PART III

ARTICLE XXIV

TERRITORIAL APPLICATION - FRONTIER TRAFFIC - CUSTOMS UNIONS AND FREE TRADE AREAS

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I. TEXT OF ARTICLE XXIV, INTERPRETATIVE NOTE AD ARTICLE XXIV AND UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GATT 1994

Article XXIV

Territorial Application -- Frontier Traffic -- Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

(*a*) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;

(*b*) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

(*a*) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(*b*) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and

(*c*) any interim agreement referred to in sub-paragraphs (*a*) and (*b*) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (*a*), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reductions brought about in the corresponding duty of the other constituents of the union.

7. (*a*) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(*b*) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(*c*) Any substantial change in the plan or schedule referred to in paragraph 5(c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

(*a*) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(*b*) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article 1 shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (*a*)(i) and paragraph 8 (*b*).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory.

Interpretative Note *Ad* Article XXIV from Annex I

Paragraph 9

It is understood that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory.

Paragraph 11

Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members,

Having regard to the provisions of Article XXIV of GATT 1994;

Recognizing that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

Recognizing the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognizing also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognizing the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby *agree* as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV:5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The "reasonable length of time" referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

Review of Customs Unions and Free-Trade Areas

7. All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

Article XXIV:12

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

II. INTERPRETATION AND APPLICATION OF ARTICLE XXIV

A. SCOPE AND APPLICATION OF ARTICLE XXIV

1. Paragraphs 1 and 2: "customs territory"

Under Article XXIV:1, each separate customs territory on behalf of which the General Agreement is applied is "treated as though it were a contracting party", and thus the most-favoured-nation clause of Article I:1 and the non-discrimination requirements of Article XIII:1, which apply as between contracting parties, apply as between each separate customs territory even if it is under common sovereignty with another customs territory. For example, the records of the London session of the Preparatory Committee indicate that in 1946 the various territories under French sovereignty in the French Union included some colonies treated as part of the metropolitan customs territory of France, and others which constituted separate customs territories. The historical

preferences accorded within the French Union were provided for under Article I:2 in the case of the latter, by listing them in Annex B of the General Agreement.[1] In 1955, certain territories were deleted from Annex B because on 1 January 1948 they had been raised to the status of French départements and thenceforth formed part of the metropolitan customs territory.[2] See the discussion below in Section III concerning the background of the provisions in Article XXIV on customs territories. See also the material under Article XIV:3 in this Index.

The records of the Havana Conference indicate that the phrasing of paragraph 1 was changed from "customs territories of the Members" to "metropolitan customs territories of the Members and to any other customs territories in respect of which this Charter has been accepted …" in order to avoid the implication that the customs territories of colonies were necessarily part of the customs territory of the metropolitan state.[3] A proposal to change the definition of "customs territory" in paragraph 2 to substitute "substantially all" for "a substantial part" was rejected.[4]

Paragraph 3 of the accession protocol of Switzerland provides: "For the purposes of the territorial application of this Protocol, the customs territory of Switzerland shall be deemed to include the territory of the Principality of Liechtenstein as long as a customs union treaty with Switzerland is in force."[5] On 29 March 1994, Liechtenstein succeeded to contracting party status under Article XXVI:5(c). See also statements concerning the application of the General Agreement with respect to certain customs territories in accession protocols e.g. of Japan[6], Portugal[7] and Spain[8].

In the earlier years of the GATT, the Secretariat periodically issued lists of the countries and territories where the General Agreement was effective, but this practice was abandoned after 1969.[9] More recent supplements of the BISD list the contracting parties to the GATT and countries where the GATT is applied on a *de facto* basis.

See also material on territorial application of the General Agreement under Article XXVI:5.

2. Paragraph 3: "frontier traffic"

Sub-paragraph 3(a) is worded almost identically to the original United States proposal, which was explained by the US at the London session of the Preparatory Committee as follows:

> "Paragraph 2(a) [XXIV:3(a)] referred to facilities for frontier traffic, in cases where a frontier ran through a city etc.; … The area affected by this provision was usually limited to a distance of 15 kilometres from the frontier."[10]

In discussions during the Geneva session of the Preparatory Committee, "it was agreed that 'frontier traffic' should not be defined too narrowly as it varied in each case and that the Organization would have, if necessary, to decide".[11]

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[1]See description at EPCT/C.II/PV/4 p. 18-20.

[2]Fourth Protocol of Rectifications and Modifications to the Annexes and to the Texts of the Schedules to the General Agreement done 7 March 1955, entered into force 23 January 1959; see also W.9/162. See also discussion of status of territories within French Union as of 1946 at EPCT/C.II/PV/4, p. 18-20.

[3]E/CONF.2/C.3/87, E/CONF.2/C.3/SR.47, p. 3.

[4]Havana Reports, p. 50; E/CONF.2/C.3/87, E/CONF.2/C.3/SR.44 p. 3-4, E/CONF.2/C.3/SR.47 p. 3.

[5]14S/6, 7-8.

[6]4S/7, para. 1(d) (exception from the application of GATT under certain circumstances for islands referred to in the Treaty of Peace with Japan).

[7]11S/20, 24, para. 11 (acceptance "in respect of all Portugal's separate customs territories").

[8]12S/27, 28 para. 3 (acceptance in respect of customs territories listed in Annex B to the Protocol, i.e. (1) Territory in the Peninsula and Balearic Islands, the Canary Islands, Ceuta and Melilla; (2) Ifni and Sahara, (3) Fernando Po and Rio Muni; these territorial units into which the National Territory is divided are considered customs territories for the sole purpose of the General Agreement).

[9]E.g. lists at 7S/12, 10S/7, 12S/5, 14S/1, 16S/3, L/3166+Add.1-2 (1969). A note was added to the list published in 1968 (16S/3) stating that "The names of the territories are those furnished to the secretariat by the governments responsible for the application of the GATT to the trade of the territories and are here listed without prejudice to any disagreement that may exist between contracting parties concerning political sovereignty or concerning the name of a territory".

[10]EPCT/C.II/38, p. 7.

[11]EPCT/A/SR/42, p. 2.

The Report of a Working Party which examined and redrafted Article 42 of the Charter at the Havana Conference notes that "The proposal of the delegation of Italy requesting exemption from the most-favoured-nation clause for a special regime between Italy and the Free Territory of Trieste, was subsequently altered to refer only to advantages accorded to trade with Trieste by contiguous countries. The Working Party decided it could accept this modified proposal on condition that trade advantages thus accorded were not contrary to the terms of the Italian Peace Treaty".[12]

The Report of the Sub-Committee of the Havana Conference which examined Articles 16 and 42 of the Havana Charter (corresponding to Articles I and XXIV of the General Agreement) notes as follows: "The Sub-Committee discussed with the delegate of Italy the latter's proposal to except the special regime existing between the Republic of Italy and the Republic of San Marino and the State of the Vatican City from the provisions of paragraph 1 of Article 16. The Sub-Committee was of the opinion that the special arrangements existing between Italy and these two territories were not contrary to the Charter ...".[13]

The Decision of 21 June 1951 on the Accession of Germany provides that "The CONTRACTING PARTIES ... agree that, notwithstanding the provisions of Article I of the General Agreement the accession of the Government of the Federal Republic of Germany will not require any modification in the present arrangements for, or status of, intra-German trade in goods originating within Germany".[14]

The Report of the Review Session Working Party on "Schedules and Customs Administration" notes that a proposal by the German delegation to add to Article XXIV:3(a) a reference to "specific frontier zones specially designated by treaty" was unsuccessful because the Working Party considered it unnecessary: "While the CONTRACTING PARTIES would no doubt wish to examine the terms of any particular treaty in the event of a dispute, the Working Party understands that traffic in zones designated in treaties between adjacent countries, designed solely to facilitate clearance at the frontier, would normally be covered by the phrase 'frontier traffic'".[15]

2. Paragraph 4

Introducing the provision in the proposed charter of the ITO in 1946, one negotiator stated that "customs unions were desirable, provided that they did not cause any disadvantage to outside countries, in comparison with their trade before the customs unions were effected ... this also was a standard clause in all commercial treaties".[16]

Concerning the drafting of paragraph 4, see also under Section III below.

(1) Relationship between paragraph 4 and paragraphs 5 to 9

This issue was first discussed in depth during the examination of the Treaty of Rome establishing the European Economic Community. This examination was initially carried out at the Twelfth Session in 1957 by a Committee composed of all contracting parties, which appointed four sub-groups, the interim reports of which appear under the title of "The European Economic Community" in the Sixth Supplement of the BISD.[17] The interim report of the sub-group on "Tariffs and Plan and Schedule" notes that

> "There was extensive discussion in the Sub-Group as to the significance to be placed upon paragraph 4 in the examination of the tariff provisions of the Rome Treaty. The representatives of the Governments of the Member States of the European Economic Community stated:
>
> > 'The terms of paragraph 4 on the one hand, and paragraphs 5 to 9 on the other hand must be interpreted interdependently. Paragraph 5 of Article XXIV starts with the word 'accordingly' which indicates beyond doubt the relationship which exists between these two sets of provisions. The

[12]E/CONF.2/C.2&3/A/14, p. 6 (referring to Italian proposal at E/CONF.2/C.3/6, item 22).
[13]Havana Reports, p. 48, para. 11; see also E/CONF.2/C.2&3/A/14, p. 6-7 and Italian proposal at E/CONF.2/C.3/6, item 22.
[14]II/34, para. 1(b). For description of these arrangements and the effect of the unification of Germany, see C/M/244, p. 16-17.
[15]L/329, adopted on 26 February 1955, 3S/205, 216, para. 24.
[16]EPCT/C.II/38.
[17]L/778, adopted on 29 November 1957, 6S/70.

conditions laid down in paragraphs 5 to 9 have the purpose of ensuring that customs unions or the free trade areas are in conformity with the general principle laid down in the second sentence of paragraph 4. In other words, a customs union or a free trade area which fulfil the requirements of the provisions of paragraphs 5 to 9 of Article XXIV would automatically and necessarily satisfy the requirements of paragraph 4 since paragraphs 5 to 9 merely spell out the implications of paragraph 4. This interpretation is confirmed by the records of the preparatory work related to the adoption of the text of the present Article XXIV.

'The view expressed by certain contracting parties that the terms of paragraph 4 of Article XXIV require the Six to take into consideration the situation of each contracting party is furthermore in contradiction with the provisions of paragraph 5 *et seq.*, particularly with those of paragraphs 5(a) and (b) which deal with the general incidence of tariff rates and commercial regulations.

'The objective of paragraph 6 is furthermore the maintenance of the rights of the contracting parties acquired by concessions granted to them, a fact which should take care to a large extent of the problem of the countries the trade of which depends on one or a few products.'

"Most members of the Sub-Group were not prepared to accept this interpretation. They believed that paragraph 4 establishes the basic principles which a customs union should apply to be consistent with the objectives of GATT. Where questions arise as to the application of the provisions of paragraphs 5 to 9 in particular cases, such questions should be resolved in a manner consistent with the principles embodied in paragraph 4. Some members of the Sub-Group felt, furthermore, that the CONTRACTING PARTIES would have to verify whether the application of paragraphs 5 to 9 is consistent with the aims of a customs union as defined in paragraph 4. ..."[18]

The Understanding on the Interpretation of Article XXIV of the GATT 1994 provides in paragraph 1 thereof that "Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, *inter alia*, the provisions of paragraphs 5, 6, 7 and 8 of that Article."

(2) Free-trade areas between territories not producing the same products

The 1966 Working Party Report on "EEC - Association Agreements with African and Malagasy States and Overseas Countries and Territories" notes the statement of one member of the Working Party that "even if a free-trade area arrangement between developed and less-developed countries met all the more specific requirements of Article XXIV, it was unlikely, given that the parties to the Arrangement tended to produce entirely different products, to satisfy the general requirement of paragraph 4 of the Article that free-trade arrangements should be designed to create new trade between the parties and not to divert existing trade." The representatives of the Community and the Associated States stated that "With regard to the general principle in paragraph 4 ... the precise wording of paragraph 5 ... made it abundantly clear that if the requirements of paragraphs 5 to 9 of Article XXIV were fulfilled, the Agreement was necessarily compatible with the principle set out in paragraph 4."[19]

(3) "not to raise barriers to the trade of other contracting parties"

The Report of the Working Party on "Accession of Portugal and Spain to the European Communities" notes that "Some delegations expressed concerns which related to the introduction in Portugal and Spain of new quantitative restrictions some of which were discriminatory and inconsistent with Articles XI, XIII and XXIV:4" and also records the response by the representative of the European Communities that "Article XXIV:4 did not constitute an obligation but an objective and did not preclude members of a customs union from erecting barriers

[18] *Ibid.*, 6S/70-71, paras 2-3. For similar statements concerning the relationship between paragraph 4 and paragraphs 5 to 9, see, *e.g.*, Report of the Working Party on "EEC - Association Agreements with African and Malagasy States and Overseas Countries and Territories", L/2441, 14S/100, 106, para. 14.

[19] L/2441, adopted on 4 April 1966, 14S/100, 106, paras. 13-14.

to trade if their overall incidence was less restrictive than the ones which had prevailed before the customs union was established".[20]

The Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" notes the major concern of members with the provision in this Agreement that the Agreement would take precedence over the General Agreement unless otherwise provided therein. They questioned the possible implications for third parties and for the multilateral trading system. The representative of the United States stated that "In accordance with both paragraphs 4 and 5 of Article XXIV, the Canada-United States Free-Trade Agreement had not raised barriers to third-country trade either directly in the context of the phased-in implementation of the provisions of the Agreement or indirectly as a consequence of its negotiation".[21] The representative of a group of countries said that "if the FTA was consistent with Article XXIV, it should have trade-creating effects for third parties".[22]

4. Paragraph 5

(1) "as between the territories of contracting parties"

(a) Agreements between contracting parties and States or governments other than contracting parties

During the Havana Conference in 1948, France proposed to form a customs union with Italy, which was not a contracting party to the General Agreement at that time. In response to a proposal by France at the First Session of the CONTRACTING PARTIES, the Special Protocol replaced the original text of Article XXIV by the provisions of the corresponding articles of the Havana Charter. The Special Protocol entered into force on 7 June 1948. The Report of the Sub-Committee on Supersession at the First Session, which drafted the Special Protocol, notes that "The representative of France explained that acceptance of the Protocol by his Government would be contingent upon the agreement of the contracting parties to waive one of the obligations of paragraph 5 so as to enable France to proceed with the formation of a customs union with Italy without first requiring Italy to accede to the General Agreement".[23] The waiver was granted on 20 March 1948 so that the formation of the Franco-Italian customs union could proceed immediately.[24]

The Working Party Reports of 1960 on "European Free Trade Association - Examination of Stockholm Convention"[25] and "Latin American Free Trade Area - Examination of Montevideo Treaty"[26] record diverging views as to whether paragraph 5 is applicable also to agreements with States or governments which are not contracting parties to GATT. The Report of the Working Party on "EEC - Agreements of Association with Tunisia and Morocco" contains the following paragraph.

> "With regard to the first sentence of paragraph 5, one delegation pointed out that the term 'territories of contracting parties' did not cover the agreements with Tunisia and Morocco, the former having only provisionally acceded while the latter had as yet no relation with GATT. Attention was drawn by this delegation to the Havana Reports on Article 44 of the Charter, and in particular to paragraph 6 which corresponds to paragraph 10 of Article XXIV. It was understood that this paragraph 'will enable the Organization to approve the establishment of customs unions and free-trade areas which include non-members'. This interpretation had been confirmed by a decision in 1956 on the participation of Nicaragua in the Central American Free-Trade Area (BISD 5S/29). The representative of the parties to the agreements recalled that in other previous cases, notably in the cases of EFTA and LAFTA, some participants in those free-trade areas were not at that time contracting parties and some of them were still not. Accordingly, it

[20]L/6405, adopted on 20 October 1988, 35S/293, 304, para. 19 and 306, para. 22.
[21]L/6927, adopted 12 November 1991, 38S/47, 70, para. 76.
[22]*Ibid.*, 38S/58, para. 34.
[23]GATT/1/21, p. 1-2, para. 7.
[24]GATT/1/49, reprinted at GATT/CP.1, p. 27; see also discussion at GATT/1/SR.11 and SR.14, and later documents and discussion at GATT/CP/17 and Add.1, GATT/CP.4/30, GATT/CP.4/SR.17.
[25]L/1235, adopted 4 June 1960, 9S/70, 86, para. 58.
[26]L/1364, adopted 18 November 1960, 9S/87, 94, para. 31.

had been shown in practice that the concept 'territories of contracting parties' had not been interpreted as restricting the applicability of paragraph 5."[27]

The 1985 Panel Report on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region", which has not been adopted, records the argument by the USA "that the procedures of Article XXIV:7(b) applied only to interim agreements among contracting parties and hence not to the agreements concluded with Algeria, Morocco, Tunisia, Jordan and Lebanon, which were not contracting parties. These agreements were rather subject to the procedures of Article XXIV:10 which required a two-thirds majority approval".[28] The Panel findings contain the following paragraph.

> "As regards the United States' contention that a free-trade area including a non-contracting party can only be considered under the provisions of Article XXIV:10 and not under those of Article XXIV:7(b) the Panel noted that the CONTRACTING PARTIES had considered several such cases under the provisions of Article XXIV:7(b) (see EFTA: BISD 9S/20; LAFTA: BISD 9S/21; Arab Common Market: BISD 14S/20; UK/Ireland Free-Trade Area Agreement: BISD 14S/23)."[29]

See also the discussion of Article XXIV:10 below at page 829.

In this connection see also the unadopted Panel Reports of 1993 on "EEC - Member States' Import Régimes for Bananas"[30] and of 1994 on "EEC - Import Régime for Bananas".[31]

(b) Free trade areas between independent and dependent territories

The 1966 Working Party Report on "EEC - Association Agreements with African and Malagasy States and Overseas Countries and Territories" notes in its examination of the association between the EEC and certain countries and territories maintaining special relations with France and the Netherlands, that

> "Some members of the Working Party felt that Article XXIV of the General Agreement was not meant to provide for free-trade areas between dependent and independent entities; one of these members added that some of the customs territories involved had no autonomy … The representative of the Community recalled that Article XXIV:8 defines a free-trade area as a group of two or more 'customs territories' and the latter are defined in paragraph 2 of Article XXIV as 'any customs territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories'. He said this was the case with respect to the Associated Countries and Territories".[32]

(c) Free trade areas between developed and developing countries

The 1966 Report of the Working Party on "EEC - Association Agreements with African and Malagasy States and Overseas Countries and Territories" (on the "Yaoundé Convention") notes the following exchange of views:

> "Some members of the Working Party expressed the view that in a free-trade area consisting of industrialized and less-developed countries the industrialized countries should not require reciprocal advantages from their less-developed partners, and, in this connexion, referred to the principles established in the new Part IV of the General Agreement. … In their view, Article XXIV had never been meant to apply to free-trade areas between developed and less-developed countries …

[27] L/3379, adopted on 29 September 1970, 18S/149, 154, para. 16. The reference to the Havana Reports is to the passage quoted on page 829 below.
[28] L/5776 (unadopted), para. 3.14.
[29] *Ibid.*, para. 4.9.
[30] DS32/R, dated 3 June 1993, paras. 365-371.
[31] DS38/R, dated 11 February 1994, para. 163.
[32] L/2441, adopted 4 April 1966, 14S/100, 112-113, para. 35.

"In reply ... the representatives of the Community and the Associated States said that the question of reciprocity was not dealt with in Article XXIV, which only required that restrictions on substantially all the trade between the member countries of a customs union or a free-trade area should be removed. Part IV of the General Agreement ... did not aim to modify the provisions of Article XXIV. The only test the CONTRACTING PARTIES could apply to a free-trade area was whether it satisfied the requirements of Article XXIV. ... There was no reason to believe that the authors of Article XXIV had overlooked the possibility of free-trade areas between countries at different stages of development. The CONTRACTING PARTIES had moreover already examined free-trade areas where there had been a great difference between the stages of development of the constituent territories".[33]

However, the 1976 Report of the Working Party on "The ACP-EEC Convention of Lomé" notes that "The parties to the Convention considered that the Convention was compatible with their obligations under the General Agreement, in particular the provisions of Articles I:2, XXIV and XXXVI, which had to be considered side by side and in conjunction with one another ... Since the objective of the Convention was to implement actions and measures aimed at improving standards of living and the economic development of less-developed countries, it could not but be in line with the objectives pursued by the GATT, in particular those defined in Part IV".[34] See also the material from this report at page 826 below.

