

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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CONTRACTING PARTIES
Ninth Session

DRAFT REPORT OF REVIEW WORKING PARTY IV ON DEFINITIVE APPLICATION

Addendum

Insert on page 5 the following:

24. The Working Party, bearing in mind that the General Agreement had been applied provisionally for seven years, and that the purpose of the review was to provide that the Agreement should contribute more effectively to early progress towards the attainment of the objectives, agreed that it was desirable that the Agreement when amended should enter into force definitively at as early a date as possible. A number of delegations indicated, however, in the course of the discussion, that such definitive application would not be possible for them at an early date if it involved immediately bringing into conformity with the General Agreement all domestic legislation which might be inconsistent with Part II. In this connection the Working Party considered a proposal submitted by the delegations of the Scandinavian countries for an amendment to Article XXVI providing for a transitional period of fixed duration by the end of which all such legislation should be brought into conformity with the General Agreement. This proposal however was not acceptable to some delegations on the ground that it created an inequitable situation because in their countries the ratification of an International Treaty had the automatic effect of modifying domestic legislation. Some other delegations had difficulty with accepting an obligation to amend domestic legislation by the end of a predetermined period to bring it into conformity with the Agreement. The Working Party therefore recommends, in order to meet these various points of view, that no amendment should be made to Article XXVI, but that it should be open to contracting parties to accept the definitive application of the Agreement under the provisions of Article XXVI subject to a reservation in respect of existing legislation similar to that covering such legislation in the Protocol of Provisional Application and other Protocols. Such an acceptance, to be valid, must be accepted as valid by all the CONTRACTING PARTIES. Accordingly the Working Party proposed that the CONTRACTING PARTIES should, at this Session, agree unanimously that acceptance subject to such a reservation will be valid. A text of the proposed reservation and conditions attaching to its acceptance are contained in annex 4 to this report.

24A. As regards the notification of legislation covered by the reservation, the Working Party considered that it would not be practicable to specify any particular time limit within which such notification must be made. They considered, however, that normally a contracting party making such a reservation would concurrently notify the CONTRACTING PARTIES of the principal legislative measures in question or, if such concurrent notification were not practicable, would do so shortly thereafter.

24B. It was the understanding of the Working Party that the annual review provided for in paragraph 3 of the Agreement or Declaration relating to the reservation would afford an opportunity for consultations regarding any special difficulties of any contracting party arising out of the operation of the legislation of another contracting party covered by the reservation. The words "appropriate recommendations" in paragraph 4 were intended to mean that the CONTRACTING PARTIES could make whatever recommendations were indicated in the circumstances existing at the time, taking into account any continuing inequities which would result from the maintenance of the situation. It was also clear that the acceptance of the reservation would not deprive any contracting party of resort to Article XXIII in accordance with paragraph 1(b) or (c) thereof.

24C. The formula suggested by the Working Party does not set any fixed time limit for the duration of the reservation, but the general intent of the Declaration and the detailed procedures proposed are directed towards securing as early as possible complete conformity between the legislation of contracting parties and their obligations of the General Agreement, since it is recognised that the continued existence of the reservation would result in an inequitable position as between those contracting parties whose domestic legislation was initially in, or has been brought into, conformity with the Agreement, and other contracting parties whose obligations were less strict by reason of the continued maintenance of such legislation.

24D. The question was raised in the Working Party whether the claim of a contracting party that any particular legislation was covered by the reservation would be subject to challenge. The Working Party considered that the reservation would provide to a contracting party a defense against the charge that it was acting inconsistently with the General Agreement only to the extent to which the CONTRACTING PARTIES judged that the legislation in question was in fact covered by the terms of the reservation. It was therefore open to any contracting party to raise such a question under the appropriate procedures of the Agreement, normally by invoking the provisions of Article XXIII. The General Agreement does not provide for rulings or declaratory judgments unconnected with claims of damage or impairment, although if such rulings were asked for in any particular case it would be for the CONTRACTING PARTIES to determine whether it was appropriate to receive such a request or not.

24E. The Working Party did not consider that it was necessary to enter into the question how and by what majority such a reservation might be terminated, since if in any particular case the reservation was used for an indefinite period of time and in such a way as to create serious problems for other contracting parties, the appropriate remedy was available through the provisions of Article XXIII which could be made the basis for restoring the reciprocal balance of obligations as between the contracting party maintaining the reservation and others affected.

24F. The Working Party has recommended the use in the reservation of the same phraseology as is employed in the Protocol of Provisional Application and other Protocols, viz "to the fullest extent not inconsistent with existing legislation". Some members of the Working Party would have preferred to specify that such legislation in order to be within the reservation must be "mandatory". As other members of the Working Party felt that this would create difficulties for them because of the inappropriateness of such a term in relation to their domestic legislative process the Working Party did not adopt this suggestion. It was felt that the use of this term was in fact unnecessary since it is plain from the wording of the Protocol of Provisional Application that the exception can only be applicable to legislation which is of a mandatory character. In this connection reference was made to the findings of a Working Party of the Third Session of the CONTRACTING PARTIES (viz. BISD, Vol. II Page 62 and Page 182), the report of which was approved at that Session by the CONTRACTING PARTIES. The Representatives of Cuba and Chile reserved their positions on this interpretation.

ANNEX 4

RESERVATION OF MANDATORY LEGISLATION FOLLOWING

ENTRY INTO FORCE UNDER ARTICLE XXVI

HAVING REGARD to the fact that the contracting parties have hitherto applied the General Agreement provisionally and have been required under such provisional application to apply Part II of the General Agreement only to the fullest extent not inconsistent with existing legislation;

RECOGNIZING the desirability that contracting parties should accept the Agreement definitively under the provisions of Article XXVI at as early a date as possible;

NOTING that it would not be practicable for certain contracting parties to bring their domestic legislation into conformity with Part II of the General Agreement immediately upon accepting it under the provisions of Article XXVI and accordingly that these contracting parties would not be in a position to so accept it unless a transitional period is provided for;

RECOGNIZING the desirability that contracting parties should use their best endeavours to bring such legislation into conformity with the provisions of the General Agreement as soon as practicable;

The contracting parties unanimously agree

(1) that an acceptance pursuant to Article XXVI shall be valid even if accompanied by a reservation to the effect that Part II of the General Agreement will be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947 or, with regard, in the case of a contracting party which since June 30 1949 has acceded to the Agreement the date of the Protocol providing for such accession;

(2) that any contracting party attaching such a reservation shall submit as soon as possible after its acceptance of the General Agreement pursuant to Article XXVI a list of the principal legislative provisions covered by such reservation;

(3) that the CONTRACTING PARTIES shall review annually progress made in bringing such legislation into conformity with the General Agreement;

(4) that three years from the entry into force of the General Agreement under Article XXVI the CONTRACTING PARTIES shall review the situation then prevailing with respect to such reservations with a view to assessing the progress achieved towards the full application of the General Agreement by all contracting parties and to make appropriate recommendations.