

ARTICLE XXXV

NON-APPLICATION OF THE AGREEMENT
BETWEEN PARTICULAR CONTRACTING PARTIES

I. TEXT OF ARTICLE XXXV 1031

II. INTERPRETATION AND APPLICATION OF ARTICLE XXXV..... 1031

A. SCOPE AND APPLICATION OF ARTICLE XXXV..... 1031

1. Paragraph 110 31

(1) "entered into tariff negotiations" 1031

(2) "or alternatively Article II of this Agreement" 1033

2. Paragraph 2: "review the operation of this Article" 1033

3. Relationship between Article XXXV and other GATT Articles 1033

(1) Article XXXIII..... 1033

(2) Article XXVI:5..... 1033

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B. INVOCATIONS OF ARTICLE XXXV 1034

1. Continuing invocations of Article XXXV 1034

the contracting party or the acceding party, could deem that the Agreement or Article II should not apply between them when the second party became a contracting party¹.

The Chairman of the CONTRACTING PARTIES ruled on 31 May 1949 during the round of trade negotiations held at Annecy that "delegations should be deemed to have entered into negotiations when they had held a first meeting scheduled by the Tariff Negotiations Working Party at which they had exchanged lists of offers".² It was stated during the discussions leading to this ruling that "Article XXXV would only apply when negotiations had not been entered into. Any contracting party could avail itself of paragraph 5(b) of Article XXV when negotiations had been entered into but not satisfactorily concluded, and its case would be considered by the CONTRACTING PARTIES, acting jointly".³

A 1965 Note by the Director-General on "The Application of Article XXXV in Relation to the Present Trade Negotiations" refers to the 1949 Chairman's ruling and notes that "In the case of two contracting parties which are not applying the GATT to each other by virtue of an earlier invocation of Article XXXV by one of them, the procedure in the past has been that the latter, unless it intended to withdraw its invocation of the Article, would not submit offers to the other. The ruling and the procedure ... are based on the earlier technique of tariff negotiation under which offers are made by each participant to other individual participants". The Note discusses the application of Article XXXV in the Kennedy Round negotiations.⁴

The Torquay Protocol of 1951 included the Philippines as an acceding government. The United States invoked Article XXXV with respect to the Philippines, noting that it had not entered into tariff negotiations with the Philippines at Torquay, and citing US legislation which provided that no trade agreement should be concluded by the United States under the Trade Agreements Act so long as a 1954 agreement on trade and other matters between the two countries was in force.

that territory (or if that territory had not been specifically excluded from such an invocation), it would

In respect of	Invoked by	Invocation	Date	Withdrawal	Date
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In respect of	Invoked by	Invocation	Date	Withdrawal	Date
Japan	Rwanda	Succession (B)	January 1966	L/3448	September 1970
"	Senegal	Succession (F)	September 1963	L/4288	December 1975
"	Sierra Leone	Succession (UK)	May 1961	L/3931	September 1973
"	South Africa	L/405	September 1955	L/5873	September 1985
"	Spain	L/3352	February 1970	L/3646	December 1971
"	Swaziland	Succession (UK)	September 1968	L/7321	December 1993
"	Tanzania	Succession (UK)	December 1961	L/4070	July 1974
"	Togo	Succession (F)	March 1964	L/4061	July 1974
"	Trinidad & Tobago	Succession (UK)	October 1962	L/2665	June 1966
"	Uganda	Succession (UK)	October 1962	L/3466	November 1970
"	United Kingdom	L/405	September 1955	L/1992 (for UK customs territory only); L/2208, L/2896, L/3396 (for UK overseas territories)	April 1963 March 1964 (L/2208) November 1967 (L/2896) May 1970 (L/3396)
"	Upper Volta	Succession (F)	May 1963	L/3484	November 1970
Korea	Czechoslovakia	L/2783	April 1967	L/6551	July 1989
"	Romania	L/3626	November 1971	L/6678	May 1970
Nicaragua	Cuba	GATT/CP/TN.1/33	August 1949	L/4810	November 1979
Nigeria	Portugal	L/1764	May 1962	L/6448	December 1988
Peru	Cuba	GATT/CP/111	April 1951	L/5430	November 1982
Poland	Korea	L/2874	October 1967	L/3580	September 1971
Portugal	Egypt	L/3386	May 1970	L/4937	January 1980
"	Ghana	L/1764	May 1962	L/6272	November 1987
"	India	L/1764	May 1962	L/4178	December 1974
"	Nigeria	L/1764	May 1962	L/6448	December 1988
South Africa	Egypt	L/3386	May 1970	L/7414	February 1994
"	India	GATT/CP.2/4	January 1948	L/7547	October 1994
"	Morocco	L/6192	June 1987	L/7498	June 1994
"	Pakistan	GATT/CP.2/4	July 1948	L/610	December 1956
"	Tunisia	L/6713	July 1990	L/7443	April 1994
Sweden	Cuba	GATT/TN.1/33	August 1949	L/5429	November 1982
Turkey	Cuba	GATT/CP/111	April 1951	L/5432	November 1982
Yugoslavia	Korea	L/2783	April 1967	L/3580	September 1971
Zimbabwe	Egypt	L/3386	May 1970	L/6360	Independence of Zimbabwe

The Declaration of 27 September 1951 on "Suspension of Obligations between Czechoslovakia and the United States under the Agreement¹⁸" which does not refer to Article XXXV, provided that the CONTRACTING PARTIES declare "that the Governments of the United States and Czechoslovakia shall be free to suspend, each with respect to the other, the obligations of the General Agreement on Tariffs and Trade", and "Affirm that any measures which may be taken either by the United States or by Czechoslovakia shall not

oblige a contracting party to enter a trade agreement with another country without its consent".²³ A new draft was then suggested to become a new Article XXXV.²⁴

In the same discussions, it was also agreed to add Article XXV:5(b) through (d), which permitted the CONTRACTING PARTIES to authorize one contracting party to withhold the benefit of concessions in its Schedule from another contracting party in certain circumstances; *supra* Article XXV.²⁵ These changes were summarized by one of their drafters during discussions on accession at Annecy:

"It had been realized at Havana that the original Article XXXIII of GATT, which required a unanimous decision with respect to accession had actually given veto power to each of the contracting parties. This was remedied by the adoption of the provision for a decision by a two-thirds majority. However, the effect of this amendment could have been to coerce a contracting party to reach a trade agreement against its will. The balance had been redressed by