ARTICLE XXV

JOINT ACTION BY THE CONTRACTING PARTIES

I. TEXT OF ARTICLE XXV

Article XXV

Joint Action by the Contracting Parties

1. Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.

2. The Secretary-General of the United Nations is requested to convene the first meeting of the CONTRACTING PARTIES, which shall take place not later than March 1, 1948.

3. Each contracting party shall be entitled to have one vote at all meetings of the CONTRACTING PARTIES.

4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast.

5. In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; *Provided* that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

(i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and

(ii) prescribe such criteria as may be necessary for the application of this paragraph.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXV

A. SCOPE AND APPLICATION OF ARTICLE XXV

1. Paragraph 1

(1) *"provisions of this Agreement which involve joint action"*

Authority for joint action by the CONTRACTING PARTIES is provided for in the following provisions of the General Agreement:

Articles II:6(a); VI:6(b) and (c); VII:1 and 4(c); VIII:2; X:3(c); XII:4(b) to (d) and 5; XIII:4; XIV:2; XV:1, 2, 3, 5, 6, 7, 8: XVI:5; XVII:4(c); XVIII:6, 7, 12, 14, 16, 19, 22; XIX:2, 3; XX:(h), (j); XXII:2; XXIII:2; XXIV:7, 10; XXV:1, 5; XXVII; XXVIII:1, 4; XXVIII bis:1; XXIX; XXX:2; XXXIII; XXXVII:2(b); XXXVIII:1, 2; Annex I, Notes Ad Articles XII:4, XVIII:15, 16, and XXVIII:1.

During the Second Session in 1948, in discussion of a proposed waiver decision, the question was raised whether a decision at a meeting of the CONTRACTING PARTIES would be adequate or whether it would be necessary to do a protocol to the General Agreement. The Chairman stated that "an action taken in accordance with the terms of an article could be effected by a decision approved by the CONTRACTING PARTIES and duly recorded".[1]

(2) "CONTRACTING PARTIES"

The New York draft of the GATT provided for establishment of an Interim Trade Committee. In discussions at Geneva, in response to reluctance expressed regarding creation of a formal organization in advance of the ITO, it was proposed and accepted that all references to the "Committee" be replaced with references to the "Contracting Parties" and that these words be in initial capitals wherever they refer to joint action. This convention was later changed to "CONTRACTING PARTIES" for the sake of typographical clarity.[2] The organization created was nevertheless envisioned to be permanent in character.

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[1] GATT/CP.2/SR.21, p. 4.

[2] See New York Report p. 78 (New York draft GATT Art. XXII). On Geneva discussions, see EPCT/TAC/PV/11 (discussion regarding powers of the Committee), EPCT/TAC/PV/12 p. 2-5 (discussion and approval of change to "Contracting Parties"), EPCT/135 (draft of the General Agreement including this change), EPCT/209 (Legal and Drafting Committee Report on Part III of the General Agreement), EPCT/TAC/PV/25 p. 2-3, 12 (discussion and approval of change to CONTRACTING PARTIES, suggested in EPCT/209).

(3) "joint action ... with a view to facilitating the operation and furthering the objectives of this Agreement"

(a) Interpretation of the General Agreement

At the Second Session of the CONTRACTING PARTIES in September 1948, a Working Party on Modifications to the General Agreement examined which of the revisions to the ITO Charter which had been made at Havana should be brought into the General Agreement text by amendment. In support of the decision of the Working Party not to pick up every one of the changes, its Report notes that "if difficulties in application were to arise before the entry into force of the Charter, the CONTRACTING PARTIES would still have the possibility under the terms of Article XXV to settle such cases in the light of the provisions of Article XXIX, paragraph 1".[3]

In 1949, the Chairman of the CONTRACTING PARTIES interpreted the phrase "with a view to facilitating the operation and furthering the objectives of this Agreement" as "enabling the CONTRACTING PARTIES acting jointly to interpret the Agreement whenever they saw fit. It was open for any government disagreeing with an interpretation to take the dispute which had given rise to such an interpretation to the International Court, although neither a government nor the CONTRACTING PARTIES acting jointly could take a ruling of the CONTRACTING PARTIES to the Court". The Chairman's statement was not contested.[4] In 1961, the Executive Secretary said "that it was within the functions of the CONTRACTING PARTIES, acting jointly under Article XXV, to interpret the Agreement whenever they saw fit. It would be open for any government which disagreed with an interpretation to take the dispute which had given rise to the interpretation to the International Court of Justice, although neither a government nor the CONTRACTING PARTIES acting jointly could take a ruling of the CONTRACTING PARTIES to the Court".[5]

The Review Session Working Party on Organizational and Functional Questions in 1954-55 negotiated the text of an Agreement on the Organization for Trade Cooperation. Article 3 of this Agreement on "Functions" provided in part that "no decision or other action of the Assembly or any subsidiary body of the Organization shall have the effect of imposing on any Member any new obligation which the Member has not specifically agreed to undertake". In this connection, the Report of the Working Party notes that "It was ... agreed that an obligation arising from the operation or interpretation of a specific provision of the General Agreement ... including an interpretation that a particular obligation thereunder had become applicable, would not be the imposition of a 'new obligation' within the meaning of this paragraph".[6]

The CONTRACTING PARTIES have followed different procedures for resolving questions of interpretation, such as Chairman's rulings, Decisions by the CONTRACTING PARTIES, adoptions of reports of panels or working parties including interpretations, and decisions by the Council to interpret the General Agreement or to adopt reports including interpretations.

- *Chairman's rulings:* Especially in the early days of the GATT, questions of interpretation were often resolved by the Chairman of the CONTRACTING PARTIES giving a ruling, either at the request of a delegate[7] or at his own initiative towards the end of a discussion[8]. These rulings sometimes did not meet dissenting opinions, and sometimes were expressly accepted[9] or put to a roll-call vote.[10]

[3]GATT/CP.2/22/Rev.1, adopted on 1 and 2 September 1948, II/39, 40.

[4]GATT/CP.3/SR.37, p. 5. In response to the suggestion of Cuba that the CONTRACTING PARTIES submit the legal aspects in dispute to an international court, the Chairman noted that "he wished to explain that the CONTRACTING PARTIES were not an organization authorized by the United Nations to request advisory opinions from the International Court of Justice. Advisory opinions from the Court may only be sought by the United Nations and by specialized agencies authorized to do so by the Assembly of the United Nations." See further under Article XXIII concerning referral of disputes to the International Court.

[5]SR.19/7, p. 88. See further under Article XXIII.

[6]L/329, adopted on 28 February, 5 and 7 March 1955, 3S/231, 235, para. 9(e).

[7]E.g., GATT/CP.2/SR.11, p. 7.

[8]GATT/CP.2/SR.11, p. 4.

[9]GATT/CP.2/SR.11, p. 8; CP.3/SR.19, p. 8.

[10]SR.10/19, p. 218.

- *Decisions of the CONTRACTING PARTIES:* The CONTRACTING PARTIES have in many instances adopted a decision, resolution or recommendation relating to a specific matter; sometimes such decisions included elements interpreting the General Agreement.[11]

- *Reports of Panels and Working Parties:* Article XXIII:2 expressly gives the CONTRACTING PARTIES the power to "give a ruling". This power has been exercised on occasion by the CONTRACTING PARTIES directly without a recommendation from another body.[12] The CONTRACTING PARTIES have adopted many reports of Panels or Working Parties which include interpretations of the General Agreement. Concerning the practice of the CONTRACTING PARTIES in the field of dispute settlement, see Article XXIII.

- *Council action:* The Council did not adopt reports of Panels or Working Parties before 1968, but merely noted them for later adoption by the CONTRACTING PARTIES at their next Session. In November 1968 the CONTRACTING PARTIES at their Twenty-fifth Session agreed that the Council should undertake a wider range of work; since then the Council has directly adopted such reports.[13]

- *Director-General:* In a few cases, a request for a legal opinion has been addressed to the Director-General or his representative.[14]

(b) Consultations under Article XXV:1

The 1979 "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" provides "that Article XXV may, as recognized by the CONTRACTING PARTIES, *inter alia*, when they adopted the report of the Working Party on particular difficulties connected with trade in primary products (L/930) also afford an appropriate avenue for consultation and dispute settlement in certain circumstances".[15]

The Report of the Working Party in 1959 on "Particular Difficulties Connected with Trade in Primary Commodities" considered actions taken to follow up on a 1956 Resolution on "Particular Difficulties Connected with Trade in Primary Commodities," which had provided for consultations under Article XXII concerning commodity problems. The 1959 Report noted that:

> "Paragraph 3 of the basic resolution has not been utilized, perhaps due to a lack of understanding of the potentialities of the General Agreement in facilitating consultations on trade problems of concern to individual contracting parties or the CONTRACTING PARTIES generally. Therefore the Working Party has thought it useful to describe the manner in which contracting parties may have recourse to the facilities of Articles XXII and XXV for dealing with problems in their trade in primary products ... there may be situations in which joint action by the CONTRACTING PARTIES under Article XXV would be more appropriate [than consultations under Article XXII], for example, where a developing situation might lead to commercial policy measures being taken by one or more contracting parties which would be injurious to others unless it is dealt with by co-operative action. For a consultation to be initiated under Article XXV, there must be a prior decision by the CONTRACTING PARTIES which could, if they wished, invite non-contracting parties to participate. Thus under these two Articles there are procedures, for initiating action and a search for solutions, which are well adapted for dealing with many of the special situations arising in the trade in primary products which could be more appropriately handled by GATT techniques than otherwise.
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> "Accordingly, the Working Party recommends that contracting parties, when contemplating action on problems arising in commodity trade, should consider the possibility of initiating consultations under Article XXII with a view to arriving at mutually acceptable solutions, thus avoiding the need for unilateral action. The CONTRACTING PARTIES are reminded that, when special circumstances are likely to affect the trade in a primary product and to threaten disruption of the market and to cause special difficulties either to

[11]E.g., Decision of 9 August 1949 on Margins of Preference, II/11; Decisions of 18 November 1968 and 26 March 1980 on Rectification and Modification of Schedules, 16S/16 and 27S/25.

[12]E.g., Decision of 8 June 1949 under Article XXIII:2 to reject the complaint of Czechoslovakia regarding US export controls, II/28.

[13]E.g., Council adoption of the four Panel Reports on tax legislation subject to the understanding in L/5271 (28S/114).

[14]See, e.g., legal opinion on application of Article I to the 1967 Agreement on Implementation of Article VI, L/3149, SR.25/3, p. 28.

[15] 26S/210, footnote.

exporters or to importers which might lead to commercial policy action being taken by one or more countries, they may, at the request of an interested party, decide to arrange for consultations among exporting and importing countries with a view to finding a solution which would avoid resort to measures which would restrict or disrupt trade. These consultations might be arranged pursuant to the provisions of Article XXV which enable them to act jointly with a view to furthering the objectives of the General Agreement."[16]

In 1961 the CONTRACTING PARTIES conducted multilateral consultations under paragraph 1 of Article XXV on the difficulties experienced by New Zealand in marketing butter in the United Kingdom.[17]

See also Articles XXXVI:4 and XXXVIII, and material under Article XXII:2 and Article XVIII:5.

(c) Political questions

In 1965, during the discussion of the request from the Government of the Republic of China (now known in the GATT and the WTO as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, or Chinese Taipei[18]) to be represented by observers at sessions of the CONTRACTING PARTIES, the Chairman of the CONTRACTING PARTIES stated, *inter alia*, that

"it had been the policy of the CONTRACTING PARTIES to avoid unproductive controversies over political questions which did not bear significantly on the many substantial questions with which the CONTRACTING PARTIES were concerned. For this reason the CONTRACTING PARTIES had followed the policy expressed in Article 86 of the Havana Charter, namely to avoid passing judgment in any way on essentially political matters and to follow decisions of the United Nations on such questions.

