regulations". How do the Member States propose to achieve the gradual elimination of such restrictions, and how, in particular, can they ensure that reductions in such restrictions will not be deferred from year to year during the twelve-year period?

Answer

As we are dealing here with measures which cannot easily be assessed quantitatively, the Treaty provided for their elimination during the period for the full establishment of the Area without setting forth any minimum undertakings. Furthermore, the negotiations provided for under Article 4 for the purposes of Article 5:3 and Article 7 will in many cases involve the elimination or reduction of such restrictions so that it does not seem appropriate to presume that the corresponding reductions might be deferred from year to year.

Question 138

Is there not a danger that the benefits which are expected to be derived from a gradual integration of the economies of the Member States may be curtailed or delayed due to uncertainty resulting from the lack of a complete and detailed plan for trade liberalization?

Answer

Chapter II includes a plan which is considered appropriate for the purposes of the Treaty.

ARTICLE 5

Question 23

Since the duties and charges levied by each Member State on its imports from the others is to constitute a decreasing percentage of duties and charges currently applicable to third parties, could not a part of the required decrease in this percentage be achieved by raising duties applicable to third parties? What assurances are there that the Montevideo Treaty will conform with Article XXIV:5(b) of the GATT, concerning the level of duties and other restrictive regulations applicable to the trade of countries outside the Treaty Area?

Answer

The Treaty stipulates that duties and charges and other restrictive regulations which affect substantially all intra-area trade shall be gradually eliminated. As regards the policy which each Member State will adopt concerning customs duties and other regulations in their respective trade with third countries, see answer to question 6.

Question 24

Is the "weighted average applicable to third countries" obtained by dividing (1) the total duties and charges which would have been collected on three years' imports from all sources of the relevant commodities had these duties and charges been assessed at rates in force on 31 December prior to the negotiations by (2) the total value of these imports from all sources in the three-year period?

Answer

This interpretation is correct.

Question 25

In performing the computations required by this Article, how will "charges" (fiscal, monetary or other) which are distinct from rates of duty be computed?

Answer

In conformity with the criteria to be laid down by the institutions of the Association.

Question 26

What are the plans of the Member States with regard to discussions with the IMF of measures to be taken under the Treaty (e.g. Articles 3-5) insofar as the provisions of the Treaty are applicable to multiple exchange rates or other measures subject to the Articles of Agreement of the IMF?

Answer

This point relates to the relations of each Member State with the International Monetary Fund.

Question 27

What kinds of restrictions would be subject to the provisions of the third paragraph of this Article? Would the relaxation or the elimination of these restrictions be extended to all Member States on a non-discriminatory basis?

Answer

1. This provision refers to restrictive regulations of any type which are not included in the concept of duties and charges referred to in paragraph 2 of Article III.
2. Yes.

Question 28

Is it anticipated that, under the provisions of the third paragraph of this Article, a Member State that is a member of the IMF or a contracting party to the GATT would relax quantitative import restrictions toward countries inside the Area without extending similar treatment to third countries?

Answer

Yes, for the reasons given in the answer to question 16(b).

Question 139

Would the Member States provide an example showing how the weighted average is actually arrived at?

Question 140

The method of calculation of the reduction in duties and charges on the basis of the weighted average of duties and charges applicable in respect of third countries, referred to in the first paragraph of this Article, does not provide the means of ascertaining the extent of the reduction on individual products, particularly as the products affected by the reduction are not known in advance. In order to facilitate a clearer understanding of the reduction mechanism, would the Member States provide a few examples?

Answer to questions 139 and 140

Weighted average of duties and charges on trade with third countries	Weighted average of duties and charges on intra-area trade
V1 x T1 : P1	V1 x t1 : p1
V2 x T2 : P2	V2 x t2 : p2
V3 x T3 : P3	V3 x t3 : p3..
...
Vn x Tn : Pn	Vn x tn : pn
$\frac{\sum P}{\sum V}$: Weighted average for third countries	$\frac{\sum p}{\sum v}$: Weighted average for the Area

- V - Yearly average of the aggregate import value for a specific item during the three-year period prior to each negotiation.
- T - Existing duties and charges on this product in respect of third countries as of 31 December prior to each negotiation.
- t - Duties and charges on this product resulting from the concession accorded to other Member States during the last negotiations.
- n - Last product in the series, which comprises:
 - (a) products included in the list of imports from the Area during the three-year period prior to the year when the negotiation took place, whether or not concessions have been granted in respect of such items, and
 - (b) products which are not included in the list referred to in the preceding paragraph but which have been included in the liberalization programme in the course of the negotiations.
- Σ - Total of "V", "P", and "p".

Question 141.

More detailed information appears to be required concerning the envisaged elimination of duties and charges. For instance, is it correct to assume that, for products listed in a schedule for the last three-year period, all duties and charges are to be eliminated in those three years?

Answer

If the question refers to the Common Schedule: yes. If it refers to a National Schedule: not necessarily.

Question 142

The time factor which enters into the calculation of the reduction in duties and charges entails, for countries acceding to the Montevideo Treaty at a later date, the necessity of implementing, with immediate effect from the date the Treaty becomes applicable to them, a tariff reduction on all goods amounting to 8 per cent of the weighted average multiplied by the number of years that have elapsed since the entry into force of the Treaty:

- (a) Assuming that a country accedes six years after the entry into force of the Treaty, would it be required to lower its customs duties on the goods concerned by 48 per cent at one and the same time?
- (b) If so, is it the opinion of the Member States that such a far-reaching reduction is a practical possibility?

Answer

- (a) Yes, under Article 59 of the Montevideo Treaty.
- (b) Obviously, yes.

Question 143

- (a) With reference to the second paragraph of this Article and on the assumption that the Montevideo Treaty enters into force in the course of 1960, will the application of the contemplated reductions be based on the duties and charges in effect as at 31 December 1959?
- (b) What is the reason for using a different base year each time the annual calculations are made?

Answer

- (a) Yes.
- (b) The intention is to impart dynamism to the liberalization of substantially all intra-area trade, by adapting the negotiations to the annual variations in the composition and value of imports.

Question 144

What are the methods and the pace envisaged for the elimination of existing quantitative restrictions on imports in each of the Member countries? What is the exact scope of the third paragraph of this Article?

Answer

1. This will be determined by negotiation in each case, on the occasion of annual negotiations.
2. To ensure the reciprocity of concessions.

Question 145

1. Is it the intention that the Member State concerned should gradually eliminate all the restrictions referred to in the third paragraph of this Article?
2. Or is the relaxation of such restrictions to be effected only to the extent considered necessary to obtain the requisite equivalence with the reductions in duties and charges granted by other Member States?

Answer

1. Yes, for substantially all imports of products originating in the Area.
2. See answer to paragraph 1 of this question.

ARTICLE 7

Question 29

What percentage of the aggregate value of trade between themselves do the Member States consider would have to be liberalized to achieve liberalization of "substantially all of such trade" as referred to in this Article?

Answer

Article 7 provides that substantially all the trade shall mean a proportion between 75 and 100 per cent, the latter percentage to be achieved during the fourth three-year period.

Question 30

This Article provides for inclusion of products on a Common (liberalized) Schedule equivalent to "substantially all of such trade" within the fourth three-year period of the transition period. If some duties, charges or restrictions are permitted to be retained, how and when will the permissible extent of these be determined in respect of each Member State?

Answer

As far as products included in the Common Schedule are concerned, at the expiry of the twelve-year period, no duties, charges or other restrictive regulations will be maintained, with the exception of the "other restrictive regulations" referred to in Chapters VI and VIII in the Treaty.

Question 31

Does the "aggregate value of the trade among Member States" mentioned in this Article mean the total value of all trade between the Member States regardless of the origin of the products traded or does it refer merely to the trade between the Member States in products originating in their territories?

Answer

Article 7 refers to the aggregate value of trade in products originating in the Area.

Question 32

How do the Member States plan to reconcile the commitment in Article 7 to free an increasing proportion (ultimately "substantially all") of trade among Member States with actions which may be taken under the Saving Clauses (Articles 23-26), the Special Provisions Concerning Agriculture (Articles 27-31), and the Measures in Favour of Countries at a Relatively Less Advanced State of Economic Development (Article 32) in the event of a conflict between the commitment of Article 7 and these actions?

Answer

The restrictions mentioned will always be of a temporary nature and will not hinder the fulfilment of the liberalization programme.

Question 33

Do the Member States intend to eliminate duties and other restrictive regulations of commerce on substantially all the trade between their constituent territories in products originating in such territories, not only on commodities actually traded, but with respect to substantially all actual and potential trade in products originating in their territories? If so, how do the Member States propose to ensure the incorporation in the liberalization programme set forth in Articles 2-13 of the Montevideo Treaty of substantially all products originating in their constituent territories and potentially tradeable among them?

Answer

Yes, by means of annual negotiations.

Question 146

Is it intended that, during the fourth three-year period, products representing at least 75 per cent of the aggregate value of trade among the Member States will be included in the Common Schedule? In the absence of any mention of a percentage for the fourth three-year period can it be inferred that, in the view of the Member States, the criterion referring to "substantially all the trade" is not only of a quantitative but also of a qualitative nature?

Answer

1. Yes.
2. The basic notion is a quantitative one. The formation of the Area is not limited to specific items or branches of production. (See Article 14 of the Treaty and answer to question 221.)

Question 147

- (a) Will the Common Schedule and the relevant obligations (inter alia the obligation relating to the irrevocability of concessions on products included in the Common Schedule) remain in force after the end of the period of twelve years referred to under Article 2?
- (b) If so, would additions be made to the Schedule in the event that, as a result of altered conditions in trade, substantially all intra-area trade is no longer covered?

Answer

- (a) Yes.
- (b) As from the expiry of the twelve-year period, the Common Schedule will always cover substantially all intra-area trade.

