

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Second Special Session

LEGAL AND INSTITUTIONAL FRAMEWORK

Proposals by the Chairman of the CONTRACTING PARTIES

As a result of the conciliation procedure arranged by the Council and following discussions with individual contracting parties, the Chairman puts forward the following texts for approval:

Annex A: The draft of a PART IV entitled TRADE AND DEVELOPMENT for incorporation in the General Agreement.

Annex B: A statement by the Chairman, relating to paragraph 4 of Article XXXVI and to paragraph 2(a) of Article XXXVIII, for inclusion in the records of the Session.

Annex C: A draft Protocol amending the GATT to include PART IV.

Annex D: A draft Final Act of the Second Special Session.

Annex E: A draft Declaration on the de facto implementation of the provisions of the Protocol.

Annex F: Draft terms of reference for the Committee on Trade and Development.

ANNEX A

PART IV

TRADE AND DEVELOPMENT

ARTICLE XXXVI

Principles and Objectives

1. The contracting parties,
 - (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
 - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
 - (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;
 - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;
 - (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures - and measures in conformity with such rules and procedures - as are consistent with the objectives referred to in this Article;
 - (f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

agree as follows.

Ad paragraph 1

This Article is based upon the objectives set forth in Article I as it will be amended by Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX when that Protocol enters into force.

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.
3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.
4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products, there is need to provide in the largest possible measure more favourable and acceptable access to markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.

Ad paragraph 4

The term "primary products" includes agricultural products, vide paragraph 2 of the notes ad Article XVI, Section B.

5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.

Ad paragraph 5

A diversification programme would generally include the intensification of activities for the processing of primary products and the development of manufacturing industries, taking into account the situation of the particular contracting party and the world outlook for production and consumption of different commodities.

6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.
8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.

Ad paragraph 8

It is understood that the phrase "do not expect reciprocity" means, in accordance with the objectives of this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.

This paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII bis (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective), Article XXXIII, or any other procedure under this Agreement.

9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

ARTICLE XXXVII

Commitments

1. The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible - give effect to the following provisions:
 - (a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;

Ad paragraph 1(a)

This paragraph would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII bis (XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective), and Article XXXIII, as well as in connexion with other action to effect such reduction or elimination which contracting parties may be able to undertake.

- (b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and
- (c) (i) refrain from imposing new fiscal measures, and
(ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.

2. (a) Whenever it is considered that effect is not being given to any of the provisions of sub-paragraphs (a), (b) and (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.

(b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives of Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 shall be examined.

(ii) As the implementation of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall:

(a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;

(b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;

Ad paragraph 3(b)

The other measures referred to in this paragraph might include steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion.

(c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

4. Less-developed contracting parties undertake to adopt appropriate measures, in pursuance of the provisions of PART IV, intended for the benefit of the trade of other less-developed countries, in so far as such measures are consistent with their individual development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.
5. In the implementation of the commitments set forth in paragraphs 1 to 4 each contracting party shall afford to any other contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

Article XXXVIII

Joint Action

1. The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.
2. In particular, the CONTRACTING PARTIES shall:
 - (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;
 - (b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;
 - (c) collaborate in analyzing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connexion, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;
 - (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
 - (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and
 - (f) establish such institutional arrangements as may be necessary to give effect to the provisions and further the objectives of this Part.

ANNEX B

Draft Statement by the Chairman for inclusion in the Records of the Session

(Ref: Articles XXXVI:4 and XXXVIII:2(a))

The importance of trade in agricultural products to the less-developed contracting parties has been strongly emphasized throughout the discussions in the Legal and Institutional Committee. A proposal that there should be an appropriate paragraph in the commitments section of the Chapter specifically referring to the policies which should be followed by contracting parties in this field was discussed.

