

# ARTICLE XXVI

## ACCEPTANCE, ENTRY INTO FORCE AND REGISTRATION

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3. This Agreement, done in a single English original and a single French original, both texts authentic,

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France	8.7	8.5
Germany, Federal Republic of	5.3	5.2
Greece	0.4	0.4
Haiti	0.1	0.1
India	2.4	2.4
Indonesia	1.3	1.3
Italy	2.9	2.8
Netherlands, Kingdom of the	4.7	4.6
New Zealand	1.0	1.0
Nicaragua	0.1	0.1
Norway	1.1	1.1
Pakistan	0.9	0.8
Peru	0.4	0.4
Rhodesia and Nyasaland	0.6	0.6

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of the Schedules annexed to this Protocol shall be the date of this Protocol".<sup>2</sup> This approach has guided subsequent protocols of accession and tariff protocols; s

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The following interpretations of this Resolution are provided in the Report of the Working Party on "Organizational and Functional Questions"<sup>10</sup>

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3. Paragraph 3

(1) *Authentic text*

The standard text of accessi

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authentic in the English, French or Spanish language as specified in each Schedule".<sup>24</sup> No Schedule done in a language other than English, French or Spanish has ever been made authentic.

*Practice since 1979:* With two exceptions the Tokyo Round Agreements of 1979 were done in English, French and Spanish, each text being equally authentic. The Agreement on Trade in Civil Aircraft was initially done in English and French; a Spanish text was added in 1986. Also, the 1979 Agreement on Government Procurement provided that the lists of entities attached thereto would be authentic in English, French or Spanish as specified.<sup>25</sup> Since 1984, authentic texts of agreements and protocols under the auspices of the GATT have been done in three languages, English, French and Spanish. The text of the WTO Agreement and of the agreements in Annexes I through 4 thereof are authentic in English, French and Spanish. In conformity with earlier practice the Marrakesh Protocol to the GATT 1994 provides in paragraph 8 that "The Schedules annexed hereto are authentic in the English, French or Spanish language as specified in each Schedule". Also, commitments on market access annexed to the General Agreement on Trade in Services, and the Appendices listing entity coverage of the 1994 Agreement on Government Procurement are authentic as specified in English, French or Spanish.

For examples of *interpretation of the meaning of a provision in the light of the different authentic texts* thereof, see, e.g., the Panel Report on "Italian Discrimination against Imported Agricultural Machinery",<sup>26</sup> the Report of the Group of Experts on Anti-dumping and Countervailing Duties<sup>27</sup>, a Note by the Executive Secretary

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See, for instance, paragraph 8 of the Annecy Protocol, which provides:

“(a) Any acceding government ... may, on or after the date on which the General Agreement enters into force pursuant to Article XXVI thereof, accede to that Agreement upon the terms of this Protocol by deposit of an instrument of accession with the Secretary-General of the United Nations. Such accession shall take effect on the day on which the General Agreement enters into force pursuant to Article XXVI or on the thirtieth day following the day of the deposit of the instrument of accession, whichever shall be the later.

“(b) Accession to the General Agreement pursuant to [sub-paragraph (a)] shall, for the purpose of paragraph 2 of Article XXXII of that Agreement, be regarded as acceptance of the Agreement pursuant to paragraph [4] of Article XXVI thereof.”<sup>38</sup>

**5. Paragraph 5**

The final provisions of the Tokyo Round multilateral trade agreements provide that "In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable."<sup>45</sup> On 17 December 1979 the United Kingdom accepted six of these agreements on behalf of the territories for which it has international responsibility except for Antigua, Bermuda, Brunei, Cayman Islands, Montserrat, St. Kitts-Nevis, Sovereign Base Areas Cyprus and the British Virgin Islands.<sup>46</sup> On 23 April 1986 Hong Kong was deemed to be a contracting party to the GATT in accordance with Article XXVI:5(c) (see below); having declared its intention to continue to accept each of these agreements, Hong Kong became a party to each of them in its own right with effect from 23 April 1986.<sup>47</sup> The Netherlands accepted the Agreement on Technical Barriers to Trade and the Agreement on Civil Aircraft "in respect of the Kingdom as a whole including the Netherlands Antilles".<sup>48</sup> In August 1994 the Committee on Government Procurement approved accession by the Netherlands to the Agreement on Government Procurement with respect to Aruba.<sup>49</sup>

In October 1990, Germany informed contracting parties of the Treaty of German Unity signed 3 October 1990, through which the German Democratic Republic acceded to the Federal Republic of Germany,

concerned only with what was relevant to the General Agreement, which were the trading arrangements proposed with respect to these territories and not their status in international law. Therefore, the approval of this protocol would not, in his view, in any way affect or conflict with whatever decisions might be taken or had been taken by the General Assembly of the United Nations, on these legal matters. The Chairman stated that in his view no conflict arose between the terms of the protocol and the United Nations resolution."<sup>53</sup>

In 1965, in response to the issuance of a list of countries and territories where the General Agreement was effective, the US took the formal position that "it does not recognize any of the claims of sovereignty which have been asserted over territory in Antarctica nor does it recognize any basis for any country to apply such an agreement as the General Agreement on Tariffs and Trade to that area. Moreover, the Government of the United States of America reserves all the rights of the United States of America with respect to Antarctica. It calls attention, in that connexion, to Article IV of the Antarctic Treaty, signed at Washington on 1 December 1959."<sup>54</sup>

See also the material under Article XXV on political questions.