Question 148

Are the percentages referred to in this Article to be applied to the total imports of the Member States as a whole or to the total imports of each Member State individually?

Answer

To the total value of the intra-area imports of the Member States.

Question 149

Will agricultural products be included in the percentages referred to in this Article?

Answer

Yes.

ARTICLES 4-7

Question 34

What measures would Member States agree to in order to prevent sudden changes in Area treatment of goods originating in third countries unduly affecting normal trade channels?

Answer

The Treaty does not contain any provisions which could operate so as to affect unfavourably trade channels between the Member States and third countries.

ARTICLE 8

Question 35

May a product included in the Common Schedule be subject to the restrictions permitted by Articles 23, 24 and 25? If so, how is such action reconciled with the "irrevocable" nature of the Common Schedule as described in this Article?

Answer

This "irrevocable" nature refers to the withdrawal of concessions but not to the temporary suspension of their practical effects in cases of emergency.

Question 36

1. In what circumstances is it envisaged that withdrawal would take place?
2. Would withdrawal of a National Schedule concession preclude its final incorporation in the Common Schedule?

Answer

1. The Treaty does not provide explicitly what kind of circumstances could be invoked to request the withdrawal of concessions. The Member States will deal with individual cases as and when they arise.
2. The rescinding of concessions included in the National Schedules does not prevent subsequent inclusion in the Common Schedule.

Question 37

Could the expression "adequate compensation" in the second paragraph of this Article include reimposition or intensification of quantitative import restrictions by the country with respect to which concessions are withdrawn? If so, would such measures be consistent with a country's obligations under the GATT or the IMF?

Answer

No. "Adequate compensation" refers to the substitution of a concession by a concession or concessions of equivalent value.

Question 150

The fact that, under the second paragraph of this Article, a Member State may withdraw concessions granted in respect of products which appear in its National Schedule constitutes an element of uncertainty. How, for example, would the following case be dealt with?:

Country X has developed standardized, large-scale production and intensified its exports of a particular product, because of its being included in the National Schedule of Country Y. Country Y wants to withdraw this article from its Schedule; Country X opposes this, and no agreement can be reached between them.

Answer

In practice, the assumption made in this question could hardly materialize. If it did, the case would be considered jointly by the Member States.

Question 151

Do the Member States consider that the retention of the National Schedules, to a substantial extent, until the end of the transition period, is consistent with the relevant rules of the GATT?

Answer

Yes. The National Schedules merely record the implementation by each individual Member State of the undertaking, to eliminate duties, charges and other restrictive regulations. At the expiry of the twelve-year period the National Schedules considered jointly will, of necessity, cover essentially all the reciprocal trade covered by the Common Schedule and possibly part of the residual trade.

Question 222

This Article provides that withdrawal of tariff reductions may be permitted as long as these items are not included in the Common Schedule. Accordingly, there would seem to be a danger that, for the more sensitive items, there will not be a progressive reduction in the tariff barriers to trade during the transition period. What measures do Member States contemplate so as to prevent the accumulation of a hard core of items where very substantial tariff reductions will have to be made at the end of the transition period if the Free-Trade Area objectives are to be attained?

Answer

The application of Articles 5, 7 and 8 taken jointly, removes the possibility entertained in this question.

ARTICLE 10

Question 38

- (a) What is the phrase "equitable consideration" intended to mean"
- (b) What criteria will be used in determining the concept of "equity" in considering the situations of those Member States whose levels of duties, charges and restrictive regulations differ substantially from those of others?

Answer

- (a) In the usual sense.
- (b) The criteria to be used for the determination of the concept of "equity" will be laid down in due time by the institutions of the Association.

Question 152

- 1. What is the exact meaning and scope of paragraph 2 of this Article?
- 2. Could the Member States give examples?

Answer

- 1. and 2. It means that during each negotiation the advantages and disadvantages resulting for each country and for the Area as a whole from the existence of substantially different levels of duties, charges and other restrictive regulations will be duly weighed. The concept of equity is intended to avoid that such difference should, as a result of the negotiations, have trade effects contrary to the objectives of the Treaty.

ARTICLE 11

Question 154

Does the expression "products included in the liberalization programme" refer to products listed in the Common Schedule or in a National Schedule?

Answer

The phrase "products included in the liberalization programme" refers to products included in the Common Schedule or in a National Schedule.

Question 155

Would the Member States explain whether the phrase "suitable, non-restrictive measures designed to promote trade at the highest possible levels" refers to intra-area trade only?

Answer

Yes. The phrase refers only to intra-area trade.

Question 223

Would the Member States confirm that steps to remedy the difficulties envisaged in this Article would not involve derogations from the obligations regarding the elimination of tariff barriers to trade within the Area?

Answer

Yes.

ARTICLES 11 and 12

Question 39

When drafting these Articles, what had the parties to the Treaty in mind?

Answer

In the case of Article 11, the intention was to ensure that the concessions granted should not result in a situation involving serious and persistent injury as between the Member States. As regards Article 12, the intention was to safeguard the Area against possible similar situations resulting from factors independent from the liberalization programme.

Question 40

What criteria are contemplated for determining "significant and persistent injury" under the provisions of these Articles?

Answer

The criteria to determine whether there is a case of serious and persistent injury shall be defined in due time by the institutions of the Association.

Question 41

How will injury arising from concessions (Article 11) be distinguished from injury arising from other circumstances (Article 12)?

Answer

As a result of an analysis of the situation which would arise.

Question 42

- (a) What are the kinds of "non-restrictive measures" and remedies contemplated under these Articles?
- (b) Would such measures be non-restrictive not only of intra-area trade but also of trade with contracting parties to the GATT not signatories to the Montevideo Treaty?
- (c) Would such measures in any way affect products in the Common Schedule?

Answer

- (a) Basically, an extension of the concessions.
- (b) Only in respect of intra-area trade.
- (c) The only foreseeable effect would be to speed up the liberalization process.

Question 43

Could the implementation of Article 12 result in an intensification of discrimination against third countries?

Answer

No.

Question 44

Does the making of "every effort within their power", referred to in Article 12, include the taking of measures which would otherwise be inconsistent with (a) the Montevideo Treaty and/or (b) the GATT?

Answer

No.

Question 153

What type of measures are envisaged in these Articles which are not covered by Articles 23 to 26?

Answer

The measures provided for under Articles 11 and 12 are not covered by Articles 23 to 26, as they will always be of a non-restrictive nature.

ARTICLE 12

Question 156

Would the Member States explain fully the nature of the "other circumstances" referred to in this Article?

Answer

Circumstances arising out of unfavourable economic situations which do not result from the implementation of the liberalization programme. Those that could be most easily defined would be natural circumstances such as droughts, floods, earthquakes, etc.

Question 157

Are the measures envisaged by the phrase "every effort within their power" in this Article intended to include quantitative import restrictions as well as tariff measures, such as for example the withdrawal of tariff concessions granted under the liberalization programme? Could the Member States give examples of the type of measures that might be used?

Answer

1. No, because this Article deals with non-restrictive measures.
2. In particular, financial and technical assistance.

ARTICLE 13

Question 45

Should a Member State find it impossible to comply with the provisions of Articles 5 and 7 on the basis of concessions intended to result in reciprocity as defined in this Article, what procedure is envisaged to ensure its full participation in a free-trade area in which duties and restrictive regulations of commerce have been removed with respect to substantially all its trade with other participants in the area in products of territories of the area?

Answer

We do not see how in practice the case under reference could occur. The undertakings subscribed by the parties of Articles 3, 5 and 7 of the Treaty are fundamental and mandatory. Article 13 refers to the principles on which the negotiations provided for under the Treaty will be based.

Question 46

If a Member State has removed duties and other restrictive regulations with respect to substantially all trade with the other Member States in the Area in products originating in the territories of the Area, how will it then be possible for the principle of reciprocity to guide any further negotiations between that country and the other Member States under the provisions of Articles 5 and 7?

Question 47

Given the above situation, could those Member States still short of achieving the required trade liberalization refuse or obstruct the offering of what they might consider as "unilateral" concessions to the Member State which had achieved the required liberalization on the grounds that reciprocity of concessions was not possible?

Answer to questions 46 and 47

There is little likelihood that the assumption referred to in questions 46 and 47 would materialize. However, the principle of reciprocity will be applicable in the negotiations which will take place at any stage during the period leading to the full establishment of the Area.

Question 48

- (a) How are the Member States to measure the "expected growth in the flow of trade"?
- (b) Is the "expected growth" defined as the expectation of individual Member States or of the Committee of the Association?

Answer

- (a) By assessing at the time of the negotiations the foreseeable trade effects of the concessions granted and received.
- (b) As the expectation of each individual Member State.

CHAPTER III

EXPANSION OF TRADE AND ECONOMIC COMPLEMENTARITY

ARTICLE 14

Question 49

What steps are contemplated to attain the objectives set forth in sub-paragraphs (b) and (c) of this Article?

Answer

By means of annual negotiations.

Question 158

In view of the fact that the Montevideo Treaty provides for the gradual elimination of duties, charges and restrictions of all kinds, would the Member States provide more detailed information with regard to the scope of sub-paragraph (a) of this Article?

Answer

The progressive nature of the elimination of duties, charges and other restrictive regulations provided for under the Treaty is no reason why the Members of the Association should not proceed in accordance with Article 14(a) in view of the fact that the Treaty undertakings are minimum undertakings. It will always be open to the Member States, subject to the principle of reciprocity, to speed up the liberalization programme in respect of specific products.

For that reason and having regard to the objectives of the Treaty, the Member States have deemed it appropriate to make every endeavour in order to ensure during the first negotiation that products imported from the Area should receive no less favourable treatment than that existing prior to the entry into force of the Treaty.

Question 159

Can the inference be drawn from the provisions of sub-paragraph (a) of this Article that some of the Member States might intend to raise, between the date of entry into force of the Treaty and the initial series of negotiations provided for in Article 4, the level of duties, charges and restrictions imposed by them?

