

# ARTICLE XXIX

## THE RELATION OF THIS AGREEMENT TO THE HAVANA CHARTER

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### I. TEXT OF ARTICLE XXIX AND INTERPRETATIVE NOTE AD ARTICLE XXIX

Article XXIX

Interpretative Note *Ad* Article XXIX from Annex I

*Paragraph 1*

Chapters VII and VIII of the Havana Charter have been excluded from paragraph 1 because they generally deal with the organization, functions and procedures of the International Trade Organization.

## II. INTERPRETATION AND APPLICATION OF ARTICLE XXIX

The General Agreement was drafted during the intermediate stages of the negotiation of the ITO Charter. The General Agreement was intended to serve as a framework for tariff concessions negotiated in the first round in 1947, and was intended to continue in existence even after the entry into force of the ITO Charter. The function of Article XXIX was twofold: it determined the relationship between the Charter and the General Agreement, and it provided that after the final version of the rules in Part II of the General Agreement had been negotiated during the Havana Conference, and after the Havana Charter had entered into effect, this version would automatically supersede Part II of the General Agreement. However, the Havana Charter never entered into force.

The present text of Article XXIX dates from the Second Session which met in September 1948 after the Havana Conference. It was drafted by the Working Party on Modifications to the General Agreement, which also considered proposals to amend the General Agreement so that its text would immediately reflect the corresponding articles of the Havana Charter.

### 1. Paragraph 1

See also the material in Section III below on the origins of paragraph 1.

#### *(1) "the general principles of Chapters I-VI inclusive and of Chapter IX of the Havana Charter"*

Chapters I through VI of the Charter dealt with, respectively, Purpose and Objectives, Employment and Economic Activity, Economic Development and Reconstruction, Commercial Policy, Restrictive Business Practices, and Inter-governmental Commodity Agreements. Chapter IX included General Provisions (final provisions).

When Article XXIX was redrafted at the Second Session, Chapters VII and VIII of the Havana Charter, which dealt with the International Trade Organization and Settlement of Differences, were omitted from the reference in Article XXIX "because they generally deal with the organization, functions and procedures of the International Trade Organization".<sup>1</sup> It was stated then that "by virtue of the Final Act signed at Havana, the contracting parties must regard themselves morally bound not to go back on the principles evolved at Havana. The principle of giving due regard to the economic circumstances mentioned in paragraph 2 of Article 72, as well as those in other articles of the Havana Charter, could not be disregarded even though they were not explicitly included in paragraph 1 of Article XXIX".<sup>2</sup>

#### *(2) Article XXIX:1 and interpretation of the General Agreement in the light of the Havana Charter*

The Second Session Working Party on Modifications to the General Agreement took a generally conservative approach to amendment of the General Agreement in advance of the anticipated supersession of Part II under Article XXIX:2. In explaining this decision, the Working Party's report notes that "... if difficulties in application were to arise before the entry into force of the Charter, the CONTRACTING PARTIES



Committee the First Session in March 1948. The Report of this Sub-Committee notes in explanation that "it is considered that the form in which [Article XXIII] appear[s] in the Charter is not suitable for the General Agreement".<sup>8</sup>

The supersession of the General Agreement by the Charter was limited to the provisions of Part II; thus, even after the Charter went into force the General Agreement (including Parts I and III and the Schedules of concessions) would remain in force coexisting with the Charter. When Article XXIX was revised at the Second Session, the words "and superseded by the corresponding provisions of the Charter" were deleted from paragraph 2 "in order to make it clear that when the Charter enters into force, and so long as it remains in force, the General Agreement would be