"Consistently also with the practice of the United Nations, it was quite clear that for the CONTRACTING PARTIES to admit observers did not prejudice the position of the CONTRACTING PARTIES or of individual contracting parties towards recognition of the government in question. The Executive Secretary had based himself also upon the opinion of the Legal Department of the United Nations, which was that the question of representation in an international organization was distinct from the question of recognition of a government by other members of that organization."[19]

In 1971, at the opening of the Twenty-seventh Session, the Chairman noted that in reaching their decision in 1965 to accede to the request of the Republic of China, the CONTRACTING PARTIES had agreed to follow decisions of the United Nations on essentially political matters, and suggested that the CONTRACTING PARTIES should follow the decision taken in United Nations Resolution 2758 (XXVI). It was agreed that for these reasons, representatives of the Republic of China should no longer attend sessions of the CONTRACTING PARTIES as observers.[20]

In the Council in 1992, in discussion of the establishment of a working party on accession of Chinese Taipei to the General Agreement, the Chairman of the Council noted that "All contracting parties had acknowledged the view that there was only one China, as expressed in the United Nations General Assembly Resolution 2758 of 25 October 1971". The Chairman stated that as part of the understanding reached on this matter, the titles carried by the representative of Chinese Taipei would not have any implication on the issue of sovereignty.[21]

The policy of following the decisions of the United Nations on political questions was also referred to in connection with the decision that the GATT observer status previously granted to the former USSR would be continued through the Russian Federation[22] and the decision of the Council at its meeting on 16-17 June 1993 that in the light of United Nations General Assembly Resolution 47/1 "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the contracting party status of the former Socialist Federal Republic

[16]L/930, adopted 22 November 1958, 7S/42, 45, para. 7-8.
[17]L/1453, Report on consultation held in April 1961, 10S/74; L/1514, Report on consultation held in June 1961, 10S/77.
[18]See Statement by Council Chairman at September 1992 Council meeting, C/M/259, p. 3-4.
[19]SR.22/3, p. 1-2.
[20]SR.27/1, p. 1-4.
[21]C/M/259, p. 3-4.
[22]Council meeting of 18 February 1992, C/M/254, p. 2; letter in L/6978.

of Yugoslavia in the GATT, and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for accession to the GATT and that it shall not participate in the work of the Council and its subsidiary bodies. The Council further invites other committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements and the Committee on Trade and Development, to take the necessary decisions in accordance with the above".[23]

See also the discussion of territorial claims under Article XXIV:1-2, and the discussion of status as a contracting party under Article XXXII.

(4) Competence of the CONTRACTING PARTIES

(a) Commodity problems

In 1955, the Chairman of the CONTRACTING PARTIES ruled that the CONTRACTING PARTIES were acting properly within the provisions of paragraph 1 of Article XXV in adopting recommendations relating to the study of commodity problems. This ruling was upheld by a formal vote of the CONTRACTING PARTIES.[24] This ruling was reaffirmed in a Resolution of 17 November 1956 on "Particular Difficulties Connected with Trade in Primary Commodities" which included the statement that "… the CONTRACTING PARTIES, in conformity with the functions conferred upon them under paragraph 1 of Article XXV and as recognized in the ruling of the tenth session, are competent to deal, upon the request of one or more contracting parties, with special difficulties arising in connexion with international trade in primary commodities …".[25]

(b) Investment

In a Resolution of 4 March 1955 on "International Investment for Economic Development", the CONTRACTING PARTIES, *inter alia*,

> "Recommend that the contracting parties who are in a position to provide capital for international investment and the contracting parties who desire to obtain such capital use their best endeavours to create conditions calculated to stimulate the international flow of capital having regard in particular, to the importance for this purpose of providing by appropriate methods for security for existing and future investment, the avoidance of double taxation, and facilities for the transfer of earnings upon foreign investments, and
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> "Urge that contracting parties upon the request of any contracting party enter into consultation or participate in negotiations directed to the conclusion of bilateral and multilateral agreements relating to these matters".[26]

During the Review Session of 1954-55 the CONTRACTING PARTIES considered a proposal to insert an article in the General Agreement on freedom of establishment.[27]

On trade-related investment measures, see also the Ministerial Declaration of 1982[28], and the Ministerial Declaration on the Uruguay Round[29] and the 1984 Report of the Panel on "Canada - Administration of the Foreign Investment Review Act".[30]

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[23] C/M/264, p. 3. Such action was taken by the Committees on Customs Valuation (L/7324), Import Licensing (L/7313), Anti-Dumping Practices (ADP/M/41), and Technical Barriers to Trade (TBT/M/45).

[24] SR.10/19, p. 218.

[25] 5S/26. See also material on commodity issues under Articles XVIII:5, XX(h), XXII:2, and XXXVII.

[26] 3S/49, 50.

[27] L/327, adopted on 28 February, 5 and 7 March 1955, 3S/231, 243, para. 36.

[28] L/5424, adopted on 29 November 1982, 29S/9ff.

[29] 33S/46.

[30] L/5504, adopted on 7 February 1984, 30S/140, 141, para. 1.4 and 157, para. 5.1; see also C/M/162, p. 25-26.

(c) Disposal of surpluses

In a Resolution of 4 March 1955 on "Disposal of Surpluses"[31] the CONTRACTING PARTIES, *inter alia*, "- Consider that when arranging the disposal of surplus agricultural products in world trade contracting parties should undertake a procedure of consultation with the principal suppliers of those products and other interested contracting parties, which would contribute to the orderly liquidation of such surpluses, including where practicable disposals designed to expand consumption of the products, and to the avoidance of prejudice to the interests of other contracting parties, and that they should give sympathetic consideration to the views expressed by other contracting parties in the course of such consultations."

(d) Liquidation of strategic stocks

In a Resolution of 4 March 1955 on "Liquidation of Strategic Stocks"[32] the CONTRACTING PARTIES recommended, *inter alia*:

> "1. That, whenever practicable, any contracting party intending to liquidate a substantial quantity of such stocks should give at least forty-five days prior notice of such intention.
>
> "2. That a contracting party, intending to liquidate and giving notice in accordance with paragraph 1, should consult fully with any contracting party which considers itself substantially interested and requests such consultations, with a view to avoiding or minimizing substantial injury to the economic interests of that contracting party and undue disruption of the markets for the product concerned and should give full and sympathetic consideration to the views expressed by such other interested contracting parties."

(e) Restrictive business practices

At the Review Session of 1954-55, the CONTRACTING PARTIES considered and rejected a proposal to add to the General Agreement the provisions of Chapter V of the Havana Charter on cartels.[33] A 1958 Resolution by the CONTRACTING PARTIES on "Restrictive Business Practices"[34] appointed a Group of Experts. The 1960 Report of that Group of Experts to the CONTRACTING PARTIES on "Arrangements for Consultations" recommended that the CONTRACTING PARTIES should undertake to deal with restrictive business practices in international trade. The members of the Group agreed "that the CONTRACTING PARTIES should now be regarded as an appropriate and competent body to initiate action in this field … and should encourage direct consultations between contracting parties with a view to the elimination of the harmful effects of particular restrictive practices".[35] On 18 November 1960 the CONTRACTING PARTIES decided on arrangements for consultations concerning restrictive business practices.[36]

The Report of the Working Party on the Accession of Poland notes: "It was pointed out in the Working Party that the Decision by the CONTRACTING PARTIES of 18 November 1960 on arrangements for consultations between contracting parties on restrictive business practices would automatically apply in the trade between Poland and other contracting parties".[37]

(f) Market disruption

In 1959, the United States drew attention to the fact that "sharp increases in imports, over a brief period of time and in a narrow range of commodities, could have serious economic, political and social repercussions in the importing countries. … The problem was to find the means to alleviate the adverse effects of an abrupt invasion

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[31] 3S/50.

[32] 3S/51. See also material on this Resolution under Section III in Article XVII.

[33] 3S/239. See also the GATT publication *Restrictive Business Practices* (Sales No. GATT/1959-2), which includes a discussion of Chapter V of the Havana Charter, and later discussions in ECOSOC and in the early sessions of GATT. See also CG.18/W/44, Secretariat Note dated 10 October 1980, on "Restrictive Business Practices".

[34] Resolution of 5 November 1958, 7S/29.

[35] L/1015, adopted on 2 June 1960, 9S/170, 171.

[36] 9S/28.

[37] L/2806, adopted on 26 June 1967, 15S/109, 112, para. 17.

of established markets while continuing to provide steadily enlarged opportunities for trade".[38] The Report of a Working Party appointed in 1960 to consider the problems and to suggest solutions[39] was submitted to the seventeenth session containing the conclusion "that whether or not safeguards against situations of 'market disruption' were already available within the provisions of the General Agreement, there were political and psychological elements in the problem which rendered it doubtful whether such safeguards would be sufficient to lead some contracting parties which are dealing with these problems outside the framework of the General Agreement or in contravention of its provisions to abandon these exceptional methods at this time. In these circumstances the Working Party did not embark on interpretations of relevant provisions in the General Agreement".[40]

(g) Minimum price arrangements

The following minimum price agreements have been reached in the framework of the General Agreement:

Arrangement Concerning Certain Dairy Products of 12 January 1970[41], entered into force on 14 May 1970 and terminated on 11 May 1982;

Protocol Relating to Milk Fat of 2 April 1973[42], entered into force on 14 May 1973 and terminated on 22 September 1980; and

International Dairy Arrangement of 12 April 1979[43], in force since 1 January 1980.

(h) Taxation and trade

In the Review Session of 1954-55, the CONTRACTING PARTIES considered a proposal to add to the General Agreement an article on double taxation.[44]

In 1968, the Council, acting under paragraph 1 of Article XXV, established a Working Party to examine the provisions of the General Agreement relevant to border tax adjustments, the practices of contracting parties in relation to such adjustments and the possible effects of such adjustments on international trade.[45] During its meetings the Working Party examined the nature of direct and indirect taxes and their effects on international trade, and deliberated on standards for their adjustment at the border. See the 1971 Report of the Working Party on "Border Tax Adjustments".[46] Following the report, the Council introduced on a provisional basis a notification procedure and established a consultation procedure whereby, upon request, a multilateral consultation could take place on changes in tax adjustments. No such consultation has so far been requested.[47]

(i) Environmental measures and international trade

On November 1971, the Council established a Group on Environmental Measures and International Trade to examine, upon request, any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment. The Group was re-activated in 1991 and met from then until early 1994.[48] Concerning the competence of the CONTRACTING PARTIES in the area of the environment, see the minutes of the

[38]SR.15/17, p. 156; SR.16/8, p. 99.
[39]SR.16/10, p. 147.
[40]9S/106, para. 3.
[41]17S/5; see also references to this Arrangement under Article XXII:2.
[42]20S/11.
[43]26S/91.
[44]3S/242.
[45]C/M/46.
[46]L/3464, adopted on 2 December 1970, 18S/97.
[47]C/M/65.
[48]L/3538, C/M/74. Documents generated by this Group appeared in the TRE series; documents of the Sub-Committee on Trade and Environment of the Preparatory Committee for the WTO appeared in the PC/SCTE series; and documents of the WTO Committee on Trade and Environment appear in the WT/CTE series. The Secretariat also issued derestricted accounts of discussions in the EMIT Group and the Sub-Committee in the TE series.

Council meeting of 8 October 1991 and the statement and proposal of the Chairman of the Council at the Forty-eighth Session in December 1992.[49]

(j) Government procurement

The Agreement on Government Procurement of 12 April 1979 was concluded, *inter alia*, in recognition of "the need to establish an agreed international framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade".[50] A new Agreement on Government Procurement was negotiated and concluded on 15 April 1994, appears in Annex IV of the WTO Agreement, and will enter into force on 1 January 1996.

(k) Services, including transport insurance

In the Review Session of 1954-55, the CONTRACTING PARTIES considered proposals relating to discrimination in transport insurance[51]. A Recommendation by the CONTRACTING PARTIES of May 1959 on "Freedom of Contract in Transport Insurance"[52] recognized that restrictive measures in regard to transport insurance were a matter that should be regarded as a subject of interest to the CONTRACTING PARTIES.