Answer

The signatory States do not intend to resort to the procedures referred to in this question.

Question 160

What is the reason for not making it mandatory to ensure that imports from within the Area are accorded, from the initial negotiation, treatment not less favourable than that which existed before the entry into force of the Treaty?

Answer

The full and immediate extension at multilateral level, of existing favourable treatments might create distortions in intra-area trade.

ARTICLE 15

Question 50

What is meant by the term "harmonize" in this Article?

Answer

To reduce the most significant disparities.

Question 51

In order to ensure fair competition among themselves, particularly with regard to industrial production, the Member States are to endeavour "to harmonize their import and export systems and the treatment accorded to capital, goods and services from outside the Area". Does this mean:

- (a) that a Member State which has no local production to protect will have to raise its duties to the level of those levied by Member States which have local industries to protect? How will this apply to products subsequently added to the Schedules?
- (b) that all Member States will adopt a common policy in their investment laws, terms of credit for imports, etc.?
- (c) that the Member States propose to adopt a uniform policy as regards the treatment to be given to foreign shipping services?

Answer

(a) No.

(b) and (c) The CONTRACTING PARTIES will endeavour to the greatest extent possible to harmonize treatment accorded to capital, goods and services from outside the Area in accordance with the criteria to be fixed in due time by the institutions of the Association.

Question 52

Will the implementation of this Article result in the imposition of quantitative restrictions?

Answer

No.

Question 53

If Member States are considering moving towards uniform tariff rates, would they be willing to move towards the lowest rather than the highest rates of duty?

Answer

The harmonization provided for under Article 15 does not necessarily imply that customs duties will be made uniform. Every endeavour will be made to carry out this process of harmonization in accordance with the most liberal criteria.

Question 54

Is there any possibility that, in the process of harmonizing their import and export systems, Member States might be required to harmonize their import systems and might such harmonization or other action under this Article mean that barriers to the trade of third countries would be increased and discrimination against such countries intensified?

Question 55

Do the Member States intend to use their import system in such a way as to preserve the expansion of trade with outside countries, especially with those whose imports of Latin American products as well as exports of goods important for industrial development show an increasing trend?

Question 56

By what means will the measures taken with respect to import and export regimes and the treatment accorded to goods from outside the Area be so implemented as to be consistent with the provisions of the GATT?

Answer to questions 54, 55 and 56

One of the objectives of the Treaty is to expand the trade of the Member States with the rest of the world. The intention therefore is not that restrictions should be intensified vis-à-vis third countries.

Question 161

If this Article means that the Member States will, to a greater or lesser degree, harmonize their external tariffs, will the harmonization apply to tariffs on agricultural products in view of the emphasis on industrial production in the Article?

Answer

The harmonization provided for under Article 15 does not exclude agricultural products. On the other hand, the Treaty does not lay down any specific obligation to harmonize external tariffs.

Question 162

Does the "harmonization" envisaged in this Article mean that quota measures in respect of countries outside the Area will be brought to a uniform level?

Answer

No.

Question 163

Are there at present any plans concerning the elimination of quantitative restrictions etc. towards third countries?

Answer

Although the Treaty does not contain any provisions in this respect, it should be pointed out that the signatory States are making considerable individual efforts in this direction, as is shown by the reforms of the external trade systems which most of them have carried out in recent years.

Question 224

Would the Member States confirm that the provisions of this Article will not preclude them from maintaining the reciprocal tariff concessions negotiated under the GATT?

Answer

Each signatory State which is a contracting party to GATT will act in conformity with its GATT obligations.

ARTICLE 16

Question 57

Sub-paragraph (a) of this Article envisages the formulation of agreements among representatives of economic sectors in order to promote closer co-ordination of industrialization. In the light of this provision, are any measures contemplated in order to prevent restrictive business practices frustrating the benefits expected from the reduction or removal of trade barriers between Member States?

Answer

1. Sub-paragraph (a) does not refer to agreements but to arrangements between the economic sectors concerned for the purpose of facilitating the co-ordination of the industrialization policies of the Member States.
2. The Treaty contains provisions intended to prevent practices which might impair normal competitive conditions.

Question 58

Would the complementarity agreements provided for in this Article have the effect of confining the number of competing plants in an industry? How would this achieve the objective stated in Article 15 of ensuring "fair competitive conditions" among the Member States?

Answer

This is not the intention. Such complementarity agreements are not intended to limit the number of competing undertakings in a given industrial sector. In their implementation, every effort will be made to avoid any impairment to fair competitive conditions between the Member States.

Question 59

Will the Member States explain fully the anticipated nature of the "mutual complementarity agreements with one another in respect of industrial sectors" authorized by this Article?

Answer

These are agreements intended to speed up the process of liberalization relating to products included in the relevant sector.

Question 60

How will the agreements contemplated by this Article affect customs duties and other regulations of commerce applied by Member States to products of (a) other parties to the Montevideo Treaty and (b) third countries?

Answer

The complementarity agreements entered into in respect of various industrial sectors will not be of a discriminatory nature as between the countries in the Area. As far as third countries are concerned, their only effects will be those resulting from the process of liberalization provided for in the Treaty.

Question 61

What is the anticipated duration of the complementarity agreements?

Answer

The period of validity of such agreements will be determined in each individual case.

ARTICLES 16 AND 17

Question 62

Do those Articles mean that the Member States propose to try and plan investment in the Area as a whole, and that before any foreign projects may be undertaken in the territories of any one of the Member States, approval of the project must be given by all the Member States?

Answer

No.

Question 63

Will the agreements contemplated in the provisions of these Articles be consistent with the provisions of Articles 18 and 20 of the Montevideo Treaty?

Answer

Yes, in view of the provisions of the last paragraph of Article 17.

Question 64

Are the agreements under these Articles to be regarded as an integral part of the Association arrangements for the purposes of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Question 65

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, any agreements which may be concluded pursuant to the provisions of these Articles of the Montevideo Treaty?

Answer to questions 64 and 65

The establishment of complementarity agreements in respect of individual industrial sectors is an integral part of the Association arrangements. Such agreements constitute mechanisms intended to facilitate the achievement of the objectives of the Association as promptly as possible. It is not therefore considered necessary to submit such agreements to the CONTRACTING PARTIES to GATT. However, the signatory States have no objection to the relevant information being furnished to the CONTRACTING PARTIES.

Question 164

As a result of expediting the closer co-ordination of industrial policies, it would appear that conditions of self-sufficiency may be built up within the Free-Trade Area. Is it not possible that, in such circumstances, the Member States will be led to discriminate against imports from third countries?

Answer

This is not a process intended to promote self-sufficiency in the Area. However, in view of the fact that the regional production would be increased, the implementation of the Treaty can bring about a decline in imports of certain products from third countries, although this will not imply a decline in the

total import figure. In the case under consideration, there would only be a change in the import pattern. On the other hand, it is foreseen that the increase in the purchasing power resulting from the economic development of the Member States will generate an intensification of the demand for other goods and services which will ensure an expansion of trade with the rest of the world.

Question 165

How would the liberalization programme for commodities covered by the complementarity agreements relate to Articles 4, 5 and 7?

Is it envisaged that the removal of tariffs, other import charges and quantitative restrictions would proceed at a different pace?

Answer

The complementarity agreements constitute mechanisms supplementing the programme of liberalization provided for in the Treaty; they may envisage an accelerated pace for the reduction of duties, charges and other restrictive regulations.

Question 166

Can third countries expect that their present ability to obtain raw materials will not be impaired by agreements of the kind envisaged in these Articles.

Answer

There is no doubt that this ability will not be impaired.

Question 167

What kind of "sponsorship" is it envisaged the Member States might undertake in terms of sub-paragraph (a) of Article 16?

Answer

In particular, by promoting the setting up of the advisory commissions referred to in Article 43.

ARTICLE 17

Question 56

Will the liberalization programme applied to the products of the sector concerned contemplate the inclusion of these products in the Common Schedule and the complete elimination of duties, charges and other restrictions, insofar as intra-area trade in these products is concerned, within the period mentioned in Article 2 of the Montevideo Treaty?

Answer

Yes, if the Member States so agree, subject to the time-limit set forth in Article 2 of the Treaty.

Question 67

By what means will "provisions directed towards the harmonization of treatments accorded to raw materials and other factors" be so implemented as to be consistent with the GATT?

Answer

Harmonization will be directed towards a reduction of the most important differences and the avoidance of any additional restrictions on trade with third countries.

CHAPTER IV

MOST-FAVORED-NATION TREATMENT

ARTICLE 18

Question 168

What is the reason for not incorporating in the Montevideo Treaty all of the provisions of paragraph 1 of Article I of the GATT regarding the most-favoured-nation clause?

Answer

Article 18 is a synthesis of all the provisions of Article I, paragraph 1, of the General Agreement on Tariffs and Trade.

Question 169

Is it intended that the preferential tariff treatment accorded by some of the Member States shall be extended to all countries within the Area from the date of entry into force of the Treaty?

Answer

Yes.

CHAPTER V

TREATMENT ON INTERNAL TAXATION

ARTICLE 21

Question 170

Can it be expected that the elimination of any discriminatory element in internal taxation will be applicable to imports from any country which is a contracting party to the GATT (in accordance with Article III of the GATT)?

Answer

In this respect every member will act in conformity with its international commitments.

CHAPTER VI
ESCAPE CLAUSES

ARTICLES 23-26

Question 225

- (a) What would be the nature of the negotiations envisaged in Article 26 relating to restrictions which may be imposed under Article 23 of the Treaty?
- (b) What arrangements are there to ensure that the use of quantitative restrictions envisaged under Article 23 will not be such as to result in the postponement of the economic objectives required to permit the full establishment of the Free-Trade Area?

