MULTILATERAL TRADE NEGOTIATIONS THE URUGUAY ROUND

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Negotiating Group on GATT Articles

ARTICLE XXVI:5(c)

Note by the Secretariat

1. As requested by the Negotiating Group on GATT Articles, the secretariat has prepared this factual background note on Article XXVI:5(c). In Part I the note discusses the origins and interpretation of Article XXVI:5(c). Part II indicates which contracting parties have succeeded to the General Agreement under Article XXVI:5(c) and which of these have established schedules of tariff concessions under Article II. The de facto application of the General Agreement is taken up in Part III.

I. The origins and interpretation of Article XXVI:5(c)

2. The text of Article XXVI:5(c) reads:

> "If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party."

3. There are no interpretative notes to Article XXVI:5(c).

4. Article XXVI:5 as a whole regulates the application of the General Agreement to the territories for which contracting parties have international responsibility. Sub-paragraph (a) states that governments which accept the General Agreement are assumed to do so not only in respect to their metropolitan territory, but also in respect of the territories for which they have international responsibilities, unless a notification is made to the contrary. Sub-paragraph (b) provides for the termination of a notification of an exception made under sub-paragraph (a). As indicated in the text quoted above, sub-paragraph (c) stipulates the conditions whereby a territory for which a contracting party has accepted the General Agreement, and which subsequently acquires autonomy in its external commercial relations and other matters provided for in the General Agreement, may be deemed to be a contracting party in its own right.

5. In the text of Article XXVI:5(c), the phrase "upon sponsorship through a declaration by the responsible contracting party" was inserted in order to certify that the customs territory concerned "had the right de jure and/or de facto to act on its own behalf and to fulfil" its obligations (EPCT/TAC/PV/22, p.22).

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6. In the original draft of the provisions of Article XXVI:5(c), the separate customs territory was "entitled to appoint a representative" to the CONTRACTING PARTIES (EPCT/135). In the final text, the word "deemed" was used in order to make clear that such territory could either act in its own right as a full contracting party and be represented by a separate delegation, or continue to be represented by the metropolitan contracting party acting on behalf of such customs territory (EPCT/TAC/PV/22, pp. 21-22).

7. The Working Part on Article XXXV Application to Japan discussed in 1961 the question of the invocation of Article XXXV by governments of territories to which the General Agreement had been applied and which had assumed the status of a contracting party pursuant to Article XXVI:5(c). The Working Party stated: "... if Article XXXV had been invoked in respect of that territory (or if that territory had not been specifically excluded from such an invocation), it would continue to be valid unless expressly disinvoked by the succeeding government" (BISD 10/73).

8. On the same question of the acquisition or applicability of rights and obligations contracted by the metropolitan contracting party to a customs territory upon succession under Article XXVI:5(c), the 1971 Panel report on "Jamaica - Margins of Preference" contains the finding:

> "The Panel held that since Jamaica had acceded to the General Agreement on Tariffs and Trade under the provisions of Article XXVI:5(c) it had acquired the rights and obligations which had previously been accepted by the United Kingdom in respect of the territory of Jamaica. This meant that Jamaica assumed the rights and obligations involved in the application to it of the General Agreement by the United Kingdom before Jamaica became independent. On 6 August 1962, the day Jamaica became independent, Article I:4 formed part of the General Agreement as it had been applied by the United Kingdom on behalf of the territory of Jamaica. The provision of Article I:4 establishing 10 April 1947 as the base date for permissible margins of preference was therefore applicable to Jamaica." (BISD 18/183,187).

II. Successions under Article XXVI:5(c)

9. In 1963 the Council adopted simplified procedures for the acquisition of contracting party status under Article XXVI:5(c) (C/M/15). Previously, requests for succession under this provision had been referred to the CONTRACTING PARTIES, despite the fact that if certain conditions are fulfilled, admission as a contracting party follows automatically. The simplified procedures require a certification by the Director-General to the effect that the conditions of Article XXVI:5(c) have been fulfilled and advising that the party concerned has become a contracting party.