The CONTRACTING PARTIES have agreed to seek solutions to problems of agricultural trade in the course of the Kennedy Round and have agreed "to deal with the rules to govern, and the methods to be employed in, the creation of acceptable conditions of access to world markets for agricultural products in furtherance of a significant development and expansion of world trade in such products". Moreover, it had been specifically agreed at ministerial level that "in the trade negotiations every effort shall be made to reduce barriers to exports of the less-developed countries". It was therefore clear that the negotiations would reflect the great interest of less-developed countries in agricultural products.

Although a specific paragraph to cover all the specific concerns expressed by those less-developed contracting parties particularly interested in agricultural trade problems has not been included in Part IV and agricultural products are covered by the general provisions of Part IV, it is to be understood that at a later stage and in the light of the results of the forthcoming trade negotiations interested contracting parties will be entitled to revert to this matter in the Committee on Trade and Development.

Draft

P R O T O C O L

AMENDING THE GENERAL AGREEMENT ON TARIFFS AND TRADE

TO INTRODUCE A PART IV ON TRADE AND DEVELOPMENT

The Governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as "the contracting parties" and "the General Agreement" respectively),

DESIRING to effect amendments to the General Agreement pursuant to the provisions of Article XXX thereof,

HEREBY AGREE as follows:

1. A Part IV comprising three new Articles shall be inserted and the provisions of Annex I shall be amended as follows:

A

The following heading and articles shall be inserted after Article XXXV:

"PART IV

"TRADE AND DEVELOPMENT

"ARTICLE XXXVI

"Principles and Objectives

[text to be inserted]

"ARTICLE XXXVII

"Commitments

[text to be inserted]

"ARTICLE XXXVIII

"Joint Action

[text to be inserted]"

B

To Annex I (which, pursuant to Section BB(i) of the Protocol amending the Preamble and Parts II and III, is to become Annex H) the following notes shall be added:

"Ad Article XXXVI

[text to be inserted]

"Ad Article XXXVII

[text to be inserted]"

2. This Protocol shall be deposited with the Executive Secretary to the CONTRACTING PARTIES to the General Agreement. It shall be open for acceptance, by signature or otherwise, by the contracting parties to the General Agreement and by the governments which have acceded provisionally to the General Agreement, until 31 December 1965; provided that the period during which this Protocol may be accepted in respect of a contracting party or such government may, by a decision of the CONTRACTING PARTIES, be extended beyond that date.
3. Acceptance of this Protocol in accordance with the provisions of paragraph 2 shall be deemed to constitute an acceptance of the amendments set forth in paragraph 1 in accordance with the provisions of Article XXX of the General Agreement.
4. In accordance with the provisions of Article XXX of the General Agreement, the amendments set forth in paragraph 1 shall become effective following acceptance of the Protocol by two thirds of the governments which are then contracting parties.
5. The amendments set forth in paragraph 1 shall become effective between a government which has acceded provisionally to the General Agreement and a government which is a contracting party, and between two governments which have acceded provisionally when such amendments shall have been accepted by both such governments; provided that the amendments shall not become so effective before an instrument of provisional accession shall have become effective between the two governments nor before the amendments shall have become effective in accordance with the provisions of paragraph 4.
6. Acceptance of this Protocol by a contracting party, to the extent that it shall not have already taken final action to become a party to the following instruments and except as it may otherwise notify the Executive Secretary in writing at the time of such acceptance, shall constitute final action to become a party to each of the following instruments:

- (i) Protocol Amending Part I and Article XXIX and XXX, Geneva, 10 March 1955;
- (ii) Protocol Amending the Preamble and Parts II and III, Geneva, 10 March 1955;
- (iii) Protocol of Rectifications to the French Text, Geneva, 15 June 1955;
- (iv) Procès-Verbal of Rectifications Concerning the Protocol Amending Part I and Articles XXIX and XXX, the Protocol Amending the Preamble and Parts II and III and the Protocol of Organizational Amendments, Geneva, 3 December 1955;
- (v) Fifth Protocol of Rectifications and Modifications to the Texts of the Schedules, Geneva, 3 December 1955;
- (vi) Sixth Protocol of Rectifications and Modifications to the Texts of the Schedules, Geneva, 11 April 1957;
- (vii) Seventh Protocol of Rectifications and Modifications to the Texts of the Schedules, Geneva, 30 November 1957;
- (viii) Protocol Relating to the Negotiations for the Establishment of New Schedule III - Brazil, Geneva, 31 December 1958;
- (ix) Eighth Protocol of Rectifications and Modifications to the Texts of the Schedules, Geneva, 18 February 1959; and
- (x) Ninth Protocol of Rectifications and Modifications to the Texts of the Schedules, Geneva, 17 August 1959.