Answer

- (a) These would be joint negotiations.
- (b) The interim nature of such restrictions and the obligation to carry out fully the liberalization programme within the time-limit set forth in the Treaty.

ARTICLE 23

Question 68

How would restrictions applied pursuant to this Article be justified under the GATT?

Answer

Being always of an interim nature, such restrictions would not prevent the achievement of the objectives of the Treaty.

Question 69

What specific criteria are contemplated for identifying and determining the existence or threatened existence of a "serious prejudice to a particular industry of significant importance to the domestic economy?"

Answer

They will be determined in each individual case by the institutions of the Association.

Question 70

Would quantitative import restrictions applied under the provisions of this Article be non-discriminatory as between countries outside the Area as well as towards those inside the Area?

Answer

The restrictions referred to in Article 23 only cover products from the Area which are included in the liberalization programme. Such restrictions would be applied without discrimination between the Member States.

Question 71

What obligations under the Treaty does a country have with respect to relaxing and removing such quantitative import restrictions?

Answer

Those that had been determined in granting the authorization and, if the case arises, the provisions of Article 26 of the Treaty.

Question 72

Could such quantitative import restrictions be relaxed toward countries inside the Area and not toward third countries?

Answer

The case envisaged in this question is not conceivable, in view of the provisions of Article 23 of the Treaty.

Question 171

- (a) In the circumstances envisaged in this Article would restrictions be imposed upon like products originating outside the Area?
- (b) If so, could the Member States undertake to notify the CONTRACTING PARTIES to the GATT of any measures taken in pursuance of this Article by Member States who are contracting parties to the GATT?

Answer

- (a) Such restrictions will not necessarily be applied to like products originating outside the Area. However, if and when the case arises, due account will be taken of the interests of third countries.
- (b) Each Member State which is a contracting party to GATT will act in this respect in accordance with its obligations under the General Agreement.

Question 172

In a case where the interests of another contracting party to the GATT is involved, would a Member State wishing to take action under this Article first have resort to the relevant provisions of the GATT?

Answer

Each Member State will act in conformity with its international commitments.

Question 173

Will this Article continue to apply after the end of the period of twelve years referred to in Article 2?

Answer

Yes.

Article 24

Question 73

What criteria will the Member States follow in determining whether to authorize a Member State to extend to intra-area trade in products included in the liberalization programme measures adopted to correct its overall balance of payments?

Answer

The criteria will be fixed in due time by the institutions of the Association.

Question 74

- (a) Will import restrictions applied by a Member State under this Article for balance-of-payments reasons in relation to Member States and to other members of GATT accord with Articles XIII and XIV of the GATT?
- (b) If it is intended that restrictive measures to correct an unfavourable balance of payments should be applied first against third countries and only later, if at all, to other Member States, how would Member States reconcile such action with their commitments under the IMF and the GATT?

Answer

- (a) Yes, to the extent that the application of such provisions does not impair the implementation of the liberalization programme referred to in Chapter II of the Treaty.
- (b) Yes, there is no incompatibility whatever between such provisions and the international commitments undertaken by some Member States within the framework of the IMF or of GATT, because the elimination of such restrictions inside a free-trade area is an inherent feature of such an area.

Question 75

- (a) What procedure will be followed to ensure that a country imposing quantitative import restrictions under this Article will relax them as its balance-of-payments position improves?
- (b) Could a country relax such quantitative import restrictions toward countries inside the Area but not likewise toward third countries?

Answer

- (a) The procedure which had been fixed in the authorization.
- (b) Yes.

Question 174

Although this Article states that authorization may be given by the Member States to a Member State to extend restrictions in intra-area trade, does not the Article as a whole imply that balance-of-payments restrictions should not apply to members of the Free-Trade Area?

Answer

This interpretation is correct.

Question 175

Would it be permissible, under this Article, for a Member State merely to reinstate quantitative restrictions previously removed in pursuance of Article 3 in respect of Member States only, if the Member States concerned felt that the deterioration in its balance-of-payments situation was attributable to measures which it had had to take under the provisions of the Treaty?

Answer

Yes, if this was the adequate solution.

Question 176

What is the reason why the provisions of the second paragraph of this Article do not likewise apply to intra-area trade in products which are not in the liberalization programme?

Answer

Paragraph 2 of Article 24 is intended to prevent to the greatest extent possible that the liberalization programme should be impaired as a result of the imposition of balance-of-payments import restrictions.

Question 226

There would appear to be a danger that the obligations under Article 24 could result in the failure of the Member States to make the most effective use of their limited foreign exchange availabilities in relation to their import requirements. How do the Member States envisage avoiding this kind of difficulty?

Answer

The signatory States are aware of the need to avoid such a situation. However it should be pointed out that Article 24 is intended to correct any balance-of-payments disequilibrium and that Article 24 will therefore be so applied as not to raise additional difficulties to the correction of such disequilibrium.

On the other hand, the Member States are those which are most interested in using their foreign exchange availabilities in the most efficient manner.

Article 26

Question 76

Would be negotiations foreseen under this Article deal only with the elimination of restrictions within the Area?

Answer

Yes.

Question 77

Could the outcome of negotiations foreseen under this Article result in more rapid relaxation of quantitative import restrictions toward countries in the Area than toward third countries?

Answer

Yes.

CHAPTER VII

SPECIAL PROVISIONS RELATING TO AGRICULTURE

ARTICLES 27-31

Question 177

With regard to the application of the provisions of Chapter VII of the Montevideo Treaty, is the Conference empowered to decide which products shall be considered as being "agricultural commodities"?

Answer

Yes.

Question 178

- (a) Is information available showing the distribution as between Member and non-Member States of imports of such agricultural products as are expected to be included in the liberalization programme from the outset?
- (b) Is similar information available with respect to such agricultural products as may be included in the liberalization programme only at a later stage?

Answer

- (a) and (b) The inclusion, by stages, of products in the liberalization programme has not been provided for. This can give rise to negotiations in any year during the transition period. It cannot, therefore, be said that agricultural products would be included from the outset or at subsequent stages.

ARTICLE 27

Question 179

The Montevideo Treaty gives no indication as to the nature of measures which might be contemplated for the purpose of co-ordinating agricultural development policies as provided for in this Article. Are any such measures contemplated by the Member States?

Answer

Such measures would be the object of decisions made in due time by the institutions of the Association.

ARTICLE 28

Question 78

This Article provides for the maintenance in certain circumstances of certain restraints on competition in trade between Member States in agricultural products during the transitional period. Is it intended to require complete removal of these restraints at the end of the twelve-year period and to require complete free trade within the Area on agricultural goods? If this is the case, what arrangements, if any, exist to ensure the progressive removal of these restraints during the twelve-year period? If Member States cannot at present give the CONTRACTING PARTIES to the GATT an assurance that these restraints will all be removed at the end of the twelve-year period and that trade in agricultural products will then be free do they agree that the CONTRACTING PARTIES will need to know their plans before being able finally to determine that the requirements of Article XXIV:8(b) have been fulfilled?

Answer

The provisions of Article 28 are not applicable after the expiry of the twelve-year period for the full establishment of the Area. The Treaty does not envisage the removal of these restraints during the twelve-year period.

Question 79

How would the measures applied pursuant to this Article be justified under the GATT?

Answer

These measures are justified because being applicable only during the transition period they do not impede the implementation of the liberalization programme, neither do they have unfavourable effects on the treatment accorded to third countries.

Question 80

What is meant by the term "uneconomic" used in this Article and in Article 31?

Answer

This refers to situations resulting from a decline in the average level of productivity referred to in Article 30.

Question 81

What criteria are contemplated for determining whether an "increase in uneconomic lines of production" is involved in measures a Member State might decide to apply pursuant to the provisions of this Article?

Answer

The situation will be examined in each individual case by the institutions of the Association.

Question 82

What is the definition of "agricultural and livestock products"? Will rubber, raw cotton and the more highly processed foodstuffs (e.g. packaged foodstuffs) be covered by this definition?

Answer

The institutions of the Association will provide a definition in due time.

Question 83

What criteria are contemplated for determining "those agricultural livestock products which are of material significance" under the provisions of this Article?

Answer

These will be determined in each individual case by the institutions of the Association.

Question 84

What proportion of intra-area trade do the Member States anticipate will be excluded by this Article from the regular trade liberalization programmes during the transitional period defined in Article 2?

Answer

It is not possible at this stage to estimate the proportion of intra-area trade which would be affected by a possible application of Article 28.

Question 85

How and when is it intended that the products affected by measures applied pursuant to this Article at the end of the transition period will be subject to the provisions of Articles 3, 4, 5, 7 and 8?

Answer

The measures provided for under this Chapter do not involve the exclusion of those products from the liberalization programme but only the temporary suspension, on an exceptional basis, of some of the effects of this programme.

Question 86

May the measures permissible under this Article be applied to a product in the Common Schedule?

Answer

Yes.

Question 87

- (a) How would imports be limited under the provisions of this Article?
- (b) Is it envisaged that imports would be controlled by means of quantitative restrictions? If so, how would such restrictions be justified under the GATT?

Answer

- (a) Mainly by means of quantitative restrictions.
- (b) Not necessarily. As regards the compatibility with the General Agreement, see answers to questions 79 and 85.

Question 88

Where Member States limit the import of certain commodities from other Member States under Article 23 or 28, will they be expected or required to limit the import of these commodities from third countries? If so, will the Member States inform the GATT before these measures are put into effect?

Answer

Not necessarily (see answer to question 171).

Question 89

Would the measures applied pursuant to the provisions of this Article be non-discriminatory not only as between Member States but also as between them and contracting parties to the GATT?

Answer

As far as relations between the Member States are concerned, such measures will be applied on a non-discriminatory basis. As regards their relations with third countries, the Member States will adapt the application of such measures to their respective international commitments.

Question 180

To what extent will agricultural products come within the provisions of Articles 2 to 13?