(2) "the duties and other regulations of commerce imposed at the institution of any such union/maintained in each of the constituent territories"

(a) Variable levies

During the examination by the Working Party on the "Accession of Greece to the European Communities", Australia requested the establishment of a Panel of experts to determine "whether variable levies constitute 'duties and other regulations of commerce', and by what means the incidence of such measures should be calculated so as to reflect their effect on trade in a range of market circumstances".[35] The EEC response stated: "The Community view is that 'duties and other regulations of commerce' in the agricultural sector are unquestionably relevant to any examination of an agreement under Article XXIV:5(a), and we believe no contracting party could hold a contrary view. ... the Community view is that variable levies are covered by the phrase 'duties and other regulations of commerce'".[36] One member of the Working Party endorsed this position and stated that "This was a reversal of a position which the EEC had held since the introduction of their variable levy system and was one of the main issues which prevented progress being made in the previous Working Parties on the Rome Treaty and the 1972-73 enlargement".[37]

(b) Quantitative restrictions

The Report of the Sub-Group at the Twelfth Session which examined the EEC Treaty provisions relating to quantitative restrictions notes:

"Most members of the Sub-Group could not accept the interpretation of the Six of paragraph 5(a). In their view the use of the term 'regulations' in this paragraph and in paragraph 8(a)(ii) does not include quantitative restrictions imposed for balance-of-payments reasons. An examination of the provisions of the Agreement indicates that the term 'regulations' is consistently used to describe such matters as customs procedures, grading and marketing requirements, and similar routine controls in international trade. This interpretation is reinforced by the fact that in 8(a)(i) the term 'regulation' is qualified by the word 'restrictive' in the one instance where Article XXIV specifically refers to the balance-of-payments Articles. Moreover, the term 'regulation' does not appear in the balance-of-payments Articles of the General Agreement. The General Agreement prohibits the use of quantitative restrictions for protective purposes and permits their use only in exceptional circumstances and mainly to deal with balance-of-payments difficulties.

[33] L/2441, adopted on 4 April 1966, 14S/100, 106, paras. 13-14.
[34] L/4369, adopted on 15 July 1976, 23S/46, 53-54, para. 23. See also L/4325, "ACP-EEC Convention of Lomé - Questions and Replies", p. 1-2.
[35] L/5117.
[36] L/5124, para. 2.
[37] L/5453, Report of the Working Party adopted on 9 March 1983, 30S/168, 187, para. 53.

Accordingly the notion that paragraph 5(a) would require that temporary quantitative restrictions should be treated in the same way as normal protective measures such as tariffs in determining the trade relations between countries in a customs union and third countries would be contrary to the basic provisions of the Agreement which preclude the use of quantitative restrictions as an acceptable protective instrument".[38]

The 1988 Report of the Working Party on "Accession of Portugal and Spain to the European Communities" notes the view of one member of the Working Party in relation to quantitative restrictions in Spain and Portugal stated to contravene Articles XI and XIII, that "because these measures were GATT-inconsistent they could not be included in the assessment of the incidence of changes in 'other regulations of commerce' which had to be carried out under Article XXIV:5(a)" and the view of some members of the Working Party that "measures which were inconsistent with the GATT could not be traded off against the alleged reduction of other barriers and could not be included in the assessment of incidence of changes in 'other regulations of commerce' required by Article XXIV:5(a) under which only GATT-consistent measures should be taken into account".[39] The EEC observed in reply that "the Communities agreed that Article XXIV did not provide a waiver from other provisions of the GATT. By the same token, however, the role of the Working Party in this context was to examine the situation in the light of Article XXIV rather than with respect to any other provision such as Articles XI or XIII".[40]

See also various other Working Party reports on this subject.[41]

(c) "Other regulations of commerce"

The Report of the Working Party of 1991 on "Free-Trade Agreement between Canada and the United States" notes the statement of the United States representative concerning its customs user fee that "the customs user fee was an 'other regulation of commerce' covered under Article XXIV:5(b)" and the statement of another member that "Article XXIV, paragraph 5(b) did not stipulate that one FTA party could waive the application of 'other regulations of commerce', such as a customs user fee, with respect to the other party". In response to a suggestion by one other member that the customs user fee should be more appropriately considered as "other restrictive regulations of commerce" that applied between the two FTA Parties in terms of Article XXIV:8(b), the representative of the United States said that "the customs user fee could not be qualified as 'restrictive regulation of commerce' in the way it was presently applied by his country".[42]

See also various other Working Party reports on this subject.[43]

[38]L/778, adopted on 29 November 1957, 6S/70, 78, para.5.
[39]L/6405, adopted 19-20 October 1988, 35S/293, 315, 316, paras. 38, 39.
[40]*Ibid.,* 35S/318, para. 45.
[41]See the relevant discussion in the Reports of the following Working Parties: European Economic Community, 6S/76-81, paras. 2-13; EFTA, 9S/70, paras. 19-28; EEC-Association of Greece, 11S/149, paras. 14-15; EEC-Association of Morocco, 18S/149, paras. 12-15; EEC-Agreement with Spain, 18S/166, paras. 13, 14; EEC-Association of Malta, 19S/90, paras. 6, 18, 19; EEC-Association with Tanzania, Uganda and Kenya, 19S/97, para. 7; EEC-Agreement with Austria, 20S/145, para. 17; EEC-Agreement with Finland, 21S/76, paras. 15, 16; ACP-EEC Convention of Lomé, 23S/46, paras. 16, 17; EEC-Agreement with Israel, 23S/55, para. 12; Finland-Czechoslovakia, 23S/67, paras. 35, 36; CARICOM, 24S/68, paras. 5, 9, 10; EFTA-Agreement with Spain, 27S/127, paras. 5, 20, 21; Finland-Poland, 27S/136, paras. 37-42; EEC-Accession of Greece, 30S/168, paras. 13, 25-32, 51.
[42]L/6927, adopted 12 November 1991, 38S/47, 60, para. 40.
[43]See the relevant discussion in the Reports of the following Working Parties: Equatorial Customs Union and Cameroon, 12S/73, para. 6; EEC-Association of Turkey, 13S/59, paras. 10-14, 19S/102, paras. 9, 12, 14; Finland-Hungary, 22S/47, paras. 24, 26, 24S/107, paras. 36-43; EEC-Accession of Greece, 30S/168, paras. 34, 35, 37, 45, 47, 48, 53, 54; Canada-US FTA, 38S/47, paras. 40, 88.

(d) Rules of origin

The Working Party Reports of 1973 on the EEC Agreements with various countries of the European Free Trade Association each contain similar exchanges of views on rules of origin in the context of a free-trade area agreement.[44] Each of these reports provides:

> "One member of the Working Party said that ... the Agreement was contrary to the General Agreement because the rules of origin would frustrate the purpose of a free-trade area as stated in Article XXIV:4 in that they would frustrate intra-trade in products that could not meet the origin criteria and raise barriers to third-country trade in intermediate products; the requirements of Article XXIV:8(b) for elimination of restrictions on substantially all the trade had not been met because of [*inter alia*] the effects of the rules of origin; the requirement of Article XXIV:5(b) that external restrictions shall not be higher than in the constituent territories had not been met because of the rules of origin ... As well as being restrictive in many substantive provisions, those rules of origin were so complex and cumbersome as to be a barrier to trade in and of themselves; in the absence of compelling reasons to the contrary, manufacturers within the free-trade area would favour origin sources over outside countries merely to be sure of qualifying under the rules of origin. Once trade shifts of that kind took place, the damage to third countries' exports would be difficult to remedy".[45]

> "In the view of the parties the General Agreement offered no objective measure for evaluating rules of origin. Contracting parties were therefore free, within the framework of Article XXIV and consistent with the objective of establishing a free-trade area, to adopt systems which met their needs and those of third countries. ..."[46]

The 1974 Report of the Working Party on "EEC Agreement with Egypt" notes that some members "found the rules of origin in the present Agreement, like those in similar agreements examined in earlier working parties, almost excruciatingly complex and difficult to explain. It was difficult to imagine why the parties would put themselves to so much trouble to draw up rules that hopefully would not represent increased barriers to third parties' trade".[47]

The 1978 Report of the Working Party on "Agreement between the EC and Algeria" notes the view of one member of the Working Party "that the stringent rules of origin provided for in the Agreement would result in components being largely sourced in the EEC, even if that were more expensive for the Algerian manufactures. ... if substantial processing in Algeria were the only guarantee of real development, he asked why an exception had been granted for components produced in the EEC member States". The spokesman for the EC noted that "while the General Agreement provided for rules of origin, it did not define any criteria in regard to them; like the needs of the parties, they could differ according to the case, consistently with the economic and commercial requirements of each context".[48]

The 1980 Report of the Working Party on "Agreement between the EFTA Countries and Spain" records the view of some members of the Working Party that "the strict rules of origin in the Agreement would limit the scope of free trade in a manner inconsistent with the requirements of Article XXIV:8(b) and would raise barriers to the trade of third countries contrary to the obligations of Article XXIV:5(c)". The parties to the Agreement

[44]EEC-Agreements with Austria, 20S/145, paras. 4-6, 10, 22-29, 33, 34, 37; EEC-Agreements with Iceland, 20S/158, paras. 4-6, 10, 26-33, 37, 38, 41; EEC-Agreements with Portugal, 20S/171, paras. 5, 6, 10, 23-30, 34, 35, 38, 24S/73, paras. 19-23; EEC-Agreements with Sweden, 20S/183, paras. 5, 6, 10, 24-31, 35, 36, 39; EEC-Agreements with Switzerland and Liechtenstein, 20S/196, paras. 5, 6, 10, 26-33, 37, 38, 41. See also the briefer but similar discussion in EEC-Agreements with Finland, 21S/76, paras. 6, 21, 22; and EEC-Agreements with Norway, 21S/83, paras. 6, 11, 24-29, 32, 33, 35.

[45]EEC-Agreements with Austria, 20S/145, 147, para. 5; EEC-Agreements with Iceland, 20S/158, 159-160, para. 5; EEC-Agreements with Portugal, 20S/171,172, para. 5; EEC-Agreements with Sweden, 20S/183,185, para. 5; EEC-Agreements with Switzerland and Liechtenstein, 20S/196, 197-198, para. 5.

[46]EEC-Agreements with Austria, 20S/145, 155, para. 28; EEC-Agreements with Iceland, 20S/158, 168, para. 32; EEC-Agreements with Portugal, 20S/171,180, para. 29; EEC-Agreements with Sweden, 20S/183,193-194, para. 30; EEC-Agreements with Switzerland and Liechtenstein, 20S/196, 206, para. 32.

[47]L/4054, adopted on 19 July 1974, 21S/102, 106, para. 18.

[48]L/4559, adopted on 11 November 1977, 24S/80, 86, paras. 17 and 19.

stated that "rules of origin ... were necessary in a free-trade arrangement. The purpose of the rules was to prevent deflection of trade and not to limit the scope of free trade nor create obstacles to third country exports".[49]

The 1991 Report of the Working Party on "Free-Trade Agreement between Canada and the United States" notes that "The parties to the FTA recognized that the purpose of rules of origin for goods in a free-trade agreement was solely to determine whether a product was eligible to benefit from preferential treatment under the agreement".[50] One member of the Working Party stated that "In operating the provisions of the FTA on rules of origin, parties should bear in mind the provisions of Article XXIV:4 and Article XXIV:5(b), which clearly stipulated that barriers to the trade of other contracting parties with free-trade areas should not be raised and that any new regulations of commerce shall not be more restrictive than those existing prior to the formation of free trade areas. The compatibility of the rules of origin in the FTA with GATT should be examined in the light of these criteria. The representative of Canada said that the discussion of the question of whether rules of origin were one of 'other regulations of commerce' in terms of Article XXIV:5(b) had not led to a solution in previous working parties on free trade agreements. Rules of origin for the FTA would operate so as not to have adverse effects on the trade of third parties".[51]

The use of rules of origin in the context of agreements notified under Article XXIV is discussed also in various other Working Party reports.[52]

(3) "shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories"

(a) "on the whole"

It was stated at the London session of the Preparatory Committee, in response to a question whether the new tariff rate on each product had to be below the average of the rates of the constituent territories prior to the formation of the union, that "The phrase 'on the whole'... did not mean that an average tariff should be laid down in respect of each individual product, but merely that the whole level of tariffs of a customs union should not be higher than the average overall level of the former constituent territories".[53]

(b) "the general incidence"

The text of the Geneva Draft Charter (and the General Agreement as of 30 October 1947) used the words "the average level" in Article XXIV:2(b) instead of the words "the general incidence". The report of the Sub-Committee at the Havana Conference which considered the Charter provision notes as follows:

> "The Sub-Committee recommended that the words 'average level of the duties' be replaced by 'general incidence of the duties' in paragraph 2(a) of the new Article. It was the intention of the Sub-Committee that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account".[54]

[49]L/5045, adopted on 10 November 1980, 27S/127, 135, paras. 27-28.
[50]L/6927, adopted 12 November 1991, 38S/47, 58, para. 35.
[51]*Ibid.*, 38S/59, para. 37.
[52]See the relevant discussion in the Reports of the following Working Parties: EFTA, 9S/70, paras. 4-10; EFTA-Association of Finland, 10S/101, para. 7; EEC-Association with Cyprus, 21S/94, 98, paras. 13-18; EEC-Agreement with Egypt, 25S/114, paras. 11, 12, 24-27, 39; EEC-Agreement with Lebanon, 22S/43, paras. 13, 14, 25S/142, paras. 12, 13, 24-27, 39; ACP-EEC Convention of Lomé, 23S/46, paras. 10-11, 29S/119, para. 21; EEC-Agreement with Israel, 23S/55, paras. 6, 10, 17, 18; EEC-Agreement with Algeria, 24S/80, paras. 8, 18, 19; EEC-Association of Morocco, 24S/88, paras. 8, 19-21, 30; EEC-Association with Tanzania, Uganda and Kenya, 19S/97, paras. 8, 19-21, 29; EEC-Agreement with Jordan, 25S/133, paras. 12, 13, 24-27, 39; EFTA-Agreement with Spain, 27S/127, paras. 25-28; Finland-Poland, 27S/136, paras. 35, 36; EEC-Agreement with Syria, 25S/123, paras. 11-12, 23-26, 38; EEC-Agreement with Yugoslavia, 28S/115, paras. 20, 21, 25; Canada-US FTA, 38S/47, paras. 37, 86.
[53]EPCT/C.II/38, p. 9, responding to question at *ibid.* p. 7; see also EPCT/C.II/PV/7.
[54]Havana Reports, p. 51, para. 24.

The change was incorporated into Article XXIV; see Section III below.

The Report of the Sub-group at the Twelfth Session which examined the EEC Treaty provisions relating to the establishment of a common tariff notes:

> "In considering the basis on which the CONTRACTING PARTIES could best make a judgement with regard to the common tariff in the light of provisions of paragraph 5(a) of Article XXIV, most of the members of the Sub-Group felt that an automatic application of a formula, whether arithmetic average or otherwise, could not be accepted, and agreed that the matter should be approached by examining individual commodities on a country by country basis. Attention was also drawn to the drafting history of paragraph 5(a) of Article XXIV, according to which the term 'general incidence of the duties' was used with the intention 'that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account'.
>
> "The representatives of the Member States drew attention to the fact that the provisions of Article XXIV do not exclude any method of calculation for the preparation of a common tariff, provided however that the duty rates applied as a result of the establishment of a customs union are not on the whole higher than the general incidence of the duties which they replace. The Member States base their calculation on the arithmetical average method which is strictly in conformity with the provisions of paragraph 5 of Article XXIV. For arriving at a still lower tariff level the Member States furthermore in their calculation use the rates actually applied on 1 January 1957, subject to the exceptions as provided for in Article 19 of the Treaty, and not the legal and contractual rates which the Member States, in their view, would have the right to apply under the provisions of paragraph 5 of Article XXIV. To the same effect the Member States provided ceiling rates for a great number of products which have to be applied even in instances where the arithmetical average would lead to higher rates ... The Member States are not in a position to accept a country-by-country study for the reasons ... given in connexion with the interpretation of paragraph 4 of Article XXIV".[55]

The 1983 Working Party Report on "Accession of Greece to the European Communities" records the views of the EEC that "Article XXIV:5 of the GATT referred to 'the general incidence', viz. the incidence of the trade régime of the enlarged EC on all of their partners";[56] and (concerning the methodology for evaluating the incidence of measures) that "Article XXIV:5 required only a generalized, overall judgement on this point";[57] and that "Article XXIV:5 dealt with the general incidence of the effects of the creation of a customs union ... particular implications for a contracting party with respect to individual products should be discussed in another forum".[58] The Working Party could not agree on the precise methodology for the assessment to be made in terms of Article XXIV:5 and could not agree on whether the duties or regulations of commerce were, on the whole, higher or more restrictive after Greek accession than before.

The 1988 Report of the Working Party on "Accession of Portugal and Spain to the European Communities" records the view of the EC that "Article XXIV:5 only required an examination on the broadest possible basis. The task was general, namely to reach a view on whether the general incidence of customs duties and regulations after enlargement was on the whole more or less restrictive than before. Even if a negative incidence were shown to be the case for certain items, such as when duties were increased or replaced by variable levies, one had to consider whether these effects were not balanced by the effects of other changes in the tariff sector taken as a whole ... In assessing general incidence, one had to avoid too static an analysis and to take into account the trade-creating effects of the establishment or enlargement of a customs union".[59] The same Report also notes that one member "could not accept the Communities' contention that the extension of the tariff of the EC/10 to the EC/12 was compatible with their obligations under Article XXIV:5(a) regardless of the effect on the tariffs of Spain and

[55]L/778, "The European Economic Community", adopted on 29 November 1957, 6S/70, 71-72, paras. 6-7; reference to EEC views on Article XXIV:4 is to para. 2 of this report, cited above at page 796.
[56]L/5453, adopted 9 March 1983, 30S/168, 179, para. 32.
[57]*Ibid.*, 30S/184, para. 42.
[58]*Ibid.*, 30S/189, para. 56.
[59]L/6405, adopted 20 October 1988, 35S/293, 295-296, para. 6.

Portugal. Article XXIV:5(a) required a comparison with the pre-accession tariffs of the constituent territories and the relative size of those territories was not a relevant factor".[60]

The Understanding on the Interpretation of Article XXIV of the GATT 1994 provides in paragraph 2 thereof that "The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required."

(c) "applicable": use of bound or applied duty rates in comparison of tariff rates

The Report of the Tariff Negotiations Committee in 1961 charged with examining the common external tariff of the EEC in the light of the provisions of Article XXIV:5(a) noted that its conclusions were "necessarily tentative" since "it was not able to reach agreement on one question which materially affects any attempt to compare tariff rates of the Member States of the EEC before its formation and the Common Tariff, i.e. the question whether, in the case of the former, legal or bound rates on the one hand, or, on the other, rates actually applied should be used". It further noted:

> "The European Economic Community held, on the basis of the text itself of paragraph 5 of Article XXIV, that the expression 'applicable' must be read, in contrast to the term 'imposed' used elsewhere in Article XXIV, as referring to a rule of law which is applied or capable of being applied, and that it is for each contracting party constituting a customs union or a free-trade area to interpret its own legislation with regard to the duties which should be regarded as being applicable. According to the national legislation of the member States of the EEC the term 'applicable' can only refer to conventional (bound) and legal customs duties. Several members of the Working Party, on the other hand, held that 'applicable' must in this context mean rates actually applied since the purpose of Article XXIV:5(a) was to prevent the institution of a customs union being used as an opportunity to increase the protective duties actually encountered by exporters. In particular it was held by these delegations that the use as a basis for the computation of the Common Tariff of tariffs which were in fact never levied (i.e. the Italian tariff) did not give a true indication of the protective regime existing before the formation of the customs union".[61]

In discussion of this report the Executive Secretary stated that "the result of any statistical exercise would only support the view, with which he thought there was no disagreement, that the incidence of the Common Tariff was higher than that of the rates actually applied by the Member States at the time of the entry into force of the Treaty of Rome".[62] In 1962 a legal opinion was requested of the Executive Secretary. The opinion notes that

> "There appears to be very little recorded history on the drafting of paragraph 5(a). ... In the English language texts ... the word 'applicable' was used consistently. In the French language texts, on the other hand, there was some alternation between the two expressions 'applicables' and 'en vigueur'; in the Havana Charter and in the General Agreement, in the final French texts drawn up in 1948, the word 'applicables' was used, but during the review of the GATT at the Ninth Session in 1955, this was changed (by means of the Protocol of Rectification to the French text) to 'en vigueur'. Thus drafting history throws no light on the choice of words which were used and no definition of them has been provided.

[60] *Ibid.*, 35S/311, para. 36.
[61] L/1479, para. 7; for discussions of this question, see also Session and Council records (SR.18/4, pp. 46-54, C/M/8, SR.19/6-7, pp. 80-90) and the Committee report, adopted on 29 November 1957, on the EEC's common tariff (6S/70-74).
[62] C/M/8, p. 6.

"In these circumstances one must explore the probable intentions of those who drafted the provisions of Article XXIV. It is clear, in the light of the general principle set out in paragraph 4 of Article XXIV, that the drafters were seeking to ensure that the creation of a customs union, as an exception to the most-favoured-nation rule, would not in practice lead to a raising of barriers to international trade. ... the words (in paragraph 5(a)) 'shall not on the whole be higher than the general incidence of duties ... applicable in the constituent territories prior to the formation of [a customs] union ...' must be understood as an effort to spell out the implications of paragraph 4 and to satisfy the requirements of that paragraph.

"... the intent of those who drafted the provisions governing the establishment of a common external tariff of a customs union was that the formation of such a union should not, on the whole, result in higher tariff barriers against trade than *existed* previously in the constituent territories of the union.