7. The Executive Secretary to the CONTRACTING PARTIES to the General Agreement shall promptly furnish a certified copy of this Protocol and a notification of each acceptance thereof to each contracting party to the General Agreement and to each government which has acceded provisionally to the General Agreement.

8. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Geneva in a single copy, in the English and French languages, both texts authentic, this day of November, one thousand nine hundred and sixty-four.

ANNEX D

Draft

F I N A L A C T

OF THE SECOND SPECIAL SESSION OF THE CONTRACTING PARTIES
TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The CONTRACTING PARTIES, by a resolution adopted at the meeting of Ministers on 21 May 1963, recognized the need for an adequate legal and institutional framework to enable the CONTRACTING PARTIES to discharge their responsibilities in connexion with the work of expanding the trade of less-developed countries.

The CONTRACTING PARTIES, which held a special session in Geneva from 17 to November 1964, have drawn up a protocol, entitled "Protocol Amending the General Agreement on Tariffs and Trade to Introduce a Part IV on Trade and Development" to be submitted to the contracting parties for acceptance.

The text of the Protocol, in the English and French languages, is annexed hereto and is hereby authenticated.

IN WITNESS WHEREOF, the duly authorized representatives of the governments which have taken part in that session, have signed the present Final Act.

DONE at Geneva in a single copy, in the English and French languages, both texts authentic, this day of November, one thousand nine hundred and sixty-four.

ANNEX E

Draft

DECLARATION
ON THE DE FACTO IMPLEMENTATION OF THE PROVISIONS
OF THE PROTOCOL AMENDING THE GENERAL AGREEMENT ON TARIFFS AND TRADE
TO INTRODUCE A PART IV ON TRADE AND DEVELOPMENT

On the occasion of the signature of the Final Act of the Second Special Session of the CONTRACTING PARTIES, authenticating the text of the Protocol Amending the General Agreement on Tariffs and Trade to introduce a Part IV on Trade and Development, each of the governments represented at the Session,

Considering that there will be some delay in the entry into effect of the amendments provided for in the said Protocol,

Recognizing that no obligation will arise prior to the entry into effect of the said amendments, and

Desiring to proceed as rapidly as possible towards the attainment of the objectives set forth in the Protocol,

Hereby Declares that, from 1 January 1965 and until 31 December 1965 or until the amendments enter into effect, whichever date is the earlier, it intends to implement the amendments on a de facto basis to the extent allowed by existing constitutional and legal possibilities.

ANNEX F

COMMITTEE ON TRADE AND DEVELOPMENT

Draft Terms of Reference

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

Note

It is proposed that the Committee will take over the functions of Committee III, of the Action Committee and its subsidiary bodies and of the Working Party on Preferences and furthermore will deal with any outstanding issues, not finalized by the Legal and Institutional Committee, including:

- (i) A review of Article XVIII, taking into account the Australian proposal (L/2165).
- (ii) A review of Article XXIII, in the light of experience of its operation and taking into consideration the proposal by Brazil and Uruguay (L/2195/Rev.1, Annex 4) and any other proposals that may be put forward by contracting parties, and to the extent that such proposals would have fallen within the terms of reference of the Legal and Institutional Committee.
- (iii) The proposal relating to the imposition of import surcharges of less-developed contracting parties to safeguard their balance of payments (L/2281, Annex II).