Answer

Agricultural products are included in the liberalization programme.

Question 181

Will the assessment of whether there are "uneconomic lines of production" be on a world-wide basis of comparison, or only by comparison with costs of production within the Area?

Answer

For the purpose of determining whether there are any "uneconomic lines of production", the provisions of Chapter VII take into account the level of productivity existing in each Member State prior to the entry into force of the Treaty.

Question 182.

1. Will the non-discriminatory measures referred to in this Article cease to be effective at the end of the period prescribed in Article 2, or could they be maintained in force by the Conference beyond that period?
2. Assuming the first alternative, how do the Member States propose to ensure that, at the end of that period, such measures could effectively be abolished?

Answer

1. As is clearly laid down in Article 28, the provisions of this Article will only apply "within the period referred to in Article 2".
2. The obligation undertaken under Article 28 means that each Member State which applies such restrictions will take the necessary steps in order to be in a position to eliminate them at the expiry of the twelve-year period referred to in Article 2.

Question 183

- (a) What measures are envisaged in order to equalize the prices of the imported and the domestic product?
- (b) Where such measures are introduced, will these apply also to items where duties are bound under the GATT?

Answer

- (a) Such measures as may be necessary in each case and in respect of each country.
- (b) If necessary. In such a case, a Member State which is a contracting party to GATT will act in conformity with its GATT obligations.

Question 184

What arrangements do the Member States have in mind for the periodic review of measures applied pursuant to this Article during the transition period?

Answer

The Treaty does not contain any specific provisions in this field. However, paragraph 2 of Article 28 provides that the Member States receive prior notification. This implies that the intention is to examine the conditions in which such measures will be applied.

ARTICLE 29

Question 90

This Article provides that an attempt shall be made to expand intra-Area trade in agricultural commodities by such means as agreements:

- (a) What is the nature of the agreements envisaged in this Article?
- (b) What safeguards exist that the conclusion of such agreements will not increase the barriers to trade of countries outside the Area?
- (c) Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, details of such agreements?

Answer

- (a) Mainly long-term purchases and sales agreements, provided however that normal channels of trade shall not be disrupted.
- (b) Such agreements cannot conceivably affect such countries considering that under this Article they will operate in normal competitive conditions.
- (c) Although Article XXIV:7 is not considered to be applicable, the signatory States have no objection to any relevant information being furnished.

Question 91

Are agreements under this Article to be regarded as an integral part of the Association arrangements for the purpose of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Answer

The signatory States are of the opinion that the provisions of this Article are an integral part of the Association arrangements. Agreements resulting from the implementation of this Article constitute mechanisms which are intended to facilitate the achievement of its objectives.

Question 92

Would the agreements contemplated under the provisions of this Article result in discrimination between countries within the Area or between the countries inside and those outside the Area? Should there be discrimination within the Area, how would it be reconciled with the provisions of Article 18?

Answer

There does not appear to be any reason why there should be any discrimination.

Question 93

What assurances are there that these agreements should be consistent with the provisions of the GATT and the policies and decisions of the CONTRACTING PARTIES to the GATT or the IMF regarding bilateralism?

Answer

The provisions of Article 29 do not necessarily lead to bilateral agreements. On the other hand, in considering this Article due account must be taken of the multilateral trade objectives on which the Treaty is based. As regards systems of payments, the Treaty does not contain any provision.

Question 94

Will products included in the agreements permitted by this Article be excluded from the provisions of Articles 3, 4, 5, 7 and 8 during the transition period of Article 2? If so, how and when will these products be made subject to the provisions of Articles 3, 4, 5, 7 and 8?

Answer

No.

Question 185

How do the Member States who are also contracting parties to the GATT reconcile this Article with their obligations under the GATT, especially in view of Article XXIV:4 of the GATT, which states that "the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories"?

Question 186

May it be assumed that the Member States, in pursuing the aim set out in the first paragraph of this Article, will give due consideration not only to the traditional flow of intra-area trade but also to traditional imports from countries outside the Area?

Answer to questions 185 and 186

The provisions of this Article do not raise obstacles to trade with other contracting parties to the General Agreement in view of the fact that priority will be granted only in normal competitive conditions, and because the great bulk of imports of agricultural and livestock products has been coming traditionally from within the Area.

Question 187

Is it intended that the agreements referred to in this Article shall apply exclusively to agricultural commodities which are not included in the programme for liberalization of intra-area trade?

Answer

No. Such agreements can be applied to any agricultural product.

Question 188

Is it contemplated that the agreements envisaged in this Article may continue in force after the end of the period prescribed in Article 2?

Answer

No.

Question 189

- (a) Would the agreements envisaged in this Article mean that a Member State would replace normal commercial importations, necessary to meet deficits in domestic production, by long-term arrangements with other Member States?
- (b) If so, do the Member States envisage that this could mean the exclusion of imports from outside countries, especially in view of the obligation to give priority, under normal competitive conditions, to products originating in the territories of the other Member States?

Answer

- (a) and (b) Not necessarily, because in such circumstances encouragement to the substitution of imports from third countries by products originating in the Area could be given only in respect of part of such imports.

Question 190

What does "priority" under normal competitive conditions mean?:

1. Does it mean that, all else being equal, priority shall be given to Member States?
2. Or does it mean that priority can be given to Member States even though sources outside the Area can supply at lower prices?

Answer

1. Yes.
2. No.

Question 191

Can the agreements referred to in this Article consist of sales/purchase contracts between importing and exporting countries?

Answer

Yes.

Question 227

Apart from the reference to "due consideration being given to traditional channels of trade within the Area" in this Article, in what way do the Member States envisage that distortions in the development of the agricultural economy of the Area can be avoided through the negotiation of agreements between Member States on agricultural commodities?

Answer

Mainly by means of the other provisions of this Chapter.

ARTICLE 30

Question 95

Could the Member States give an example of the type of situation to which the provisions of this Article would apply?

Answer

The provisions of Article 30 are intended to prevent a Member State from applying restrictions in order to stimulate production increases where such restrictions would bring about a decline in the average level of productivity existing prior to the date of the entry into force of the Treaty.

Question 96

What criteria will be followed in determining whether the measures provided for in Chapter VII of the Treaty are applied for the purpose of incorporating, in the production of agricultural commodities, resources which imply a reduction in the average level of productivity?

Answer

The institutions of the Association will examine each case individually.

Question 192

Considering that Article 27 calls for policies aimed at securing the most efficient utilization of the natural resources of Member States and that Article 28 rules out any increase in uneconomic lines of production, may it be assumed that the purpose of this Article is to prevent Member States from employing an increasing number of workers in the production of a given volume of agricultural output? If not, what is the specific purpose of this Article?

Answer

The intention is to prevent the utilization of resources of all kinds (land, capital, labour, know-how, etc.) in uneconomic undertakings.

ARTICLE 31

Question 193

Is the term "reduction of its exports" intended to mean a reduction in absolute value or a reduction in relation to the volume of exports which would have been reached had the measures referred to in Article 28 not been instituted?

Answer

This phrase refers to a decline in the volume of exports as a result of a reduction in regular consumption levels or of an uneconomic increase of productive activities in the importing country, in the circumstances referred to in Article 31.

CHAPTER VIII

MEASURES IN FAVOUR OF COUNTRIES IN A RELATIVELY
LESS ADVANCED STAGE OF ECONOMIC DEVELOPMENT

ARTICLE 32

Question 97

Are measures authorized under this Article to be regarded as an integral part of the Association arrangements for the purposes of the consideration of the arrangements by the CONTRACTING PARTIES to the GATT?

Answer

Yes.

Question 98

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT pursuant to Article XXIV:7 of the GATT any measures authorized pursuant to this Article of the Montevideo Treaty?

Answer

When the institutions of the Association deem it appropriate.

Question 99

What criteria are used to determine whether a Member State may benefit from the provisions of this Article?

Answer

Under the Protocol of 18 February 1960, the governments which are signatories to the Treaty have agreed that Bolivia and Paraguay are at present in a position to claim the special treatment provided for in Chapter VIII. In future cases, it will be incumbent upon the institutions of the Association to lay down the criteria to be followed for the purpose of determining whether a Member State is entitled to the benefit of the provisions of Article 32 of the Treaty.

Question 100

Is it envisaged that quantitative import restrictions would be applied under the provisions of this Article (sub-paragraphs a, b, c, and d)?

- (a) If so, could such restrictions be applied or relaxed so as to discriminate in favour of countries in the Area and against third countries?

- (b) How would it be determined when a country shall cease to apply such restrictions?

Answer

Yes, as far as paragraphs (c) and (d) are concerned.

- (a) Yes; in this case each Member State would have to act in conformity with its international commitments.
- (b) This will be determined in each individual case by the institutions of the Association.

Question 101

What is the nature of the "advantages" contemplated in sub-paragraph (a) of this Article and what special arrangements are envisaged?

Answer

A Member State may grant another Member State in a relatively less advanced stage of economic development in the Area concessions which will not be extended to other members.

Question 102

Could the "advantages" contemplated under the provisions of sub-paragraph (a) of this Article be retained after the termination of the period cited in Article 2? If so, how could such action be reconciled with Article 18 of the Treaty of Montevideo and Article I of the GATT?

Answer

Article 32 is an exception to the rule of Article 18 of the Treaty. If the assumption referred to in the first part of the question did materialize the Member States would adapt such situations to their international commitments.

Question 103

Are measures affecting imports or exports envisaged under sub-paragraph (a) of this Article? If so, what kind of measures? Is there an upper limit to the duration for which a measure may be applied?

Answer

The Treaty does not cover exports. The measures referred to are intended to apply to products originating in countries in a relatively less advanced stage of economic development in the Area. The nature of these measures will depend upon the circumstances of each individual case, and will be of an interim nature.

Question 104

What are the "more favourable conditions" contemplated under sub-paragraph (b) of this Article?