"Against this background of the purposes and intent of paragraph 5(a) the two different interpretations of the word 'applicable'... should be examined. It seems that the intentions of the drafters are not fully covered by either interpretation, and yet when the two interpretations are reconsidered from the point of view of reasonableness and logic the gap between them narrows. On the one hand, if the word were interpreted in the sense of 'applied' duties, it would be reasonable, in the computation of a common external tariff, to permit the use of the duties inscribed in the tariff in those cases where duties had been temporarily lowered or suspended to meet particular circumstances of an economic nature or because other types of barriers were being used. On the other hand, if the word were interpreted in the sense of 'applicable' duties, it would be reasonable, in the computation of a common external tariff, to disallow the customs duties of a legal tariff if these duties had never actually been applied and there was no reasonable expectation that they ever would be applied".[63]

The Report of the Working Party on the "Accession of Greece to the European Communities" notes that "Several members of the Working Party took the view that since it was the task of the Working Party under Article XXIV:5(a), *inter alia*, to make an assessment of the changes in the tariff level of Greece, it was necessary to obtain information not only relating to the bound or legal rates but also to the applied rates .... The spokesman for the EC replied that for the purposes of the Working Party, only the bound rates were of relevance".[64]

The 1991 Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" notes (in relation to the elimination of Canadian duty remission schemes conditional on export performance) that

"The representative of Canada said that the objective of not raising barriers to the trade of other parties in Article XXIV:4 had to be considered together with the requirements of Article XXIV:5(b). Any judgement on the restrictive effect of eliminating [this] ... scheme ... should be made with respect to trade in goods with bound tariff rates. Parties to a free-trade agreement did not have the obligation to continue, regardless of the GATT bound rates, the duties applied at lower rates than GATT bound rates through duty remission schemes or temporary reduction or suspension of duties prior to the formation of the free-trade agreement. The representative of a group of countries noted with interest that the parties' interpretation of Article XXIV was that the obligation not to increase the restrictiveness of duties related exclusively to bound rates. One member maintained the view that the term 'duties' in Article XXIV:5(b) was not only limited to bound rates but covered all the duties applied by the parties at the time of the formation or the enlargement of a free-trade agreement".[65]

The Report also records the view of the parties to the Agreement that: "With respect to concerns expressed about duty drawback and duty remission provisions in the Agreement they questioned whether it was the intent of Article XXIV to bind parties never to increase m.f.n. rates of duty which, at the time of entry into force of the FTA, had been suspended or subject to exoneration in some way".[66]

[63] L/1919, dated 14 November 1962, paras. 5-8. See also request for opinion at SR.19/7, p. 89-90; discussion of opinion by CONTRACTING PARTIES, which "noted the views of the Executive Secretary" (p. 171), at SR.20/11, p. 169-171.

[64] L/5453, adopted 9 March 1983, 30S/168, 175 paras. 19-20.

[65] L/6927, adopted 12 November 1991, 38S/47, 66, para. 62.

[66] *Ibid.*, 38S/71, para. 77.

Paragraph 2 of the Understanding on Interpretation of Article XXIV of the GATT 1994, concerning evaluation of the formation of a customs union, provides that "The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty".

d) Other issues concerning methodology for comparison of duty rates

The 1988 Report of the Working Party on "Accession of Portugal and Spain to the European Communities" records the extensive debate in the Working Party concerning the use of the trade coverage approach (favoured by the EEC) and the "duties collected" approach (favoured by certain other delegations) in analysing changes in duty rates.[67] The same Report also notes the statement of one member, which was not agreed to by the EEC, that "exclusion of preferential trade was necessary when making the Article XXIV:5(a) assessment of the impact of accession ....".[68] See also the Understanding on the Interpretation of Article XXIV of the GATT 1994.

(4) "any interim agreement ... shall include a plan and schedule for the formation of such a customs union or of such a free-trade area"

The 1965 Report of the Working Party on "Association of Turkey with the European Economic Community" notes the view of the EEC and Turkey that

> "the fact that Article XXIV:5 uses the words 'interim agreement' indicates rather clearly that the 'plan and schedule' need not necessarily be detailed and complete; the CONTRACTING PARTIES have examined other regional agreements which were also somewhat imprecise in this respect".[69]

In the Report of the Working Party on "European Economic Community - Agreements of Association with Tunisia and Morocco" which examined these agreements in 1970, it was stated that

> "without a precise and complete plan and schedule, it would be impossible for the CONTRACTING PARTIES to make findings with regard to whether the agreements were likely to result in free-trade areas within a reasonable period and, if necessary, to make recommendations".[70]

The Report of the Working Party of 1975, on "Agreement between the EEC and Lebanon" records the statement by the EEC

> "that Article XXIV:5 must be read in its entirety. The parties' view, shared by some other members of the Working Party, was and remained that the three concepts of 'interim agreement', 'plan and schedule' and 'reasonable length of time' could not be dissociated from one another as to their significance and their scope. They could not claim to be able to foresee, in an interim agreement, in any precise manner at this stage and in a situation constantly changing, all the modalities that would lead to its objective.
>
> "It nevertheless remained that, within the context of the Agreement, there was a plan and a schedule in the sense that the Agreement contained specific concrete provisions for attaining the objectives of tariff and quota dismantlement in a first stage, and the provisions necessary for continuing such dismantlement in accordance with the stated will of the parties to achieve a free-trade area within the meaning of Article XXIV and in compliance with the provisions of the General Agreement. Some members reminded the Working Party that their authorities did not share this interpretation and said that the parties should, in any event, provide reference dates so that contracting parties could judge for themselves whether the time period was reasonable in their view".[71]

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[67] L/6405, adopted 20 October 1988, 35S/293, 297-303, paras. 10-16, and 312-318, paras. 37-44.
[68] *Ibid.*, 35S/311, para. 36 and 35S/320, para. 48; see also 35S/304, para. 18.
[69] L/2265, adopted on 25 March 1965, 13S/59, 62, para. 9.
[70] L/3379, adopted on 29 September 1970, 18S/149, 157, para. 27.
[71] L/4131, adopted on 3 February 1975, 22S/43, 46, para. 12.

The Report of the Working Party of 1980 on "Agreement between the EFTA Countries and Spain" records the view of the parties to this agreement

> "that a study of the practice of GATT showed that the borderline between the two legal concepts of free-trade agreement and interim agreement was not quite distinct".[72]

The 1984 Report of the Working Party on "Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT)" notes that the New Zealand representative emphasized that "the Agreement was in no sense provisional or incomplete but a definitive establishment of a free trade area under Article XXIV, paragraph 7(a). There was, however, an intervening period between entry into force and the complete elimination of duties and other restrictive regulations on substantially all the trade".[73]

The Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" records that "one member was unable to take a definitive position on the consistency of the Agreement with Article XXIV:5(c) because of the absence of a clear plan and schedule for the elimination of certain non-tariff barriers in agricultural products …".[74]

See also the discussion on "plan and schedule" in various other Working Party reports.[75]

Paragraph 10 of the Understanding on the Interpretation of Article XXIV provides that "Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations."

(5) "within a reasonable length of time"

During discussions at the London session of the Preparatory Committee a South African proposal to replace the ambiguous term "reasonable" by a definite time limit was not taken up.[76]

The 1962 Working Party on "Association of Greece with the European Economic Community" notes that "Some members of the Working Party expressed concern about the length of the transitional period provided for by the Association Agreement. Article 15 of this Agreement stipulated, for a number of products covering a relatively large percentage of Greek imports (30 percent of Greek imports from the EEC) a transitional period of twenty-two years. Doubt was expressed as to whether this could be considered a reasonable length of time for the realization of the customs union".[77]

The Report of the Working Party on "European Economic Community - Agreement with Spain" records that the parties to that Agreement noted that the meaning of the term "reasonable length of time", which must be

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[72]L/5045, adopted on 10 November 1980, 27S/127, 129, para. 7.

[73]L/5664, adopted on 2 October 1984, 31S/170, 179, para. 29.

[74]L/6927, adopted 12 November 1991, 38S/47, 74, para. 89.

[75]See, e.g., Reports on: South African/Southern Rhodesia Customs Union Agreement, II/176, paras. 16-19; European Economic Community, 6S/70, paras. 17-18; EFTA, 9S/70, para. 31; EEC-Association with Turkey, 13S/59, paras. 8-9, 19S/102, paras. 3-4, 9, 11, 21S/108, paras. 7-9; Arab Common Market, 14S/94, paras. 5, 12, 16, 20, 21; EEC-Association Agreements with African and Malagasy states, 14S/100, paras. 5, 6, 11, 23, 24, 30; New Zealand-Australia FTA, 14S/115, paras. 5, 9, 15-17; UK-Ireland FTA, 14S/122, para. 8; EEC-Association of Tunisia and Morocco, 18S/149, paras. 7, 17-20; EEC-Agreement with Israel, 18S/158, paras. 3, 7, 9, 14-21, 24-26, 23S/55, paras. 4-5, 24; EEC-Agreement with Spain, 18S/166, paras. 17, 20, 22; EFTA-Accession of Iceland, 18S/174, para. 5; EEC-Association of Malta, 19S/90, paras. 1, 11-13, 21, 23; EEC-Agreements with Austria, 20S/145, paras. 11, 34; EEC-Agreements with Iceland, 20S/158, paras. 11, 38; EEC-Agreements with Portugal, 20S/171, paras. 11, 35; EEC-Agreements with Sweden, 20S/183, paras. 12, 36; EEC-Agreements with Switzerland and Liechtenstein, 20S/196, paras. 11, 38; EEC-Agreements with Norway, 21S/83, paras. 12, 33; EEC-Association with Cyprus, 21S/94, paras. 5-8; EEC-Agreement with Egypt, 21S/102, paras. 5, 9, 13-15, 19; EEC-Agreement with Lebanon, 22S/43, paras. 10-12; EFTA-Agreement with Spain, 27S/127, paras. 7-11, 13-14, 27-28.

[76]EPCT/C.II/38, p. 8; EPCT/C.6/34, pp. 4-5.

[77]L/1829, adopted on 15 November 1962, 11S/149, 150, para. 6.

appreciated in conjunction with that of "interim agreement", had never been defined by the CONTRACTING PARTIES.[78]

The 1972 Report of the Working Party on "EEC - Agreement of Association with Malta" records that:

> "Most members of the Working Party stated that paragraphs 5-9 of Article XXIV had to be interpreted against the background of paragraph 4. ... From the point of view of the General Agreement an evolutionary time-table, such as the one presented in this Agreement, was preferable to a precise and detailed schedule in the case of countries with different levels of development. Such a time-table might be more likely to lead to the formation of a customs union within a shorter period ...
>
> "The parties to the Agreement ... stated - and several members of the Working Party supported them - that in view of the difference in stage of development of Malta and the Community, the provisions of the Agreement concerning the plan and schedule for the establishment of a customs union represented a realistic approach ... Paragraph 5(c) dealt expressly with the case of interim agreements. The very term 'interim' as applied to the notions of 'plan and schedule' and 'reasonable length of time' made it clear that they did not necessarily have to be fixed at the outset in an absolutely specific and detailed manner.
>
> "One member of the Working Party could not accept the foregoing interpretation of Article XXIV, pointing out that ... the text of paragraph 5(c) was very clear and unequivocal".[79]

The 1972 Report of the Working Party on "European Economic Community - Agreement of Association with Turkey", which examined an Additional Protocol and Interim Agreement concluded in 1970 and 1971 pursuant to the Ankara Agreement examined in 1964, records the views of Turkey that "[t]he modalities and time period for the formation of a customs union [between developed and developing countries], while remaining consistent with Article XXIV of the General Agreement, must take into consideration the special conditions of the developing countries concerned, for their development and well-being were essential objectives of the same General Agreement, and in particular Part IV thereof"[80] and that "no determination of what constituted a reasonable length of time had been made by the CONTRACTING PARTIES".[81]

The Report of the Working Party on "Agreement between the European Communities and Israel" records that

> "a member of the Working Party noted the parties' viewpoint that there was nothing in Article XXIV to prevent the time-table for the fulfilment of the reciprocal obligations being phased differently if the parties so agreed. His authorities considered that such a different phasing could be a legitimate matter for concern, especially if the difference were substantial. The representative of Israel did not share this view, especially in the light of the Tokyo Declaration and the need for differential measures providing special and more favourable treatment for developing countries. He said that, in the present instance, the parties' different stages of economic development made the phasing appropriate and compatible with both the letter and the spirit of the General Agreement".[82]

The Report of the Working Party on the Free-Trade Agreement between Canada and the United States notes as follows.

> "Several members had doubts about the temporary nature of the measures which allowed re-imposition of duties on fresh fruit and vegetables over a period of twenty years and which did not set out a time period for the phasing out of Canadian import permits for grain and grain products. They questioned the consistency of these provisions with Article XXIV:5(c). ... The representative of the United States said that ... this provision would not have the effect of frustrating the ultimate objective of eliminating tariff restrictions between the two parties in a certain time frame .... The parties to the FTA considered that

[78] L/3579, adopted on 6 October 1971, 18S/166, 172, para. 22.
[79] L/3665, adopted on 29 May 1972, 19S/90, 92-93, paras. 10-12.
[80] L/3750, adopted on 25 October 1972, 19S/102, 103, para. 3.
[81] *Ibid.*, 19S/105, para. 8.
[82] L/4365, adopted on 15 July 1976, 23S/55, 63, para.23.

[these provisions] were applied as a type of emergency clause and therefore met the requirements of Article XXIV."[83]

"With regard to the requirement referred to in paragraph XXIV:5(c) that free-trade areas be formed 'within a reasonable length of time', the Working Party noted that the plan and schedule for the elimination of tariffs in the Agreement did not exceed the time period of ten years. Furthermore, bilateral emergency actions (Article 1102) allowing the suspension of reductions in duty or a return to m.f.n rates of duty would be limited to the transition period .... However one member was unable to take a definitive position on the consistency of the Agreement with Article XXIV:5(c) because of the absence of a clear plan and schedule for the elimination of certain non-tariff barriers in agricultural products, in particular the existence of a twenty-year snapback provision for fresh fruit and vegetables (Article 702) and the indefinite time-frame allowing the imposition of restrictions on grain and grain products (Article 705)."[84]

See also the discussion in various Working Party reports concerning "reasonable length of time"[85] and the references to the powers of the CONTRACTING PARTIES below under paragraph 7 of Article XXIV.

Paragraph 3 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "The 'reasonable length of time' referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period".

5. Paragraph 6

The present paragraph 6 of Article XXIV emerged from the initiative of France at the First Session of the CONTRACTING PARTIES at Havana in 1948, to immediately replace the original text of Article XXIV by the text of the corresponding articles of the Havana Charter in order to accommodate the customs union agreement that had been signed between France and Italy. In discussions at the First Session, the representative of the United States stated that "he would have to give further study to the position of bound rates of duty in the event of formation of a customs union"; the representative of France stated that "he would have no objection to providing some procedure whereby an injured party could seek a satisfactory adjustment or compensation; he mentioned in this connection the formula provided in Article XXIII and in Article XXVIII".[86] The Report of the Sub-Committee on Supersession at the First Session, which recommended the replacement of Article XXIV, notes that "in connection with paragraph 5(a) of Article XXIV, the Sub-Committee discussed the question of increases in bound rates of duty which might arise from the provision that the duties imposed at the institution of a customs union are not to be on the whole higher than the general incidence of the duties previously applicable in the constituent territories. This question was referred to the delegates of France and the United States who were asked to submit recommendations". The report of these two delegations recommended an addition to paragraph 5(a) which became the present paragraph 6.[87]

(1) "the procedure set forth in Article XXVIII shall apply"

(a) Application of Article XXVIII procedures

Paragraph 10 of the 1980 Guidelines on "Procedures for Negotiations under Article XXVIII"[88] provides that these procedures are in relevant parts also valid for renegotiations under Article XXIV:6.

[83] L/6927, adopted 12 November 1991, 38S/47, 63, para. 52.

[84] *Ibid.*, 38S/74, para. 89.

[85] See the relevant discussion in the Reports of the following Working Parties: EEC-Association of Greece, 11S/149, paras. 6, 7; EEC-Association with Turkey, 13S/59, paras. 6, 7, 19S/102, paras. 6, 8, 14, 21S/108, paras. 7, 10; UK-Ireland FTA, 14S/122, paras. 24, 26.

[86] GATT/1/SR.2, p. 4.

[87] GATT/1/21, p. 2, para. 8; report of the two delegations, GATT/1/41; discussion and adoption at GATT/1/SR.7, p. 4, GATT/1/SR.10, p. 2, GATT/1/SR.11, p. 1.

[88] C/113 and Corr.1, 27S/26.

The 1988 Working Party Report on "Accession of Portugal and Spain to the European Communities" notes the statement of one member of the Working Party that "The exclusion of preferential trade was necessary ... for the purpose of determining supplier rights in the negotiations conducted under Article XXIV:6".[89]

The 1990 Award by the Arbitrator on "Canada/European Communities - Article XXVIII Rights" discusses, *inter alia*, the Article XXVIII rights of Canada dating from Article XXIV:6 negotiations Canada concluded with the Community on 29 March 1962 and the agreements on quality and ordinary wheat concluded between the parties on the same day. The Award notes as follows:

> "... it is appropriate to give weight to the generally accepted proposition that the right to withdraw concessions is an integral part of the right to negotiate, which right is not in dispute here. It is worth recording that Article XXIV:6 itself specifies that in the negotiations required by Article XXIV 'the procedures set forth in Article XXVIII shall apply'. There can be no doubt that here the procedures include the right to withdraw concessions".[90]

Paragraph 4 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26-28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union".

(b) Conciliation and arbitration

In October 1963 a panel was established at the request of the EEC and the US "to render an advisory opinion to the two parties concerned in order to determine: on the basis of the definition of poultry provided in paragraph 02.02 of the Common Customs Tariff of the European Economic Community, and on the basis of the rules of and practices under the GATT, the value (expressed in United States dollars) to be ascribed, as of 1 December 1960, in the context of the unbindings concerning this product, to United States exports of poultry to the Federal Republic of Germany". The unbindings in question had taken place pursuant to Article XXIV:5(a). The Panel determined the appropriate reference period, adjusted the figures for that period to take into account discriminatory quantitative restrictions existing in the Federal Republic of Germany during that period, and assessed what the United States could reasonably have expected that the value of its exports would have been in the reference period had there been no discriminatory quantitative restrictions.[91] See further under Article XXVIII.

In 1974 Canada could not reach an agreement with the EEC in Article XXIV:6 negotiations in connection with the accession to the Communities of Denmark, Ireland and the United Kingdom. A Panel was established under paragraphs 1(c) and 2 of Article XXIII upon Canada's request, "to investigate whether the entry into force of Schedules LXXII and LXXIIbis maintains the general level of reciprocal and mutually advantageous concessions between Canada and the European Communities, not less favourable to trade than that provided for in Schedules XL, XLbis, XIX, XXII and LXI; the investigation would not be limited to statistical or quantitative tests but would take account of the broader economic elements as is customary in Article XXVIII negotiations".[92] The Panel was not activated because the parties reached an agreement which resulted in a Joint Declaration.[93]

In July 1987 Argentina, supported by a number of delegations, requested establishment of a panel under Article XXIII:2, stating that the EEC had "insisted on applying incorrect methods in calculating compensation

[89] L/6405, adopted on 19-20 October 1988, 35S/293, 311, para. 36.
[90] DS12/R, 37S/80, 85.
[91] Establishment of Panel, 12S/65; full text of Panel Report on "Panel on Poultry", L/2088 (not reprinted in the BISD).
[92] L/4107, C/W/250, C/M/101 p. 7-11, C/W/251, C/M/102 p. 2-5.
[93] C/W/259, C/M/105 p. 1-3.

(global balance) which are not consistent with Article XXIV:6 of the General Agreement".[94] The matter was not pursued.

At the special meeting of the Council in October 1988 to review developments in the trading system, the Director-General informed the Council that in April 1988, Canada and the EC had asked him, with reference to paragraph 8 of the 1979 Understanding, to render an advisory opinion on whether a tariff concession granted by Portugal to Canada in 1961 was applicable to wet salted cod. This issue had arisen in tariff negotiations between Canada and the EC under Article XXIV:6. He had agreed on 15 April to render such an opinion and on 15 July had made it available to the two parties concerned.[95]

(c) Application of Article XXVIII:3, including time-limits

See under Article XXVIII:3.

(2) "compensatory adjustment"

(a) Methods of calculation and negotiation

The 1988 Working Party Report on "Accession of Portugal and Spain to the European Communities" notes that one member of the Working Party

> "... construed the concept of 'compensatory adjustment' in Article XXIV:6 as implying that a tariff reduction on one item in some constituent territories of the customs union should be taken into account in calculating the amount of compensation for the increase in the tariffs applied to the same item in other constituent territories of the same customs union. It was therefore opposed to the view that 'compensatory adjustment' implied that the amount of compensation should be estimated on the basis of the aggregate change in tariff levels applying to all items, including those not subject to concession".[96]

Paragraph 5 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII".

(b) "Reverse compensatory adjustment"

A Communication from the Commission of the European Communities of 11 January 1973, in connection with the accession to the Communities of Denmark, Ireland and the United Kingdom, proposed that contracting parties consider that the concessions then bound in Schedules XL and XL*bis* were the concessions offered for application to the customs territory of the enlarged Community subject to adjustments in tariff quotas, and stated: "The Communities consider that under the provisions of Article XXIV they have no obligation to extend to the enlarged Communities the concessions formerly granted by the six-State Communities. Having regard to this

[94] L/6201; C/M/212, p. 34-35; C/M/213, p. 8-9.
[95] C/M/225, p. 2.
[96] L/6405, adopted on 19-20 October 1988, 35S/293, 315, para. 38.

consideration, the Communities consider that the concessions they are offering are greater than any compensation which might result for third countries from the provisions of Article XXIV:6".[97]

The 1988 Working Party Report on "Accession of Portugal and Spain to the European Communities" notes that one member of the Working Party

> "... rejected the European Communities' view that as a corollary of 'compensatory adjustment', a customs union could claim 'counter-compensation' from other contracting parties for the reduction of the general incidence of customs duties resulting from the customs union, since this concept was utterly without foundation in the GATT".[98]

Paragraph 6 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents".

