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GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Technical Barriers to Trade
Committee on Import Licensing
Committee on Subsidies and Countervailing Measures
Committee on Anti-Dumping Practices

PROCEDURES FOR ACCESSION OF NON-CONTRACTING PARTIES

Note by the Secretariat

1. This note has been prepared by the secretariat in response to a request made in Committees established under MTN Agreements (TBT/M/1, paragraph 6; LIC/M/1, paragraph 6). It gives information on developments during the Multilateral Trade Negotiations, outlines some precedents which may be relevant and then discusses these.

Developments in the negotiations

2. The Agreement on Technical Barriers to Trade (Article 15.1 to 3), the Agreement on Import Licensing Procedures (Article 5.1(a) to (c)), the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Article 19.2(a) to (c)), the Agreement on Implementation of Article VI of the GATT (Article 16.2(a) to (c)), the Agreement on Implementation of Article VII of the GATT (Article 22.1 to 3), the Agreement on Trade in Civil Aircraft (Article 9.1.1 to 9.1.3) and the Agreement on Government Procurement (Article IX.1(a) to (d)) all contain similar provisions relating to accession although the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement are different from the others in certain respects. The provisions in the Agreement on Technical Barriers to Trade and the Agreement on Import Licensing read as follows:

"This Agreement shall be open for acceptance by signature or otherwise, by governments contracting parties to the GATT, and by the European Economic Community.

"This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

"This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed."

3. At the meeting of the Trade Negotiations Committee held on 11-12 April 1979, the following statement on accession to instruments by non-contracting parties was accepted by the Committee and included in the record of the meeting (MIN/P/5, paragraphs 2, 4 and 9):

"The relevant articles in the Final Provisions of each Agreement provide that the Agreement will be open to accession by a government which is not a contracting party on terms related to the effective application of rights and obligations under the Agreement to be agreed between that government and the Parties to the Agreement. It is understood that the purpose or aim of the negotiations on terms would be to secure an overall parity of rights and obligations as between Parties to the Agreement which are contracting parties to the GATT and those that are not, taking into account the particular situation of individual countries as relevant, for example, to their development, financial and trade needs. Thus the basis of the negotiations would be that a Party which is not a contracting party to the GATT shall not directly or indirectly nullify or impair advantages which accrue to other Parties under the Agreement by taking action which, had it been a contracting party to the GATT, it would have been debarred from taking by virtue of its GATT obligations. Likewise a Party which is a contracting party to the GATT shall not directly or indirectly nullify or impair advantages which accrue to other Parties under the Agreement by taking action which it would be debarred from taking by virtue of its GATT obligations, had the other Parties in question been contracting parties to the GATT."

4. At the end of the discussion on proposed action by the CONTRACTING PARTIES on the Multilateral Trade Negotiations which took place at the 35th Session, the Chairman recalled that a question had been raised in the Council relating to the position of non-contracting parties in the MIN agreements. The Chairman then made the following statement for the record (SR.35/4, p.62):

"Difficulties may arise during the period between the application for accession of non-GATT member countries to the Agreements and the finalization of the necessary negotiations. It is my hope that any such difficulties would as far as possible be overcome on the basis of temporary arrangements between the members of the Agreements and the respective applying countries, with the understanding that the balance of rights and obligations will be preserved."

Possible precedents

5. The procedures for accession to the General Agreement and the Arrangement Regarding International Trade in Textiles are among the main precedents although neither can be used without some modification.

6. Article XXXIII of the General Agreement provides for the accession of governments "on terms to be agreed between such government and the CONTRACTING PARTIES" and goes on to specify that "decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority". The procedures for accession involve the establishment of a Working Party by the Council, the examination by the Working Party of the foreign trade system of the acceding country and the establishment of a Protocol of Accession, a draft Decision and a schedule, normally of tariff concessions. When the draft Decision has been adopted by a two-thirds majority of the CONTRACTING PARTIES, the Protocol is opened for acceptance by the acceding country (and contracting parties if they have schedules attached to the Protocol or if they wish to sign) which becomes a contracting party thirty days after having deposited its instrument of acceptance.

7. Article 13:2 of the Arrangement regarding International Trade in Textiles reads as follows:

"Any government which is not a contracting party to the GATT, or has not acceded provisionally to the GATT, may accede to this Arrangement on terms to be agreed between that government and the participating countries. These terms would include a provision that any government which is not a contracting party to the GATT must undertake, on acceding to this Arrangement, not to introduce new import restrictions or intensify existing import restrictions, on textile products, in so far as such action would, if that government had been a contracting party to the GATT, be inconsistent with its obligations thereunder."