- (a) Could the liberalization programme be applied in a discriminatory fashion?
- (b) Would the programme still provide for the reduction of duties, charges and other restrictions within twelve years, or could it be extended beyond that period?
- (c) To what extent would the programme for the reduction of duties be made more favourable and would there, nevertheless, be a final time-limit for achieving a free-trade area?

Answer

- (a) No.
- (b) and (c) The matter shall be the object of a decision by the institutions of the Association. Although the provisions considered permit certain Member States to reduce duties, charges and other restrictive regulations "under more favourable conditions", the firm intention is to comply strictly with the general obligation of Article 7. This is possible in view of the fact that the shares of the Member States in total intra-area trade are different.

Question 105

How do the provisions of sub-paragraph (c) of this Article differ from those of Article 24?

Answer

The difference arises from the fact that the measures provided for under Article 24 are subject to the limitation laid down in paragraph 1 of Article 26.

Question 106

What criteria are contemplated for determining an "adverse balance of payments" under the provisions of sub-paragraph (c) of this Article?

Answer

The criteria which are usually applicable.

Question 107

In order for the provisions of sub-paragraph (c) of this Article to become operative would a country's balance of payments have to be "adverse" simply with countries in the Area or with the world as a whole?

Answer

What is involved here is the overall balance of payments.

Question 108

If the measures under sub-paragraph (c) of this Article take the form of import restrictions, would they be operated in the manner provided for in Articles XVIII, XIII and XIV of the GATT?

Answer

To the extent that this was appropriate.

Question 109

How will the authorizations under sub-paragraph (d) of this Article be controlled?

Answer

By the institutions of the Association.

Question 110

- (a) May the measures permissible in sub-paragraph (d) of this Article be applied after the end of the transition period?
- (b) Would such measures be consistent with the GATT, particularly Article I thereof?

Answer

- (a) Yes.
- (b) Yes, because the exceptional measures permissible under these provisions will be of an interim nature and will not prevent the attainment of the objectives of the Treaty.

Question 111

1. Are measures affecting imports or exports envisaged under sub-paragraph (d) of this Article?
2. If so, what kind of measures?

Answer

1. Only measures affecting imports by countries enjoying the benefit of the provisions of this Article.
2. Inter alia, quantitative restrictions.

Question 112

- (a) Are the products which may benefit from the provisions of sub-paragraph (d) of this Article to be excluded from the provisions of Articles 3, 4, 5, 7 and 8 during the transition period of Article 2?
- (b) If so, how and when will these products be made subject to the provisions of Articles 3, 4, 5, 7 and 8?

Answer

- (a) and (b) No. The application of the provisions of paragraph (d) does not interrupt the implementation of the liberalization programme. It only results in some of its effects being temporarily suspended.

Question 194

Are the measures in favour of countries in a relatively less advanced stage of economic development to be regarded as general exceptions to the programme of trade liberalization with the consequence that such measures could likewise be initiated or maintained after the end of the twelve-year period?

Answer

The measures covered by Chapter VIII constitute an exception to the Treaty which does not prevent the fulfilment of the liberalization programme, and they can be applied after the end of the twelve-year period.

Question 195

Would it be correct to assume that steps taken under this Article will not have the effect of injuring the interests of third countries?

Answer

Yes.

Question 196

Does this Article imply that even uneconomic production of agricultural products would be countenanced, together with limitation of imports, in spite of the exception to it in Article 28?

Answer

No. The purpose of this Chapter is to raise the average level of productivity of those countries.

Question 197

Do the collective arrangements referred to in sub-paragraph (e) of this Article refer also to help in expanding the agricultural development of less-developed Member States and the promotion of their external trade in agricultural products?

Answer

They are intended to bring about an expansion in productive activities in general.

Question 198

Would the special technical assistance programmes referred to in sub-paragraph (f) of this Article cover agricultural production?

Answer

Agricultural production is not excluded.

Question 199

Is it intended that there should be some review of the special provisions of this Article, so as to take account of any improvements in economic development and so gradually lessen any internal differences of treatment?

Answer

The interpretation is that this question does not refer to a modification of the Article proper but to a review of its effects.

In this case, the imposition of the measures envisaged in Article 32 will be the object of a joint authorization which implies that the terms and conditions of the authorization will include adequate provisions to ensure that such measures are applied only to the extent necessary.

Question 228

Would the Member States confirm that the special arrangements envisaged in sub-paragraph (a) of this Article relate to Bolivia and Paraguay exclusively, and that this special provision would not be available to other Member States?

Answer

The Member States will determine in each individual case what are the countries to which the provisions of this Article will apply.

Question 229

To what extent is it envisaged that Member States will resort to the provisions of sub-paragraph (a) of this Article to assist the less-developed Member States rather than through other forms of assistance envisaged under this Article?

Answer

The institutions of the Association will determine in each individual case what provisions are most suitable for the attainment of the objectives pursued.

CHAPTER XI

MISCELLANEOUS PROVISIONS

ARTICLE 48

Question 200

With reference to the first paragraph of this Article, will there be a similar guarantee for third countries that changes made will not imply a level of duties and charges less favourable than that in force before the changes?

Answer

In its relations with third countries, each Member State will act in conformity with its international commitments.

ARTICLE 49

Question 113

What are the criteria to be adopted for the purpose of determining the origin of goods and for their classification?

Answer

The criteria will be determined in due time by the institutions of the Association.

Question 114

In adopting criteria for the purpose of determining the origin of goods, will the Member States make special provisions to facilitate the use of raw materials normally imported from outside the Area in goods deemed to originate within the Area?

Answer

Yes, in all likelihood.

Question 201

In view of the far-reaching significance of the rules governing criteria for determining the origin of goods in a free-trade area, full information on the criteria adopted or to be adopted in the Latin American Free Trade Area would be very useful in assessing the practical scope of the Treaty:

- (a) Is it the intention of the Member States to make available to the CONTRACTING PARTIES to the GATT the text of any rules which they might adopt concerning the origin of goods?
- (b) Are they at this stage in a position to give information on such rules?

Answer

- (a) Yes.
- (b) No.

Question 202

What are the means envisaged by the Member States to protect themselves against deflections of trade? Is it intended to require a certificate of origin for all goods or only for specific categories of goods?

Answer

The question will be examined in due time by the institutions of the Association.

Question 203

What criteria for determining the origin of goods will be applied during the intermediary period which may elapse before the rules on origin enter into force?

Answer

The criteria applicable to intra-area trade. It is intended that the final criteria will be fixed as soon as possible.

Question 204

With reference to sub-paragraph (c) of this Article, is it the intention of the Member States to adopt the Brussels Nomenclature or to establish a distinct tariff nomenclature of their own?

Answer

The provisional committee of Montevideo has recommended to the governments of the signatory States that they adopt the Brussels Nomenclature.

Question 205

With reference to sub-paragraph (e) of this Article, is it the intention of the Member States to establish criteria different from those contained in the General Agreement with regard to "dumping" and other unfair trade practices?

Answer

For the purpose of such studies the criteria referred to in Article VI of the GATT will be taken into account.

ARTICLE 50

Question 115

Under what provision of the GATT do the Member States justify the restrictions on exports set forth in this Article?

Answer

The provisions of this Article do not run counter to the spirit of the General Agreement. The signatory States intend to apply this Article only in cases where differences between the systems of external trade could give rise to operations involving disruptions of natural trade channels.

Question 206

What are the reasons which have prompted the Member States to introduce a procedure of prior approval for the re-export of products imported by a Member State from the Area?

Answer

Re-exportation will be authorized only where no deflection of trade flows likely to injure a Member State is threatened.

Question 207

Could the Member States provide information concerning the "degree of industrial processing or manufacture" which the Committee will determine for the purposes of the second paragraph of this Article?

Answer

Not at present. The criteria will be determined as soon as possible by the institutions of the Association in pursuance of Article 49(a).

ARTICLE 52

Question 208

1. Can it be assumed that this Article applies to agricultural products as well as industrial products? and that
2. production relying on subsidies would be classified as uneconomic for the purposes of Article 28?

Answer

1. Yes.
2. Not necessarily. It should be pointed out, however, that the provisions of Article 52 do not cover production subsidies.

Question 209

- (a) Does this Article also relate to the subsidization of exports to countries outside the Area?
- (b) If not, what rules will apply to the subsidization of such exports?

Answer

- (a) No.
- (b) In its relation with third countries, each Member State will act in conformity with its international commitments.

Question 210

Are the provisions of this Article to be construed as debarring goods which are subsidized from being exported to the Area when such goods are also produced in other countries of the Area?

Answer

No.

CHAPTER XII

FINAL CLAUSES

ARTICLE 58

Question 211

This Article provides that accession to the Treaty will be open to all Latin American countries. Will any countries other than Latin American countries be considered for full or partial membership?

Answer

No. The Treaty will be open for accession by Latin American countries only.

ARTICLE 60

Question 116

Will the Member States undertake to submit to the CONTRACTING PARTIES to the GATT, pursuant to Article XXIV:7 of the GATT, amendments to the Montevideo Treaty presented pursuant to the provisions of this Article?

Answer

Yes.

ARTICLE 62

Question 117

Does this Article apply to international agreements such as the GATT and the IMF?

Answer

In view of the provisions of paragraph 1 of Article 62, the Montevideo Treaty will not affect the agreements entered into by the signatory States under the General Agreement or with the International Monetary Fund.

Paragraph 2 does not apply to such cases in view of the fact that there is no incompatibility between the Montevideo Treaty on the one hand, and the General Agreement and the IMF on the other.

Question 118

Does the second paragraph of this Article imply that the Member States must reconcile conflicts between the Treaty of Montevideo and existing agreements in favour of the former?

Answer

Under paragraph 2 of Article 62 each signatory State undertakes to renegotiate its agreements so that the provisions of such agreements should not hinder the application of the Montevideo Treaty or the attainment of its objectives.