(c) Effect of Article XXIV:6 negotiations

The 1989 Panel Report on "EEC - Payments and Subsidies paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins" examined, *inter alia*, the effect of the substitution of EEC Schedules, after successive Article XXIV:6 negotiations as a result of Community enlargement, on non-violation nullification or impairment claims of contracting parties with respect to concessions in those Schedules.

> "The first issue the Panel examined in this context was ... whether the benefits accruing to the United States under the tariff concessions on oilseeds presently in force include the protection of expectations that prevailed in 1962 when the tariff concessions on oilseeds were originally incorporated in the Schedule of Concessions of the Community. ...
>
> "The Panel concluded ... that the answer to the question of whether the expectations of 1962 continue to be protected depends on whether the concessions on oilseeds resulting from the subsequent renegotiations under Article XXIV:6 were part of a new balance of concessions or whether the reinstitution of the concessions at the same rate after the successive enlargements of the Community meant that the balance of concessions originally negotiated in 1962 was to be continued. The Panel noted that the result of the initial Article XXIV:6 negotiations of the Community in 1962 was the creation of a Schedule of Concessions for its common external tariff that had replaced the tariffs of the six founding member States. In these negotiations, the trading partners of the Community compared the benefits accruing to them under the previous tariff concessions of the individual member States with the benefits accruing to them under the common external tariff in the whole territory of the Community. The result of the Article XXIV:6 negotiations following the successive enlargements of the Community was not the creation of a new common external tariff but the extension of the existing tariff concessions of the Community to the new member States.[99] On the occasion of these negotiations pre-existing concessions of the Community were renegotiated as well but such modifications remained exceptional. Except where such modifications were specifically renegotiated, the partners of the Community could confine themselves to comparing the benefits accruing to them under the previous tariff concessions of the new member States with the benefits accruing to them as a result of the application of the Community's tariff concessions by the new member States. They had no reason to proceed to a global reassessment of the value of all the Community's concessions in the whole of the Community's territory.

[97] L/3807.

[98] L/6405, adopted on 19-20 October 1988, 35S/293, 315, para. 38.

[99] The footnote to this sentence refers to "Article XXIV:6 Negotiations: Communication from the Commission of the European Communities", document L/3807 dated 11 January 1973; "Negotiations Under the Provisions of Article XXIV:6: Communication from the Commission of the European Communities", document TAR/16 dated 20 May 1981; "Enlargement of the European Economic Community: Accession of Portugal and Spain", document L/5936, Add.2 and Third Geneva (1987) Protocol, Schedule LXXX.

"In these circumstances, the partners of the Community in the successive renegotiations under Article XXIV:6 could legitimately assume, in the absence of any indications to the contrary, that the offer to continue a tariff commitment by the Community was an offer not to change the balance of concessions previously attained. The Panel noted that nothing in the material submitted to it indicated that the Community had made it clear to its negotiating partners that the withdrawal and reinstitution of the tariff concessions for oilseeds as part of the withdrawal of the whole of the Community Schedule meant that the Community was seeking a new balance of concessions with respect to these items. There is in particular no evidence that the Community, in the context of these negotiations, offered to compensate its negotiating partners for any impairment of the tariff concessions through production subsidies or that it accepted compensatory tariff withdrawals by its negotiating partners to take into account any such impairment. The balance of concessions negotiated in 1962 in respect of oilseeds was thus not altered in the successive Article XXIV:6 negotiations. The Panel therefore found that the benefits accruing to the United States under the oilseed tariff concessions resulting from the Article XXIV:6 negotiations of 1986/87 include the protection of reasonable expectations the United States had when these concessions were initially negotiated in 1962".[100]

6. Paragraph 7

(1) "Any contracting party ... shall promptly notify the CONTRACTING PARTIES"

(a) Notification of agreements under Article XXIV

The Council Decision of 25 October 1972 on procedures for the examination of customs unions and free-trade areas provides that

"The Council notes that Article XXIV:7(a) of the General Agreement requires that any contracting party deciding to enter into a customs union or free trade area or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES.

"Without prejudice to the legal obligations to notify in pursuance of Article XXIV, the Council decides to invite contracting parties that sign an agreement falling within the terms of Article XXIV, paragraphs 5 to 8, to inscribe the item on the agenda for the first meeting of the Council following such signature, to the extent that the advance notice of ten days prescribed for inclusion of items on the agenda can be observed. Inclusion of the item should allow the Council to determine the procedures for examination of the agreement".[101]

(b) Procedures for examination of agreements under Article XXIV

The examination of agreements under Article XXIV has been conducted in working parties established for that purpose; such working parties have generally commenced with an exchange of written questions and answers concerning the agreement under examination.

The Report in 1949 of the Working Party on "The South Africa-Southern Rhodesia Customs Union", which was the first Working Party ever to examine an agreement under Article XXIV, notes that

"It was suggested at the meeting of the CONTRACTING PARTIES when the working party was appointed that its terms of reference might include an examination of the procedure to be established for the implementation of Article XXIV. The working party discussed this question and reached the conclusion that consideration by the CONTRACTING PARTIES of proposals for customs unions would have to be based on the circumstances and conditions of each proposal and, therefore, that no general procedures can be established beyond those provided in the article itself".[102]

[100] L/6627, adopted on 25 January 1990, 37S/86, 126-128, para. 144-146.
[101] 19S/13.
[102] GATT/CP.3/24, adopted on 18 May 1949, II/176, 181, para. 20.

During the discussion of this report, it was stated that "each case should be considered on its own merits. The case under consideration could not create a precedent because no two cases had the same characteristics". It was also submitted that "to establish precedents was clearly against the spirit of Article XXIV".[103]

The Report of the Working Party on "Association of Greece with the EEC"

> "… stressed that the sum of the conditions prevailing in Greece was unique to Greece and that the present Agreement was not a precedent for possible future association agreements between other countries and the European Economic Community. The Working Party considered that in any event, because of differing economic factors, each agreement for association would have to be considered, in the context of GATT, entirely on its own merits".[104]

The Report of the Working Party on "EEC - Agreement of Association with Turkey" records the view that "as acknowledged by prior working parties, these association agreements had to be considered on a case-by-case basis and in their own context".[105]

Paragraph 7 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate".

c) Periodic reporting

At the end of the Twenty-seventh Session in 1971, the CONTRACTING PARTIES instructed the Council to establish a calendar fixing dates for the examination, every two years, of reports on regional preferential agreements.[106] However, no such calendar has been fixed since 1987.

At the Twenty-Fifth Session in 1968, the representative of the EEC stated that since 1 July 1968 the customs union had been fully achieved, and the Community did not anticipate submitting further reports on the formation of the customs union.[107] At the February 1970 Council meeting, the EEC cited its notification that on 1 January 1970 the Common Market had completed its transitional period of existence and entered the definitive stage, and "this Customs Union is now complete in accordance with the criteria laid down in Article XXIV"[108] and stated that the Community would no longer submit annual reports on the development of its customs union. The Chairman in his summing-up noted that he had consulted on this matter with delegations and had come to the conclusion that it would be wiser not to pursue an examination of the legal issues involved; he noted as well that "such a decision was without prejudice to the legal rights of all contracting parties under Article XXIV, so that it was open to any contracting party to raise on the agenda of the Council or on the agenda of the CONTRACTING PARTIES any specific matter arising under Article XXIV in relation to the Community".[109]

The Report of the Working Party on "Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT)" also records the view of the representative of Australia that "consistent with past GATT practice, the parties would be prepared to submit a report biennially to the CONTRACTING PARTIES on the operation of the Agreement. They would, however, see no need to continue this reporting once the full free trade area had been finally established".[110]

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[103]GATT/CP.3/SR.13, p. 5, 7.
[104]L/1829, adopted on 15 November 1962, 11S/149, 157, para. 32.
[105]L/3750, adopted on 25 October 1972, 19S/102, 103, para. 3.
[106]L/3641, 18S/37, 38. For calendars established by the Council, see, e.g., documents L/3682/Rev.1, L/4100, L/4445, L/4725, L/5158, L/5502 and L/5825.
[107]L/3125, SR.25/7 p. 119ff, SR.25/9 p. 171ff; see also later statement by the EEC that from a legal point of view, there was no reporting obligation in the case of customs unions and free-trade areas which had been fully completed, C/M/123, p. 6.
[108]L/3332.
[109]C/M/61, p. 6-7.
[110]L/5664, adopted on 2 October 1984, 31S/170, 179, para. 28.

See also material on this subject in various reports of working parties.[111]

Paragraph 11 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur".

(2) "the CONTRACTING PARTIES shall make recommendations"

(a) Powers of the CONTRACTING PARTIES under paragraph 7

It was stated during discussions on the General Agreement at the Geneva session of the Preparatory Committee that

> "there is no question of the [CONTRACTING PARTIES] ... having any power to approve or disapprove a Customs Union ... if a country which is a Member of this Agreement enters into an arrangement with another country ... which involves preferential arrangements which are not consistent with its obligations under Article I, and justifies that departure from its obligations on the ground that it is a step toward a Customs Union, then the contracting parties should have a chance to have a look at those proposals and see whether they are in fact as represented. If the [CONTRACTING PARTIES] find that the proposals made by the country that is making them will in fact lead towards a Customs Union in some reasonable period of time, why they must approve it. They have no power to object. It is simply a mechanism foreseeing, if necessary, that some Member does not find a way out of its obligations under Article I under the guise of entering into a Customs Union when it is really not likely that a Customs Union will eventuate".[112]

The Report of the Working Party on "EEC - Agreement with Spain" contains the following paragraph:

> "Members of the Working Party noted that paragraph 7(b) stipulated that the CONTRACTING PARTIES should make recommendations to the parties to a free-trade agreement if they found that the Agreement was not likely to result in the formation of a customs union or a free-trade area within the period contemplated by the parties to the Agreement or the period foreseen for the formation of free-trade area was not a reasonable one. In the absence of a specific time period for achieving that purpose, it was obviously impossible in the case under discussion to judge its reasonableness. Hence the CONTRACTING PARTIES were deprived of one of the important safeguard provisions incorporated in Article XXIV".[113]

Paragraphs 7 through 10 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provide as follows:

> "... The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.
>
> "In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.
>
> "Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

[111] See the relevant discussion in the Reports of the following Working Parties: ANZCERT, 31S/170, paras. 26, 28, 31; Australia-Papua New Guinea, 24S/63, paras. 14, 15, 19; Canada-US FTA, 38S/47, paras. 80, 97, 98; CARICOM, 24S/68, para. 14; ACP-EEC Convention of Lomé, 23S/46, paras. 21, 24-26, 29S/119, paras. 7, 9, 10, 24; EEC-Agreement with Egypt, 25S/114, paras. 13-15, 39; EEC-Agreement with Jordan, 25S/133, paras. 14-16, 39; EEC-Agreement with Lebanon, 25S/142, paras. 14-16, 39; EEC-Association of Morocco, 24S/88, paras. 6, 8, 30; EEC-Agreement with Syria, 25S/123, paras. 13-15, 39; EEC-Agreement with Tunisia, 24S/97, paras. 6, 20, 29; EEC-Agreement with Yugoslavia, 28S/115, paras. 10, 12, 25; EFTA-Agreement with Spain, 27S/127, paras. 27, 29.

[112] EPCT/TAC/PV/11, p. 37.

[113] L/3579, adopted on 6 October 1971, 18S/166, 172, para. 21.

"Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations".

(b) Practice under paragraph 7

In the early years of GATT, the examination of agreements notified under Article XXIV:7 was sometimes concluded by the adoption of a Declaration or Decision. See, for instance, the Declaration of 18 May 1949 on "The Customs Union Agreement between the Governments of the Union of South Africa and Southern Rhodesia", in which

"The CONTRACTING PARTIES

"*Declare* that the Governments of the Union of South Africa and Southern Rhodesia are entitled to claim the benefits of the provisions of Article XXIV of the General Agreement on Tariffs and Trade relating to the formation of customs unions;

"*Request* the Governments of the Union of South Africa and Southern Rhodesia to instruct the Customs Union Council to include in each annual report a definite plan and schedule of the steps to be taken during the ensuing twelve months towards the re-establishment of the said union; and

"*Decide* to review the above declaration if, after study of reports and plans submitted by the two Governments, they find at any time that the Interim Agreement is not likely to result by 1 April 1959 in the establishment of a customs union in the sense of Article XXIV".[114]

Since that time, the examination of agreements notified under Article XXIV:7 has almost never led to a unanimous conclusion or a specific endorsement by the CONTRACTING PARTIES that all the legal requirements of Article XXIV had been met and that the parties to the agreement in question could claim the benefits of Article XXIV. The exceptions are the customs union between the Czech Republic and the Slovak Republic; the Caribbean Community and Common Market (CARICOM); the Caribbean Free Trade Agreement; and the El Salvador-Nicaragua Free Trade Area and the Participation of Nicaragua in the Central American Free Trade Area. In the case of the Ireland-United Kingdom Free Trade Agreement the conclusions stated that no recommendations were being made under Article XXIV: 7.[115]

In the Twelfth Session, the CONTRACTING PARTIES examined the Treaty Establishing the European Economic Community in a Committee composed of all contracting parties, which appointed four sub-groups. The report of the Committee notes that "the sub-group reports contained no definite conclusions, because either the time at the disposal of the sub-groups or the information available did not permit such conclusions to be drawn".[116] Further consideration of questions relating to the Treaty was conducted in the Intersessional Committee and at the Thirteenth Session, where "After giving further consideration to the continuation of their examination of the Rome Treaty the CONTRACTING PARTIES arrived at the following conclusions:

"(a) As many contracting parties considered that because of the nature of the Rome Treaty there were a number of important matters on which there was not at this time sufficient information to enable the CONTRACTING PARTIES to complete the examination of the Rome Treaty pursuant to paragraph 7 of Article XXIV, this examination and the discussion of the legal questions involved in it could not usefully be pursued at the present time.

[114] II/29.
[115] For citations for these agreements, see the table that follows this chapter.
[116] 6S/69.

"(b) This postponement would clearly not prejudice the rights of the CONTRACTING PARTIES under Article XXIV.

"(c) The CONTRACTING PARTIES welcomed the readiness of the members of the EEC to furnish further information pursuant to paragraph 7(a) of Article XXIV as the evolution of the Community proceeded.

"(d) The CONTRACTING PARTIES noted that procedures for consultations under Article XXII had been agreed upon and were being applied in connexion with questions arising out of the application of the Rome Treaty.

"(e) The CONTRACTING PARTIES also welcomed the willingness of the members of the EEC to furnish in Article XXII consultations information as to the measures arising out of the application of the Treaty.

"(f) The CONTRACTING PARTIES noted that the other normal procedures of the General Agreement would also be available to contracting parties to call in question any measures taken by any of the six countries in the application of the provisions of the Rome Treaty, it being open of course to such country to invoke the benefit of Article XXIV insofar as it considered that this Article provided justification for any action which might otherwise be inconsistent with a provision or provisions of the General Agreement".[117]

Similar phrasing was also used in some other conclusions adopted on regional trade agreements.[118]

In some cases the CONTRACTING PARTIES have granted a waiver or special exception. In other cases, the CONTRACTING PARTIES adopted conclusions which note, *inter alia,* that "the CONTRACTING PARTIES do not at this juncture find it appropriate to make recommendations to the parties to the Treaty pursuant to paragraph 7(b) of Article XXIV".[119] There are also cases where the CONTRACTING PARTIES took note of the interim arrangement and "invited" submission of "a sufficiently comprehensive plan and schedule".[120]

At the November 1992 Council in discussion of the Report of the Working Party on "Canada-United States Free Trade Agreement", the Chairman of the Working Party noted that "Over fifty previous working parties on individual customs unions or free-trade areas had been unable to reach unanimous conclusions as to the GATT consistency of those agreements. On the other hand, no such agreements had been disapproved explicitly. … he noted that some reservations expressed in the examination of the Canada-United States Agreement, as well as of earlier agreements, had been concerned primarily with possible future effects of the agreements. This suggested that greater reliance might be placed on a review of how such agreements were actually implemented".[121]

(c) Legal status of agreements in the absence of recommendations

The Report of the Working Party on the "Accession of Greece to the European Communities" records the view of one member of the Working Party that "the compatibility of the Treaty of Rome itself with the provision of the General Agreement remained an open question since the Working Party which had examined the Treaty had not reached any final conclusions in this regard. Similarly, the compatibility of the 1973 enlargement with the General Agreement had also remained unresolved as that Working Party had not issued a final report".[122] The EC responded that it "did not share the view that these earlier treaties constituted an open question or that their legal status was unresolved in GATT since the CONTRACTING PARTIES had formulated no recommendations under Article XXIV:7(b) for any modifications to those arrangements. It was, however, always possible for any country to seek to resume discussions of these questions in another more appropriate context".[123]

[117] 7S/71.
[118] See, e.g., similar conclusions adopted on Latin American Free Trade Area, 18 November 1960, 9S/21.
[119] See, e.g.. Latin American Free Trade Area, 9S/21; Association of Greece with the EEC, 11S/57; Arab Common Market, 14S/21.
[120] New Zealand/Australia Free Trade Agreement, 14S/23.
[121] C/M/253, p. 25.
[122] L/5453, adopted on 9 March 1983, 30S/168, 174, para. 14.
[123] *Ibid.*, 30S/175, para. 18.

During discussions in the Council concerning establishment of the Panel on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region", one delegation "expressed disagreement with the interpretation that in not rejecting the agreements, the CONTRACTING PARTIES had accepted them. He referred to the reports of the Working Parties which had examined the EEC agreements with Algeria, Morocco and Tunisia respectively. It had been stipulated in those reports that some members of the Working Parties had held the view that it was doubtful that these agreements were entirely compatible with the requirements of the General Agreement. ... Moreover, the reports of the Working Parties which had examined the agreements of Malta, Cyprus and Israel respectively, all indicated that some members held views on these agreements similar to the view expressed above. ... In at least one specific case, members reserved their rights under the General Agreement".[124]

The 1985 Panel report on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region", which has not been adopted, includes the following findings:

> "The Panel noted that at the time of the examination of the agreements entered into by the European Community with certain Mediterranean countries, there was no consensus among contracting parties as to the conformity of the agreement with Article XXIV:5. ..."[125]

> "... The Panel considered that, in effect, the CONTRACTING PARTIES had withheld judgment at that time as to the conformity of the agreements with the requirements of Article XXIV. The agreements had not been disapproved, nor had they been approved. The Panel found therefore that the question of the conformity of the agreements with the requirements of Article XXIV and their legal status remained open. ...".[126]

With regard to the applicability of Article XXIII:

> "... The Panel noted that the absence of a pertinent decision by the CONTRACTING PARTIES did not create a legal vacuum. In fact the decision had to be considered as pending and could therefore be taken at any time in the future ... At this stage, on the multilateral level, the status of the agreements had to be considered as still undetermined".[127]

The Panel concluded, *inter alia*, that:

> "Given the lack of consensus among contracting parties, there had been no decision by the CONTRACTING PARTIES on the conformity with Article XXIV of the agreements under which the EC grants tariff preferences to certain citrus products originating from certain Mediterranean countries, and therefore the legal status of the agreements remained open".[128]

During the discussion of this Panel report in the GATT Council, this Panel finding was criticized by some contracting parties which stated, *inter alia*, that "Article XXIV agreements had to be presumed to be in conformity with the General Agreement as long as the CONTRACTING PARTIES had not made a recommendation on them".[129]

In this connection see also the unadopted 1993 Report of the Panel on "EEC - Member States' Import Régimes for Bananas"[130] and the unadopted 1994 Report of the Panel on "EEC - Import Régime for Bananas".[131]

Paragraph 12 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of

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[124] C/M/162, p. 15, referring respectively to 24S/80, 88, 97; 19S/90, 21S/94, 23S/55; and 19S/96. See also C/M/160, p. 18.
[125] L/5776 (unadopted, dated 7 February 1985), para. 4.6.
[126] *Ibid.*, para. 4.10.
[127] *Ibid.*, para. 4.21.
[128] *Ibid.*, para. 5.1(b).
[129] C/M/186, pp. 9, 10, 16, 17.
[130] DS32/R, dated 3 June 1993, paras. 364-372.
[131] DS38/R, dated 11 February 1994, paras. 156-164.

Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area".