See the Ministerial Declaration of 1982[53] and the Ministerial Declaration on the Uruguay Round, which states that: "Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying services and shall take into account the work of relevant international organizations."[54] A General Agreement on Trade in Services was negotiated in the Uruguay Round and constitutes Annex 1B of the WTO Agreement.

(5) Procedures

A discussion on procedures for decisions by the CONTRACTING PARTIES appears in the chapter herein on Institutions and Procedure.

2. Paragraph 2: "the first meeting of the CONTRACTING PARTIES"

The First Session of the CONTRACTING PARTIES was convened in Havana, Cuba during the Havana Conference, and met from 28 February through 23 March 1948.

3. Paragraph 4: "majority of the votes cast"

This phrase was used in order to permit postal voting by the CONTRACTING PARTIES.[55] A discussion of voting procedures and practices appears in the chapter on Institutions and Procedure.

[49]C/M/252, SR.48/1 p. 12-16. See also C/M/247, C/M/248, C/M/250, C/M/260.
[50]26S/33.
[51]3S/242-3.
[52]Adopted on 27 May 1959, 8S/26.
[53]L/5424, adopted on 29 November 1982, 29S/9ff.
[54]33S/28.
[55]EPCT/209, p.8, footnote; EPCT/TA/PV/25, pp. 11-12.

4. Paragraph 5

(1) Scope of the waiver power

At the First Session of the Preparatory Committee in London in October 1946, in Committee V on organizational arrangements, one delegation proposed that the waiver authority in the draft ITO Charter be extended to cover not just the commercial policy obligations, as originally proposed, but all Charter obligations. Queried concerning the purpose of this provision, the United States delegate stated,

> "... it was the thought of the U.S. in drafting this section that members would take advantage of such escapes as exist in the rest of the charter first, and this was meant merely to cover cases which were exceptional and caused particular hardship to any particular member and were not covered by the other escapes provided in the charter. This is to cover cases which are not covered elsewhere".[56]

The discussion is summarized in the London Report:

> "In discussing the powers of the Conference to suspend, in exceptional circumstances, obligations undertaken by members under the general commercial policy provisions, it was suggested that this power might be extended to cover all obligations under the Charter. It was stressed that the waiving of such obligations was intended to apply only in cases of an exceptional nature, involving hardship to a particular member, which were not covered by specific escape clauses. It was finally agreed that all the obligations undertaken by members, pursuant to the Charter, should come within the purview of this general provision."[57]

The Report of the Working Party in 1952 on "The European Coal and Steel Community" notes:

> "... The Working Party considered ... whether it would be appropriate to grant a waiver under paragraph 5(a) of Article XXV, in order to permit the six countries to participate in the European Coal and Steel Community without violating their obligations under the General Agreement. The Working Party concluded ... that such action would be appropriate. The Working Party is of the view that the text of paragraph 5(a) of Article XXV is general in character; it allows the CONTRACTING PARTIES to waive any obligations imposed upon the contracting parties by the Agreement in exceptional circumstances not provided for in the Agreement, and places no limitations on the exercise of that right. ...
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> "The Working Party recognized, however, that it would be appropriate for the CONTRACTING PARTIES, before granting a waiver under paragraph 5(a) of Article XXV, to consider whether the objectives of the European Coal and Steel Community were consistent with those of the General Agreement. The Working Party examined the provisions of the Treaty which define the objectives of the European Coal and Steel Community and it appeared to the Working Party that those objectives were broadly consistent with the objectives of the General Agreement."[58]

The Report of the 1955 Review Working Party on "Schedules and Customs Administration" records the request by the representative of Cuba for a legal opinion as to whether the CONTRACTING PARTIES could grant, by the majority specified in paragraph 5(a) of Article XXV, a waiver from obligations which a contracting party had assumed under Part I of the Agreement. The Executive Secretary noted that this question had been addressed in the Working Party Report on the European Coal and Steel Community and gave his opinion that the CONTRACTING PARTIES could grant such a waiver by a two-thirds majority.[59] The considerations which had led the Executive Secretary to this interpretation were subsequently presented in a Secretariat note, which referred to the following arguments:

> "In the absence of any other qualification the words 'may waive an obligation' [in Article XXV:5(a)] must refer to any obligation under the Agreement. If the drafters had intended this power to be limited to Parts II

[56]EPCT/C.V/PV/9, p. 8; see also EPCT/C.V/25, p. 1-4.
[57]London Report, p. 22, para. D.2 (also cited at 1S/86, para. 2).
[58]G/35, adopted on 10 November 1952, 1S/85, 86, paras. 2-3.
[59]L/329, adopted on 26 February 1955, 3S/205, 208-209, para. 6. See also discussion in W.9/114.

and III of the Agreement it would have been a simple matter to include such a qualification. This was not done.

"The phrase 'Except where provision for modification is made elsewhere ...' [in Article XXX:1] provides a clear exception for action taken under the provisions of Article XXV:5(a), for

(i) if the waiver of an obligation in Part I is not considered to represent a 'modification' it can hardly be a change that would require the application of the amendment procedure; and

(ii) if such a waiver is considered to be a 'modification', this phrase provides an explicit exception from the unanimity requirement for amendment for Part I. ...

"From the above analysis it appears -

(a) that the CONTRACTING PARTIES intentionally made a distinction in the Agreement between an amendment and a waiver granted in exceptional circumstances;

(b) that they made an effort to avoid the possibility of conflict between Article XXX and other Articles by writing an exception in Article XXX;

(c) that they explicitly decided that the provisions of Article XXV:5(a) may be applied to any obligation under the Agreement; and

(d) that they have, in many cases, granted waivers of obligations of Part I by less than a unanimous vote."[60]

At the Tenth Session in 1955, the representative of Cuba again put forward his Government's objections to the granting of waivers from obligations under Part I of the General Agreement. The Intersessional Committee considered the matter on the basis, *inter alia*, of the Note cited above, and in its Report recommended that the CONTRACTING PARTIES "should affirm their intention to proceed with caution in considering requests for a waiver from obligations in Part I or from other important obligations of the Agreement, and to take appropriate measures to safeguard the interests of contracting parties".[61] See below for the Decision of 1 November 1956 adopted as a follow-up to this Report.

(2) Procedures

In recent years a request to the CONTRACTING PARTIES for a waiver has generally been followed by a Council decision as to whether to establish a working party. Except in those cases where consensus had been reached on the waiver text, a working party has been established; after examining the measures for which the waiver was sought (normally through a question and answer process) and the "exceptional circumstances" claimed, the working party has drafted its report and the terms of the waiver decision.[62] The report has on occasion included additional material interpreting the terms and conditions attached to the waiver. The report and the draft text of the waiver decision have been adopted by the Council which then has recommended the adoption of the decision by the CONTRACTING PARTIES by a vote. The vote has taken place either at a Session or by postal or telegraphic ballot.

At the Eleventh Session, on 1 November 1956 the CONTRACTING PARTIES adopted a Decision on "Article XXV - Guiding Principles to be followed by the CONTRACTING PARTIES in considering applications for waivers from Part I or other important obligations of the Agreement".[63] These procedures provide as follows:

[60] L/403.
[61] L/532.
[62] See, for example, the Report on "United States Caribbean Basin Economic Recovery Act", L/5708, adopted on 6-8 and 20 November 1984, 31S/180.
[63] 5S/25.

"(a) Applications for waivers from Part I or other important obligations of the General Agreement should be considered only if submitted with at least thirty days' notice. It is recognized, however, that in exceptional cases calling for urgent action this requirement may, by general agreement, be relaxed.

"(b) In the interval afforded by such notice, the applicant contracting party should give full consideration to representations made to it by other contracting parties and engage in full consultation with them.

"(c) The CONTRACTING PARTIES when examining an application should give careful consideration to any representations that such consultations had proved unsatisfactory, and in general should not grant an application in cases where they are not satisfied that the legitimate interests of other contracting parties are adequately safeguarded.

"(d) Any decision granting a waiver should include procedures for future consultation on specific action taken under the waiver, and, where appropriate, for arbitration by the CONTRACTING PARTIES ... .

"(e) Any such decision should also provide for an annual report and, where appropriate, for an annual review of the operation of the waiver."[64]

During debate in the GATT Council and in a waiver working party on the United States request for a waiver for duty-free treatment provided under the US Caribbean Basin Economic Recovery Act of 1983, in spite of differences of view as to whether it was appropriate to employ the waiver procedure under Article XXV:5 (as opposed to other procedural approaches) to establish a preferential scheme such as this one, "it was acknowledged that a decision on whether to ask for a waiver ... could only be made by the United States. The United States therefore requested that the draft waiver ... be submitted to the CONTRACTING PARTIES for a vote".[65]

As for the role of a working party in examining a waiver request and drafting the waiver decision, the 1993 Report of the Working Party on "German Unification - Transitional Measures Adopted by the European Communities" provides as follows:

"... The Working Party noted that the established practice of the CONTRACTING PARTIES with respect to waiver working parties had been either to establish a working party to examine the waiver request and to draft the text of the waiver decision, or (when such an examination was deemed unnecessary or inappropriate) to make a decision without establishing any working party. The Working Party recalled that its establishment had been a departure from this practice; as a result its work had consisted essentially of increasing transparency, and its conclusions were necessarily limited. Some members of the Working Party regretted this departure and emphasised that they did not regard it as establishing a precedent."[66]

The 1993 Report of the Working Party on "United States Andean Trade Preference Act" also noted the view of members of the Working Party that "working party examination of the appropriateness of a waiver and its terms should take place prior to the granting of a waiver."[67]

In May 1993, in discussion of a waiver request, the Council approved the text of the draft decision directly without referring the request to a working party, and recommended its adoption by the CONTRACTING PARTIES by a vote by postal ballot. In this connection the Council Chairman noted that "the decision, when and if adopted by a vote by postal ballot, would be circulated as usual in an L/ series document ... Furthermore, the effective date of the Waiver Decision would be the date of its adoption. As representatives were aware, when voting by postal ballot, contracting parties were customarily given 30 days in which to cast their votes. Accordingly, the effective date of this decision would be the date at which the requisite majority was obtained, but not later than the

[64]However, the following year the Working Party on "Consultations under Article XII:4(b)" examined the waivers of Article XV:6 which had been granted to Czechoslovakia and New Zealand, and "came to the conclusion that the nature of the subject-matter of these waivers being somewhat distinct from other matters covered by waivers, did not seem to require regular consultations". The Working Party recommended that these waivers be amended so as to dispense with the annual consultation requirement. L/769, adopted on 30 November 1957, 6S/36, 38, paras. 8-10.

[65]Working Party Report on "United States - Caribbean Basin Economic Recovery Act (CBERA)," L/5708, adopted on 6-8 and 20 November 1984, 31S/180, 197-198, para. 62; see also C/M/183, p. 58.

[66]L/7119, adopted on 9-10 February 1993, para. 19.

[67]L/7190, adopted on 24 March 1993, para. 11; see also *ibid.*, para. 29 and statements to the same effect at C/M/262 p. 2-5.

thirtieth day following the present Council meeting".[68] Further concerning voting procedures, see the chapter on Institutions in this Index. See also the reference above at page 874 concerning the confirmation by the Chairman during the Second Session in 1948 that in the case of a waiver under Article XXV:5, a decision of the CONTRACTING PARTIES is sufficient, and a Protocol is not required.

