

ARTICLE XXXIII

ACCESSION

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Protocol of Provisional Application was not signed by June 30, 1948 shall not be considered to be a 'party' within the meaning of Article XXXII of the General Agreement in its provisional application and consequently that any such government may accede to such Agreement pursuant to the accession provisions of Article XXXIII".⁶ Thus, the first government to accede under Article XXXIII was Chile, which acceded under the Protocol for the Accession of Signato

At the November 1994 Council meeting, the Chairman of the Council made a statement on management of accession negotiations.

"... After consultations with delegations, it has ... been possible to identify a certain number of points which may help to guide both the Secretariat and governments in handling the negotiations on accession. These points ... are of an indicative nature; their aim is to rationalize the manner of work on accession negotiations when an unusually large number of requests for accession must be dealt with. They are not intended in any way to substitute for the established procedures which are maintained.

"The points are as follows:

- "1. the management of accession negotiations in the GATT should ensure the wider acceptance and effective application of rules and disciplines under the GATT, thus contributing towards the reform processes in the applicant countries or territories, and towards the objective of further strengthening the multilateral trading system;
- "2. there shall be no lowering of present standards for terms of accession to GATT;
- "3. accession negotiations should be limited to

4. "terms to be agreed between such government and the CONTRACTING PARTIES"

(1) *Provisions in protocols of accession*

Certain provisions have appeared in almost all protocols of accession since the Annecy Protocol. The following text is drawn from the Decision and Protocol of Accession of Bolivia. Cross-references are provided to the places in this Index where material on the provision concerned can be found.

"The CONTRACTING PARTIES...

"Decide, in accordance with Article XXXIII of the General Agreement, that the Government of [...] may accede to the General Agreement on the terms set out in the Protocol of Accession.

"PROTOCOL OF ACCESSION OF [...]

"The governments which are contracting parties to the General Agreement on Tariffs and Trade (hereinafter referred to as 'contracting parties' and the 'General Agreement', respectively), the European Economic Community and the Government of [...] (hereinafter referred to as '[...]'),¹³....

"Have through their representatives agreed as follows:

PART I - GENERAL

"1. [...] shall, upon entry into force of this Protocol pursuant to paragraph 6, become a contracting party to the General Agreement, as defined in Article XXXII thereof,¹⁴ and shall apply to contracting parties provisionally and subject to this Protocol:

- (a) Parts I, III and IV of the General Agreement, and
- (b) Part II of the General Agreement to the fullest extent not inconsistent with the relevant legislation of [...] existing on the date of this Protocol.¹⁵

The obligations incorporated in paragraph 1 of Article I by reference to Article III and those incorporated in paragraph 2(b) of Article II by reference to Article VI of the General Agreement shall be considered as falling within Part II for the purpose of this paragraph.¹⁶

"2. (a) The provisions of the General Agreement to be applied to contracting parties by [...] shall, except as otherwise provided in this Protocol, be the provisions contained in the text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as rectified, amended or otherwise modified by such instruments as may have become effective on the day on which [...] becomes a contracting party.¹⁷

¹³The reference to the European Economic Community is necessary because the EEC is not itself a contracting party.

¹⁴See material on Article XXXII in this Index.

¹⁵Concerning the definition of "existing legislation" and the relevant date for the purpose of provisional application, see the chapter on provisional application of the General Agreement.

¹⁶This sentence replaces for the acceding contracting party the provisions of the first interpretative note to Article I:1. See references to this note under Articles I and II.

¹⁷The text annexed to the Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment is the text of the General Agreement as agreed on 30 October 1947 (55 UNTS 187, UN Sales No. 1947.II/10). A list and overview of the amendments to the General Agreement can be found under Article XXX. A list of the sources of each of the provisions of the present text of the General Agreement, their effective dates and their respective citations in the United Nations *Treaty Series* or in GATT publications appears as an appendix to the text of the General Agreement published by the GATT Secretariat.