7. Paragraph 8

(1) "duties and other restrictive regulations of commerce ... are eliminated"

(a) "regulations of commerce"

The Report of the 1970 Working Party on "EEC - Association with African and Malagasy States" records the view of some members of the Working Party that "the regulations of commerce in question should be interpreted in relation to Articles I:1 and III of the General Agreement".[132]

(b) Charges on imports other than customs duties

The Report of the 1970 Working Party on "EEC - Association with African and Malagasy States" records the view of some members of the Working Party that "free trade within the meaning of Article XXIV:8(b) did not exist" in view of the continued imposition by certain parties to the Yaoundé Convention of fiscal charges on imports from other members, and that "an alternative approach should ... be sought, ... namely the Generalized System of Preferences".[133]

> "The representatives of the parties to the Convention ... noted that, so far as they knew, the elimination of fiscal charges had never yet constituted an element necessary for recognition that a free-trade area was consistent with the GATT rules. ... The General Agreement made a clear-cut distinction between measures which had a protective effect and other measures applied in like manner to domestic and imported products. The rules and obligations in that respect were very clearly defined in Article III. It was evident that the provisions of Article XXIV concerning the concept of a free-trade area concerned only protective measures. The taxes referred to were of a fiscal character, not protective, and did not differ from similar taxes applied by other contracting parties. It was in any case unacceptable that developing countries should be denied the right to impose a general fiscal tax, and be deprived of one of the main sources of income when the imposition of such taxes was a normal and accepted practice in all other countries including contracting parties which were members of regional arrangements already examined in the GATT".[134]

The same differences of view are recorded in the Report of the Working Party on "EEC - Association with Certain Non-European Countries and Territories".[135]

The Report of the Working Party on "EEC - Agreement of Association with Malta" notes that one member stated that "If after entering a customs union Malta were to retain essentially the same level of charges on imports from all sources as presently existed in the Maltese tariff, but redefined as revenue duties, his delegation wondered how it could be said that trade was free of duties; in his view this would not be consistent with the intent of the General Agreement as regards the establishment of customs unions".[136] In response,

> "The parties to the Agreement denied the validity of this interpretation concerning revenue duties in relation to the application of Article XXIV. There was nothing in the General Agreement to prohibit the levying of revenue duties, which indeed represented an essential source of revenue for developing economies. The freedom of action of any contracting party in the application of its fiscal policy was not limited by the General Agreement except where its direct or indirect protective effects might be detrimental to a concession. In the face of the provisions of Article XXIV, the existence of revenue duties, which by definition ruled out discriminatory application, could not be regarded as jeopardizing the establishment of free trade. Such an interpretation would be tantamount to denying the benefit of the provisions of Article XXIV and the economic integration desired by those who framed it to practically all countries,

[132] L/3465, adopted on 2 December 1970, 18S/133, 135-136, para. 7.
[133] *Ibid*.
[134] *Ibid*., 18S/136-137, para. 8.
[135] L/3611, adopted on 9 November 1971, 18S/143, 146-147, paras 9-12.
[136] L/3665, adopted on 29 May 1972, 19S/90, 94, para. 14.

developing countries in particular. In the present instance, the objective of the parties to the Agreement was to institute free trade among them and to establish a customs union involving the adoption by Malta of the Common Customs Tariff of the Community. Those were strictly the only points to be taken into consideration in the face of the provisions of Article XXIV.

"One member of the Working Party ... stressed that these was no obligation to eliminate non-protective revenue duties on goods traded between members of a customs union or a free-trade area.

"The discussion brought to light the fact that the English and French versions of Article XXIV paragraph 8(a) differed inasmuch as the English text referred only to 'duties', whereas the French text referred to 'droits de douane' (customs duties). The Working Party did not reach any conclusion on the point".[137]

The Report of the Working Party on "EEC - Agreement of Association with the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya" notes the view of the parties to this Agreement that the fiscal entry charges levied by these African countries were not "duties or other regulations of commerce" within the meaning of Article XXIV.[138] This view was challenged by other members of the Working Party.

The Report of the Working Party on the "Free-trade Agreement between Canada and the United States" notes that "In response to a suggestion by one other member that the customs user fee should be more appropriately considered as 'other restrictive regulations of commerce' that applied between the two FTA parties in terms of Article XXIV:8(b), the representative of the United States said that the customs user fee could not be qualified as 'restrictive regulation of commerce' in the way it was presently applied by his country".[139]

See also the discussion of this issue in various other Working Party reports and documents.[140]

(c) Duties in the context of free-trade areas between market economy and centrally-planned economy countries

During discussion of the free-trade area agreements between Finland and Hungary, Finland and Bulgaria, and Finland and Czechoslovakia at the February 1975 meeting of the Council, the representative of the United States stated that "Article XXIV of the GATT was intended to permit the creation of free-trade areas by the removal of duties and other restrictive regulations of commerce. He wondered how this was to be achieved in the case of countries where duties had a nominal or at most a limited effect on trade, while other restraints on commerce played a more significant role". He further expressed "doubt that the criteria and intent of Article XXIV could be met by agreements between market and non-market economy countries which essentially dealt only with the removal of duties".[141]

The Reports of the Working Parties on the examination of the agreements concluded by Finland with Czechoslovakia[142], the German Democratic Republic[143], Hungary[144] and Poland[145] record divergent views as to the applicability of Article XXIV to such agreements. The 1977 Working Party Report on "Agreement between Finland and Hungary" notes that "Some members of the Working Party considered that all agreements concluded under Article XXIV should be examined in the same manner but with regard to agreements involving a centrally-planned economy State-trading country and a market economy or a mixed economy country, they considered that serious and novel questions were raised which merited serious consideration, although this did not mean that they took the position that such agreements could not under any circumstances comply with the requirements of

[137] *Ibid.*, 19S/94-95, paras. 15-17.
[138] L/3721, adopted on 25 October 1972, 19S/97, 100, para. 14.
[139] L/6927, adopted on 12 November 1991, 38S/47, 60, para. 40.
[140] See the Reports of the following Working Parties: EEC-Association with African and Malagasy states, 18S/133, paras. 7, 8, 14, 27, 29; EEC-Association with Tanzania, Uganda and Kenya, 19S/97, paras. 11-17; ANZCERT, 31S/170, paras. 25-29. See also note on discriminatory application by Italy of administrative and statistical fees, L/3279, discussed at C/M/59; request for consultations by Colombia regarding Italian fiscal duties on bananas, L/6138, discussed at C/M/207 and C/M/212, referred to as resolved at 35S/323, para. 8.
[141] C/M/103, p. 10-11.
[142] L/4342, adopted on 14 June 1976, 23S/67; L/4837, Second Report adopted on 6 November 1979, 26S/327.
[143] L/4471, Interim Report adopted on 2 March 1977, 24S/106; there was no final report.
[144] L/4230, adopted on 31 October 1975, 22S/47; L/4497, Second Report adopted on 23 May 1977, 24S/107.
[145] L/4928, adopted on 26 March 1980, 27S/136.

Article XXIV. Accordingly, they would be interested in determining whether the customs tariff alone influenced trade flows between the parties".[146] The 1980 Working Party Report on "Agreement between Finland and Poland" notes that one member of the Working Party stated that "he could not accept any approach that would question *a priori* the compatibility of the Agreement with the provisions of the General Agreement, on the basis that the parties to the Agreement were of different economic and social systems".[147]

(d) Quantitative restrictions

The Report of the Sub-group of the Committee on the "European Economic Community" which examined the provisions of the EEC Treaty relating to quantitative restrictions notes that most members of the Sub-Group "could not accept the term 'other regulations of commerce' in 8(a)(ii) included quantitative restriction. Moreover they pointed out that if paragraph 8(a)(ii) were interpreted to require a common level of quantitative restrictions against third countries, this would be incompatible with the explicit permission in paragraph 8(a)(i) for the use of quantitative restrictions within the system for balance-of-payments reasons since it would appear not to be practicable to have a common level of quantitative restrictions against third countries in a situation where countries within the customs union made use of their right to impose such restrictions against their partners. Moreover, the effect of such an arrangement would be that some country or countries in the union would be imposing quantitative restrictions not required by their own individual balance-of-payments position and would, therefore, be raising barriers to trade with other contracting parties".[148]

The Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" notes with respect to the retention of import quotas on eggs and dairy products by Canada that "one member said that the provisions of Article XXIV:8(b) did not give open-ended permission to maintain quantitative restrictions".[149] In the case of the reciprocal exemptions from meat import laws granted by each party, one member "wished to know the legal basis on which such restrictions vis-à-vis third countries could be justified; and on which the party taking the action could exempt exports of the other party from the quantitative restrictions if it was those exports which were causing injury".[150]

(2) "except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX"

Article 44 of the Havana Charter, from which this provision was taken, refers to "except, where necessary, those permitted under Section B of Chapter IV and under Article 45".

The Report of the Sub-group of the Committee on the "European Economic Community" which examined the consistency with Article XXIV of the EEC Treaty provisions for the association of overseas territories records the view of some members that

> "paragraph 8(b), in derogation of the rule regarding the elimination of internal obstacles, made provision for certain restrictive trade regulations authorized under certain Articles of the General Agreement; the list of these did not, however, include Article XVIII, concerning governmental assistance to economic development. The application of the customs duties and of the restrictions instituted under Article XVIII did not therefore benefit from the exception for which provision was made in Article XXIV. The latter did not make provision for allowing one constituent territory of a free-trade area, in order to protect its industry, to levy import duties on imports from another constituent territory".[151]

[146] L/4497, adopted on 23 May 1977, 24S/107, 110, para. 12.
[147] L/4928, adopted on 26 March 1980, 27S/136, 138, para. 11.
[148] L/778, adopted on 29 November 1957, 6S/70, 79, para. 6.
[149] L/6927, adopted on 12 November 1991, 38S/47, 65, para. 57.
[150] L/6927, adopted on 12 November 1991, 38S/47, 63-64, para. 53.
[151] L/778, adopted on 29 November 1957, 6S/70, 94, para. 16.

The EEC member States responded that

> "the Rome Treaty did not make any legal use of Article XVIII. Furthermore, the argument which had been drawn *a contrario* from the fact that Article XVIII was not one of those referred to in Article XXIV:8(b) did not take into account the fact that Article XXI was not mentioned either. It would be difficult, however, to dispute the right of contracting parties to avail themselves of that provision which related, inter alia, to traffic in arms, fissionable materials, etc., and it must therefore be concluded that the list was not exhaustive".[152]

The Report of the Working Party on "European Free Trade Association and Association between EFTA and Finland - Accession of Iceland" records the view of certain members of the Working Party that "Article XXIV did not affect the obligation of contracting parties to apply quota restrictions in a non-discriminatory manner".[153]

The Report of the Working Party on "EC Agreements with Finland" records the view of the EEC and Finland that "Article XXIV:8(b), specifically mentioning Article XIII, was permissive in this respect and covered certain possibilities in relation to the maintenance of outward restrictive regulations of commerce in certain circumstances, while eliminating those between the parties to the Agreement".[154]

The 1988 Report of the Working Party on "Accession of Portugal and Spain to the European Communities" notes that "Several representatives .... wondered whether in the opinion of the European Communities, Article XXIV provided a derogation from the obligations arising out of other GATT provisions. The representative of the European Communities considered that Article XXIV applied in the light of other provisions of the GATT".[155]

The 1991 Report of the Working Party on "Free-Trade Agreement between Canada and the United States" notes the view of one member that "if a party to a free-trade agreement invoked Article XX to justify an export licensing scheme for short supply or conservation purposes, it should apply such a measure in a non-discriminatory manner. ... Article XXIV:8(b) did not allow parties to a free trade agreement to exempt other parties from the measures taken under the exceptions provided in that article. Such measures could not be considered 'other restrictive regulations of commerce' in terms of Article XXIV:8(b). The representative of Canada said that under Article XXIV:8(b) of the GATT, restrictions meeting the exceptions of Article XX could be maintained in a free-trade agreement. Export control measures were included in 'other restrictive regulations of commerce' in this article. ... Article XXIV:8(b) ... did not preclude the parties to a free-trade agreement from undertaking elimination of restrictions vis-à-vis the other party to the agreement".[156]

The 1992 Panel Report on "United States - Denial of Most-favoured-nation Treatment as to Non-Rubber Footwear from Brazil" includes the following footnote:

> "The Panel noted that Brazil had also mentioned the existence of other preferential arrangements -- specifically, free-trade arrangements between the United States and other contracting parties that would be covered by Article XXIV. However, the question of whether such Article XXIV arrangements can include non-tariff preferences has repeatedly been discussed but never resolved by the CONTRACTING PARTIES. See, for example, the Report of the Working Party on the Accession of Iceland to EFTA, BISD 18S/174, 177. In any case, the Panel did not consider that the resolution of such an issue with respect to Article XXIV arrangements was necessary to the disposition of the case at hand."[157]

See also the discussion below of the relationship between Article XXIV and Articles XII, XIII, XVIII and XIX, and see material on Article XXIV under Article XX.

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[152] *Ibid.*, 6S/97, para. 26.
[153] L/3441, adopted on 29 September 1970, 18S/174, 177, para. 10.
[154] L/4064, adopted on 30 October 1974, 21S/76, 80, para. 16.
[155] L/6405, adopted on 19-20 October 1988, 35S/293, 310, para. 35.
[156] L/6927, adopted on 12 November 1991, 38S/47, 61, para. 45.
[157] DS18/R, adopted on 19 June 1992, 39S/128, 153, footnote to para. 6.17.

(3) "with respect to substantially all the trade"

(a) Quantitative criteria

The Report of the Sub-group of the Committee on the "European Economic Community" which examined the consistency with Article XXIV of the EEC Treaty provisions for the association of overseas territories notes that the EEC member States proposed the following definition of the term "substantially all": "a free-trade area should be considered as having been achieved for substantially all the trade when the volume of liberalized trade reached 80 per cent of total trade".[158]

> "Many members of the Sub-Group said that each case of a proposed customs union or free-trade area had to be considered on its merits and that it was, therefore, inappropriate to fix a general figure of the percentage of trade which could be subjected to internal barriers without running counter to the definition in paragraph 8(b) of Article XXIV. A matter to be considered was whether the provisions of a free-trade area pointed towards a gradual increase of barriers affecting the trade between the constituent parties or a gradual reduction of such barriers. Moreover, any calculation of the percentage of trade not freed from barriers would need to take account of the fact that this would be, or would have been, larger if the trade had been allowed to flow freely. Some members of the Sub-Group thought that it would be unrealistic to apply the same criterion to a free-trade area such as that existing between Nicaragua and El Salvador and to a free-trade area the members of which were highly industrialized countries accounting for a large percentage of world trade".[159]

The same Report reflects different views as to whether a quantitative assessment of the trade liberalization within the free trade areas between the European and the overseas territories should be based, as suggested by the EEC States, on the total volume of trade including the intra-European trade among the EEC States or, as suggested by other contracting parties, solely on the trade between the EEC as a whole and the associated overseas territories.[160]

The Report of the Working Party on "European Communities - Agreements with Portugal" notes the view of the EEC "that no exact definition of the expression ['substantially all the trade'] existed and that the precise figures would vary from case to case according to several factors. At any rate, percentages were established as a general indicator of the trade covered by the Agreement and were not to be regarded as a conclusive factor".[161]

See also discussions in various Working Party reports on this subject.[162]

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[158] L/778, adopted on 29 November 1957, 6S/70, 99, para. 30.

[159] *Ibid.*, 6S/100, para. 34.

[160] *Ibid.*, 6S/98-101.

[161] L/3901, adopted on 19 October 1973, 20S/171, 176, para. 16.

[162] See the Reports of the following Working Parties: Arab Common Market, 14S/94, paras. 12-13; ANZCERT, 31S/170, paras. 4-5, 25; Australia/Papua New Guinea Agreement, 24S/63, paras. 6-7, 13; CARIFTA, 18S/129, paras. 5, 7, 13; CARICOM, 24S/68, paras. 5, 7; European Economic Community, 6S/94-101, paras. 15-36; EEC-Association Agreements with African and Malagasy States, 14S/100, paras. 5, 6, 11, 23, 24, 30, 18S/133, paras. 4, 5, 8, 11, 12, 27; ACP-EEC Convention of Lomé, 23S/46, para. 4; EEC-Agreement with Algeria, 24S/80, paras. 5, 12; EEC-Association with Cyprus, 21S/94, paras. 20-22; EEC-Agreement with Egypt, 21S/102, paras. 16, 19, 25S/114, paras. 5, 13; EEC-Association of Greece, 11S/149, paras. 10-11; EEC-Agreement with Israel, 18S/158, paras. 3, 7, 22, 28, 23S/55, paras. 4, 6, 7, 9, 19, 21, 22, 24; EEC-Agreement with Jordan, 25S/133, paras. 5, 14; EEC-Agreement with Lebanon, 22S/43, paras. 4, 15, 16, 25S/142, paras. 5, 14; EEC-Association of Malta, 19S/90, paras. 15, 18; EEC-Association of Morocco, 18S/149, paras. 22-25, 27, 24S/88, paras. 5, 12; EEC-Agreements with Portugal, 20S/171, paras. 5, 13-17, 34, 38, 24S/73, paras. 11-14; EEC-Agreement with Spain, 18S/166, paras. 6, 17, 18, 22; EEC-Agreement with Syria, 25S/123, paras. 5, 13; EEC-Association with Tanzania, Uganda, Kenya, 19S/97, para. 17; EEC-Association of Tunisia, 18S/149, paras. 22-25, 27, 24S/97, paras. 5, 12, 24; EEC-Association of Turkey, 13S/59, para. 7; EEC-Agreement with Yugoslavia, 28S/115, paras. 6, 9, 16; EEC-Agreements with Austria, 20S/145, paras. 4, 5, 14-16, 33, 37; EEC-Agreements with Finland, 21S/76, paras. 4, 6, 9, 12-14; EEC-Agreements with Iceland, 20S/158, paras. 5, 14-19, 37, 41; EEC-Agreements with Norway, 21S/83, paras. 4, 6, 9, 14-16, 32, 35; EEC-Agreements with Sweden, 20S/183, paras. 5, 15-17, 35, 39; EEC-Agreements with Switzerland and Liechtenstein, 20S/196, paras. 5, 14-16, 37, 41; EFTA, 9S/70, paras. 47-54; EFTA-Association of Finland, 10S/101, paras. 3, 8; EFTA-Accession of Iceland, 18S/174, para. 6; EFTA-Agreement with Spain, 27S/127, paras. 4, 10, 15, 27, 28; Finland-Czechoslovakia, 23S/67, paras. 5, 6, 30; Finland-Hungary, 22S/47, paras. 5, 8, 20; Finland-Poland, 27S/136, para. 5; Israel-US FTA, 34S/58, paras. 6, 21; LAFTA, 9S/87, paras. 5, 7; New Zealand, Australia FTA, 14S/115, paras. 7, 14-17.

(b) Qualitative criteria and sectoral exclusions

The Report of the Working Party on the "European Free Trade Area - Examination of the Stockholm Convention" notes:

> "The Working Party considered first whether the requirement relating to 'substantially all the trade' in Article XXIV:8(b) was met in the case of the Stockholm Convention. The view was put forward that, as the provisions of, *inter alia*, Articles 3 and 10 of the Convention relating to the elimination of barriers to trade in the free-trade area did not apply to trade in agricultural products, it could not be maintained that duties and other restrictive regulations of commerce were being eliminated on 'substantially all the trade'. It was also contended that the phrase 'substantially all the trade' had a qualitative as well as quantitative aspect and that it should not be taken as allowing the exclusion of a major sector of economic activity. For this reason, the percentage of trade covered, even if it were established to be 90 per cent, was not considered to be the only factor to be taken into account.
>
> "The member States agreed that the quantitative aspect, in other words the percentage of trade freed, was not the only consideration to be taken into account. Insofar as it was relevant to consider the qualitative as well as the quantitative aspect, it would be appropriate to look at the consistency of the Convention with Article XXIV:8(b) from a broader point of view and to take account of the fact that the agricultural agreements did facilitate the expansion of trade in agricultural products even though some of the provisions did not require the elimination of the barriers to trade. Moreover, insofar as both qualitative and quantitative aspects were concerned it was incorrect to say that the agricultural sector was excluded from the free-trade area; in fact barriers would be removed on one third of total trade in agricultural products between member States …
>
> "… The member States did not accept the contention that they should not take credit for the removal of barriers to trade on a product unless such barriers were removed by all the member States. In this connexion the drafting history of Article XXIV was important. The Article had been drafted against the background of the possibility of a free-trade area being established in Europe in which the United Kingdom, in particular, might wish to retain some barriers against certain imports from its partners mainly as a result of its preferential arrangements. It was envisaged, therefore, that an individual member of a free-trade area should have a certain latitude in respect of some products; this latitude would be permitted by the phrase 'substantially all the trade'. In view of the preferential arrangements of the United Kingdom, there was an inference that this latitude would be used particularly with respect to agricultural products. It was important to note that the phrase used in Article XXIV was 'substantially all the trade' and not 'trade in substantially all products'. Some members might wish to avail themselves of this latitude in respect of different products. The member States did not claim that free trade would be achieved in the case of all agricultural products, but they did consider themselves entitled to take into account the trade affected by the complete removal of barriers under the agricultural agreements for certain products when assessing the total amount of trade freed under the free-trade area arrangements. …
>
> "There was, therefore, a divergence of view regarding the justification for including, in estimating the amount of trade within the free-trade area to be freed from barriers in terms of Article XXIV, the trade in agricultural products where imports were freed in the case of one member State only. In the time at its disposal, the Working Party was unable to reach agreement concerning the interpretation which should be given to the relevant provisions of Article XXIV".[163]

Various other Reports of Working Parties on agreements presented under Article XXIV also include statements that the meaning of "substantially all the trade" had never been defined in GATT.[164] It was also stated that Article XXIV:8(b) had to be interpreted to mean free trade in all products and not carved out by sectors; the exclusion of a whole sector, no matter what percentage of current trade it constituted was contrary to the spirit of both Article XXIV and the General Agreement.[165]

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[163] L/1235, adopted on 4 June 1960, 9S/70, 83-85, paras. 48-49, 51, 54.
[164] 18S/164; 21S/80; 27S/132.
[165] 21S/79, para. 12.

