GENERAL AGREEMENT ON
TARIFFS AND TRADE

RESTRICTED
C/130
28 June 1984
Limited Distribution

DE FACTO APPLICATION OF THE GENERAL AGREEMENT

Note by the Secretariat

This note has been prepared in response to a request made by the Council at its meeting on 14 June 1984.

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1. Article XXVI:5 regulates the application of the General Agreement to the territories for which contracting parties have international responsibility. Sub-paragraph (a) of this provision states that governments which accept the General Agreement are assumed to do so not only in respect of their metropolitan territory but also in respect of the territories for which they have international responsibility. This assumption does not apply if the contracting party, upon accession, has notified the Director-General of the GATT that it does not wish to apply the General Agreement to a territory for which it has international responsibility. According to sub-paragraph (b) such an exclusion may at any time be terminated by giving notice to the Director-General.

2. Sub-paragraph (c) of Article XXVI:5 declares that a territory for which a contracting party has accepted the General Agreement and which possesses or acquires full autonomy for its external commercial relations and for the other matters provided for in the General Agreement, shall be deemed to be a contracting party "upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact". A government becoming a contracting party under Article XXVI:5(c) does so on the terms and conditions previously accepted by the metropolitan government of the territory in question (cf. BISD 10S/73). Of the ninety contracting parties, thirty-eight acceded on the basis of this provision.

3. The CONTRACTING PARTIES realized that governments of newly-independent territories normally need some time to consider their future commercial policy and the question of their relations with the General Agreement. They also considered it desirable that, in the period between the acquisition of autonomy and the final decision on the

relations with the General Agreement, the trade relations between the newly-independent countries and the contracting parties continue to be governed by the General Agreement. They therefore recommended in 1958 that the contracting parties should continue to apply de facto the General Agreement in their relations with any territory which has acquired full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement, provided that the territory continues to apply de facto the General Agreement to them (BISD 6S/12).

4. Originally, the period of de facto application was determined in each case by the CONTRACTING PARTIES (BISD 6S/12). Subsequently, the period was set at two years from the acquisition of autonomy (BISD 9S/17). Considering that prolongations of the de facto régime had frequently been requested and that they had always been granted, the CONTRACTING PARTIES decided in 1967 to recommend that the de facto application continue without any time-limit. At the same time, they decided that they would, on the request of any contracting party, review their recommendation in respect of any territory (BISD 15S/64).

5. When the Secretariat is advised that a territory in respect of which a contracting party has accepted the General Agreement has acquired autonomy in the conduct of its external commercial relations, it so informs the contracting parties in an L/- document and addresses a letter to the government of the newly-independent country concerned, advising it that the 1967 recommendation is applicable to its trade relations with the contracting parties and requesting it to confirm that it is prepared to reciprocate in this matter by continuing to apply de facto the provisions of the General Agreement to the trade of the contracting parties. The countries applying the General Agreement de facto are regularly kept informed about GATT activities since they receive all GATT documents and publications.

6. In the 1967 recommendation the Director-General is requested to submit a report on its application after three years. The Council repeated this request every three years (cf. C/M/160, page 24). The reports were submitted in November 1970 (L/3457), in November 1973 (L/3948), in October 1976 (L/4427), in October 1979 (L/4846 and Add.1) and in July 1982 (L/5345).

7. The 1967 recommendation is at present applicable in respect of the following thirty-one countries:

	Date of independence
Kampuchea	9 November 1953
Mali	20 June 1960
Algeria	3 July 1962
Botswana	30 September 1966
Lesotho	4 October 1966
Yemen, Democratic	30 November 1967
Swaziland	6 September 1968
Equatorial Guinea	12 October 1968
Tonga	5 June 1970
Fiji	10 October 1970
Bahrain	16 August 1971
Qatar	3 September 1971
United Arab Emirates	1 December 1971
Bahamas	10 July 1973
Grenada	7 February 1974
Guinea-Bissau	10 September 1974
Mozambique	25 June 1975
Cape Verde	5 July 1975
Sao Tomé and Principe	12 July 1975
Papua New Guinea	16 September 1975
Angola	11 November 1975
Seychelles	29 June 1976
Solomon Islands	7 July 1978
Tuvalu	1 October 1978
Dominica	3 November 1978
Saint Lucia	22 February 1979
Kiribati	12 July 1979
St. Vincent and the Grenadines	27 October 1979
Antigua and Barbuda	1 November 1981
St. Christopher and Nevis	19 September 1983
Brunei-Darussalam	31 December 1983

8. The CONTRACTING PARTIES have never defined the meaning of de facto application. However the following practices have evolved in regard to this form of association with the General Agreement:

(a) The countries applying the General Agreement on a de facto basis are expected to observe the substantive provisions of the General Agreement. However, they do not apply the procedural provisions of the General Agreement. Thus, when these countries impose import restrictions for balance-of-payments purposes, they do not notify the GATT and do not consult in the GATT Balance-of-Payments Committee (cf. Article XVIII:B). They also do not notify the trade measures

they take for development purposes (cf. Article XVIII:C), emergency actions (cf. Article XIX) or the formation of customs unions and free-trade areas (cf. Article XXIV). They are expected to apply the schedule of concessions which the metropolitan government had agreed to apply to their territory; however, they do not notify any modifications of their tariff schedules (cf. Article XXVIII). The contracting parties granting GATT treatment to a country applying the General Agreement on a de facto basis determine themselves whether the conditions stipulated in these provisions are met.

(b) Each contracting party decides whether or not to apply the provisions of the General Agreement to a country which applies the General Agreement on a de facto basis. The contracting parties do not inform the GATT of their decision.

(c) The CONTRACTING PARTIES do not assist in the resolution of disputes on the interpretation or application of the General Agreement that might arise between contracting parties and countries applying the General Agreement on a de facto basis. Article XXIII:2 is not applied to such disputes (cf. VAL/M/8, page 2, for a legal opinion on this issue by the Secretariat).

(d) The countries applying the General Agreement on a de facto basis are treated as non-contracting parties for organizational purposes. They are invited to be represented as observers at the annual sessions of the CONTRACTING PARTIES. They do not attend other GATT meetings unless they have requested and obtained observer status, and they do not contribute to the GATT budget.