(3) "In exceptional circumstances"

In 1970, Greece requested a waiver of its obligations under Article I for preferential tariff quotas granted to the USSR. The purpose of the tariff quotas was to offset the competitive disadvantage which imports of USSR products faced vis-a-vis imports of EEC products due to tariff reductions under the EEC-Greece Association Agreement, and thus to facilitate Greek exports to the USSR under a bilateral payments agreement. The Report of the Working Party on "Greece— Preferential Tariff Quotas to the USSR" notes that "it was considered that the Greek bilateral payments position with the USSR did not constitute 'exceptional circumstances' in the sense of Article XXV:5."[69]

> "The Working Party, with the exception of one member, expressed serious concern over the action taken by Greece which had led it to request a waiver from its obligations under Article I. The members concerned considered that the question of principle and precedent was of utmost importance. While expressing sympathy for and understanding the difficulties encountered by Greece, they were not convinced that exceptional circumstances as required under Article XXV:5 existed and therefore were opposed to granting of a waiver. In their view, Greece should consider terminating the Special Protocol or extending the tariff concessions on a most-favoured-nation basis, at an early date."[70]

> "A large majority of the members of the Working Party does not recommend that a waiver be granted as requested by the Government of Greece."[71]

The Report of the Working Party on "United States Caribbean Basin Economic Recovery Act" notes, *inter alia*, the following views:

> "Some members stated that in their view the exceptional circumstances referred to in paragraph 5 of Article XXV had not been established. A deviation from the m.f.n. principle on the basis of geographical and non-economic considerations had to be well justified. These members considered that compliance with the criteria specified in paragraph 3 of the Enabling Clause was *per se* not sufficient to warrant the granting of a waiver. One member noted that the CONTRACTING PARTIES had not defined what constituted the exceptional circumstances referred to in Article XXV:5 and that each contracting party would consider the question individually when deciding how to vote on the proposed waiver. The representative of the United States said that the exceptional circumstances justifying the waiver were basically economic and legal: (i) the economic recovery of the fragile economies of the region required trade policies aimed at achieving sustained investment and growth rates, and (ii) the CBERA established a programme not covered by the provisions of the Enabling Clause, though consistent with its objectives, which required a GATT framework."[72]

> "The Working Party recognized that there are a number of different approaches within the GATT framework to the establishment of preferential schemes and that each case must be analysed on the basis of all the circumstances peculiar to it. Having considered these alternative approaches in this case, a number of members of the Working Party concluded that the waiver procedure under paragraph 5 of Article XXV was the most appropriate alternative with respect to the CBERA. However, others were of the view that this was not the case. Notwithstanding these differing views, it was acknowledged that a decision on whether to request a waiver for the CBERA could only be made by the United States. The United States therefore

[68] C/M/263, p. 23.
[69] L/3447, adopted on 2 December 1970, 18S/179, 181, para. 6.
[70] *Ibid.*, 18S/183, para. 13.
[71] *Ibid.*, 18S/183, para.16.
[72] L/5708, adopted on 6-8 and 20 November 1984, 31S/180, para. 30.

requested that the draft waiver annexed to this report be submitted to the CONTRACTING PARTIES for a vote."[73]

The waiver requested by the United States was granted in a Decision of 15 February 1985.[74]

(4) Effect of waivers

The 1962 Panel Report on the "Uruguayan Recourse to Article XXIII" includes the following footnote regarding "prima facie nullification or impairment":

"It may be noted in this connexion that the status of a measure (that is, whether or not it is consistent with GATT) is not to be affected by a waiver decision taken subsequently. In fact, Decisions taken under Article XXV:5 granting waivers from GATT obligations have normally expressly provided for the continued validity of the procedures of Article XXIII in respect of the otherwise 'waived' obligations (cf. *inter alia* BISD, Third Supplement, pages 35-41; Eighth Supplement, page 22)"[75].

The 1990 Panel Report on "United States - Restrictions on the Importation of Sugar and Sugar-Containing Products Applied Under the 1955 Waiver and Under the Headnote to the Schedule of Tariff Concessions"[76] examined quantitative restrictions on sugar-containing products, which it found were inconsistent with the obligations of the United States under Article XI:1 but in conformity with the terms of a decision of the CONTRACTING PARTIES waiving that obligation in accordance with Article XXV:5. The Panel found that

"Since both Article XI:1 and Article XXV:5 form part of the General Agreement, the imposition of the restrictions in conformity with the Waiver cannot constitute a 'failure of [the United States] to carry out its obligations under this Agreement' within the meaning of Article XXIII:1(a).

...

"... the fact that the restrictions found to be inconsistent with Article XI:1 conform to the terms of the Waiver does not prevent the EEC from bringing a complaint under Article XXIII:1(b) of the General Agreement but it is up to the EEC to demonstrate that a nullification or impairment of benefits accruing to it under the General Agreement has resulted from these restrictions."[77]

The same Panel Report also discusses arguments made by the parties concerning the significance of the Uruguayan Recourse footnote above. The Panel findings provide:

"The Panel ... examined the implication of the note in the report on the Uruguayan Recourse to Article XXIII, according to which '... the status of a measure (that is, whether or not it is inconsistent with GATT) is not affected by a waiver decision ...'. The Panel noted that the panel which submitted this report had examined import restrictions imposed by Germany and that Germany had obtained a waiver for the restrictions but nevertheless insisted that they were covered by the existing legislation clause in the protocol by which it acceded to the General Agreement (BISD 8S/31 and 10S/126). Against this background the footnote can be understood to suggest that a decision by the CONTRACTING PARTIES to waive an obligation for a particular measure does not constitute a ruling by the CONTRACTING PARTIES that the measure is inconsistent with the General Agreement and that, consequently, a contracting party having obtained a waiver for a particular measure is not barred from arguing in proceedings under Article XXIII:2 that the measure would be consistent with the General Agreement even in the absence of the waiver. The footnote therefore does not support the conclusion that a contracting party imposing a measure inconsistent with a particular provision of the General Agreement but covered by the terms of a decision waiving the obligations under that provision in accordance with Article XXV:5 nevertheless fails to carry out its obligations under the General Agreement within the meaning of Article XXIII:1(a). The footnote can in the view of the Panel however be taken as an indication of the fact that a measure inconsistent with a particular

[73] *Ibid.*, 31S/197-198, para. 62.
[74] L/5779, 31S/20.
[75] L/1923, adopted on 16 November 1962, 11S/95, 100, footnote 1.
[76] L/6631, adopted on 7 November 1990, 37S/228.
[77] *Ibid.*, 37S/260-261, paras. 5.18, 5.20.

provision of the General Agreement remains inconsistent with that particular provision even if the CONTRACTING PARTIES authorized in accordance with Article XXV:5 in exceptional circumstances the maintenance of the measure subject to specified conditions."[78]

See also the material under Article XXIII on relationship with Article XXV:5.

(5) Notification, consultation and dispute settlement with respect to waivers

The 1956 Procedures for considering waivers referred to above at page 883 provide that "Any decision granting a waiver should include procedures for future consultation on specific action taken under the waiver, and, where appropriate, for arbitration by the CONTRACTING PARTIES. …"[79] Some waiver decisions explicitly provide for the possibility of "recourse to the appropriate provisions of Article XXIII".[80] Other waiver decisions include special provisions on consultation and dispute settlement which do not explicitly refer to Article XXIII.[81] There have been some cases of invocation of such special dispute settlement procedures, for instance in connection with the waiver to the United Kingdom in connection with items traditionally admitted duty-free from countries of the Commonwealth.[82]

See also under Article II on the December 1993 Decision of the Committee on Tariff Concessions regarding progress reports on implementation under waivers of Article II granted in connection with introduction of the Harmonized System. See also material under Article XXIII concerning the relationship between Article XXIII and Article XXV.

(6) Waivers granted under Article XXV:5

As of 1 January 1995, there had been 115 original waiver decisions by the CONTRACTING PARTIES, as well as many other waiver decisions extending or amending a prior waiver decision. A list of all waiver decisions appears at the end of this chapter.

There are two instances when a waiver was requested but not granted by the CONTRACTING PARTIES. One concerned a request in 1969 by the EEC for a waiver from its obligations under Article I in order to reduce the customs duties in respect of certain citrus fruit originating from Israel and Spain.[83] Another case concerned the request (referred to above) by Greece in 1970 for a waiver from Article I in connection with tariff preferences for certain manufactured products imported from the USSR within specific quota limits.[84]

(7) Extension of a waiver under Article XXV:5

The 1993 Report of the Working Party on the "Andean Trade Preference Act" notes the view of the Working Party that "any extension of the ATPA to new beneficiary countries and to additional products would require a new waiver request".[85]

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[78] *Ibid.*, 37S/260-261, para. 5.19.

[79] 5S/25, adopted 1 November 1956, para. (d).

[80] See, e.g., Waiver granted to the US in connection with import restrictions imposed under Section 22 of the US Agricultural Adjustment Act (of 1933) as amended, Decision of 5 March 1955, 3S/32, 35; Problems raised for contracting parties in eliminating import restrictions maintained during a period of balance-of-payments difficulties ("hard-core waiver decision"), Decision of 5 March 1955, 3S/38, 41; German Import Restrictions, Decision of 30 May 1959, 8S/31, 33; Caribbean Basin Economic Recovery Act, L/5779, Decision of 15 February 1985, 31S/20, 23.

[81] See, e.g., 7S/37, 39; 8S/29, 31; 10S/51, 53; 14S/37, 39.

[82] Waiver at 2S/20, amended at 3S/25; see disputes brought by Germany regarding an increase in the margin of preference on ornamental pottery, IC/SR/44, SECRET/44; and brought by Brazil regarding margin of preference on bananas, C/M/9, L/1749, C/M/10, SR.20/2.

[83] See 17S/61 and C/M/59 and 61.

[84] See 18S/179 and C/M/63 and 65.

[85] L/7190, adopted on 24 March 1993, para. 29; see also discussion at C/M/262, p. 2-5.

(8) Termination of a waiver under Article XXV:5

Concerning the possibility of modifying or terminating a waiver that does not contain an expiration date, the Panel Report on "United States - Restrictions on the Importation of Sugar and Sugar-Containing Products Applied under the 1955 Waiver and under the Headnote to the Schedule of Tariff Concessions" includes the following finding:

> "The Panel, while concluding that the United States had not acted in contradiction with the terms, conditions and procedures of the Waiver by imposing quantitative limitations on imports of sugar-containing products, considered that the CONTRACTING PARTIES, when they granted the Waiver in 1955, may not have expected that the United States would make use of Section 22 in the manner described in paragraphs 5.10 to 5.12 above nor that the United States would pursue a sugar policy of the kind currently pursued, given the assurances analysed in paragraphs 5.14 to 5.15 above. The power of the CONTRACTING PARTIES to grant waivers under Article XXV:5 implies the power to withdraw or modify the waivers granted. The questions of whether the United States uses Section 22 in a manner expected by the CONTRACTING PARTIES when they granted the Waiver and of whether it acts in accordance with the assurances in consideration of which the CONTRACTING PARTIES granted the Waiver may be relevant for a decision of the CONTRACTING PARTIES to withdraw or modify the Waiver. However, it is not the mandate of panels established under Article XXIII:2 to propose changes in GATT provisions, but to make findings regarding the interpretation and application of the existing provisions (cf. BISD 35S/241; L/6568, page 21), and the Panel therefore did not address the question of a withdrawal or modification of the Waiver."[86]

Termination of an existing waiver was also discussed in the 1984 Report of the Working Party on "US Import Restrictions on Agricultural Products".[87]

B. RELATIONSHIP BETWEEN ARTICLE XXV:5 AND OTHER GATT PROVISIONS

1. Article XXX

See the discussion at page 882 regarding the issue raised by Cuba in the Ninth and Tenth Sessions, regarding whether the granting of waivers with respect to obligations under Part I was inconsistent with the amendment provisions of Article XXX, which provide that amendments to the provisions of Part I may only become effective upon acceptance by all the contracting parties.