d) *Application of Article XXVI:5(b)*

The 1971 Panel Report on "Jamaica – Margins of Preference" notes that in 1948, the government of the United Kingdom gave notice (under paragraph 2 of the Protocol of Provisional Application) of its intention to apply the General Agreement provisionally to all of the territories for the international relations of which it was responsible, except for Jamaica. In 1962, United Kingdom, in a communication received on 2 July, gave notice that the General Agreement was to be applied provisionally also to Jamaica. In accordance with paragraph 2 of the Protocol of Provisional Application and Article XXVI:5(b), this notification was effective as from 1 August 1962.<sup>55</sup>

(e) *Occupied areas*

Until the Review Session amendments agreed in 1954-55, an interpretative note to Article XXVI provided that "Territories for which the contracting parties have international responsibility do not include areas under military occupation". A Final Note provided that "The applicability of the General Agreement on Tariffs and Trade to the trade of contracting parties with the areas under military occupation has not been dealt with and is reserved for further study at an early date. Meanwhile, nothing in this Agreement shall be taken to prejudice the issues involved. This, of course, does not affect the applicability of the provisions of Articles XXII and XXIII to matters arising from such trade".<sup>56</sup> These provisions were deleted effective 7 October 1957; see section III below.

(2) *Succession to GATT under Article XXVI:5(c)*

Of the 128 GATT contracting parties as of 1 January 1995, 63 have succeeded to contracting party status on the basis of Article XXVI:5(c). A list of these contracting parties appears in the appendix tables at the end of this book.

(a) *"full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement"*

The preparatory work of the General Agreement indicates that it was intended that the "responsible contracting party" should certify that the customs territory in question "had the right *de jure* and/or *de facto* to act on its own behalf and to fulfil" its obligations.<sup>57</sup> During the negotiation of the General Agreement in 1947, an ad-hoc Sub-committee examined the situation of Burma, Ceylon and Southern Rhodesia (now Myanmar, Sri Lanka and Zimbabwe). In response to a request by the Sub-committee, the United Kingdom submitted

<sup>53</sup>SR.19/12, p. 195-196. See also discussion of political questions and the representation of China at SR.22/3, p. 1-2.

<sup>54</sup>L/2428, dated 8 April 1965 (responding to L/2337, reprinted at 14S/1).

<sup>55</sup>Panel Report in L/3485, adopted on 2 February 1971, 18S/183, 184, para. 3; see also L/1809.

<sup>56</sup>L/74; concerning the inclusion of these provisions in the General Agreement see EPCT/W/311, EPCT/W/340 and Rev.1, and discussion of Notes at EPCT/TAC/PV/22 p. 52-65, EPCT/TAC/PV/24 p. 2-26, EPCT/TAC/PV/28 p. 21-40.

<sup>57</sup>EPCT/TAC/PV/22, p. 22.

information on certain specific matters relating to the autonomy in commercial policy of these territories and made a Declaration to the Tariff Agreement Committee establishing the ability of these three territories to enter into and fulfil all obligations under the General Agreement. The Sub-Committee agreed to recommend that Burma, Ceylon and Southern Rhodesia be admitted to participate as full contracting parties, and also recommended consequential changes to the Preamble, the provisions on acceptance which became Article XXVI:5, and the accession provisions in Article XXXIII.<sup>58</sup>

Declarations concerning the autonomy in commercial matters of customs territories under the international responsibility of another State were made in the case of Hong Kong, Lesotho, Liechtenstein and Macau.<sup>59</sup>

(c) *"be deemed to be a contracting party"*

In the first full draft of the General Agreement (EPCT/135) the separate customs territory was "entitled to appoint a representative" to the CONTRACTING PARTIES. In the revised text of 30 October 1947, the word "deemed" was used intentionally 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 delegate (as in the case of Burma, Ceylon and Southern Rhodesia during the negotiation of the General Agreement in 1947) or continue to be represented by the metropolitan contracting party acting on behalf of such customs territory.<sup>63</sup>

(d) *Terms and conditions of succession to GATT*

The Report of the Working Party on "Article XXXV - Application to Japan" pointed out "that there could be no doubt that a government becoming a contracting party under Article XXVI:5(c) does so on the

Considering that prolongations of the *de facto* régime had frequently been requested and that they had always been granted, the CONTRACTING PARTIES adopted the Recommendation adopted 11 November 1967 on "Application of the General Agreement to Territories which acquire Autonomy in Commercial Matters", in which the CONTRACTING PARTIES, *inter alia*,

*"Considering* that paragraph 5(c) of Article XXVI of the General Agreement provides that if a customs territory, in respect of which a contracting party has accepted the Agreement, 'acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement', such territory may be 'deemed' to be a contracting party;

*"Considering* that the CONTRACTING PARTIES have recognized that the governments of territories which acquire such autonomy will normally require some time to consider their future commercial policy and the question of their relations with the General Agreement and that it is desirable that meanwhile the





Only one of the current contracting parties, Haiti, has accepted the General Agreement (on 7 March 1952). 135 Tct0.203seriate952) OF THE

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participation not by governments but by States. However, the Charter too had provisions on acceptance, entry into force, and registration (Article 103), and deposit, date of the Charter and authentic languages (Article 106).

The 30 October text of the General Agreement included an Interpretative Note *Ad* Article XXVI, as follows: "Territories for which the contracting parties have international responsibility do not include areas under military occupation". It also included a Final Note on areas under military occupation; see page 919 above. These provisions were deleted in the Review Session of 1954-55.

*Amendments agreed in 1949:* Paragraph 4 of the Article was amended in 1949 to conform to the treatment