(b) In each case in which paragraph 6 of Article V, sub-paragraph 4(d) of Article VII, and sub-paragraph 3(c) of Article X of the General Agreement refer to the date of that Agreement, the applicable date in respect of [...] shall be the date of this Protocol.¹⁸

PART II - SCHEDULE

"3. The schedule in the Annex shall, upon the entry into force of this Protocol, become a schedule to the General Agreement relating to [...].

"4. (a) In each case in which paragraph 1 of Article II of the General Agreement refers to the date of the Agreement, the applicable date in respect of each product which is the subject of a concession provided for in the Schedule annexed to this Protocol shall be the date of this Protocol.¹⁹

(b) For the purpose of the reference in paragraph 6(a) of Article II of the General Agreement to the date of that Agreement, the applicable date in respect of the Schedule annexed to this Protocol shall be the date of this Protocol.²⁰

PART III - FINAL PROVISIONS

"5. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES. It shall be open for acceptance, by signature or otherwise, by [...] until [date].²¹

"DONE at Geneva on [date] in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto²⁵, each text being authentic."

(2) *Reservations in accession protocols and commitments in accession protocols*

Paragraph 4 of the protocol of accession of Switzerland provides a reservation with regard to the application of the provisions of Article XI of the General Agreement to the extent necessary to permit Switzerland to apply import restrictions pursuant to certain Swiss legislation; see under Article XI. Paragraph 5 of the same protocol provides a reservation with regard to the provisions of Article XV:6: see under Article XV:6.²⁶ By the Decision of 1 April 1966 "The CONTRACTING PARTIES, acting pursuant to Article XXXIII of the General Agreement, decide that Switzerland may accede to the General Agreement on the terms set out in the said Protocol."²⁷

The Protocols of Accession of Poland, Romania, and Hungary (and the corresponding Decisions on accession) each provide for a reservation with respect to Article XV:6 identical to that of Switzerland.²⁸

Other protocols of accession have provided for time-limited reservations for existing measures inconsistent with the General Agreement, such as certain internal taxes of the Philippines and Thailand²⁹, the Egyptian consolidation of economic development tax and import taxes and surcharges of Costa Rica³⁰, and quantitative restrictions maintained by Costa Rica.³¹

Certain recent accession protocols also refer to additional commitments listed in specified paragraphs of the relevant accession working party report. Issues dealt with in these commitments have included, for instance: elimination of discrimination in internal taxation or of import charges in excess of bound duty rates; application of customs charges consistent with Articles II and VII

5. Provisional accession

"Provisional accession" was a concept used during the 1955-1975 period. It was first implemented in the case of Switzerland.³³ The 1956 Report of the Working Party on "Arrangements and Procedures for the Accession of Switzerland"³⁴ recommended arrangements and procedures to enable Switzerland to accede to the GATT, in the first place provisionally and then definitively. These arrangements provided that Switzerland would "enter into tariff negotiations with a view to provisional accession"³⁵ and that a declaration would be drawn up providing for entry into force of the tariff concessions for a limited period, and for trade between the signatories and Switzerland to be governed by its terms which would incorporate by reference all the provisions of the General Agreement. The Declaration would be accepted as valid even though accompanied by certain reservations by Switzerland. "The Working Party felt that it was desirable that a fixed period should be specified for the duration of the period of provisional accession. They felt that this period, which might be extended upon request of Switzerland by a decision of the CONTRACTING PARTIES, should be relatively short ...".³⁶

Upon completion of the arrangements for provisional accession the CONTRACTING PARTIES adopted a Declaration on "Provisional Accession of the Swiss Confederation"³⁷ and a Resolution on "Participation of Switzerland in the work of the CONTRACTING PARTIES."³⁸ At the same time they placed the following Understanding on record:

"In view of the wording of the provisions of Articles XXV and XXXII, it is not possible, from a strictly legal point of view, to give full voting rights to Switzerland. However, in the normal course of business this is not very important since the CONTRACTING PARTIES do not usually proceed to a formal vote in reaching decisions; generally the Chairman takes the sense of the meeting and Switzerland would have the same opportunity as contracting parties to express its opinion".³⁹

A similar understanding had been recorded with respect to the 1953 Declaration on "Commercial Relations between certain Contracting Parties to the General Agreement and Japan".⁴⁰

The Declaration on Swiss provisional accession provided that "the commercial relations between the participating countries and the Swiss Confederation shall ... be based upon the General Agreement as if the Swiss Confederation had acceded to the General Agreement in accordance with the relevant procedures and as if the schedules annexed to this Declaration were schedules annexed to the General Agreement".⁴¹ Provisional accession subsequently granted to other governments, pending their definitive accession, was not accompanied by tariff negotiations.