2. The "Enabling Clause"

The 1983 request by the USA for a waiver for the Caribbean Basin Economic Recovery Act (CBERA)[88] notes that "the United States' request is made in accordance with footnote 2 of paragraph 2 of the Framework Agreement and paragraph 5 of Article XXV of the General Agreement". In reply to a question, this reference to the 1979 GATT Decision on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" was explained by the US as follows:

> "The United States has interpreted 'the GATT provisions for joint action' in footnote 2 of paragraph 2 of the Enabling Clause as referring to provisions of the GATT, including the general waiver provision contained in paragraph 5 of Article XXV which deals with joint action by contracting parties. It was for this reason that the United States cited both footnote 2 of paragraph 2 of the Enabling Clause and paragraph 5 of Article XXV in its waiver request."[89]

During the meeting of the Working Party on the US Caribbean Basin Economic Recovery Act on 10 April 1984, the Legal Advisor to the Director-General pointed out in response to a request for clarification

[86] L/6631, adopted on 7 November 1990, 37S/228, 259, para. 5.16.
[87] L/5707, adopted on 6-8 and 20 November 1984, 31S/198, paras. 27ff.
[88] L/5573, p. 1.
[89] L/5620, p. 4.

"that the interpretation of GATT provisions was not within the competence of the Secretariat; only the CONTRACTING PARTIES could give legally valid interpretations. On that understanding he said that, although in his opinion the words 'the GATT provisions for joint action' in footnote 2 could be interpreted as referring to the provisions of Article XXV, paragraph 1, he had been assured that the drafters of the text had intended the phrase to refer to the waiver procedure in Article XXV, paragraph 5, as being appropriate to cover such special and differential treatment. He recalled, however, that the only agreement which had previously been notified with reference to the footnote, SPARTECA, had not been dealt with as a waiver case. He did not think that the footnote should be interpreted as referring to Article XXXVIII which did not contain any procedural provisions."[90]

The Report of the Working Party on "United States Caribbean Basin Economic Recovery Act" notes:

"At the request of the Working Party, the representative of the secretariat described the Secretariat's understanding of the meaning of footnote 2 of paragraph 2 of the Enabling Clause. In brief, the Enabling Clause provided authority or cover only for the kinds of preferential treatment described therein. Footnote 2 of paragraph 2 of the Enabling Clause recognized that there could be other situations involving preferential treatment not falling within the scope of paragraph 2 which the CONTRACTING PARTIES might wish to cover under the GATT provisions for joint action. The provisions in question could not be those of Part IV, including Article XXXVIII thereof, as these did not provide authority for preferential treatment. The joint action envisaged had to be in terms of paragraph 5 of Article XXV irrespective of whether this was specifically mentioned or not."[91]

The Report of the Working Party on the "Third ACP-EEC Convention of Lomé" records the response of the spokesman for the ACP States to the question of why the EC had not sought a waiver from Article XXV obligations for the Lomé Convention as the United States had done for the Caribbean Basin Initiative. The ACP spokesman stated that the Convention had been agreed on the basis of full equality between the ACP States and the EC and that all the parties believed that the Convention was in full conformity with the General Agreement including Part IV thereof.[92]

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Institutional provisions: The institutional provisions of the US Charter appear in Chapter VII; in the London Draft Charter in Chapter VIII; in the New York Draft Charter in Chapter VIII; in the Geneva Draft Charter in Chapter VII; and in the Havana Charter in Chapter VII. All Charter drafts except the Havana Charter included provision for a committee within the ITO which would be composed of Members having made effective the General Agreement. The concept of a body to administer the General Agreement appeared first in Annexure 10 of the London Report, on giving effect to certain provisions of the Charter by means of a General Agreement on Tariffs and Trade among the members of the Preparatory Committee. Annexure 10 noted that certain provisions of such an agreement required for their successful operation the existence of an international body, and proposed that a provisional international agency be created which would go out of existence upon establishment of the ITO.[93] The New York draft of the GATT provided for establishment of an Interim Trade Committee.[94] In discussions at Geneva the references were changed to "CONTRACTING PARTIES": see page 874.[95] The organization created was nevertheless envisioned to be permanent in character. Although Article XXIX provides for suspension of Part II upon entry into force of the Havana Charter, Article XXV would not be thus suspended, and the CONTRACTING PARTIES were intended to have a continuing role in the oversight of Parts I and III.

[90]Spec(84)23, p. 3.
[91]L/5708, adopted on 6-8 and 20 November 1984, 31S/180, 189-90, para.31.
[92]L/6382, adopted on 22 September 1988, 35S/321, 327, para. 19.
[93]London Report, p. 51.
[94]New York Report p. 78 (New York draft GATT Art. XXII).
[95]See EPCT/TAC/PV/11 (discussion regarding powers of the Committee), EPCT/TAC/PV/12 p. 2-5 (discussion and approval of change to "Contracting Parties"), EPCT/135 (draft of the General Agreement including this change), EPCT/209 (Legal and Drafting Committee Report on Part III of the General Agreement), EPCT/TAC/PV/25 p. 2-3, 12 (discussion and approval of change to CONTRACTING PARTIES, suggested in EPCT/209).

Waiver provisions: In the 1946 US Draft Charter, Article 55:2 provided for waiver authority, by two-thirds vote, for the obligations in Chapter IV of the Draft Charter (general commercial policy). Article 66(2) of the London Draft Charter provided for waiver authority for any obligation in the Charter. This provision was kept, with no substantive changes as to scope, as Article 66:2 of the New York Draft Charter. The New York draft of the General Agreement on Tariffs and Trade included an Article XXII on the functions and structure of the Interim Trade Committee, including a provision on waiver of any obligation by two-thirds vote.[96] The waiver provision was then reformulated in GATT Article XXV:5(a) and the parallel provisions of Article 74:3 of the Geneva Draft Charter, to provide that the exceptional circumstances in which a waiver may be granted are those "not elsewhere provided for" in GATT or the Charter.[97] An almost-identical text on waivers appears in Article 77:3 of the Havana Charter.

The text of Article XXV in the General Agreement as agreed on 30 October 1947 was identical to the present text. During the first session of the CONTRACTING PARTIES, which was held at the Havana Conference, it was agreed (in connection with changes in Articles XXXII, XXXIII and XXXV, described *infra* under Article XXXV) to add subparagraphs 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 determined to have "failed without sufficient justification to carry out with [the complaining] contracting party negotiations of the kind described in paragraph 1 of Article 17 of the Havana Charter". If concessions referred were withheld, the contracting party subject to such withholding would then be free to withdraw from the General Agreement on sixty days' notice. This provision would not apply as between any two contracting parties the Schedules of which contained concessions initially negotiated between them.[98] Paragraph 17:1 of the Havana Charter referred to "negotiations directed to the substantial reduction of the general levels of tariffs and other charges on imports and exports, and to the elimination of the preferences referred to in paragraph 2 of Article 16 [corresponding to GATT Article I:2] on a reciprocal and mutually advantageous basis". At the Review Session in 1954-55 it was agreed to delete subparagraphs 5(b)-(d). This deletion was effected through the Protocol Amending the Preamble and Parts II and III of the General Agreement, which entered into force October 1957. The Report of the Review Working Party on "Schedules and Customs Administration" noted in this connection:

> "The Working Party recommends the deletion of paragraphs 5(b), (c) and (d). During the six years that the provision of sub-paragraphs (b) and (c) had been applicable, no contracting party has had recourse to them and, with one exception, no member of the Working party supported their retention. The representative of Cuba opposed their deletion on the ground that they constitute a right which contracting parties have under the Agreement and this right should not be withdrawn and reserved the position of his government. As a consequential amendment the words 'without prejudice to the provisions of paragraph 5(b) of Article XXV' should be deleted from Article XXXV."[99]

[96]See successive drafts of waiver provision at EPCT/C.6/65/Rev.2 p. 2-3, EPCT/C.6/79 p. 3, EPCT/C.6/85/Rev. 1 p. 34.

[97]Geneva Report p. 48. For adoption by the Trade Agreements Committee see EPCT/TAC/SR/12 p. 1-2, EPCT/TAC/PV/19 p. 35; for adoption of later text in EPCT/209 p. 8, see EPCT/TAC/PV/25 p. 11.

[98]Protocol Modifying Certain Provisions of the General Agreement on Tariffs and Trade, 24 March 1948.

[99]L/329, adopted on 26 February 1955, 3S/205, 216, para. 25.

IV. RELEVANT DOCUMENTS

London

Discussion:	EPCT/C.V/PV/9 (waivers)
Reports:	EPCT/C.V/25, London Report p. 22 (waivers)

New York

Reports:	EPCT/C.6/65/Rev.2, EPCT/C.6/79, EPCT/C.6/85/Rev.1

Geneva

Discussion:	EPCT/TAC/SR/11,12 EPCT/TAC/PV/12, 19, 21, 25
Reports:	EPCT/135, 189, 196, 209, 214/Add.1/Rev.1
Other:	EPCT/W/272, 273, 274, 277, 285, 312, 322, 330

Havana

Reports:	E/CONF.2/45

CONTRACTING PARTIES

Discussion:	GATT/CP.3/SR.37 GATT/CP.5/SR.24 GATT/CP.6/SR.20
Reports:	GATT/CP.5/9 GATT/CP.6/35, 54 GATT/CP/1, 32, 61 L/35, L/39

Review Session

Discussion:	SR.9/36, 38, 47
Reports:	W.9/114, 212, 215, 236
Other:	L/189, L/261/Add.1, L/273, L/276, L/292 W.9/62, 93, 114, 179, 236

V. WAIVERS GRANTED BY THE CONTRACTING PARTIES UNDER ARTICLE XXV:5

Updated to 1 January 1995. Notes appear following the table. For those waivers which were still in effect on 1 January 1995, the "date of expiry" cell is shaded. In certain instances, measures covered by a waiver may also fall within the scope of a later decision of the CONTRACTING PARTIES, such as the Decision of 29 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause").

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
(a) Waivers for measures of one contracting party								
1.	Argentina	Establishment of a new Schedule LXIV ("Harmonized System")	II	03.12.1992 19.07.1993 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension Extension	L/7150 L/7271 L/7381 L/7505 L/7592	30.06.1993 31.12.1993 30.06.1994 31.12.1994 30.06.1995	
2.	Australia (1)	Treatment of products of Papua New Guinea	I	24.10.1953 25.11.1955 13.11.1956 30.05.1959	Original decision Amendment decision Amendment decision Amendment decision	2S/18 4S/14 5S/34 8S/28	No time limit	Annual
3.	Australia	Base dates under Article I:4 (for products of Malawi and Zimbabwe only)	I	19.11.1960	Original decision	9S/46	No time limit	
4.	Australia	Tariff preference for less-developed countries	I	28.03.1966	Original decision	14S/23	No time limit	Annual
5.	Bangladesh	Establishment of a new Schedule LXX ("Harmonized System")	II	18.07.1988 24.07.1989 05.12.1989 16.07.1990 13.12.1990 01.07.1991 14.12.1991 20.07.1992 03.12.1992 19.07.1993 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	35S/348 L/6544 L/6616 L/6702 L/6790 L/6898 L/6951 L/7053 L/7142 L/7272 L/7382 L/7506 L/7593	30.06.1989 31.12.1989 30.06.1990 31.12.1990 30.06.1991 31.12.1991 30.06.1992 31.12.1992 30.06.1993 31.12.1993 30.06.1994 31.12.1994 30.06.1995	
6.	Belgium	Certain agricultural products (under "hard-core" waiver)	XI	03.12.1955	Original decision	4S/22	03.12.1960 and 31.12.1962	Annual
7.	Bolivia	Establishment of a new Schedule LXXXIV	II	03.12.1992 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension	L/7151 L/7383 L/7507 L/7594	31.12.1993 30.06.1994 31.12.1994 30.06.1995	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
8.	Brazil	Withdrawal of certain concessions	II	07.08.1948	Original decision	GATT/CP/1, p. 29	15.12.1948	
				22.04.1949	Extension	GATT/CP/32, p. 19	15.06.1949	
9.	Brazil	New customs tariff	II	16.11.1956	Original decision	5S/36	12 months after new tariff enactment	
				10.07.1958	Extension	7S/129	31.07.1959	
				29.05.1959	Extension	8S/179	20.11.1959	
				06.11.1959	Extension	8S/179	04.06.1960	
				03.06.1960	Extension	9S/267	03.08.1960	
				03.08.1960	Extension	9S/267	02.09.1960	
10.	Brazil	New Schedule III	II	19.11.1960	Original decision	9S/36	01.05.1961	
11.	Brazil	Renegotiation of schedule revision	II	27.02.1967	Original decision	15S/75	29.02.1968	
				29.02.1968	Extension	16S/19	25th CP Sess.	
				25.11.1968	Extension	16S/20	30.03.1969	
				19.05.1969	Extension	17S/23	26th CP Sess.	
				20.02.1970	Extension	17S/24	27th CP sess.	
				19.11.1971	Extension	18S/28	31.12.1972	
				30.01.1973	Extension	20S/25	31.12.1973	
				01.02.1974	Extension	21S/24	31.03.1974	
				30.04.1974	Extension	21S/24	30.04.1974	
				26.11.1975	New decision (susp.of Art. II)	22S/10	31.03.1977	
				31.03.1977	Extension	24S/13	31.03.1978	
				17.04.1978	Extension	25S/10	31.03.1979	
12.	Brazil	Establishment of a new Schedule III ("Harmonized System")	II	08.11.1988	Original decision	35S/17	30.12.1989	
				05.12.1989	Extension	36S/431	30.06.1990	
				16.07.1990	Extension	L/6703	31.12.1990	
				07.12.1990	Extension	L/6776	30.06.1991	
				01.07.1991	Extension	L/6874	31.12.1991	
				04.12.1991	Extension	L/6952	30.06.1992	
				20.07.1992	Extension	L/7054	31.12.1992	
				03.12.1992	Extension	L/7149	30.06.1993	
				19.07.1993	Extension	L/7273	31.12.1993	
13.	Canada	Delay in implementation of certain concessions in Geneva (1967) Protocol	II	25.07.1968	Original decision	16S/20	01.01.1969	
14.	Canada	CARIBCAN	I	26.11.1986	Original decision	L/6102, SR.42/4	15.06.1998	Annual