Question 212

In the case of those Member States which are also contracting parties to the GATT, which provisions of the Montevideo Treaty are considered to be inconsistent with the GATT and in what ways will the Member States concerned seek to reconcile the provisions of the Treaty with the provisions of the GATT?

Answer

The Member States which are contracting parties to the General Agreement are of the opinion that the provisions of the Montevideo Treaty have been duly adjusted to the rules laid down in the General Agreement.

Question 213

What attitude will the Member States adopt in respect of agreements signed with countries outside the Area, due consideration being given to the second paragraph of this Article?

Answer

The Member States will take the necessary steps in order to harmonize the provisions of such agreements with the objectives of the Treaty.

PROTOCOL NO. 1

Question 119

Paragraph 7 of this Protocol provides that the Member States shall be entitled to exclude products of little value from the group subject to tariff reduction provided that their aggregate value does not exceed 5 per cent of the value of imports for the Area. Are the products to be excluded left entirely within the discretion of the importing Member? What safeguard is there that this Member will not exclude products produced in the Area in which there has hitherto been little trade because of high import barriers? What does the expression products "of little value" mean?

Answer:

For practical reasons, these products are excluded from statistical computations but this does not mean that they are excluded from the liberalization programme.

The Standing Executive Committee will be called upon to furnish statistical evidence.

Question 120

Does paragraph 18 of Title V of this Protocol imply that the procedure for securing "the highest possible degree of effective reciprocity" may involve restrictive measures which would favour reciprocity at the expense of inhibiting the highest possible trade levels?

Answer

No.

Question 121

If Member States are considering the equalization of tariff rates, would they be willing to move toward the lowest rather than the highest rates of duty?

Question 122

How will Member States ensure that measures taken pursuant to paragraph 18 of Title V of this Protocol will be consistent with Article XXIV:5 of the GATT?

Answer to questions 121 and 122

These provisions are not directed towards the establishment of a common external tariff. They merely incorporate the rules which are intended to serve as a basis for specific negotiations in which the advantages and disadvantages of the situation of each item will be weighed.

Question 214

1. Would it be possible for the individual Member States to provide a rough estimate of the values which "t" and "T" in the formula set out in paragraph 5 of Title I of this Protocol are likely to assume at the time of the inauguration of the programme for trade liberalization?
2. Would an increase in "T" be considered as a step towards the fulfilment of the obligations of a Member State?

Answer

1. The signatory States which are contracting parties to GATT are prepared to furnish such information in due time.
2. No, if an increase in "T" is attributable to an increase in the general tariff or to other practices, contrary to the provisions of the Treaty.

Question 215

Could the Member States also supply all contracting parties to the GATT with the information called for under sub-paragraphs (a) to (f) of paragraph 8 of Title II of this Protocol?

Answer

Yes, in due time.

Question 216

1. What are the meaning and scope of paragraph 17 of Title V of this Protocol?
2. Is it contemplated that duties, charges and other restrictive regulations should be eliminated at a faster rate or to a greater extent in the case of Member States which impose duties, charges and restrictive regulations substantially higher or more severe than those in force in other countries of the Area? Could examples be quoted?

Answer

1. See answer to question 152.
2. For the purposes of paragraph 17 of Title V of Protocol I, one of those measures could be the measure referred to in the question.

Question 217

What is meant by "prior equalization in paragraph 18 of Title V of this Protocol?

Answer

This phrase refers to a comparison of the various tariffs prior to the negotiations so as to assess the value of possible concessions in order to assure reciprocity.

PROTOCOL NO. 4

Question 123

What proportion of inter-area trade is represented by the exclusion of petroleum and petroleum derivatives, as qualified by the second paragraph of the Protocol, from the provisions of the Treaty?

Answer

Trade in petroleum and petroleum derivatives is not excluded from the system of liberalization instituted under the Treaty.

The second paragraph of this Protocol merely refers to certain commitments arising out of purchases and sales contracts entered into by Member States prior to the signature of the Treaty.

The actual value of the trade resulting from such commitments is not significant.

Question 218

Are the Member States in a position to give information on the main provisions of the agreements relating to commitments to purchase and sell petroleum and petroleum derivatives referred to in this Protocol, also on the period of duration of such commitments and on the value of total trade involved?

Answer

Information will be supplied upon request.

RESOLUTION I

Question 124

Apart from Resolution I, the Treaty contains no references to provisions for invisible transactions and credits. Are Member States contemplating preferential area arrangements for such transactions? If not, are non-member countries right in assuming that invisible transactions and transfers will continue to be on a non-discriminatory basis?

Answer

No preferential treatment is contemplated for such transactions.

GENERAL QUESTIONS

Question 125

Will Member States be free without restriction to reduce their external tariffs in negotiation with other GATT contracting parties or otherwise?

Answer

Yes, in view of the provisions of Articles 5 to 13 inclusive of the Montevideo Treaty.

Question 126

Are existing special regimes for free zones and ports to be retained?

Answer

The Treaty does not deal with this matter.

Question 219

The Preamble emphasizes that the expansion of trade with the rest of the world is to follow after "the strengthening of domestic economies". Do not Member States consider that the improvement of their trade links with third countries is necessary to the progressive establishment of the Free-Trade Area and that more consideration should have been given to this aspect in the Treaty?

Answer

The main objective of the liberalization programme is to speed up the economic development of the countries in the Area as a prerequisite to an increase in their external trade in general.

Question 220

- (a) To what extent will State-traded commodities come within the scope of the Free-Trade Area?
- (b) Are any special arrangements in mind to cover these commodities?

Answer

- (a) and (b) Products coming under State trading are not excluded from the liberalization programme provided for in the Treaty.

PART II

Questions asked during meetings of the Working Party on 1 and 3 June 1960 and replied to by representatives of signatories of the Montevideo Treaty at the meetings.

CHAPTER I

NAME AND PURPOSE

ARTICLE 1

Question 230

Could the Member States explain what measures they intend to take to liberalize trade in accordance with the provisions of Article XXIV of the General Agreement?

Answer

The purpose of the Montevideo Treaty is to promote trade liberalization as a means of facilitating the economic development of the region. In progressively eliminating charges and barriers of all sorts on intra-area trade, Member States will take due account of the objective of the Treaty to expand and diversify trade within the Area as well as international trade in general. In establishing the Free Trade Area, Member States will act in accordance with their commitments under other international agreements. The Montevideo Treaty is designed to conform both in letter and in spirit with the provisions of Article XXIV of the General Agreement.

Question 231

Does the Treaty affect only trade between Member States or will Member States also follow a common commercial policy vis-à-vis other countries?

Answer

The Montevideo Treaty only covers intra-area trade. Member States will remain free to determine their commercial policy towards third countries. In doing this they will, of course, take account of their commitments under the Montevideo Treaty and other international agreements.

CHAPTER II

PROGRAMME FOR TRADE LIBERALIZATION

ARTICLE 3

Question 232

Could the Member States supplement the information given in the reply to question 12 concerning the requirement that importers of certain products in Mexico have to produce evidence of compensating exports?

Answer

Article 3 provides that the Member States shall "gradually eliminate, in respect of substantially all their reciprocal trade, such duties, charges and restrictions as may be applied to imports of goods originating in the territory of any contracting party". If the requirement for compensatory exports causes an increase in the price of the imported commodity, this requirement will be considered as a "charge" in the sense of Article 3 of the Treaty. It is understood that the Mexican Government in imposing or maintaining such requirements will apply them in accordance with its obligations under the Treaty and in accordance with other international commitments.

Question 233

What are the other international commitments of Mexico referred to in the reply to question 232?

Answer

Mexico is not a contracting party to the General Agreement on Tariffs and Trade; it is, however, a signatory to the International Monetary Fund Agreement and is bound by the provisions of that Agreement. Mexico does not have any bilateral agreements.

Question 234

Could the Member States expand on their reply to question 13 relating to the effect which the obligation under the Treaty to eliminate duties, charges, etc., would have on the operation and maintenance of the exchange auction system in Brazil?

Answer

In cases where the use of different exchange auction rates causes an increase in the price of imported products the practice of applying different exchange auction rates may be construed as a charge in the sense of Article 3 of the Montevideo Treaty, and may thus have to be eliminated.

Question 235

Will the application of any of the provisions of the Treaty have the effect of preventing an individual Member State from reducing or eliminating balance-of-payments restrictions as and when its balance-of-payments and external reserve position improves?

Answer

The Treaty does not relieve Member States of their obligation to reduce and eliminate restrictions as required by the GATT or the IMF.

Question 236

Does the Treaty require the abolition of all restrictions regardless of their purpose or will it be possible for Member States to retain restrictions in certain circumstances or in respect of certain goods?

Answer

The objective of the Member States under the Treaty is to eliminate all restrictions. The approval of the Member States is required for any deviation from the programme of trade liberalization.

ARTICLES 4 TO 8

Question 237

- (a) The Treaty provides for the gradual elimination of duties, charges and restrictions through the negotiation of National Schedules and a Common Schedule. How are National Schedules and the Common Schedule to be negotiated and how will they be co-ordinated?
- (b) Is it correct to assume that at the end of the transitional period all items included in the National Schedules will also be included in the Common Schedule and that the rate of duty applying to trade between Member States will be nil?

- (c) What provision has been made for including in the Schedules items which, although not at present moving between Member States, are items which can potentially be traded between the countries of the Free Trade Area?