The Report of the Working Party on the "Free-trade Agreement between Canada and the United States" notes that:

> "The Working Party generally recognized that, in terms of its coverage, this Agreement was one of the more comprehensive free-trade agreements examined in GATT so far. The Canada-United States Free-trade Agreement did not attempt to exclude the whole of the agricultural sector from its coverage. Nevertheless several members raised doubts as to consistency of the Agreement with the definition of a free-trade area in Article XXIV:8(b) and as to whether it covered 'substantially all' the trade between the parties. These members remained concerned about the exceptions allowing restrictions on trade between the two parties in a number of specific products. ... The representative of Canada pointed out that [certain of the measures cited] related to emergency arrangements for addressing any unforeseen developments in these sectors".[166]

The preamble of the Understanding on the Interpretation of Article XXIV of the GATT1994 provides, *inter alia*:

> *"Recognizing* the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;
>
> *"Recognizing* also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded".

(c) Reverse preferences and one-way free-trade areas

The 1976 Report of the Working Party on "The ACP-EEC Convention of Lomé" notes the statement of the EEC that: "In the light of their development needs and the principles of Part IV of the General Agreement, the Community had not demanded reciprocity in its trade with the ACP".[167] "The representative of the ACP countries stated that the Convention did not require them to grant reverse preferences. At the same time, Article 7 of the Convention accommodated a historical situation in which, prior to the enlargement of the EEC, some ACP countries granted preferences to the original six members of the EEC and others to the United Kingdom ... he would expect ACP countries progressively to eliminate those preferences which remained ... ."[168] However, the view of the parties to the Convention - "that the Convention was compatible with their obligations under the General Agreement, in particular the provisions of Articles I:2, XXIV and XXXVI, which had to be considered side by side and in conjunction with one another"[169] - was not shared by some other members of the Working Party.[170] The 1982 Report of the Working Party on "Second ACP-EEC Convention of Lomé" notes the statement of the ACP representative that "ACP countries were not obliged to give preferences to the EEC. Prior to the first Lomé Convention, a number of ACP countries had granted reverse preferences to the EEC. Since the Convention had been implemented, all States but two had eliminated such preferences".[171]

The 1977 Report of the Working Party on "The Australia/Papua New Guinea Trade and Commercial Relations Agreement" provides:

> "The representative of Australia stated that although Papua New Guinea would not be extending any reverse preferences to Australia under the Agreement, trade statistics showed that substantially all the trade was covered within the meaning of Article XXIV:8(b). It was pointed out in this connexion that Article XXIV did not contain any specific provision with respect to reverse preferences. The absence of reverse preferences in favour of Australia did not, in the view of his authorities, affect the free-trade area status of the Agreement."[172]

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[166] L/6927, adopted on 12 November 1991, 38S/47, 73, para. 83.

[167] L/4369, adopted on 15 July 1976, 23S/46, 48, para. 4. See also Working Party Report on EEC-Association with African and Malagasy States, 14S/100, paras. 13, 14, 25, 26, 30.

[168] *Ibid.*, 23S/50, para. 12. See also material below on Article XXIV:9.

[169] *Ibid.*, 23S/53-54, para. 23.

[170] *Ibid.*, 23S/54, paras. 25, 26.

[171] L/5292, adopted on 31 March 1982, 29S/119, 123, para. 17.

[172] L/4571, adopted on 11 November 1977, 24S/63, 64, para. 7.

"Some members expressed doubts about the conformity of the Agreement with the provisions of Article XXIV, since it appeared that no reciprocal reduction of duties or elimination of other restrictive regulations of commerce by Papua New Guinea had been required. … One member … stated that he did not share the view expressed by the representative of Australia that, in the light of the fact that Article XXIV made no mention of reverse preferences, reciprocity was not required between the partners to free-trade area agreements."[173]

The 1977 Reports of the Working Parties on "Agreement between the EC and Algeria", "Agreement between the EC and Morocco", and "Agreement between the EC and Tunisia" each note that one member of the Working Party "welcomed the confirmation by the spokesman for the European Communities that the Agreement did not provide for reverse preferences and expressed his expectation that the Agreement would not contain such preferences in the future. He also expressed concern at the rules of origin, which might in several cases have the same effect as reverse preferences and deflect trade from lower cost suppliers, often at an increased cost to the developing country and thereby deflect scarce resources from other development needs".[174]

The 1984 Report on the "Application of the EEC-Algeria, EEC-Morocco, EEC-Tunisia, EEC-Egypt, EEC-Jordan, EEC-Lebanon and EEC-Syria Co-operation Agreements" contains the following communication by the parties to these agreements: "By virtue of the provisions of the agreements, the partners of the Community have not so far granted it any concessions in conformity with the principles of Part IV of the General Agreement".[175]

In this connection see also the unadopted 1993 Report of the Panel on "EEC - Member States' Import Régimes for Bananas"[176] and the unadopted 1994 Report of the Panel on "EEC - Import Régime for Bananas".[177]

(4) "substantially the same duties and other regulations of commerce are applied …"

In September 1978, the EEC notified the contracting parties concerning its change in the unit of account for specific duties in its common customs tariff other than those applied to certain agricultural products. While the specific duties had been expressed in terms of national currencies, the rates were converted to the European Unit of Account (EUA); as a result, the specific duties expressed in terms of certain national currencies (e.g. the German mark) would be lowered and those expressed in terms of other currencies (e.g. the Italian lira) would be raised. The notification stated that "the legal basis for this change derives from the entry into force on 1 April 1978 of the second amendment to the IMF Articles of Agreement"[178] and further stated:

"The alignment with the EUA of specific duties and other specific elements of the common customs tariff expressed in terms of national currencies does not fall within the provisions of either Article XXVIII of GATT or Article II:6, and is moreover consistent with the provisions of Article II:3.

" … the move toward standardization of the specific duties in the CCT, to be made on 1 January 1979, does not involve any modification or withdrawal of EEC concessions, since these have never been expressed in terms of the respective currencies of the member States. If the amounts in national currencies corresponding to the specific duties had been adjusted in proportion to their fluctuation away from the unit of account, as allowed under the provisions governing bindings, the result would be less favourable for contracting parties than that resulting from alignment with the EUA, because the latter is at a level lower than the EUA par value. Far from diminishing the value of EEC concessions, the [EUA] in fact implies a reduction of specific duties which the EEC, under the terms of its schedule of bindings, would be justified in applying in pursuance of Article II … It is simply an up-dating operation comprising reductions and increases of specific duties expressed in terms of national currencies, so as in this way to ensure a return to a unified common customs tariff in accordance with the obligations established by Article XXIV:8(a)(ii). Nor is it a matter of an upward adjustment of specific duties following a monetary devaluation in excess of

[173] *Ibid.*, 24S/65, para. 11.
[174] L/4559, adopted on 11 November 1977, 24S/80, 83, para. 8; L/4560, adopted on 11 November 1977, 24S/88, 92, para. 8; L/4558, adopted on 11 November 1977, 24S/97, 101, para. 8.
[175] L/5674, p. 1.
[176] DS32/R, dated 3 June 1993, paras. 364-372.
[177] DS38/R, dated 11 February 1994, paras. 156-164.
[178] L/4706, dated 4 October 1978, p. 2, para. 4.

20 per cent (Article II:6(a)), because the bindings concerned have never been expressed in terms of national currencies and the purpose of the alignment is not to offset a devaluation. Lastly, the alignment does not alter the method of converting currencies so as to impair the value of any concessions, and is thus consistent with the provisions of Article II:3 of the General Agreement".[179]

8. Paragraph 9: Historical preferences and customs unions or free-trade areas

The Interpretative Note *Ad* Paragraph 9 was rectified by the Third Protocol of Rectification, which entered into force on 21 October 1951, to meet a difficulty of Southern Rhodesia, which had a customs union with South Africa. At Havana "it had not been envisaged that the importing country might be one which granted the same preferential rate to the country of origin of the product as the re-exporting country and in that case the difference payable should be that between the duty already paid and the preferential rate".[180]

The Report of Sub-Group D on "Association of Overseas Territories" of the Committee which examined the Treaty Establishing the European Economic Community notes the following views of some members of the Sub-Group:

"Paragraph 9 of Article XXIV stipulated that the formation of a customs union or of a free-trade area should not affect the preferences authorized in paragraph 2 of Article I of the General Agreement; those preferences might, however, be eliminated or adjusted by means of negotiations, in particular the preferences of which the elimination was required to conform with the provisions of paragraph 8(a)(i) and paragraph 8(b). The association of the overseas territories provided for in the Rome Treaty ran counter to this rule since it strengthened the preferences referred to in paragraph 9 and established new preferences in favour of imports originating in the associated territories. ... Certain members pointed out that [the Interpretative Note *Ad* paragraph 9] indicated the course which should have been followed in order to link the preferential systems existing between Belgium, France and the Netherlands on the one hand, and the overseas territories, on the other, with the customs union provided for in the Treaty".[181]

The 1966 Working Party Report on "EEC - Association Agreements with African and Malagasy States and Overseas Countries and Territories" notes regarding paragraph 9:

"The objection was made that resort to Article XXIV was merely a device to cover the situation arising out of the extension of preferences. Reference was made to the Note to paragraph 9 of Article XXIV ... The representative of the Community said that the Community was well aware of this rule and applied it under the Rome Treaty in respect of imports from third parties benefiting from preferences in the territory of one of the members of the Community. The rule did not, however, apply to the present case since the countries or territories which originally benefited from preferences were not members of the free-trade area and there was no longer any question of preferences in the sense of Article I".[182]

[179] *Ibid.*, p. 4-5, paras. 9-10. See also C/M/128, and L/4774 dated 7 February 1979 (notification of request by United States for consultations under Article XXII:1).

[180] GATT/CP.3/SR.6, p. 7-8.

[181] L/778, adopted on 29 November 1957, 6S/70, 95, Part D, para. 19.

[182] L/2441, adopted on 4 April 1966, 14S/100, 113, para. 36.

9. Paragraph 10

(1) Formation of customs unions and free trade areas with non-GATT contracting parties

As originally proposed, the Charter only provided for the formation of customs unions between Members. The provisions of paragraph 10 were added at the Havana Conference; the reports on discussions at Havana note that "a sixth paragraph was added to provide that the Organization may, by a two-thirds vote, approve proposals which do not fully comply with the requirements of the Article provided that they lead to the establishment of a customs union or a free-trade area in the sense of the Article. It was the understanding of the Sub-Committee that this new paragraph 6 will enable the Organization to approve the establishment of customs unions and free-trade areas which include non-Members".[183] It was the view of those who favoured the insertion of the words "as between the territories of Members" in Article 44 that "this Article, including the new paragraph 6 … would not prevent the formation of customs unions and free-trade areas of which one or more parties were non-Members but would give the Organization an essential degree of control".[184] Paragraph 10 was added to the General Agreement when the original text of Article XXIV was replaced by the texts of the corresponding Havana Charter articles.

Free-trade areas including a contracting party and one or more non-contracting parties have been approved by the CONTRACTING PARTIES in two instances: the Decision of 25 October 1951 on Free-Trade Area Treaty between Nicaragua and El Salvador[185] and the Decision of 13 November 1956 on participation of Nicaragua in the Central American Free-Trade Area.[186]

See also the excerpts from the Panel Report on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region"[187] and the discussion above concerning the scope of Article XXIV:5, at page 798. In this connection see also the unadopted 1993 Report of the Panel on "EEC - Member States' Import Régimes for Bananas"[188] and the unadopted 1994 Report of the Panel on "EEC - Import Régime for Bananas".[189]

(2) "by a two thirds majority"

In the corresponding paragraph of Article 44 of the Havana Charter, the voting rule reads "by a two thirds majority of the Members present and voting". However, this rule was not brought into the General Agreement in 1948 when the original text of Article XXIV was replaced with the text of Charter Articles 42-44.[190] At the Review Session in 1954-55, a proposal to amend the rule to read "by a majority comprising two thirds of the contracting parties" was rejected.[191]

10. Paragraph 11: Arrangements between India and Pakistan

Paragraph 11 and its Interpretative Note were added to Article XXIV of the GATT in September 1947 at the Geneva session of the Preparatory Committee[192] and a corresponding provision was added to the Charter at Havana, to respond to the particular situation of India and Pakistan as the partition of India and Pakistan had taken place on 10 August 1947. At the Review Session of 1954-55, the need for this provision was considered and it was retained at the request of the delegations of India and Pakistan.[193]

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[183]Havana Reports, p.52, para. 27.
[184]*Ibid.*, p. 51, para. 23.
[185]II/30.
[186]5S/29.
[187]L/5776, para. 3.14; see also 18S/154.
[188]DS32/R, dated 3 June 1993, paras. 364-372.
[189]DS38/R, dated 11 February 1994, paras. 156-164.
[190]GATT/1/SR.2, p. 4; see Section III below.
[191]L/189, W.9/193.
[192]EPCT/W/339, dated 17 September 1947, discussed and adopted at EPCT/TAC/PV/23, p. 2-5. The reference in Annex A to "India (as on April 10, 1947)" was phrased in this manner in order to recognize historical preferences existing on that date. See EPCT/TAC/PV/26-27.
[193]L/189, W.9/193 p. 13.

11. Paragraph 12: "observance of the provisions of this Agreement by ... regional and local governments and authorities"

(1) *Purpose and scope of paragraph 12*

During the negotiation of the Charter and the General Agreement, the following justifications and explanations were given by delegations that suggested the inclusion of a "federal clause". During the London session of the Preparatory Committee, Australia stated in connection with a proposed rule to prevent internal fiscal and regulatory discrimination against imported goods:

> "Where the matter is one solely of action by a State, and our 'external powers' laws do not give the Commonwealth authority to act, we would agree to use our best efforts to secure modification or elimination of any practice regarded as discriminatory".[194]

The United States delegation stated with reference to a rule on discriminatory government procurement practices:

> "The obligation to accord fair and equitable treatment in awarding contracts applied to both central and local governments where the central government was traditionally or constitutionally able to control the local government".[195]

The Report of the Sub-committee on Technical Articles noted that "Several countries emphasized that central governments could not in many cases control subsidiary governments in this regard, but agreed that all should take such measures as might be open to them to ensure the objective".[196]

During negotiation of the General Agreement at the Geneva session of the Preparatory Committee, the United States rejected a proposal by China to change the language of Article XXIV:12 by pointing out:

> "it is necessary to distinguish between central or federal governments, which undertake these obligations in a firm way, and local authorities, which are not strictly bound, so to speak, by the provisions of the Agreement, depending of course upon the constitutional procedure of the country concerned".[197]

At the Havana Conference, Mexico proposed an amendment under which federal States would have been fully responsible for actions by regional and local governments. The sub-committee which examined the proposal reported: "The Mexican amendment ... was withdrawn as certain delegates stated that their governments would encounter constitutional difficulties in attempting to enforce the provisions ... as drafted in the Mexican amendment".[198]

In the 1985 Panel report on "Canada - Measures Affecting the Sale of Gold Coins", which has not been adopted:

> "... the Panel considered that the purpose of Article XXIV:12 was to qualify the basic obligation to ensure the observance of the General Agreement by regional and local government authorities in the case of contracting parties with a federal structure...
>
> "The Panel then examined whether Article XXIV:12 applies (a) to *all measures* taken at the regional or local level or (b) *only to those measures which the federal government cannot control* because they fall outside its jurisdiction under the constitutional distribution of competence. ...".[199]

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[194]EPCT/C.II/5, p. 1.
[195]EPCT/C.II/27, p. 1.
[196]EPCT/C.II/54, p. 4.
[197]EPCT/TAC/PV/19, p. 33.
[198]E/CONF. 2/C. 6/48/Rev.1, p. 4.
[199]L/5863 (unadopted, dated 17 September 1985), paras. 53-54.

The Panel examined the drafting history of Article XXIV:12 and then further noted:

> "… This drafting history indicates, in the view of the Panel, that Article XXIV:12 applies only to those measures taken at the regional or local level which the federal government cannot control because they fall outside its jurisdiction under the constitutional distribution of competence."[200]
>
> "… The Panel considered that, if Article XXIV:12 is to fulfil its function of allowing federal States to accede to the General Agreement without having to change the federal distribution of competence, then it must be possible for them to invoke this provision not only when the regional or local governments' competence can be clearly established but also in those cases in which the exact distribution of competence still remains to be determined by the competent judicial or political bodies. The Panel therefore concluded that Canada had to be given the benefit of the doubt and that Article XXIV:12 had to be deemed to be applicable to the Ontario measure."
>
> "The Panel then turned to the question of the legal consequences of the application of Article XXIV:12 to the Ontario measure. The Panel considered that Article XXIV:12 could be interpreted either (a) as limiting the *applicability* of the other provisions of the General Agreement or (b) as merely limiting the obligation of federal states to secure the *implementation* of these provisions."[201]
>
> "The Panel proceeded to an evaluation of the relative merits of the two interpretations of Article XXIV:12. The Panel noted that Article XXIV:12 refers to the 'observance' of the provision of the General Agreement by local governments. Only a rule that applies to local governments can be 'observed' by them. This suggests that Article XXIV:12 was not meant to regulate the scope of application of the provisions of the General Agreement but merely the measures to secure their observance by local governments. The Panel further noted that Article XXIV:12 is an exception to the general principle that a party to a treaty may not invoke its internal law as a justification for not performing its treaty obligations … that it grants a special right to federal States without giving an offsetting privilege to unitary States and that it could therefore lead to imbalances in rights and obligations between unitary and federal States if the latter encounter constitutional difficulties in carrying out their obligations under the General Agreement.
>
> "The Panel considered that, as an exception to a general principle of law favouring certain contracting parties, Article XXIV:12 should be interpreted in a way that meets the constitutional difficulties which federal States may have in ensuring the observance of the provisions of the General Agreement by local governments, while minimizing the danger that such difficulties lead to imbalances in the rights and obligations of contracting parties. Only an interpretation according to which Article XXIV:12 does not limit the *applicability* of the provisions of the General Agreement but merely limits the obligations of federal States to secure their *implementation* would achieve this aim".[202]

In Council discussion of this Panel Report in October 1985, the representative of South Africa stated that "The Panel's findings and conclusions were addressed to the Federal Government" to which the Panel "had recommended certain actions" so that "the provincial governments were … not directly involved in adoption of this report".[203]

In the 1988 Panel Report on "Canada - Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies", the Panel "noted Canada's claim that the practices [concerning listing/delisting requirements and the availability of points of sale which discriminate against imported alcoholic beverages] … were not 'restrictions' in the sense of Article XI because … they were provincial measures and because they were consistent with the Provincial Statement of Intentions. … The Panel noted that the relevance of the fact that the measures concerned were provincial measures would be examined in the second part of its findings [concerning Article XXIV:12]".[204]

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[200] *Ibid.*, para. 56.
[201] *Ibid.*, para. 58-59.
[202] *Ibid.*, paras. 63-64.
[203] C/M/192, p. 15.
[204] L/6304, adopted on 22 March 1988, 35S/37, 89, paras. 4.23-4.24.

The 1991 Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" notes that

> "Some members noted that the specific obligations incurred by the two parties in terms of Article 103 of the FTA appeared to be more direct than the obligations of Article XXIV:12 to ensure compliance at the sub-federal levels of government in respect of international trade matters. The representative of a group of countries ... wondered whether there was a difference in the constitutional status of bilateral agreements compared to multilateral agreements which created an impediment to undertaking more stringent commitments at sub-federal level under multilateral agreements. ... The representative of Canada said that regarding this matter, the two parties agreed that there was no difference between the constitutional status of federal obligations of bilateral and multilateral agreements with respect to the compliance of sub-federal governments. ... The representative of the United States said that the wording of Article 103 did not alter the federal jurisdiction on international trade, regardless of how the wording was formulated in the two provisions".[205]

In the 1992 Panel Report on "Canada - Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies"

> "The Panel ... noted that Article XXIV:12 was not an exception to other rules of the General Agreement; it merely qualified the obligation to implement the provisions of the General Agreement in relation to measures taken by regional and local governments and authorities. Consequently, the provisions of the General Agreement were applicable to measures by regional and local governments and authorities notwithstanding Article XXIV:12. This followed clearly from the obligation set out in this provision 'to ensure observance of the provisions of this Agreement' by such governments and authorities because a provision could only be 'observed' by a government or authority if it was applicable to it".[206]

The 1992 Panel Report on "United States - Measures Affecting Alcoholic and Malt Beverages" examined the application of Article XXIV in relation to various measures of state and local governments within the United States.