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
15.	Chile	Import surcharges	II	27.05.1959 18.11.1960 08.12.1961 13.11.1962 21.06.1963 15.03.1965	Original decision Extension Extension Extension Extension Extension	8S/29 9S/38 10S/43 11S/68 12S/52 13S/22	31.12.1960 31.12.1961 31.12.1962 31.12.1963 31.12.1964 31.12.1966	
16.	Chile	Renegotiation of schedule	II	31.12.1966 20.11.1967 25.11.1968 23.06.1969 20.02.1970	Decision on new schedule Extension Extension Extension Extension	15S/83 15S/85 16S/27 17S/25 17S/26	31.12.1967 25th CP Sess. 30.06.1969 26th CP Sess. 31.12.1970	
17.	Chile	Establishment of a new Schedule VII	II	05.12.1989 24.05.1991 04.12.1991 20.07.1992 03.12.1992 19.07.1993	Original decision Extension Extension Extension Extension Extension	L/6614 L/6857 L/6953 L/7055 L/7140 L/7399	30.04.1991 31.12.1991 30.06.1992 31.12.1992 30.06.1993 31.12.1993	
18.	Colombia	Establishment of a new schedule LXXVI ("Harmonized System")	II	13.12.1990 04.01.1991 20.07.1991 03.12.1992	Original decision Extension Extension Extension	L/6791 L/6954 L/7056 L/7146	31.12.1991 30.06.1992 31.12.1992 30.06.1993	
19.	Costa Rica	Establishment of a new Schedule LXXXV	II	26.01.1994	Original decision	L/7403	31.12.1994	
20.	Cuba	Import restrictions	XVIII	14.09.1948	Original decision	GATT/CP/1, p. 34	3rd CP Sess.	
21.	Cuba (2)	Negotiations under Article XXVIII:1	XXVIII	22.11.1951	Original decision	GATT/CP/130, p. 5	7th CP Sess.	Report on negotiations
22.	Cuba (3)	Import controls during renegotiation of Schedule IX	XI	30.11.1957	Original decision	6S/27	Until 30th day after negotiations concluded	
23.	Cuba	Provisions of Article XV:6	XV	07.08.1964	Original decision	13S/23	No time limit	No regular reporting
24.	Czech and Slovak Federal Republic	Renegotiation of Schedule X	II	04.12.1991	Original decision	L/6968	31.12.1992	
25.	Czech and Slovak Federal Republic	Provisions of Article XV:6	XV	05.03.1955 30.11.1957	Original decision Amendment	3S/43 6S/28	See endnote (4)	No regular reporting
26.	Egypt	Renegotiation of Schedule LXIII	II	13.08.1992 19.07.1993 17.01.1994 21.07.1994	Original decision Extension Extension Extension	L/7071 L/7231 L/7391 L/7517	30.06.1993 31.12.1993 30.06.1994 WTO entry into force	
27.	El Salvador	Establishment of a new Schedule LXXXVII	II	26.01.1994 09.12.1994	Original decision Extension	L/7404 L/7595	31.12.1994 30.06.1995	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
28.	Finland	Adjustment of specific duties	II	03.03.1955	Original decision	3S/28	04.04.1955	
29.	France (5)	Customs union with Italy	XXIV	20.03.1948	Original decision	GATT/1/53 pp. 7-8	No time limit	
30.	France (6)	Trade with the Saar	I	22.11.1957	Original decision	6S/30	When EEC intra-trade is duty-free	Annual
31.	France (7)	French trading arrangements with Morocco	I	19.11.1960	Original decision	9S/39	No time limit	
32.	Germany (6)	Trade with the Saar	I	22.11.1957	Original decision	6S/30	When EEC intra-trade is duty-free	Annual
33.	Germany	Import restrictions	XI	30.05.1959	Original decision	8S/31	Nov. 1962	Annual
34.	Greece	Renegotiation of concessions	II	12.11.1959 02.06.1960	Original decision Extension	8S/51 9S/40	16th CP Sess. 17th CP Sess.	
35.	Guatemala	Establishment of a new Schedule LXXXVIII	II	26.01.1994 09.12.1994	Original decision Extension	L/7405 L/7596	31.12.1994 30.06.1995	
36.	Haiti	Extension of time limit for submission of statement under Article XVIII:12	XVIII	21.03.1950	Original decision	GATT/CP/61, p. 5	27.11.1950	
37.	Hungary	Establishment of a new schedule LXXI ("Harmonized System")	II	07.12.1990 04.12.1991 20.07.1992 03.12.1992	Original decision Extension Extension Extension	L/6777 L/6955 L/7057 L/7148	31.12.1991 30.06.1992 31.12.1992 30.06.1993	
38.	India	Regulatory duty	II	18.04.1972 29.07.1972	Original decision New decision	19S/7 19S/7	30.06.1972 15.05.1973	
39.	India	Auxiliary duty of customs	II	15.11.1973 30.04.1974 05.05.1974 30.07.1976 31.08.1977 28.06.1978 30.04.1979 30.04.1980 13.04.1981 03.05.1982 11.04.1983 16.04.1984 03.06.1985	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	20S/26 21S/25 22S/12 23S/6 24S/14 25S/11 26S/226 27S/11 28S/19 29S/25 30S/9 31S/18 32S/16	31.03.1974 31.03.1975 30.06.1976 30.06.1977 31.03.1978 31.03.1979 31.03.1980 31.03.1981 31.03.1982 31.03.1983 31.03.1984 31.03.1985 31.03.1986	
40.	India	Renegotiation of Schedule XII	II	16.03.1973 31.03.1974 30.03.1976	Original decision Extension New decision	20S/26 21S/26 23S/7	30.06.1974 30th CP Sess. 31.12.1977	
41.	Indonesia	Renegotiation of Schedule	II	10.04.1961 25.07.1961	Original decision Amendment	10S/43 10S/45	09.12.1961 09.12.1961	Annual

