

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES

Twenty-Second Session

## DEFINITIVE APPLICATION OF THE GATT

### Note by the Executive Secretary

Although the General Agreement has been in force for seventeen years the contracting parties are still applying the Agreement on a provisional basis pursuant to the Protocol of Provisional Application and to the various protocols of accession. It is my view that the time has now come when this anomalous situation should be redressed and contracting parties are therefore invited to consider whether steps can be taken now to bring about the definitive application of the Agreement.

"Provisional application" signifies that contracting parties are required to apply Part II of the GATT only to "the fullest extent not inconsistent with existing legislation" i.e. legislation, containing mandatory provisions, which existed on 30 October 1947 or in the case of contracting parties which acceded since 1948 on the date of their respective protocols of accession. Provisional application was intended to be a temporary arrangement pending the GATT's entry into force definitively under Article XXVI. To accept the GATT under Article XXVI a government is required to deposit an instrument of acceptance with the Executive Secretary. The GATT will enter into force, in accordance with Article XXVI:6, as between those governments which accept it, when it has been accepted by governments named in Annex H whose territories account for 85 per cent of the total external trade of such territories.

This question of bringing the GATT into force definitively under the procedures of Article XXVI has been discussed on several occasions, particularly during the ninth (review) session in 1954/55. The following is a resumé of the discussions and of the action taken:

1. In the discussion of organizational and functional questions at the review session (SR.9/18 and 19) there were references to the desirability of bringing national legislation which was not consistent with Part II of the GATT into conformity with the GATT provisions and of bringing the GATT itself into force definitively under Article XXVI. When the Review Working Party on Organizational and Functional Questions was established (W.9/1/Add.8) it was instructed to consider inter alia specific proposals relating to entry into force and provisional application. (Proposals had been submitted by the secretariat (L/189/Add.1), Denmark (L/273), Sweden (L/275) and Norway (L/276)).

2. At a later meeting of the same session (SR.9/27) the CONTRACTING PARTIES, acting on a proposal by the United Kingdom (L/299), invited governments to provide information as to the extent to which they were prevented by internal mandatory legislation from complying with the provisions of the General Agreement. The information received was distributed in documents L/309 and Addenda 1 and 2.
3. The question of definitive application was discussed in the Working Party and consideration was given to a proposal (W.9/195) that acceptance under Article XXVI should be valid even though accompanied by a reservation in respect of Part II, similar to that covering existing legislation in the Protocol of Provisional Application. The Working Party, reporting on this question (3S/247-250), considered it desirable that the GATT should enter into force definitively at as early a date as possible and recommended the adoption of a Resolution "expressing the unanimous agreement of the contracting parties to the attachment of a reservation on acceptance pursuant to Article XXVI". The Resolution was discussed by the CONTRACTING PARTIES (SR.9/39 and 46) and was adopted on 7 March 1955 (3S/48). The Resolution provides for contracting parties which attach reservations to their acceptances to furnish lists of the principal legislative provisions covered by the reservations, for an annual review of progress made in bringing such legislation into conformity with the GATT, and for a review three years after the entry into force of the Agreement of the situation then prevailing with respect of such reservations.
4. The lack of action under this Resolution was mentioned at the twelfth session (SR.12/16) and was taken up by the Intersessional Committee in May 1958 (IC/Sr.38). The Chairman of the Committee suggested that a move toward definitive acceptance might be started if governments which had obtained authority to accept the Agreement under Article XXVI were to deposit their instruments of acceptance and if governments which were not yet in a position to accept the agreement would submit details of legislation on which they might wish to enter reservations at the time of acceptance. The information furnished by contracting parties was reported in document IC/W/77, dated 25 September 1958. No instruments of acceptance have been deposited.

In considering the matter afresh the CONTRACTING PARTIES will no doubt wish to bear in mind that those contracting parties whose legislation is fully consistent with the provisions of the General Agreement had the right to expect, when they acceded to the Agreement, that other contracting parties would bring their legislation into line with the provisions of the General Agreement without undue delay.

No doubt over the past seventeen years much of the legislation covered by paragraph 1(b) of the Protocol of Provisional Application, which previously gave rise to difficulties in relation to definitive application, has now been replaced by new legislation which falls outside the provisions of this paragraph. In so far as problems remain contracting parties continue to have the right to invoke the reservation procedure provided for the Resolution of 1955. It is true that the effectiveness of the General Agreement depends primarily upon the will of governments to respect its provisions and to pursue its objectives. The definitive acceptance of the General Agreement at this time would be a timely reaffirmation of their intention to do so as a permanent element of international co-operation. The psychological and political impact of such a move at this time would strengthen the standing and authority of the General Agreement and of the CONTRACTING PARTIES. These considerations appear to me to add up to a powerful case for definitive acceptance at an early date.