> "The Panel noted from the drafting history of Article XXIV:12[207] that this provision was designed to apply only to those measures by regional or local governments or authorities which the central government cannot control because they fall outside its jurisdiction under the constitutional distribution of powers. The Panel agreed with this interpretation in view of the general principle of international treaty law that a party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation.[208] As indicated in an earlier panel report,[209] not yet adopted by the CONTRACTING PARTIES, the qualification in Article XXIV:12 of the obligation to implement the provisions of the General Agreement grants a special right to federal states without giving an offsetting privilege to unitary states, and has to be construed narrowly so as to avoid undue imbalances in rights and obligations between contracting parties with unitary and federal constitutions. The above-mentioned interpretation -- according to which Article XXIV:12 applies only to measures by regional or local authorities which the central government cannot control under the constitutional distribution of powers -- meets the constitutional difficulties which central governments may have in ensuring the observance of the provisions of the General Agreement by regional and local authorities, but minimizes the risk that such difficulties lead to imbalances in the rights and obligations of contracting parties".[210]

The 1990 Panel Report on "EEC - Restrictions on Imports of Dessert Apples - Complaint by Chile" notes that in this proceeding, Chile argued that, noting the Commission's responsibility for EEC trade policy, and that member States' import licensing systems were determined by EEC legislation, the Commission should be held responsible for ensuring that its member States administered such licensing in accordance with Article X; the

[205] L/6927, adopted on 12 November 1991, 38S/47, 57, para. 31.
[206] DS17/R, adopted on 18 February 1992, 39S/27, 86-87, para. 5.36.
[207] A footnote to the Report refers here to, e.g., EPCT/13, p. 1; EPCT/C.II/27, p. 1; EPCT/C.II/54, p. 4; EPCT/C.II/64, p. 3.
[208] The footnote to this sentence refers to Article 27 of the 1969 Vienna Convention on the Law of Treaties.
[209] A footnote to the Report here refers to the unadopted Panel Report on "Canada - Measures Affecting the Sale of Gold Coins", L/5863.
[210] DS23/R, adopted on 19 June 1992, 39S/206, 296, para. 5.79.

EEC stated that it understood Article XXIV:12 to be an exception and that since the Community had not invoked it in the present case, it saw no grounds for the Panel to examine the EEC's obligations thereunder. "The Panel ... noted that the EEC Commission Regulations in question were directly applicable in all of the ten Member States concerned in a substantially uniform manner, although there were some minor administrative variations ... The Panel found that these differences were minimal and did not in themselves establish a breach of Article X:3. The Panel therefore did not consider it necessary to examine the question whether the requirement of 'uniform' administration of trade regulations was applicable to the Community as a whole or to each of its Member States individually".[211]

Paragraphs 13-15 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provide as follows:

> "Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.
>
> "The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.
>
> "Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former".

(2) "reasonable measures"

As regards the meaning to be given to the term "reasonable", see the discussion under Article III concerning the interpretative note to Article III:1, which defines the term "reasonable measures" in the case of national legislation authorizing local governments to impose taxes.

The 1985 Panel Report on "Canada - Measures Affecting the Sale of Gold Coins", which has not been adopted, includes the following Panel findings:

> "The Panel considered that neither the wording nor the drafting history of Article XXIV:12 supported the Canadian view that each contracting party had the right to determine itself whether a measure was 'reasonable' within the meaning of Article XXIV:12. The obligation to take reasonable measures which Article XXIV:12 imposes on federal States is a counterpart to the privilege which this provision confers upon these States (see para. 42 above). If the Canadian position were accepted, the obligation under Article XXIV:12 would be void of all substance while the corresponding privilege would remain intact.
>
> "The Panel consequently examined what meaning should be given to the term 'reasonable'. The Panel noted that the only indication in the General Agreement of what was meant by 'reasonable' was contained in the interpretative note to Article III:1, which defined the term 'reasonable measures' for the case of national legislation authorizing local governments to impose taxes. According to this note the question of whether the repeal of such enabling legislation would be a reasonable measure required by Article XXIV:12 should be answered by taking into account the spirit of the inconsistent local tax laws, on the one hand, and the administrative or financial difficulties to which the repeal of the enabling legislation would give rise, on the other. The basic principle embodied in this note is, in the view of the Panel, that in determining which measures to secure the observance of the provisions of the General Agreement are 'reasonable' within the meaning of Article XXIV:12, the consequences of their non-observance by the local government for trade

[211] L/6491, adopted on 22 June 1989, 36S/93, 133, para. 12.30; arguments at 36S/118, paras. 7.1-7.2.

relations with other contracting parties are to be weighed against the domestic difficulties of securing observance. While recognizing that this note refers to the case of national enabling legislation, the Panel considered that the basic principle embodied therein was applicable to the present case".[212]

The 1988 Panel Report on "Canada - Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies" provides:

"The Panel noted that Canada had taken the position that the only authority that could judge whether all reasonable measures had been taken under Article XXIV:12 was in this case the Canadian government. While noting that in the final analysis it was the contracting party concerned that would be the judge as to whether or not specific measures could be taken, the Panel concluded that Canada would have to demonstrate to the CONTRACTING PARTIES that it had taken all reasonable measures available and that it would then be for the CONTRACTING PARTIES to decide whether Canada had met its obligations under Article XXIV:12.

"The Panel noted that the Government of Canada considered that it had already taken such reasonable measures as were available to it to ensure observance of the provisions of the General Agreement by the provincial liquor boards. The Panel, however, also noted that the efforts of the Canadian federal authorities had been directed towards ensuring the observance of these provisions as they themselves interpreted them and not as interpreted in these findings. The Panel therefore concluded that the measures taken by the Government of Canada were clearly not all the reasonable measures as might be available to it to ensure observance of the provisions of the General Agreement by the provincial liquor boards, as provided in Article XXIV:12 and that therefore the Government of Canada had not yet complied with the provisions of that paragraph. The Panel was of the view, however, that in the circumstances the Government of Canada should be given a reasonable period of time to take such measures to bring the practices of the provincial liquor boards into line with the relevant provisions of the General Agreement".[213]

The 1992 Panel on "Canada - Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies", the members of which were the same as the 1988 Panel above, examined the application of Article XXIV:12 to various measures, some of which they had examined in 1988. With respect to certain measures examined which had not been before the Panel before (restrictions on private delivery of beer, and the imposition of minimum prices by a number of provincial liquor boards), "the Panel found it appropriate to follow the procedure adopted by the 1988 Panel … and to propose that the Government of Canada should be given a reasonable period of time to take measures which would lead to an elimination of this practice".[214] However, the Panel "considered that, pending the elimination of such discrimination, the liquor boards should in no case levy charges for the delivery of imported beer higher than the costs actually incurred by them".[215]

With respect to certain measures which had already been examined in 1988 (restrictions on access to points of sale for beer, and differential mark-up practices of the provincial liquor boards):

"… the Panel proceeded to examine whether Canada had demonstrated that it had taken all reasonable measures available with respect to the different practices which the Panel had found to be contrary to the General Agreement. The Panel considered that, for this purpose, Canada would have to show that it had made a serious, persistent and convincing effort to secure compliance by the provincial liquor boards with the provisions of the General Agreement. The Panel first reviewed Canada's claim that it had taken reasonable measures to eliminate restrictions on access to points of sale for beer, which the Panel had found to be inconsistent with the General Agreement. It recalled that the 1988 Panel had already concluded that 'the availability of points of sale which discriminate against imported alcoholic beverages were restrictions made effective through state-trading operations contrary to Article XI:1'. As a result of that finding the CONTRACTING PARTIES had requested Canada to take 'such reasonable measures as may be available to ensure observance of the provisions of Article XI of the provincial liquor boards'. After reviewing all the information and documentation before it, including the statement made by Canada … the Panel came to the

[212] L/5863 (unadopted), paras. 68-69.
[213] L/6304, adopted on 22 March 1988, 35S/37, 92, paras. 4.34-4.35.
[214] DS17/R, adopted on 18 February 1992, 39S/27, 87-88, 89, paras. 5.38, 5.40.
[215] *Ibid.*, 39S/88, para. 5.38.

conclusion that, in spite of that request made by the CONTRACTING PARTIES in 1988, Canada had not demonstrated that it had made serious, persistent and convincing efforts to secure elimination of restrictions on points of sale for beer. These discriminatory practices had not been dealt with in the agreement reached with the EEC subsequent to the adoption of the 1988 Panel report, nor had they been specifically addressed in the interprovincial agreement designed to achieve an integrated market for Canadian beer. The Panel therefore *concluded* that Canada had failed to comply with its obligations under Article XXIV:12 of the General Agreement with respect to availability of points of sale."[216]

"The Panel then turned to the differential mark-up practices of the provincial liquor boards and to its finding in paragraph 5.21 above, that these practices were inconsistent with Article II:4 of the General Agreement. It noted that, as a result of the agreement between the European Communities and Canada and of the interprovincial agreement, the liquor boards had accepted to eliminate discriminatory pricing practices on beer (both domestic and imported), not later than 31 December 1994. It recalled, in this context, the last sentence of the Note Ad Article III:1, which indicated that the term 'reasonable measures' could be interpreted to permit the elimination of inconsistent measures 'gradually over a transition period, if abrupt action would create serious administrative and financial difficulties'. Since the CONTRACTING PARTIES had already requested Canada in 1988 to take reasonable measures to ensure that differential mark-ups were not applied contrary to the provisions of Article II:4, the Panel asked itself whether the provincial liquor boards encountered administrative and financial difficulties which could justify a transition period of more than six years to ensure the application of differential mark-ups in full compliance with the 1988 Panel report. This was clearly not the case: as far as administrative practices were concerned, the Panel had already noted that most provincial liquor boards had introduced a system of cost-of-service charges (in addition to a uniform mark-up); any financial difficulties could be resolved by increasing the mark-up uniformly for both imported and domestic beer. By agreeing, in 1991, to become party to an agreement which sanctioned postponement until the end of 1994 of a practice which the CONTRACTING PARTIES had found in 1988 to be inconsistent with the General Agreement, the Government of Canada could hardly claim that it had taken a reasonable measure in compliance with the CONTRACTING PARTIES' request. The Panel therefore *concluded* that Canada had not made serious, persistent and convincing efforts to secure elimination of discriminatory mark-up practices and that it had not taken all the reasonable measures as might be available to it to ensure observance by the provincial liquor boards of the provisions of Article II:4 of the General Agreement. The Panel therefore *found* that with respect to provincial liquor board mark-up practices Canada had failed to comply with its obligations under Article XXIV:12".[217]

In the 1992 Panel Report on "United States - Measures affecting Alcoholic and Malt Beverages",

"The Panel recalled that the United States invoked Article XXIV:12 in respect of any state measures that the Panel were to find to be inconsistent with the General Agreement. … The Panel noted that the United States had not provided the Panel with any evidence in support of its invocation of this provision. In particular, it had presented no evidence in support of its claim that reasonable measures were not available to it to ensure the observance by the state authorities of the relevant provisions of the General Agreement. …

"The Panel recalled its finding with respect to the [Protocol of Provisional Application] that, according to the evidence submitted to this Panel, GATT law is part of federal law in the United States and as such is superior to GATT-inconsistent state law.[218] Based on the evidence submitted, the Panel concluded that the United States has not demonstrated to the Panel that the general obligation of contracting parties to withdraw measures inconsistent with the General Agreement cannot be observed in this case by the United

[216] *Ibid.,* 39S/27, 87, para. 5.37.
[217] *Ibid.,* 39S/27, 88-89, para. 5.39.
[218] The footnote to this paragraph states as follows: "The Panel noted that this view is also shared by the legal authorities to which the parties referred in their submissions. E.g. Hudec, 'The Legal Status of GATT in the Domestic Law of the United States' in Hilf, Jacobs, Petersmann (eds), *The European Community and GATT* (1986), page 221: 'Article XXIV:12 obligates the United States to compel state adherence to [the General Agreement] …'."

States as a result of its federal constitutional structure and that the conditions for the application of Article XXIV:12 are met".[219]

During consideration of this Panel Report at the June 1992 Council meeting, the representative of the United States said that "While the United States would not oppose adoption of the Panel report, it would enter for the record a formal reservation" regarding these paragraphs.[220]

(3) "regional and local governments and authorities"

In the 1988 Panel Report on "Canada - Import, Distribution and Sale of Alcoholic Drinks by Canadian Provincial Marketing Agencies", "The Panel noted that there was no dispute that the provincial liquor boards were "regional authorities" within the meaning of Article XXIV:12".[221] In the 1992 Panel Report on "Canada - Import, Distribution and Sale of Certain Alcoholic Drinks by Provincial Marketing Agencies", "The Panel noted that the parties to the dispute agreed that the provincial liquor boards were 'regional authorities' within the meaning of Article XXIV:12 of the General Agreement and that this Article was therefore applicable to all the provincial practices at issue".[222]

B. RELATIONSHIP BETWEEN ARTICLE XXIV:4-11 AND OTHER GATT PROVISIONS

1. Article XI

In this connection, see the unadopted Panel Report of 1993 on "EEC - Member States' Import Régimes for Bananas".[223]

2. Articles XII and XVIII

Divergent views have been expressed on various occasions as to whether the regional economic integration provisions of Article XXIV can justify a discriminatory application of balance-of-payments restrictions. At the Twelfth Session in 1957, four sub-groups were appointed to examine the relevant provisions of the Treaty of Rome in the light of the provisions of the General Agreement. The Report of Sub-Group B, which examined those provisions of the Treaty relating to quantitative restrictions[224] notes the difference in views between certain members of the Sub-Group, who expressed concern that the Rome Treaty provisions would permit a Member State to use quantitative restrictions not justified by its own balance-of-payments position, and the six EEC member States, who considered that the opening phrase of paragraph 5 of Article XXIV provided a general exception under which they were entitled to deviate from the other provisions of the General Agreement, including Articles XI to XIV, insofar as the application of these provisions would constitute obstacles to the formation of the customs union and to the achievement of its objectives.[225] See under Article XII:1.

See also the discussion of Articles XIII and XXIV in the 1959 Report of the Working Party on "German Import Restrictions".[226]

The 1974 Report of the Working Party on "Italian Import Deposit" examined a prior import deposit scheme introduced by the Italian government on a non-discriminatory basis, and notes the statement by the representative of the European Communities that "The deposit was applied without distinction to the origin of products, although that did not mean that the Community regarded itself as bound to accept that as a rule of the General Agreement".[227]

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[219]DS23/R, adopted 19 June 1992, 39S/206, 296-297, paras. 5.78, 5.80. See also material from this report in the chapter on provisional application of the General Agreement.

[220]C/M/257.

[221]L/6304, adopted on 22 March 1988, 35S/37, 91, para. 4.33.

[222]DS17/R, adopted on 18 February 1992, 39S/27, 86, para. 5.35.

[223]DS32/R, dated 3 June 1993, para. 358.

[224]L/778, adopted on 29 November 1957, 6S/70, 76ff, section B.

[225]*Ibid.*, 6S/76-80, paras. 2-11.

[226]L/1004, adopted on 30 May 1959, 8S/160, 161-163, paras. 6-9.

[227]L/4082, adopted on 21 October 1974, 21S/121, 122, para. 3.

The Chairman of the Committee on Balance-of-Payments Restrictions, reporting in 1978 to the Council on the consultation with Finland, said "that during the consultation with Finland the question of the relationship between Articles XII and XXIV had been raised with respect to the non-discriminatory application of balance-of-payments measures and divergent views had been expressed in this respect".[228]

See also the July 1994 Secretariat background document for consultations under Article XII:4(a) with the Slovak Republic concerning a surcharge imposed for balance-of-payments reasons; this document notes that the import surcharge applied to all imports in a non-discriminatory manner, including "the Czech Republic as well as other countries with which the Slovak Republic has made bilateral or multilateral free trade agreements.[229] The 1994 basic document supplied by Poland for consultations under Article XII:4 notes that a surcharge imposed for balance-of-payments purposes will be applied to all imports; see directly below under relationship with Article XIII.[230]

3. Article XIII

The 1984 Report of the "Panel on Newsprint" examined the claim of Canada concerning the application of a tariff concession on newsprint established by the European Communities. The concession in the EC's Schedule LXXII provided for an annual tariff quota of 1.5 million tonnes duty-free, leaving the bound duty rate at 7 per cent for imports exceeding that quota. Under agreements between the EC and the EFTA countries, newsprint imports from EFTA countries became duty-free as from 1 January 1984, and the EC then opened a duty-free tariff quota for m.f.n. suppliers of 500,000 tonnes for newsprint for the year 1984. The Panel "concluded that the EC, in unilaterally establishing for 1984 a duty-free quota of 500,000 tonnes, had not acted in conformity with their obligations under Article II of the GATT. …

> "The Panel carefully noted and examined the statement by the EC that, should the Panel consider the action taken by the EC as not being in conformity with the GATT, they might proceed to option (b) under which the tariff quota would be maintained at 1.5 million tonnes but that imports from all sources, including the EFTA countries, would be recorded against that quota; once the latter had been filled, the Community's formal contractual obligations would have been met. While the Panel could find no specific GATT provision forbidding such action and no precedents to guide it, it considered that this would not be an appropriate solution to the problem and would create an unfortunate precedent. It is in the nature of a duty-free tariff quota to allow specified quantities of imports into a country duty-free which would otherwise be dutiable, which is not the case for EFTA imports by virtue of the free-trade agreements. Imports which are already duty-free, due to a preferential agreement, cannot by their very nature participate in an m.f.n. duty-free quota. The situation in this respect could only change if the free-trade agreements with the EFTA countries were to be discontinued; in this case these countries would be entitled to fall back on their GATT rights vis-à-vis the EC, which rights continue to exist.
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> "On the basis of the findings and conclusions reached above, the Panel suggests that the CONTRACTING PARTIES recommend that the European Communities engage promptly in renegotiations under the procedures of Article XXVIII of the GATT with regard to the tariff quota on newsprint in Schedule LXXII. Further, the Panel suggests that the CONTRACTING PARTIES recommend to the European Communities that, pending the termination of such renegotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained".[231]

The 1986 Report of the Working Party on the Sixth Review under the Protocol of Accession of Hungary notes the view of Hungary that "it was unacceptable that Spain's accession to the EEC resulted in the introduction of discriminatory quantitative restrictions vis-à-vis Hungary. Article XXIV did not release any contracting party from the obligation of non-discrimination as provided for by Article XIII of the GATT".[232] In

[228] C/M/127, referring to BOP/R/102.
[229] BOP/319, para. 5; see also BOP/R/218.
[230] BOP/317, p. 4, subpara. (c).
[231] L/5680, adopted on 20 November 1984, 31S/114, 131-133, paras. 52, 55-56.
[232] L/5977, adopted on 22 May 1986, 33S/136, 143, para. 24.

Council discussion on this Report it was pointed out that "The Working Party had noted that discriminatory quantitative restrictions not consistent with Article XIII were still maintained against Hungarian exports by the European Economic Community, and had discussed at length the slow pace at which the remaining restrictions were being removed".[233] The Report of the Working Party on "Trade with Romania - Sixth Review under the Protocol of Accession" also records the view of the representative of Hungary with regard to quantitative restrictions resulting from the accession of Spain and Portugal to the EEC "that Article XXIV of the GATT did not allow any contracting party the introduction of restrictions inconsistent with Article XIII".[234]

The 1988 Report of the Working Party on "Accession of Portugal and Spain to the European Communities" records the concern of several members of the Working Party that "since acceding to the Communities, Spain had introduced discriminatory quantitative restrictions which contravened Articles XI, XIII and XXIV:4 as well as their countries' Protocols of Accession to the GATT under which contracting parties undertook not to increase the element of discrimination which they maintained on these countries' imports. ... Since Article XXIV did not provide a waiver from obligations contained in Articles XI and XIII and did not allow or require a country acceding to a customs union to adopt the more restrictive trade régime of the customs union, they called on the Communities and Spain to eliminate all GATT-inconsistent measures, which in the case of one of these countries affected one quarter of its total exports to Spain".[235]

The 1994 basic document supplied by Poland for consultations under Article XII:4 notes with respect to a surcharge imposed for balance-of-payments purposes that "As required by Article XIII:1 of the General Agreement, the surcharge will be applied to all imports without preference of discrimination as regards the type of goods, sources of imports and the nature of bilateral relations with the countries of origin, rates, procedures and all other modalities of the measure. It will apply equally to all trade, including trading partners with whom Poland's commercial relations are based on Article XXIV of the General Agreement."[236]

4. Article XIX

The modalities of application of Article XIX have been discussed on a number of occasions in relation to agreements presented under Article XXIV. Differing views have been expressed on whether the fact that Article XIX is not mentioned among the exceptions in Article XXIV:8 should be interpreted to mean that a member of a customs union or free-trade area is entitled to exempt from the application of Article XIX measures imports from other members of the customs union or free-trade area.[237]

The Reports of the Working Parties concerning the agreements between the European Communities and Austria[238], Iceland[239], Portugal[240], Sweden[241] and Switzerland and Liechtenstein[242] each contain the following three paragraphs:

> "Some members of the Working Party expressed their concern that the parties to the Agreement seemed to interpret the provisions of Article XXIV:8(b) of the General Agreement so as to allow discriminatory application of Article XIX when safeguard action was being taken. They would like it to be understood in the Working Party that the reply given by the parties to the Agreement to the question on application of safeguard provisions did in fact mean that safeguard action would be taken on a strictly most-favoured-nation basis.
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> "The representative of the European Communities called attention to the omission of Article XIX from among those mentioned in Article XXIV:8(b), which required the elimination of certain 'other

[233] C/M/198, p. 14.
[234] L/6282, adopted on 2 February 1988, 35S/337, 345, para. 29.
[235] L/6405, adopted on 19-20 October 1988, 35S/293, 315-316, para. 39.
[236] BOP/317, p. 4, subpara. (c).
[237] Concerning the negotiating history of Article XXIV in relation to Article XIX, see the Secretariat Note on "Article XXIV of the General Agreement" (Addendum), MTN.GNG/NG7/W/13/Add.1, dated 10 August 1988.
[238] L/3900, adopted on 19 October 1973, 20S/145.
[239] L/3902, adopted on 19 October 1973, 20S/158.
[240] L/3901, adopted on 19 October 1973, 20S/171; see also 24S/73 (same views repeated in 1977 Report).
[241] L/3899, adopted on 19 October 1973, 20S/183.
[242] L/3898, adopted on 19 October 1973, 20S/196.

restrictive regulations of commerce' as between members of the free-trade area. His authorities, accordingly, were of the view that they were free to exempt these members from possible restrictions imposed under Article XIX.