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
42.	Indonesia	Provisions of Article XV:6	XV	28.02.1966	Original decision	14S/33	See endnote (8)	No regular reporting
43.	Indonesia	Renegotiation of Schedule XXI	II	13.11.1973	Original decision	20S/28	31.12.1975	
				26.11.1975	Extension	22S/13	31.12.1976	
44.	Indonesia	Establishment of a new Schedule XXI	II	22.11.1976	New decision	23S/9	31.12.1977	Regular reporting
				29.11.1977	Extension	24S/15	31.12.1978	
				27.11.1978	Extension	25S/12	31.12.1979	
				29.02.1980	Extension	27S/12	31.12.1980	
				25.11.1980	Extension	27S/13	31.12.1981	
				24.11.1981	Extension	28S/20	31.12.1982	
				22.04.1988	Extension	35S/347	31.12.1988	
				08.11.1988	Extension	35S/18	31.10.1989	
				13.11.1989	Extension	36S/431	30.06.1990	
				16.07.1990	Extension	L/6704	31.12.1990	
45.	Israel	Establishment of a new Schedule XLII ("Harmonized System")	II	03.12.1987	Original decision	34S/29	30.06.1988	
				18.07.1988	Extension	35S/349	31.12.1988	
				08.11.1988	Extension	35S/19	30.06.1989	
				16.07.1990	Extension	L/6705	31.12.1990	
				07.12.1990	Extension	L/6778	30.06.1991	
				01.07.1991	Extension	L/6897	31.12.1991	
				04.12.1991	Extension	L/6956	30.06.1988	
				20.07.1992	Extension	L/7058	31.12.1992	
				03.12.1992	Extension	L/7136	30.06.1993	
				19.07.1993	Extension	L/7275	31.12.1993	
				17.01.1994	Extension	L/7384	30.06.1994	
				21.07.1994	Extension	L/7508	31.12.1994	
				09.12.1994	Extension	L/7597	30.06.1995	
46.	Italy	Measures notified under Article XVIII:11	XVIII	13.08.1949	Original decision	GATT/CP/32, p. 23	12.1950 (9)	
47.	Italy	Imports from Libya	I	26.10.1951	Original decision	II/10	30.09.1952	Annual
				09.10.1952	Extension	1S/14	31.12.1955	
				17.11.1954	Amendment	3S/21		
				25.11.1955	Extension	4S/16	31.12.1958	
				20.11.1958	Extension	7S/34	31.12.1961	
				16.11.1961	Extension	10S/45	31.12.1964	
				25.01.1965	Extension	13S/24	31.12.1967	
				21.11.1967	Extension	15S/85	31.12.1969	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
48.	Italy	Imports from Somalia	I	19.11.1960 01.04.1966 21.11.1967 14.01.1970 28.02.1970	Original decision Extension Extension Extension Amendment to correct the extension date	9S/40 14S/34 15S/87 17S/27 17S/28	31.12.1965 31.12.1967 30.06.1968 and 31.12.1969 28.02.1970 31.12.1970	
49.	Jamaica	Margins of preference	I	02.03.1971	Original decision	18S/33	No time limit	
50.	Jamaica	Establishment of new Schedule LXVI	II	20.08.1993 21.07.1994 09.12.1994	Original decision Extension Extension	L/7291 L/7509 L/7598	31.07.1994 31.12.1994 30.07.1995	
51.	Luxembourg (10)	Import restrictions on certain agricultural products	XI	03.12.1956	Original decision	4S/27	To be reviewed in 1960	Annual
52.	Malawi (11)	Base dates under Article I:4	I	19.11.1960	Original decision	9S/46	No time limit	
53.	Malawi	Renegotiation of schedule	I II	20.11.1967 19.11.1968	Original decision Extension	15S/89 16S/27	31.12.1968 30.06.1969	
54.	Malawi	Renegotiation of Schedule LVIII	II	03.12. 1992 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension	L/7152 L/7392 L/7518 L/7589	31.12.1993 30.06.1994 31.12.1994 30.06.1995	
55.	Malaysia	Establishment of a new Schedule XXXIX ("Harmonized System")	II	03.12.1987 18.07.1988 08.11.1988 24.07.1989 05.12.1989 16.07.1990 13.12.1990 01.07.1991 04.12.1991 20.07.1992 03.12.1992	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	34S/30 35S/350 35S/20 36S/431 36S/431 L/6706 L/6789 L/6875 L/6957 L/7059 L/7143	30.06.1988 31.12.1988 30.06.1989 31.12.1989 30.06.1990 31.12.1990 30.06.1991 31.12.1991 30.06.1992 31.12.1992 30.06.1993	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
56.	Mexico	Establishment of a new Schedule LXXVII ("Harmonised System")	II	18.07.1988 08.11.1988 24.07.1989 05.12.1989 16.07.1990 07.12.1990 01.07.1991 04.12.1991 20.07.1992 03.12.1992 19.07.1993 17.01.1994 21.07.1994	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	35S/351 35S/21 36S/431 36S/431 L/6707 L/6779 L/6876 L/6958 L/7060 L/7152 L/7276 L/7385 L/7510	31.12.1988 01.07.1989 31.12.1989 30.06.1990 31.12.1990 30.06.1991 31.12.1991 30.06.1992 31.12.1992 30.06.1992 31.12.1993 30.06.1994 31.12.1994	
57.	Morocco	Establishment of a new Schedule LXXXI	II	08.11.1988	Original decision	35S/21	30.06.1989	
58.	Morocco	Establishment of a new Schedule LXXXI	II	20.07.1992 19.07.1993 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension Extension	L/7068 L/7277 L/7386 L/7511 L/7599	30.06.1993 31.12.1993 30.06.1994 31.12.1994 30.06.1995	
59.	Netherlands	Waiver of requirements regarding dates in Article XVIII:6	XVIII	14.09.1948	Original decision	GATT/CP/1, p. 33	See table endnote (12)	
60.	New Zealand (13)	Provisions of Article XV:6	XV	20.01.1955 30.11.1957	Original decision Amendment	3S/42 6S/32	See endnote (14)	No regular reporting
61.	New Zealand	Renegotiations of Schedule XIII	II	30.11.1957 10.11.1958 04.06.1960 18.11.1960 06.12.1961 31.10.1962 31.01.1964	Original decision Extension New decision Extension Extension Extension Extension	6S/34 7S/36 9S/42 9S/44 10S/46 11S/69 12S/53	Nov. 1958 (end, 13th CP Sess.) Nov. 1959 (end, 15th CP Sess. 31.12.1960 31.12.1961 31.12.1962 31.12.1963 31.12.1964	
62.	New Zealand (15)	Tariff-free quotas for handicrafts from South Pacific Islands	I	13.11.1973	Original decision	20S/30	31.12.1976	Annual
63.	Nicaragua (16)	Temporary increase in import duties	II	20.11.1959 09.11.1962	Original decision Extension	8S/52 11S/70	30.06.1962 30.11.1963	Annual
64.	Nicaragua (17)	Increase in rates of duty specified in Schedule XXIX	II	23.11.1961 17.03.1965	Original decision Extension	10S/48 13S/26	22.11.1964 23.11.1967	
65.	Nicaragua	Establishment of a new Schedule XXIX	II	26.01.1994 09.12.1994	Original decision Extension	L/7406 L/7600	31.12.1994 30.06.1995	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
66.	Pakistan	Flood relief surcharge	II	28.01.1974	Original decision	21S/27	31.12.1974	
				04.12.1991	Extension	L/6959	30.06.1992	
				20.07.1992	Extension	L/7061	31.12.1992	
67.	Pakistan	Establishment of a new Schedule XV	II	29.11.1977	Original decision	24S/15	31.12.1979	
				27.11.1979	Extension	26S/227	31.12.1980	
				25.11.1980	Extension	27S/14	31.12.1981	
				24.11.1981	Extension	28S/21	31.12.1982	
				22.11.1982	Extension	29S/26	31.12.1983	
				07.11.1983	Extension	30S/10	31.12.1984	
				30.11.1984	Extension	31S/19	31.12.1985	
				26.11.1985	Extension	32S/17	31.12.1986	
				24.11.1986	Extension	33S/99	31.12.1987	
				03.12.1987	Extension	34S/34	31.12.1988	
				23.01.1989	Extension	36S/431	31.12.1989	
				05.12.1989	Extension	36S/431	30.06.1990	
				16.07.1990	Extension	L/6708	31.12.1990	
				07.12.1990	Extension	L/6780	30.06.1991	
				01.07.1991	Extension	L/6877	31.12.1991	
				04.12.1991	Extension	L/6959	30.06.1992	
				20.07.1992	Extension	L/7061	31.12.1992	
				03.12. 1992	Extension	L/7137	30.06.1993	
				19.07.1993	Extension	L/7278	31.12.1993	
				17.01.1994	Extension	L/7387	30.06.1994	
				21.07.1994	Extension	L/7512	31.12.1994	
				09.12.1994	Extension	L/7601	30.06.1995	
68.	Peru	Import surcharges	I	21.11.1958	Original decision	7S/37	08.06.1961	Annual
			II	17.11.1959	Amendment decision	8S/56		
				19.11.1960	Extension	9S/45	08.06.1962	
				06.12.1961	Extension	10S/50	30.04.1963	
69.	Peru	Import surcharges	II	20.03.1964	Original decision	12S/54	March 1965 (end, 22nd Sess.)	
70.	Peru	Renegotiation of schedule	II	25.03.1965	Original decision	13S/27	31.03.1966	
				01.04.1966	Extension	14S/36	31.12.1966	
71.	Peru	Establishment of a new Schedule XXXV	II	20.07.1992	Original decision	L/7067	31.05.1993	
				14.06.1993	Extension	L/7245	31.12.1993	
				17.01.1994	Extension	L/7388	30.06.1994	
				21.07.1994	Extension	L/7513	Entry into force of WTO	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
72.	Philippines	Establishment of a new Schedule LXXV ("Harmonized System")	II	13.03.1989 05.12.1989 16.07.1990 13.12.1990 01.07.1991 04.12.1991 20.07.1992	Original decision Extension Extension Extension Extension Extension Extension	36S/431 L/6613 L/6709 L/6788 L/6878 L/6960 L/7062	31.12.1989 30.06.1990 31.12.1990 30.06.1991 31.12.1991 30.06.1992 31.12.1992	
73.	Romania	Renegotiation of Schedule LXIX	II	04.12.1991	Original decision	L/6967	31.12.1992	
74.	Senegal	Establishment of a new schedule XLIX	II	07.12.1990 04.12.1991 20.07.1992 03.12.1992 19.07.1993 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension Extension Extension Extension Extension	L/6784 L/6963 L/7063 L/7141 L/7282 L/7393 L/7519 L/7590	31.12.1991 30.06.1992 31.12.1992 30.06.1993 31.12.1993 30.06.1994 31.12.1994 30.06.1995	
75.	South Africa (18)	Base dates under Article I:4	I	19.11.1960	Original decision	9S/46	No time limit	
76.	South Africa	Treatment of Rhodesia and Nyasaland products	I	04.06.1960	Original decision	9S/51	30.06.1965	Annual
77.	Sri Lanka (Ceylon)	Release under Article XVIII:8	XVIII	13.08.1949	Original decision	II/26	4th CP Sess.	
78.	Sri Lanka (Ceylon) (19)	Temporary duty increases; increase in margins of preference	II,I	10.04.1961 15.11.1962 25.03.1965 06.04.1966 21.01.1967 25.11.1968 21.05.1971	Original decision New decision Extension Extension New decision Decision Extension	10S/35 11S/60 13S/21 14S/31 15S/76 16S/22 18S/29	31.12.1962 31.12.1964 31.12.1966 31.12.1966 31.12.1968 31.12.1970 31.12.1971	Annual
79.	Sri Lanka	Establishment of a new Schedule VI ("Harmonized System")	II	08.11.1988 24.07.1989 05.12.1989 16.07.1990 07.12.1990 01.07.1991 04.12.1991 20.07.1992 03.12.1993 19.07.1993 17.01.1994 21.07.1994 09.12.1994	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	35S/22 36S/431 36S/431 L/6710 L/6781 L/6879 L/6961 L/7064 L/7138 L/7279 L/7389 L/7514 L/7602	30.06.1989 29.12.1989 30.06.1990 31.12.1990 30.06.1991 31.12.1991 30.06.1992 31.12.1992 30.06.1993 31.12.1993 30.06.1994 31.12.1994 30.06.1995	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
80.	Trinidad and Tobago	Establishment of a new Schedule LXVII	II	20.8.1993 21.07.1994 09.12.1994	Original decision Extension Extension	L/7399 L/7515 L/7603	31.07.1994 31.12.1994 30.06.1995	
81.	Thailand	Establishment of a new Schedule LXXIX	II	03.12.1987	Original decision	34S/31	30.06.1988	
82.	Tunisia	Temporary suspension of bound duties	II	17.01.1994	Original decision	L/7380	31.12.1996	
83.	Turkey	Renegotiation of Schedule XXXVII	II	19.11.1960 19.05.1961	Original decision Extension	9S/49 10S/51	18th CP Sess. 19th CP Sess.	
84.	Turkey	Renegotiation of Schedule XXXVII	II	22.08.1964 01.04.1966	Original decision Extension	13S/29 14S/36	31.10.1965 30.09.1966	
85.	Turkey	Stamp duty	II	20.07.1963 11.11.1967 24.08.1969 30.01.1973 03.07.1973 15.05.1975 17.04.1978 27.11.1979 24.11.1981 21.11.1983 26.11.1985 09.11.1987 05.12.1988 04.11.1991	Original decision Amendments to extension Amendment Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	12S/55 15S/90 17S/28 20S/31 20S/32 22S/13 25S/12 26S/228 28S/22 30S/11 32S/18 34S/35 36S/433 L/6964	31.12.1967 31.12.1972 - 31.05.1973 30.06.1975 31.12.1977 31.12.1979 31.12.1981 31.12.1983 31.12.1985 31.12.1987 31.12.1989 31.12.1991 31.12.1992	Annual. Stamp duty terminated; see L/7072
86.	Turkey	Establishment of a new Schedule XXXVII ("Harmonized System")	II	08.11.1988 05.12.1989 07.12.1990 01.07.1991 04.12.1991 20.07.1992 03.12.1992	Original decision Extension Extension Extension Extension Extension Extension	35S/24 L/6623 L/6782 L/6881 L/6962 L/7065 L/7135	31.12.1989 31.12.1990 30.06.1990 31.12.1991 30.06.1992 31.12.1992 30.06.1993	
87.	United Kingdom	Waiver of date requirements in Article XVIII:6 with respect to restrictions on imports of tea into Mauritius and on imports of filled soap into Northern Rhodesia in force on 1 September 1947	XVIII	14.09.1948	Original decision	GATT/CP/1, p. 33	See endnote (20)	
88.	United Kingdom	Increase in margins of preference for items traditionally imported duty-free from Commonwealth	I	24.10.1953 05.03.1955	Original decision Amendment	2S/20 3S/25	No time limit	Annual. Special dispute settlement procedure.
89.	United Kingdom	Special problems of dependent overseas territories: increase in margins of preference etc.	I, VI, XVI, XIX	05.03.1955	Original decision	3S/21	No time limit	Annual. Special dispute settlement procedure.

