

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES  
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Review Working Party IV on  
Organizational and  
Functional Questions

Sub-Group A on Organizational Questions

Joint Report on the Establishment of an Organization  
and on the transfer of the CONTRACTING PARTIES' powers  
to that Organization.<sup>1</sup>

Submitted by the representatives of France, Norway and the  
United States as Rapporteurs

1. The three Rapporteurs consider that it is preferable to make the instrument establishing an Organization entirely independent of the General Agreement on Tariffs and Trade. It would, moreover, from a juridical standpoint, be difficult to bind together two instruments which may not be subject to the same accession and ratification procedures by certain contracting parties. In order to bring out more clearly the independence of the two texts, the instrument establishing the Organization could be given the title of Agreement rather than that of Protocol. The reference to Article XXV of the General Agreement made in paragraph 1 of the Draft Protocol prepared by the secretariat should be omitted, since the obligatory character of the instrument will derive from the independent authority of the Member States and not from any authority conferred on the CONTRACTING PARTIES by Article XXV.
2. The main function of the Organization will be to administer the provisions of the General Agreement on Tariffs and Trade. Therefore, it is essential to adjust the independence of the two texts to the need to ensure a perfect liaison and succession between the CONTRACTING PARTIES on the one hand and the Organization on the other. The powers of the CONTRACTING PARTIES must be transferred in a regular manner to the Organization. The membership of the Organization should ultimately include all the contracting parties.
3. The three Rapporteurs consider, furthermore, that the Organizational Agreement should come into force as soon as possible. Moreover, it would be desirable to draft the Agreement so that the Organization might be set up on a provisional basis. It is essential that the final entry into force of the

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<sup>1</sup> This text is a draft, currently under consideration in the Sub-Group.

Organizational Agreement should not be indefinitely postponed by the failure of a smaller number of contracting parties, or even of a single contracting party, to accept or ratify it.

4. In order to meet these various requirements, the three Rapporteurs propose a procedure which would include four successive phases:

- (a) The first phase, which would take place at the end of the Ninth Session of the CONTRACTING PARTIES, would include the following operations:
  - (i) Opening for acceptance of the Organizational Agreement, which would in principle provide that all contracting parties to the General Agreement would be members of the Organization, but which would include a clause making entry into force of the Organizational Agreement, both provisional and final, dependent on the conditions set forth in the analysis of the second and third phases.
  - (ii) The opening for acceptance by the CONTRACTING PARTIES of an amendment to Article XXV, transferring to the Organization their powers and competence as soon as the Organization is established, and providing that all contracting parties should become members of the Organization.
- (b) The second phase is that in which the Organization is established on a provisional basis:
  - (i) The CONTRACTING PARTIES would decide to set up the Organization on a provisional basis. At this stage, it does not matter whether the Organizational Agreement has or has not been accepted by contracting parties. What matters is that the establishment of the Organization on a definite and final basis should appear likely to materialize in the not too distant future. There must also be an almost virtual certainty that the Organizational Agreement will be accepted by the countries playing a preponderant part in international trade.
  - (ii) In order to enable the Organization to administer the General Agreement, the CONTRACTING PARTIES will transfer their powers to the provisional Organization, by a resolution adopted in pursuance of Article XXV. The three Rapporteurs consider that such a resolution would not constitute an abuse of power on the part of the CONTRACTING PARTIES.
  - (iii) The Organization, for its part, will accept the transfer by a resolution adopted in pursuance of the provisions of the Organizational Agreement.

- (c) The third phase is that in which the statute of the Organization comes into force finally and definitively.
- (i) If the entry into force of the Organizational Agreement should be conditional on acceptance by all the contracting parties, it would run the risk of being delayed indefinitely. The three Rapporteurs consider that the entry into force of the Agreement should be made conditional upon acceptance by an adequate number of countries, including those playing a preponderant part in international trade. The Organizational Agreement should, therefore, include a provision based, so far as entry into force is concerned, on principles comparable or identical with those set forth in paragraph 5 of Article XXVI of the General Agreement. The three Rapporteurs considered whether it would be appropriate to use the same criteria as those of Article XXVI, or whether it would be preferable to provide for acceptance by a greater number of contracting parties. They have been unable to make any definite proposals, but they wish to emphasize that if acceptance by an excessive number of contracting parties is required, the definitive establishment of the Organization will undoubtedly be considerably delayed.
- (ii) When the Organizational Agreement has definitively entered into force, the members who have accepted it will, in pursuance of a special provision in the Agreement, permit those who have not accepted it to take part, or to be more exact, to continue to take part, on a temporary basis, in the meetings and work of the Organization until, within a specified time-limit, they either accept the Organizational Agreement or withdraw from the General Agreement.
- (iii) When the Organizational Agreement has definitively entered into force, the amendment to Article XXV referred to above, (first phase, sub-paragraph (i)), may or may not have come into effect. If it has come into effect, the final transfer to the Organization of the powers and competence of the CONTRACTING PARTIES will be effected automatically. Otherwise, the final transfer will be made when the amendment comes into force.
- (d) The fourth phase is that in which all contracting parties would be members of the Organization.
- (i) This phase should normally be reached when all the contracting parties, having accepted the Organizational Agreement will have become permanent members of the Organization. Allowing for delays in acceptance, which are sometimes of a prolonged nature,