The Chairman of the 1959 Working Party which recommended provisional accession for Israel explained that "although the provisions of Article XXXIII of the General Agreement did not specifically require countries to enter into tariff negotiations before accession, the Working Party had thought it desirable to follow the precedent set by the CONTRACTING PARTIES in dealing with previous requests for accession and to await the outcome of tariff negotiations before drawing up the terms for the full accession of Israel. ... As Israel will accede provisionally to the General Agreement without a schedule of tariff concessions ... the Working Party had felt that contracting parties accepting the Declaration should not have to accept direct obligations towards Israel in respect ofg parties t[(ONJodi)3.8(fi)3.8(p1w[(respect)3.8(t 1(the o)-8.6(u)-2.6(t/nc8)7r81sio)-39113(v)3417.43a)154s 1b Tc.2691 Tw

There have been no formal arrangements for provisional accession since 1975, the date of the Declaration on Provisional Accession of Colombia. While there have been requests for provisional accession in a few cases, each of the governments concerned has decided to proceed directly to the accession process without the intermediate step of provisional accession.⁴³

A table of provisional accessions a

In 1992, Slovenia became independent and requested accession under Article XXXIII, stating at the July 1992 Council meeting that

“Slovenia intended to continue to apply the GATT’s provisions in force before its independence, including the obligations pursuant to the Schedule of Concessions of the former SFRY [Socialist Federal Republic of Yugoslavia]. Slovenia expected that the terms of accession to be agreed upon by itself and the CONTRACTING PARTIES should reflect the conditions that had prevailed thus far.... Her Government considered that the existing GATT provisions did not adequately address situations such as that of Slovenia. In the absence of more appropriate provisions, however, it had decided to seek accession to the General Agreement in accordance with the provisions of Article XXXIII, with the hope that the CONTRACTING PARTIES would be prepared to accept Slovenia as a contracting party without further negotiations and to agree that the terms of accession should reflect the conditions which had thus far prevailed.... In Slovenia’s case... there was no legal and internationally-recognized entity of the former SFRY that could make the necessary declaration on its behalf under Article XXVI:5(c). Slovenia hoped, therefore, that the Council would agree to accept its proposal, and requested the Secretariat to draft a Protocol of Accession which would include a Schedule identical to that applied before independence. ...”

A number of delegations stated that

States did not intend that the participation in the GATT of the newly independent states should be on a basis that was different from that of the CSFR. However, it needed to place on record the conditions under which – in this situation and in potential similar situations in the future – it could accept that negotiations were not necessary. These conditions were

the amended Article XXXIII would also have clarified the majority requirement for accession decisions. The provisions on accession on behalf of a separate customs territory would have been moved into an interpretative note.⁵³ However, these amendments were contained in the Protocol of Organizational Amendments to the General Agreement, which did not enter into force.

IV. RELEVANT DOCUMENTS

Geneva

Discussion: EPCT/TAC/SR.16
 EPCT/TAC/PV/22, 25
 Reports: EPCT/135, 189, 196, 206, 209,
 214/Add.1/Rev.1
 Other: EPCT/W/273, 274, 285, 312

Review Session

Discussion: SR.9/38
 Reports: W.9/198, W.9/215 + Corr.1,
 3S/233-234, 252
 Other: L/189, L/292, W.9/62, W.9/93,
 W.9/151

CONTRACTING PARTIES

Discussion: GATT/CP.2/SR.8, 11, 15, 20, 24
 Reports: GATT/CP.2/20, 29
 GATT/CP.3/37

⁵³See 3S/233-234 and 3S/252.