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
90.	United States	Trust territory of Pacific Islands	I	08.09.1948	Original decision	II/9	No time limit	
91.	United States	Temporary modification of a concession on potatoes	II	03.04.1950	Original decision	GATT/CP/61, p. 10	15.09.1951	
92.	United States	Section 22 of Agricultural Adjustment Act	II, XI	05.03.1955	Original decision	3S/32	No time limit	Annual
93.	United States	Imports of automotive products	I	20.12.1965	Original decision	14S/37	No time limit	Annual
94.	United States	Tariff classification	II	20.07.1963 20.06.1964 30.06.1965 01.12.1965	Original decision Extension Extension Amendment	12S/57 13S/30 14S/43 14S/43	30.06.1964 30.06.1965 30.06.1966 -	
95.	United States	Caribbean Basin Economic Recovery Act	I	15.02.1985	Original decision	31S/20	30.09.1995	Annual
96.	United States	Andean Trade Preference Act	I	19.05.1992	Original decision	L/6991	04.12.2001	
97.	Uruguay	Import surcharges	II	08.05.1961 18.03.1964 23.03.1965 14.12.1965 17.11.1967 26.07.1968 20.02.1970 28.08.1970 10.08.1971 19.11.1971 15.07.1972	Original decision Extension Extension Extension Extension Extension Extension Extension Extension Extension Extension	10S/51 12S/59 13S/31 14S/44 15S/93 16S/28 17S/31 18S/34 18S/35 18S/36 19S/8	01.07.1963 31.03.1965 31.12.1965 24th CP Session 30.06.1968 End of last CP Session in 1969 01.08.1970 30.06.1971 27th CP Session 31.05.1972 30.09.1972	Annual

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
	Uruguay	Import surcharges (replacement of 1961 waiver decision)	II	24.10.1972	New decision	19S/9	30.06.1974	Annual
				22.07.1974	Extension	21S/28	30th CP Session	
				19.11.1974	Extension	21S/29	30.06.1976	
				09.09.1976	Extension	23S/11	30.06.1978	
				18.07.1978	Extension	25S/14	31.12.1978	
				31.08.1979	Extension	26S/229	31.12.1979	
				25.11.1980	Extension	27S/15	31.12.1981	
				24.11.1981	Extension	28S/23	30.06.1982	
				30.07.1982	Extension	29S/27	31.12.1982	
				22.11.1982	Extension	29S/28	30.06.1983	
				27.06.1983	Extension	30S/13	31.12.1983	
				21.11.1983	Extension	30S/14	30.06.1984	
				16.07.1984	Extension	31S/23	30.06.1985	
				08.07.1985	Extension	32S/20	30.06.1986	
				18.06.1986	Extension	33S/100	30.06.1987	
				20.08.1987	Extension	L/6207	30.06.1988	
				18.07.1988	Extension	35S/253	30.06.1989	
				24.07.1989	Extension	36S/432	30.06.1990	
98.	Uruguay	Renegotiation of Schedule XXXI	II	07.12.1990	Original decision	L/6783	31.03.1991	
				11.04.1991	Extension	L/6837	31.12.1991	
				20.07.1992	Extension	L/7066	31.12.1992	
				03.12.1992	Extension	L/7139	30.06.1993	
				19.07.1993	Extension	L/7278	31.12.1993	
				17.01.1994	Extension	L/7390	30.06.1994	
				21.07.1994	Extension	L/7520	Entry into force of WTO	
99.	Venezuela	Establishment of a new Schedule LXXXVI	II	22.10.1993	Original decision	L/7316	30.6.1994	
				21.07.1994	Extension	L/7516	31.12.1994	
100.	Yugoslavia	Establishment of a new Schedule LVII ("Harmonized System")	II	03.12.1987	Original decision	34S/30	30.06.1988	
				18.07.1988	Extension	35S/352	31.12.1988	
				23.01.1989	Extension	36S/431	31.03.1989	
101.	Zaire	Establishment of a new Schedule LXVIII ("Harmonized System")	II	05.12.1989	Original decision	36S/434	30.06.1990	
				16.07.1990	Extension	L/6711	30.06.1991	
				01.07.1991	Extension	L/6882	31.12.1991	
				04.12.1991	Extension	L/6966	31.12.1992	
				03.12.1992	Extension	L/7147	30.06.1993	
				19.07.1993	Extension	L/7283	31.12.1993	
				17.01.1994	Extension	L/7394	30.06.1994	
				21.07.1994	Extension	L/7521	31.12.1994	
				09.12.1994	Extension	L/7591	30.06.1995	
102.	Zambia	Renegotiation of Schedule LXXVIII	II	26.11.1993	Original decision	L/7329	30.11.1995	

Nº	Contracting party	Title	Article(s) waived	Date of Decision	Type of Decision	Reference	Date of expiry	Reporting requirement/ Remarks
103.	Zimbabwe (21)	Customs tariff and agreements with South Africa and Australia	I	03.12.1955 13.11.1956 20.11.1958 29.05.1959	Original decision Resolution Extension Extension	4S/17 5S/39 7S/40 L/1012	01.07.1958 - 01.07.1959 01.07.1960	
104.	Zimbabwe (22)	Customs treatment for products of United Kingdom territories	I	19.12.1960	Original decision	9S/47	No time limit	Annual
105.	Zimbabwe (23)	Base dates under Article I:4	I	19.11.1960	Original decision	9S/46	No time limit	
(b) Waivers for measures of more than one contracting party								
106.	Lebanon and Syria	Measures notified under Article XVIII:11	XVIII	10.08.1949	Original decision	GATT/CP/32, p. 10	21.03.1950	
107.	Cuba; France; Haiti	Negotiations under Article XXVIII:1 - extension of deadline for completion of negotiations by each at Torquay	XXVIII	03.04.1951	Original decision	GATT/CP/130, pp. 3-4	01.07.1951	Report on negotiations
108.	All contracting parties (24)	Extension of time limit in Article XX:II	XX	30.11.1950 22.10.1951	Original decision Extension	GATT/CP/94, p.5 II/28	01.01.1952 01.01.1954	
109.	Members of the European Coal and Steel Community	Coal and steel products	I	10.11.1952	Original decision	1S/17	10.02.1958	Annual
110.	All contracting parties which had maintained import restrictions for balance-of-payments reasons	"Hard core" waiver	XI	05.03.1955 01.11.1957 05.11.1958 19.11.1959 19.11.1960 08.12.1961	Original decision Extension Extension Extension Extension Extension	3S/38 6S/32 7S/33 8S/27 9S/35 10S/35	31.12.1957 31.12.1958 31.12.1959 31.12.1960 31.12.1961 31.12.1962	
111.	European Communities	Transitional measures to take account of the external economic impact of German Unification	I	13.12.1990 14.06.1993	Original decision Extension	L/6792, 37S/296 L/7246	31.12.1992 31.12.1993	Report on use of waiver
112.	European Communities	Transitional measures to take account of the external economic impact of German Unification	I	09.12.1994	Original decision (different scope than previous waiver)	L/7605	31.12.1995	Reports on use of waiver
113.	European Communities	Fourth ACP-EEC Convention of Lomé	I:1	09.12.1994	Original decision	L/7604	29.02.2000	Annual report on implementation of preferential treatment
114.	All developed contracting parties (25)	Generalized system of preferences	I	25.06.1971	Original decision	18S/24	25.06.1981	
115.	Participants in the "Protocol relating to Trade Negotiations among Developing Countries" (26)	Trade negotiations among developing countries	I	26.11.1971	Original decision	18S/26	No time limit	Annual

NOTES:

1. These tariff preferences are now granted within the framework of the Papua New Guinea/Australia Trade and Commercial Relations Agreement, which entered into force on 1 February 1977 and was notified under Article XXIV (L/5138).

2. Article XXVIII:1, as amended by paragraph 6 of the Torquay Protocol, did not permit modification or withdrawal of concessions prior to 1 January 1954; this waiver permitted earlier renegotiation.

3. Renegotiation under Article XXVIII (conversion of nomenclature) was notified in 1958 (SECRET/101, Rev.1 and Add.1-2). Cuba completed renegotiation of Part I of its Schedule IX in connection with its conversion to HS nomenclature; renegotiation of Part II of Schedule IX has not yet been completed.

4. The Czech and Slovak Republic ceased to exist on 31 December 1993.

5. France was granted a waiver from the provisions of Article XXIV:5 in order to permit France to enter a customs union with Italy, which was not a contracting party. At the time of the waiver, Article XXIV did not include the changes made at Havana; see Section III in the chapter on Article XXIV.

6. Waiver was granted to France and Germany for special treatment applied in their trade relations with the Saar, and expired when EEC intra-trade became duty-free in 1970 (C/M/60).

7. Waiver applies to those products not covered by the Cooperation Agreement between the EEC and Morocco (Exchange of letters attached to Final Act, L/4381).

8. Waiver was required because Indonesia ceased to be a member of the IMF; however, Indonesia resumed IMF membership in 1967. See Article XV:6 in this Index.

9. The waiver in question permitted retention of import restrictions notified by Italy under Article XVIII:11 (as amended in 1948) pending a decision by the CONTRACTING PARTIES under Article XVIII:12. The notification was withdrawn by Italy in late 1950: see GATT/CP.5/SR.23 p. 3, GATT/CP.5/29.

10. Luxembourg liberalized all products covered by the waiver as from 1 May 1970 (L/3452).

11. The waiver from the base dates under Article I:4, which was granted to the Federation of Rhodesia and Nyasaland, is now applicable to Malaw; Malawi acceded to the GATT under Article XXVI:5(c) and thereby committed itself to the tariff concessions specified in Schedule XVI - Federation of Rhodesia and Nyasaland, which constituted from that time Schedule LVIII - Malawi.

12. Article XVIII:6 in the 30 October 1947 text of the General Agreement (prior to the replacement of Article XVIII which took place in 1949) permitted retention of any non-discriminatory measure if it affected unbound items only and had been in force as of 1 September 1947, and if the contracting party had by 10 October 1947 notified the products to which the measure applied as well as its nature and purpose, and if it had notified the measure to the CONTRACTING PARTIES within sixty days after it had become a contracting party. The decisions of 14 September 1948 granted waivers to the UK and the Netherlands in respect of the dates of notification and operation: see GATT/CP.2/38, GATT/CP.2/SR.25. This provision of Article XVIII became paragraph 11 in the text as amended in 1948, and was eliminated when Article XVIII was revised in the 1954 Review Session.

13. Waiver was required because New Zealand was neither a member of the IMF nor had entered into a special exchange agreement. New Zealand became a member of the IMF in 1961; see material under Article XV:6 in this Index.

14. Waiver was required when New Zealand was not a member of the IMF. New Zealand became a member of the Fund effective 31 August 1961. See under Article XV:6 in this book.

15. Waiver has expired and products concerned have been included in New Zealand's GSP scheme (L/4444 and L/4366).

16. The temporary duty increase was terminated for all but two items, in the process of alignment of external customs duties under the Central American Economic Integration (L/2256).

17. The renegotiations required as a consequence of the tariff changes were not carried out.

18. The waiver from the base dates under Article I:4, granted to Australia and South Africa, applied only in respect of imports from the Federation of Rhodesia and Nyasaland.

19. Prior to the Decision of 25 November 1968, the waiver included temporary duty increases inconsistent with Article II. As some of these changes resulted in margins of preference higher than those existing on 10 April 1947, the scope of the waiver was increased to include Article I:4.

20. See note above concerning Netherlands waiver of 14 September 1948.

21. The waiver decision of 20 November 1958 permitted extension of preferences granted in the original decision to the Portuguese territories of Mozambique and Angola.

22. It is not clear whether the Government of Zimbabwe continues to grant tariff preferences for these products.

23. This waiver, granted to the Federation of Rhodesia and Nyasaland covered all imports specified in the Decision of 1 July 1955, which introduced new tariff levels.

24. The original text of Part II of Article XX, a group of three transitional exceptions intended for the immediate postwar period, permitted maintenance of measures inconsistent with other provisions of the General Agreement, until such time as the conditions giving rise to them had ceased, and not later than 1 January 1951. The waiver extended the time limit contained in this provision of the Article. See Section III under Article XX and the discussion in that chapter of Article XX(j).

25. The "GSP Waiver" expired on 25 June 1981, but was not renewed in view of the 1979 Enabling Clause decision; see under Article I in this Index.

26. The most recent annual report of the Committee of Participating Countries under this Protocol (L/7106) states: "The Protocol is applied under the provisions of the Enabling Clause, and in particular under the terms of its paragraph 2(c)." See discussion of this Protocol under Article I in this Index.