the last acceptance cannot perhaps be counted on before three or four years after the opening of the Agreement for acceptance. Members should take account of this fact in the conditions which they impose under sub-paragraph (ii) of the third phase.

- (ii) If, on the expiry of the fairly lengthy time-limit, a contracting party has still not accepted the Organizational Agreement, the members shall be entitled to refuse to prolong the time-limit, and in consequence to consider such party to be no longer a member of the Organization.
- (iii) Moreover, by the end of such a period (1) the amendments to the General Agreement will presumably have entered into force in accordance with Article XXX, and (2) the General Agreement itself may perhaps have entered into force definitively pursuant to acceptance under Article XXVI by the requisite number of CONTRACTING PARTIES. The members of the Organization will thus be able, if it should be absolutely necessary, to compel a contracting party to withdraw from the General Agreement (1) in accordance with paragraph 2 of Article XXX if it has failed to accept the amendments to that Agreement, or (2) in accordance with paragraph 2 of Article XXXII if it has failed to accept the General Agreement in accordance with Article XXVI. It is recognized that a contracting party might accept both the amendments and the General Agreement without having accepted the Organizational Agreement. This situation is considered a very unlikely one. Should it arise, it might be dealt with through reliance on the provision in the amended General Agreement that all CONTRACTING PARTIES would be members of the Organization (first phase, sub-paragraph (i)), by the procedure provided for in sub-group (ii) of this fourth phase, or by recommending that, in accepting the amendment to Article XXV, the contracting party had agreed to administration of the General Agreement by the Organization.
- (iv) In order to provide for the case of States which subsequently accede to the General Agreement and which should in consequence simultaneously become members of the Organization, an amendment or interpretative note to Article XXXIII should definitely lay down that membership in the Organization is a condition of accession to the General Agreement.

5. In order to facilitate the examination and discussion of the different phases contemplated in paragraph 4 above, a table of concordance is appended to this report.

6. If the procedure proposed above were to be accepted, the following amendments should be made to the General Agreement:

- (a) Amendments to Article XXIV: joint action by the contracting parties would be carried out by the Organization of which all contracting parties should be members.
- (b) Amendment or interpretative note to Article XXXIII: membership of the Organization would be a condition of accession to the General Agreement. These amendments shall enter into force only when the Organizational Agreement has entered into force.

7. The Organizational Agreement should include the following provisions:

- (a) Provisions relating to the entry into force after acceptance by an adequate number of contracting parties, and perhaps to the continued participation by the contracting parties which at that time have not accepted the Organizational Agreement.
- (b) Provisions under which the Organization might be set up on a provisional basis, pending the entry into force of the Organizational Agreement.

ANNEX

TABLE OF COMPARISON

ORGANIZATION :

Stage 1:

The Organizational Agreement is opened for acceptance.

Stage 2:

The CONTRACTING PARTIES agree to set up the Organization on a provisional basis.

Stage 3:

The Organizational Agreement enters into force, being accepted by the requisite number of contracting parties.

Stage 4:

Any contracting party which has not accepted the Organizational Agreement will, in all probability cease to be a contracting party pursuant to Stage 4 of the GATT column, and consequently would lose its normal right to membership in the Organization.

G A T T :

Stage 1:

Amendment to Article XXV transferring the powers of the CONTRACTING PARTIES to the Organization is opened for acceptance.

Stage 2:

A resolution is adopted by the CONTRACTING PARTIES under Article XXV transferring the powers of the CONTRACTING PARTIES to the Organization which is set up on a provisional basis.

Stage 3:

At some time between Stage 2 and Stage 4 the amendments to the Agreement, including the amendments to Articles XXV and XXXIII, enter into force under Article XXX, and the General Agreement itself perhaps enters into force by acceptance under Article XXVI.

Stage 4:

Any contracting party which has not accepted the amendments ceases to be a contracting party under Article XXX, and any contracting party which has not accepted the General Agreement pursuant to Article XXVI ceases to be a contracting party under Article XXXII.