Answer

The Treaty provides for a flexible approach to the gradual but progressive elimination of duties, charges and restrictions on substantially all the trade during the twelve-year period. Duties, charges and other restrictions for all products included in the Common Schedule will have been eliminated at the latest by the time the transitional period expires, as provided for in paragraph (b) of Article 4 of the Treaty. Annual reductions in duties and charges concerning items to be included in the National Schedules equivalent to not less than 8 per cent of the weighted average applicable to third countries will be made through annual negotiations between Member States. The level of these duties and charges shall, as provided for in Article 5, be based on the level of those duties and charges in force vis-à-vis third countries on 31 December prior to each negotiation. Under Article 14(c) Member States will take the necessary steps to add to these Schedules each year an increasing number of products which are not yet included in reciprocal trade. Common Schedules will be negotiated every three years and Member States are obliged under Article 7 to include in the Common Schedule not less than 25, 50 and 75 per cent of the aggregate value of trade among the Member countries during the first, second and third three-year periods respectively. During the fourth three-year period substantially all the intra-area trade will have been included in the Common Schedules. While substantially all the trade will move freely between Member countries, it is possible that a limited number of items may continue to be subject to certain duties, charges or restrictions. If this is the case, it will be necessary for Member States to re-examine at the end of the transitional period the measures that will have to be taken to deal with these items. In arriving at a decision Member States will take into account the international obligations of Member countries, as well as the particular circumstances affecting trade in these commodities.

Question 238

In proceeding with the reduction of duties and charges by a given percentage each year, will it be possible for Member States to reduce or eliminate duties and charges on certain products while maintaining them on other products?

Answer

The Member States undertake in Article 5 to reduce annually duties and charges equivalent to not less than 8 per cent of the weighted average applicable to third countries until such duties and charges are eliminated in respect of substantially all of their imports from the Area. It is left to the Member States to decide the items to be negotiated each year and the extent to which duties and charges will be reduced on specific items, subject only to the provision that the reduction is not less than 3 per cent per year of the average.

Question 239

Will Member States which are not signatories to the General Agreement follow a commercial policy which is consistent with the international obligations of other Member States?

Answer

Member States which are not contracting parties to the General Agreement will, of course, not be under any legal obligation to comply with the provisions of that Agreement. It can be assumed, however, that such Member States will take into consideration the effects of policies pursued by them on other Member States which have to observe the provisions of the General Agreement. Note may be taken of the fact that all signatories to the Montevideo Treaty have accepted that the obligations of Member States under the Treaty should not be inconsistent with the obligations of those Member States which are signatories to the GATT.

ARTICLES 11 AND 12

Question 240

These Articles provide for action by Member States to remedy "significant and persistent disadvantages" which might result from the implementation of the liberalization programme. (a) What kind of action is envisaged by the Member States for dealing with these problems and what different circumstances are envisaged which would lead to action under Article 12 rather than Article 11? (b) Will action under Article 12 also be implemented in a way permitting the maintenance of trade at the highest possible level or will measures applied under this Article take the form of import restrictions?

Answer

The provisions of these Articles are designed to contribute to the balanced development of the economies of the countries in the region by permitting Member States, primarily through the negotiation of additional concessions, to counteract persistent and significant disadvantages which may result from the implementation of the liberalization measures negotiated between the Member States. Although the type of action most appropriate to deal with a given case will depend on the particular circumstances of the case, the overriding objective of the Treaty of expanding trade will not be lost sight of. The provisions of Article 12, although essentially similar to those of Article 11, have been included in the Treaty as an additional safeguard for the interests of the relatively less-developed Member States.

CHAPTER III

ARTICLE 15

Question 241

In reply to question 51(c) Member States have indicated that they do not envisage the adoption of a uniform policy in their treatment of foreign shipping services. What are the services from outside the Area envisaged in Article 15 on which Member States may want to reconcile their respective policies?

Answer

The use of the term "services" in the Treaty corresponds to the definition and use of this term by the International Monetary Fund. Although shipping is one of the items included in this definition the Member States have not contemplated the adoption of a uniform policy towards foreign shipping services under the provisions of Article 15. This does not preclude the possibility of other suitable action under the GATT or other international agreements, and the introduction of defence measures against discrimination in shipping rates affecting the export and import trade of Latin American countries. This kind of discrimination has been experienced in recent years and because of its adverse effects on the trade of the Area it is a matter of particular concern to the countries in the region.

Question 242

Will the provisions of Article 15 be implemented in such a way as to prevent the imposition of new barriers and the withdrawal of reciprocal tariff concessions negotiated under the GATT?

Answer

The Treaty does not affect the freedom of individual Member States to determine and maintain tariffs and charges vis-à-vis imports from third countries. However, in the process of establishing the Free Trade Area, Member States will bear in mind the common objectives of the Treaty. There is no intention on the part of the Member States to take any action which will lead to the abrogation of their international commitments or to a reduction of trade with countries outside the Area.

ARTICLES 16 AND 17

Question 243

In the reply to question 64, it is stated that "complementarity agreements constitute a device for the fulfilment of the liberalization programme provided for under the Treaty". Can it be assumed that the complementarity agreements will be terminated by the end of the transitional period, by which time the liberalization programme is supposed to have been completed?

Answer

It is thought that it should be possible to terminate the complementarity agreements, which aim at promoting the expansion of production and trade, by the end of the transitional period. Any extension of the period of operation of such agreements, if considered desirable, will be subject to review at the expiration of the transitional period.

CHAPTER VI
ESCAPE CLAUSES

ARTICLE 23

Question 244

Will the application of the escape clauses of Article 23 be limited to the transitional period?

Answer

Escape clauses, by their very nature, could be applied after the transitional period.

CHAPTER VII

SPECIAL PROVISIONS RELATING TO AGRICULTURE

ARTICLE 28

Question 245

In reply to question 82, concerning the commodities to be considered under the Treaty as "agricultural commodities", it has been stated that the institutions of the Latin American Free Trade Association will provide a definition of this term in due time. Have the Member States agreed on such a definition and will the definition be communicated to the CONTRACTING PARTIES?

Answer

The Member States have not yet decided what commodities will be covered by this term. A definition will, however, be submitted to the CONTRACTING PARTIES in due time.

ARTICLE 29

Question 246

This Article provides that Member States shall give priority "... under normal competitive conditions to products originating in the territories of the other contracting parties, due consideration being given to the traditional flows of intra-area trade". Will due consideration also be given to the maintenance of traditional flows of trade with countries outside the Area?

Answer

The purpose of the agreements envisaged in Article 29 is to enlarge and consolidate the flows of trade within the Area so as to facilitate the adjustment towards the free exchange of agricultural products within the Area after the end of the transitional period. The agreements are not intended to mitigate against trade between Member States and third countries.

CHAPTER VIII

MEASURES IN FAVOUR OF COUNTRIES
AT A RELATIVELY LESS-ADVANCED
STAGE OF ECONOMIC DEVELOPMENT

ARTICLE 32

Question 247

What are the special considerations which prompted the inclusion in the Treaty of special provisions for relatively less-developed Member States?

Answer

In order to deal with the emergency situation at the end of the war and in the early post-war years, it was necessary for Latin American countries to rely upon import restrictions to protect their balance of payments. Many of these countries, although still in balance-of-payments difficulties, have in recent years undertaken comprehensive measures to simplify their import control systems. Moreover, in accordance with their obligations under international agreements, they have taken steps to reduce and eliminate non-tariff barriers in general. However, some of the relatively less-developed countries in the region have found it difficult to adjust their import control systems as rapidly as the more developed countries of the region. Having regard to the beneficial effects of the free-trade area arrangement on trade not only within the Area but also with third countries, the Treaty endeavours to make it easier for such less-developed countries to participate by enabling them to make the necessary adjustments in their pattern of trade and their structure of productions in accordance with their particular circumstances.

Question 248

Will Bolivia be entitled to avail itself of the provisions of Article 32 and of Protocol No.5 if that country signs the Treaty?

Answer

It is hoped that Bolivia will soon be in a position to sign the Treaty. In that event, Bolivia will be entitled to invoke the provisions of Article 32 and Protocol No.5 of the Treaty.

Question 249

In the reply to question 101 it is stated that a Member State may grant another Member State which is at a relatively less-advanced stage of economic development advantages which it may not necessarily extend to other members. How can this be reconciled with the reply to question 104(a) that the

liberalization programme as provided for in Article 32 will not be implemented in a discriminatory fashion? Will the CONTRACTING PARTIES be informed of special measures applied under Article 32?

Answer

The provisions of this Article are designed to deal with special circumstances affecting certain countries. If identical conditions warranting the granting of "more favourable conditions" for the implementation of the liberalization programme are to be found in more than one Member State, identical treatment will be given to all Member States qualifying for this special consideration. Any measures which will be applied under this Article will be communicated to the CONTRACTING PARTIES.

Question 250

Does Article 32 provide for the extension of special tariff concessions or special State-trading concessions to Member States which are relatively less developed.

Answer

The provisions of this Article are designed to give Member States at a relatively less-developed stage of economic development an opportunity to activate their respective economies. The type of measures applied under these provisions will depend on the particular circumstances of the country involved. It is not contemplated, however, that a country invoking the provisions of Article 32 will be permitted to discriminate between countries in the Area.

CHAPTER XI

MISCELLANEOUS PROVISIONS

ARTICLE 49

Question 251

In the reply to question 113 the Member States have indicated that in due time the criteria for the establishment of rules of origin and for the classification of goods will be decided by the institutions of the Association. Have these criteria been determined and will they be communicated to the CONTRACTING PARTIES?

Answer

The Member States have set up a Commission for the purpose of determining these criteria. Rules thus formulated will be submitted to the first conference of the Latin American Free Trade Association, to be convened in Montevideo after the ratification of the Treaty; once established they will be made public, and will certainly be communicated to the CONTRACTING PARTIES.

GENERAL QUESTIONS

Question 252

Since the Treaty does not deal with the maintenance of the existing regimes for free zones and ports, can it be assumed that these will be continued as at present?

Answer

The existing special regimes for free zones and ports will not be affected by the Treaty and the operation and maintenance of these will continue to be determined by individual Member States. It is expected, however, that Member States will operate them in a manner which is compatible with the terms of the Treaty.

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