10. Of the 95 contracting parties, the following 41 have become contracting parties on the basis of Article XXVI:5(c):

	Date of independence	Date of admission as contracting party	Reference
Antigua and Barbuda	1.11.1981	30.3.1987	L/6147
Barbados	30.11.1966	15.2.1967	15S/59
Belize	21.9.1981	7.10.1983	30S/7
Benin	1.8.1960	12.9.1963	12S/33
Botswana	30.9.1966	28.8.1987	L/6211
Burkina Faso	5.8.1960	3.5.1963	12S/34
Burundi	1.7.1962	13.3.1965	13S/12
Cameroon	1.1.1960	3.5.1963	12S/33
Central African Republic	14.8.1960	3.5.1963	12S/33
Chad	11.8.1960	12.7.1963	12S/33
Congo	15.8.1960	3.5.1963	12S/33
Cyprus	16.8.1960	15.7.1963	12S/33
Gabon	17.8.1960	3.5.1963	12S/33
Gambia	18.2.1965	22.2.1965	13S/12
Ghana	6.3.1957	17.10.1957	6S/9
Guyana	26.5.1966	5.7.1966	14S/13
Hong Kong	23.4.1986[1]	23.4.1986	L/5986
Indonesia	27.12.1949	24.2.1950	IS/6
Ivory Coast	7.8.1960	31.12.1963	12S/33
Jamaica	6.8.1962	31.12.1963	12S/34
Kenya	12.12.1963	5.2.1964	12S/34
Kuwait	19.6.1961	3.5.1963	12S/34
Madagascar	25.6.1960	30.9.1963	12S/34
Malawi	6.7.1964	28.8.1964	13S/12
Malaysia	31.8.1957	24.10.1957	6S/9
Maldives	26.7.1965	19.4.1983	30S/7
Malta	21.9.1964	17.11.1964	13S/12
Mauritania	28.11.1960	30.9.1963	12S/34
Mauritius	12.3.1968	2.9.1970	18S/23
Niger	3.8.1960	31.12.1963	12S/34
Nigeria	1.10.1960	18.12.1960	9S/13
Rwanda	1.7.1962	1.1.1966	14S/13
Senegal	20.6.1960	27.9.1963	12S/34
Sierra Leone	27.4.1961	19.5.1961	10S/11
Singapore	9.8.1965	20.8.1973	20S/19
Suriname	25.11.1975	22.3.1978	25S/6
Tanzania	9.12.1961	9.12.1961	10S/14
Togo	27.4.1960	20.3.1964	12S/34
Trinidad and Tobago	30.8.1962	23.10.1962	11S/44
Uganda	9.10.1962	23.10.1962	11S/45
Zambia	24.10.1964	10.2.1982	29S/7

[1]Date of certification of autonomy in external commercial relations

11. Of the 41 contracting parties which have succeeded to the General Agreement under Article XXVI:5(c), the following 19 have established schedules of tariff concessions under Article II:

Country	Number of Schedule
Indonesia	XXI
Malaysia	XXXIX
Nigeria	XLIII
Burkina Faso	XLVI
Benin	XLVIII
Senegal	XLIX
Mauritania	L
Madagascar	LI
Côte d'Ivoire	LII
Niger	LIII
Burundi	LV
Rwanda	LVI
Malawi	LVIII
Jamaica	LXVI
Trinidad and Tobago	LXVII
Singapore	LXXIII
Suriname	LXXIV
Zambia	LXXVIII
Hong Kong	LXXXIII

III. De facto application of the General Agreement

12. 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. The CONTRACTING PARTIES 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 territories 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).

13. 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 should continue without any time-limit. At the same time, they decided that they would, on the request of any contracting party, review this recommendation in respect of any territory (BISD 15S/64).

14. 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 territory 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.

15. 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), in July 1982 (L/5345), and in July 1985 (L/5823)

16. The 1967 recommendation is at present applicable in respect of the following twenty-nine countries:

	Date of independence
Kampuchea	9 November 1953
Mali	20 June 1960
Algeria	3 July 1962
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
St. Christopher and Nevis	19 September 1983
Brunei-Darussalam	31 December 1983

17. 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.