8. The standard procedures for accession to the Arrangement by a non-contracting party may be summarized as follows (see in particular COM.TEX/2, pages 3 and 4):

8.1 The government concerned notifies in writing to the Director-General of GATT as depositary of the Arrangement of (a) its acceptance of the Arrangement without reservation, (b) its undertaking in terms of Article 13, paragraph 2, (c) its willingness to submit the notifications referred to in Article 2, paragraph 1 within the 60 days referred

to in that paragraph and its willingness to justify the continued maintenance of any quantitative restrictions in a way analogous to that laid down in Article 2, paragraph 2 and (d) its expectation that, upon its accession to the Arrangement and for matters covered thereby, it would be entitled to a treatment equivalent to that accorded to other participating countries with similar economic systems and level of development.

- 8.2 As soon as possible thereafter, the Textiles Committee meets to agree on the terms on which the non-contracting party may accede. If there are no particular problems which it has to resolve, the Committee takes note of the fact that the applicant government has fulfilled the required conditions and welcomes it as a member of the Arrangement.
- 8.3 The acceding non-contracting party then writes a letter to the Director-General confirming the agreed terms for its accession. The effective date of accession is the date on which the letter is received by the Director-General.

Discussion

9. The accession of non-contracting parties to the Agreements negotiated in the Multilateral Trade Negotiations raise two questions:

- (a) the procedures to be followed, and
- (b) the terms to be agreed.

10. Examples have been cited above of two types of procedures - the relatively formal and comprehensive arrangements adopted in the case of accession to the General Agreement and the simpler approach adopted in the textiles context. Since rights and obligations under the individual Agreements relate to policies and practices in certain specific areas rather than almost the entire gamut of a country's trade policies as under the General Agreement, it is suggested that a procedure similar to that used for textiles might be followed. If this view is accepted, the Committee established under each Agreement would agree on appropriate terms for accession of non-contracting parties. A government which is not a contracting party and which wishes to accede would inform the Director-General of this fact and of its willingness to accept such terms. The Committee and the applicant government would then agree on the terms which would apply in the particular case. The accession would become effective when the applicant government deposits a Declaration setting out the agreed terms with the Director-General.

11. It is not the intention of this paper to explore in detail the terms on which non-contracting parties might accede as this is for each Committee to do. Neither the procedures for accession to the GATT nor the procedures for the accession of non-contracting parties to the Multifibre Arrangement provide much help in this area. However, as recalled above, the Trade Negotiations Committee accepted a statement setting out the purpose or aim of the negotiations for accession and establishing the basis for these negotiations. This statement implies that a government which is not a contracting party and which wishes to accede might declare its willingness to accept the Agreement and to undertake "not to nullify or impair, directly or indirectly, advantages which accrue to other Parties under the Agreement by taking action which, had it been a contracting party to the GATT, it would have been debarred from taking by virtue of its GATT obligations". On their side, the Parties might agree to apply the Agreement to the acceding government and to undertake "not to nullify or impair, directly or indirectly, advantages which accrue to other Parties under the Agreement by taking action which they would be debarred from taking by virtue of their GATT obligations, had the other Parties in question been contracting parties to the GATT".

12. This might constitute a basis for discussion of appropriate terms in the Committees. It is already clear that these would need to be modified for the purposes of certain Agreements. In the case of the Agreement on Government Procurement for instance, each applicant government, whether it is a contracting party or not, must negotiate a list of entities to be annexed to the Agreement. In the case of the Agreement on Trade in Civil Aircraft each party must incorporate duty-free treatment for products covered by the Agreement in its GATT schedule.

13. The text agreed in the Trade Negotiations Committee seems to make it clear that non-contracting parties wishing to accede to other MTN Agreements should not be requested to negotiate a schedule of tariff concessions since they would not be acquiring corresponding rights in the schedules of contracting parties. Still less should they be asked to assume all the obligations of contracting parties since, if this had been the drafters' intention, the Agreements would simply have provided that only contracting parties could join them.

14. The adoption of appropriate terms would not, of course, limit the freedom of each Committee to modify them in order to deal with particular questions relating to specific cases, either raised by the applicant government or by a party or parties to the relevant Agreement.