"Some members could not accept that explanation. In their view, the invocation of Article XXIV did not mean that other Articles of the General Agreement should cease to apply; and these members could not agree that the invocation of Article XXIV permitted the discriminatory application of Article XIX".[243]

With regard to the EEC's Article XIX action in 1973 relating to imports of magnetophones into Italy, Japan noted "that the import restrictive measure did not apply to the associated countries and the other members of the Community, while Article XIX required global application". The representative of the EC stated that the measure was consistent with Article XXIV[244]. The matter was subsequently discussed in the twenty-ninth session of the CONTRACTING PARTIES. The representative of the European Communities stated that while Article XIX measures "should apply *erga omnes*, they need not apply to countries which had an agreement with the Community in accordance with Article XXIV. The Community was always prepared to enter into consultations and consultations had been held on this subject".[245]

The Panel Report on "Norway's Article XIX Action on Certain Textile Products" noted the exclusion of EFTA and EEC products from the scope of Norway's Article XIX action, but the Panel, noting that Hong Kong had limited its formal request for a ruling on Norway's Article XIX action, also "noted and consequently based its decision on the statements by Hong Kong that ... a finding concerning the exclusion from the quotas of the EEC and EFTA countries was not necessary"[246] and did not make a finding with respect to the exclusion of these products.

In "Questions and Replies" concerning the Free-Trade Agreement between Canada and the United States one question related to the provisions in this agreement providing that each party to this agreement could exempt imports from the other party from Article XIX actions taken by it, except where imports from the other contribute importantly to serious injury caused by all imports. The two parties stated in response that "there is no agreed interpretation by contracting parties of the relationship between Articles XIX and XXIV. There is, however, a practice in place under other Article XXIV arrangements that provides for the exemption of Parties to the arrangement from safeguard actions".[247] In the Report of the Working Party on this agreement, various members of the Working Party took issue with this statement or with its implications for the determination of serious injury under Article XIX:

"... For these members, selective non-application of safeguard measures to the other party was not consistent with the provisions of Article XIX of the General Agreement. ... One member considered that discriminatory provisions of the Agreement on global emergency actions diluted the principle of non-discrimination and m.f.n. application of emergency measures, particularly when imports from the other party contributed to the serious injury".[248]

With respect to the September 1991 Article XIX action by Austria consisting of a global quota applied to all imports of certain types of cement and cement preparations, except for imports from the EC and EFTA member states, Japan and a number of other contracting parties stated at the October 1991 Council meeting that in their view, Article XIX did not permit a contracting party to exempt its partners in free-trade agreements from the application of its safeguard measures. Austria stated that it had exempted these imports on the basis of the Stockholm Convention and the association agreement between Austria and the EC; that these were agreements notified under Article XXIV; and that since Article XIX was not mentioned in the list in Article XXIV:8(b), measures taken thereunder might be not applied to other members of a free-trade area.[249]

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[243]20S/156, 169, 181, 194, 207.
[244]C/M/86.
[245]SR.29/1, p. 5-6.
[246]L/4959, para. 14(a).
[247]L/6739, p. 36. See also L/7219 (notification of investigation by Canadian International Trade Tribunal of imports of boneless beef originating other than from the United States).
[248]"Free-Trade Agreement between Canada and the United States", working party report adopted on 12 November 1991, L/6927, 38S/47, 74-75, para. 90; see also *ibid.* at 38S/66-67, para. 63.
[249]C/M/252, p. 12-15. See also L/6899/Add.7/Suppl.1 (notification of import quota for cement of origin other than from EC or EFTA-

Other instances of non-application of Article XIX measures to imports from other members of a regional trade agreement include the following: import licensing imposed by the Federal Republic of Germany on coal products since September 1958 only for imports from non-ECSC countries[250]; quantitative restrictions imposed by Australia in 1976 on chest freezers for all imports other than those under the existing special trading arrangements provided for in the New Zealand-Australia Free Trade Agreement[251]; action under Article XIX by Hungary in November 1992 with respect to certain paper and paper products, but not applied to imports from the EEC or from Finland; two Article XIX actions in 1993 by Austria, on certain types of cement and certain preparations containing cement, and certain fertilizers, from which imports originating in EC or EFTA member States were exempted[252]; and a tariff quota under Article XIX imposed by Canada in 1993 on boneless beef, from which imports originating in the US were exempted.[253] On the other hand, there are also instances of application of Article XIX safeguard measures on a non-discriminatory basis to all imports, including imports from other members of a regional trade agreement under Article XXIV.[254]

5. Articles XXII and XXIII

The possibility of invoking Article XXII with regard to agreements presented under Article XXIV has been expressed in various working party reports since the examination of the Treaty of Rome.[255] During the consideration at the Twelfth Session of the Treaty of Rome in a special Committee on the Rome Treaty consisting of all contracting parties, when it was suggested to continue examination of this Treaty by prolonging the Committee's mandate, the representative of the Interim Committee for the Common Market and Euratom stated that "the Six ... could not accept any special procedures which would imply for them additional obligations not applied to the other contracting parties. In regard to the question under consideration, the provisions of Articles XXII and XXIII of the General Agreement should be sufficient for the holding of any consultations which the CONTRACTING PARTIES might desire".[256] Also in connection with the examination of the Treaty of Rome, the "Procedures under Article XXII on Questions Affecting the Interests of a Number of Contracting Parties" were agreed in 1958 in the Intersessional Committee and adopted at the Thirteenth Session.[257] The 1978 Working Party Report on "Agreement between the EEC and Egypt" notes that the representative of the EEC stated that "As regards the possibility of consultations with the contracting parties concerning the incidence of the Agreement on their trade interests... nothing prevented these countries from invoking the relevant provisions of the General Agreement, such as Articles XXII and XXIII ... The representative of Egypt said that his Government was also prepared to enter into consultations under Articles XXII and XXIII should the need arise".[258] See also discussion in the Council concerning the invocation of Article XXIII in relation to measures under Article XXIV.[259]

In 1974, a Canadian request for a panel because of lack of agreement in Article XXIV:6 negotiations led to the establishment of a panel under paragraphs 1(c) and 2 of Article XXIII, which was not activated because the parties reached an agreement; see this and other instances of conciliation and arbitration at page 811 above.

The 1985 Panel Report on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region," which has not been adopted, contains, *inter alia*, the following findings as to the relationship between Articles XXIII and XXIV.

> "... In the opinion of the Panel, the examination - or re-examination - of Article XXIV agreements was the responsibility of the CONTRACTING PARTIES. In the absence of a decision by the CONTRACTING

Member State).

[250]L/855, 920.

[251]L/4387.

[252]L/6899/Add.7-8, L/6899/Add.7/Suppl.1; L/7204 and Add.1-4, L/7204/Suppl.1.

[253]L/7219 & Add. 1-5.

[254]E.g., non-discriminatory surcharge by Finland 1976-1979 on imports of pantyhose (tights) below a basic price, listed in the table of Article XIX actions following the chapter on Article XIX; emergency measures under Article XIX on imports of whitefish from all origins, February/March 1993 (L/7194).

[255]E.g., 23S/61, 24S/66.

[256]CRT/SR.5, p. 60.

[257]7S/24, adopted on 10 November 1958; see reference to Article XXII consultations in Chairman's summing-up on action at the Thirteenth Session on the Treaty of Rome, 7S/71; see also the discussion of these procedures under Article XXII.

[258]L/4460, adopted on 17 May 1978, 25S/114, 119, paras. 15-16.

[259]E.g., C/M/73, p. 5; C/M/162, p. 13; C/M/166, p. 12.

PARTIES and without prejudice to any decision CONTRACTING PARTIES might take in the future on such a matter, the Panel was of the view that it would not be appropriate to determine the conformity of an agreement with the requirements of Article XXIV on the basis of a complaint by a contracting party under Article XXIII:1(a). The Panel did not preclude that amongst the procedures available to CONTRACTING PARTIES, a panel could be established to give an advisory opinion on the conformity of an agreement or an interpretation of specific criteria under Article XXIV to assist CONTRACTING PARTIES in making findings or recommendations under Article XXIV:7(b). However, the Panel was of the view that irrespective of the procedure to be followed for this purpose, including a panel, this should be done clearly in the context of Article XXIV and not Article XXIII, as an assessment of all the duties, regulations of commerce and trade coverage as well as the interests and rights of all contracting parties were at stake in such an examination, and not just the interests and rights of one contracting party raising a complaint.

"The Panel considered that the practice, so far followed by the CONTRACTING PARTIES, never to use the procedures of Article XXIII:2 to make recommendations or rulings on the GATT-conformity of measures subject to special review procedures was sound. It felt that the purposes these procedures served and the balance of interests underlying them would be lost if contracting parties could invoke the general procedures of Article XXIII:2 for the purpose of requesting decisions by the CONTRACTING PARTIES, on measures to be reviewed under the special procedures. The panel therefore concluded that it should, in the absence of a specific mandate by the Council to the contrary, follow this practice also in the case before it and therefore abstain from an overall examination of the bilateral agreements."[260]

"The Panel further noted that in some of the conclusions on agreements, following their examination under Article XXIV:7, the CONTRACTING PARTIES had recalled that procedures for consultations under Article XXII had been accepted and had then noted that 'the other normal procedures of the General Agreement would also be available to contracting parties to call into question any measures taken' under the interim agreements (see Rome Treaty: BISD 7S/71; EFTA: BISD 9S/20; LAFTA: BISD 9S/21, and Finnish Association with EFTA: BISD 10S/24). The reference to 'the other normal procedures of the General Agreement', after the mention of Article XXII, can only be understood to mean the procedures of Article XXIII. The CONTRACTING PARTIES have established in the above conclusions that this procedure could be used to call into question '*any measure*' taken by the parties to the agreements; they did not mention the possibility of calling into question the agreements as a whole, under the procedures of Article XXIII. Furthermore, the Panel noted that in the reports of the working parties relating to the respective EEC agreements with Egypt, Lebanon, and Jordan, it was specified that 'as regards the possibility of consultations with the contracting parties concerning the incidence of the Agreement on their trade interests, which had been mentioned by some members of the Working Party, the spokesman for the European Communities stated that nothing prevented these countries from invoking the relevant provisions of the General Agreement, such as Articles XXII and XXIII' (BISD 25S/119 para.15, 139 para.16, and 147 para.16).

"... a decision of the CONTRACTING PARTIES on the agreements would inevitably have amounted to a judgment on their conformity with Article XXIV. Had it been recognized that an agreement was in conformity with the requirements of Article XXIV, the implementation of this agreement could no longer be considered as nullifying or impairing benefits accruing under the General Agreement. On the other hand, had the agreement been considered by the CONTRACTING PARTIES as not being in conformity with the said requirements, its implementation would amount to a clear infringement of the provisions of the General Agreement which would constitute *prima facie* a clear case of nullification or impairment in the sense of Article XXIII:1(a)."[261]

The Panel's conclusion "that in this particular situation the balance of rights and obligations underlying Articles I and XXIV of the General Agreement had been upset to the disadvantage of the contracting parties not parties to these agreements and that the United States was therefore entitled to offsetting or compensatory adjustment to the extent that the grant of the preferences had caused substantial adverse effects to its actual

[260] L/5776 (unadopted, dated 7 February 1985), paras. 4.15-4.16.
[261] *Ibid.*, paras. 4.18-4.19.

trade or its trade opportunities"[262] was disputed by several contracting parties in the GATT Council discussion of the Panel report, which was not adopted.[263]

The 1991 Report of the Working Party on the "Free-Trade Agreement between Canada and the United States" records that its members were concerned about possible conflict between the bilateral dispute settlement procedure under the FTA and the multilateral dispute settlement procedure under the GATT. They feared this situation would result in either delays in the adoption of panel reports by CONTRACTING PARTIES or the report never being adopted due to contradictory findings in the FTA bilateral dispute settlement process and the General Agreement multilateral process. In the view of one member "such obstruction of the proper functioning of the multilateral dispute settlement process was not in accordance with the obligations of parties under the GATT".[264] The representative of the United States "emphasized that the rights and obligations of the FTA parties under the GATT remained unchanged".[265]

Paragraph 12 of the Understanding on the Interpretation of Article XXIV of the GATT 1994 provides that "The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area".

6. Article XXVIII

The 1966 Report of the Working Party on "Turkey - Consultation under Article XXII:2" describes the results of consultations in respect of the following matter raised by the United Kingdom: "The application by Turkey of Article XXIV:5(a) and of Article XXIV:6 when, in the course of forming a customs union with the European Economic Community, the Turkish Government reduces its tariff in successive stages towards the Community on the one hand and towards other contracting parties on the other".[266] Under a waiver, the Turkish Government was imposing duties on a number of imports in excess of bound rates, and was seeking to renegotiate these duties under Article XXVIII; meanwhile Turkey had notified its association agreement with the EEC as an interim agreement leading to a customs union. The United Kingdom sought to ascertain the Turkish Government's intentions with respect to aligning its tariff to the EEC's and reducing its tariff on imports from Community sources to zero. Some members of the Working Party pointed out that

> "while there may have been no connexion in intent between the Ankara Agreement and the tariff increase, in terms of practical effect the connexion existed and the way in which Turkey moved toward customs union with the Community was of great interest to third countries, particularly in respect of duty rates on items presently bound in Schedule XXXVII …".[267]

The Turkish Government offered to incorporate a Declaration into agreements reached in the renegotiations under Article XXVIII, providing that "it will give due consideration to the equitable rights of contracting parties who are not members of the Ankara Agreement when it comes to implementing differential tariff treatment in favour of the EEC on these items".[268]

See also sections above relating to paragraphs 6 and 9 of Article XXIV, and the discussion of Article XXVIII in the Reports of the Working Parties on "European Economic Community", and "EEC - Association of Greece".[269]

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[262] *Ibid.*, para. 4.37.
[263] C/M/186, 187, C/W/462.
[264] L/6927, adopted on 12 November 1991, 38S/47, 54, para. 22.
[265] *Ibid.*, 38S/55, para. 25.
[266] L/2465, adopted on 28 March 1966, 14S/59, 59-60, para. 1.
[267] *Ibid.*, 14S/63, para. 17.
[268] *Ibid.*, 14S/64, para. 22.
[269] European Economic Community, 6S/70, para. 12; EEC - Association of Greece, 11S/149, para. 8.

7. Article XXX

During the Review Session of 1954-55, in response to a question whether an amendment to Article XXIV would require unanimous acceptance for its entry into force if it involved a departure from the no-new-preference rule in Article I , the Executive Secretary gave the following legal opinion:

> "By virtue of the provisions of Article XXX an amendment to Article XXIV would enter into force for those contracting parties accepting it upon acceptance by two-thirds of the contracting parties. This would apply, however, only in the case of an amendment which was in accordance with the principles of Article XXIV, that is to say if it relates to an arrangement for establishing a customs union or a free-trade area involving the complete or substantial abolition of duties or restrictions between the parties to the arrangement. If an amendment did not look to this objective it would amount to an amendment of Article I and would therefore require unanimity".[270]

8. Article XXXIII

The 1989 Report of the Working Party on the "Accession of Bolivia" notes:

> "Some members referred to the effect of Bolivia's participation in regional agreements on its ability to enter into tariff negotiations with interested contracting parties. These members noted that the provisions of Article XXIV of the General Agreement and of the Enabling Clause did not support the assertion that trade concessions exchanged in the context of integration agreements could not be affected by tariff concessions negotiated with third countries. ... Any attempt to exclude concessional products from the tariff negotiations would be a reason for serious concern. In the view of these members, in the case of countries with wide-ranging preferential tariff commitments, the insistence on maintaining such a line of action might be tantamount to a refusal to enter into tariff negotiations with third countries which, without questioning Bolivia's sovereign right to make or not to make concessions, they would not be able to accept. A member requested that Bolivia provide a list of the items in Bolivia's tariff schedule which would be subject to the Common Minimum External Tariff of the Cartagena Agreement. This member added that in the view of her Government, Bolivia should be prepared to participate fully in tariff negotiations in connection with its accession proceedings without regard to instruments that were not in force at the present time".[271]

9. Part IV and the Enabling Clause

Reports of Working Parties on agreements presented under Article XXIV record divergent views as to the relationship between Article XXIV and Part IV of the General Agreement. On the one side, the parties to these agreements have often taken the view that the conformity of the agreement with GATT should be examined also in the light of Part IV. For instance, some Working Party Reports on EEC agreements with Mediterranean countries record the view of the parties to these agreements that, while Article XXIV remained fully valid as far as the EEC was concerned, the lack of reciprocal commitments on the part of the less-developed contracting parties "was consistent with the spirit and letter of Part IV of the General Agreement".[272] On the other side, the view has also been expressed that provisions in agreements for the according of "reverse preferences" by developing countries to developed countries were inconsistent with the principle of non-reciprocity in Part IV.[273] In the Working Party on "EEC - Association with African and Malagasy States" the view was expressed that the Agreement should be examined in the light of Part IV and that Part IV did not permit trade discrimination among developing countries[274]; the parties to the Yaoundé Convention replied that Article XXIV:5 specifies that the provisions in the General Agreement shall not prevent the formation of free-trade areas, and as Part IV does not

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[270] W.9/114, p. 1.

[271] L/6542, adopted on 19 July 1989, 36S/9, 23-24, para. 40. See in comparison Article 17 of the Havana Charter and material under Article I:2 concerning tariff negotiations and historical preferences.

[272] See, e.g., 25S/120, 126, 135, 144; 28S/117.

[273] EEC - Association Agreements with African and Malagasy states, 14S/100, 105-106, para. 13.

[274] L/3465, adopted on 2 December 1970, 18S/133, 140, para. 22; see also 18S/140; 24S/84, 93, 102; 25S/119, 127, 137; 28S/120; 29S/121.

override Article XXIV, the provisions of Article XXIV:5 applied.[275] See also other references to Part IV in working party reports.[276]

In the 1985 Panel report on "EC - Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region", which has not been adopted, the Panel found as follows:

> "The Panel considered that Article XXIV and Part IV constituted distinct sets of rights and obligations and that measures taken under one could not be covered by the other. As these agreements had been presented under the specific provisions of Article XXIV, then, whatever the general impact of Part IV and the Enabling Clause on the GATT as a whole, the agreements would in any event need to conform to the precise criteria of Article XXIV. The Panel therefore did not consider Part IV and the Enabling Clause as being relevant and therefore did not consider it any further".[277]

The 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries ("Enabling Clause") provides, *inter alia*:

> "1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries[1], without according such treatment to other contracting parties.
>
> "2. The provisions of paragraph 1 apply to the following:[2] ...
>
> "(c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of non-tariff measures, on products imported from one another".[278]

A list of the regional agreements notified under the Enabling Clause appears under Article I.

During 1992, there were extensive discussions in the Council and the Committee on whether the MERCOSUR Agreement should be notified and examined under the Enabling Clause or under Article XXIV. This agreement was notified under the Enabling Clause and the Committee established a working party with the following terms of reference:

> "To examine the Southern Common Market Agreement (MERCOSUR) in the light of the relevant provisions of the Enabling Clause and of the General Agreement, including Article XXIV and to transmit a report and recommendations to the Committee for submission to the CONTRACTING PARTIES, with a copy of the report transmitted as well to the Council. The examination in the Working Party will be based on a complete notification and on written questions and answers."[279]

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[275] *Ibid.*, 18S/140, para. 23.

[276] EEC - Association Agreements with African and Malagasy states, 14S/100, paras. 13, 14, 25, 26, 30, 31; ACP-EEC Convention of Lomé, 23S/46, paras. 4, 8, 23, 24, 26, 29S/119, paras. 6, 8, 24; CARICOM, 24S/68, para. 11; EEC-Association of Morocco, 24S/88, paras. 5, 9-12; EEC-Association of Tunisia, 24S/97, paras. 5, 6, 9, 10, 12, 27; EEC-Agreement with Egypt, 25S/114, paras. 12, 18-23; EEC-Agreement with Syria, 25S/123, paras. 5, 12, 13, 18-23; EEC-Agreement with Jordan, 25S/133, paras. 5, 13, 14, 18-23; EEC-Agreement with Lebanon, 25S/142, paras. 5, 13, 14, 18-23; EEC-Agreement with Yugoslavia, 28S/115, paras. 6, 9-11, 14.

[277] L/5776 (unadopted, dated 7 February 1985), para. 4.11.

[278] L/4903, adopted on 28 November 1979, 26S/203. Footnotes 1 and 2 provide as follows: "(1) The words 'developing countries' as used in this text are to be understood to refer also to developing territories. (2) It would remain open for the CONTRACTING PARTIES to consider on an *ad hoc* basis under the GATT provisions for joint action any proposals for differential and more favourable treatment not falling within the scope of this paragraph".

[279] L/7029 (request); L/7373 (WP terms of reference) see Council discussion in C/M/202, C/M/223, C/M/226, C/M/247, C/M/249, C/M/254, C/M/255, C/M/258, C/M/259, C/M/260; see discussion in Committee on Trade and Development, COM.TD/132, L/7124; SR.48. See also documents listed under MERCOSUR above.

III. PREPARATORY WORK AND SUBSEQUENT MODIFICATIONS

Corresponding provisions in the Havana Charter: Havana Charter Articles 42; 43; 44; 99:1(d) and Annex M; and 104:3 correspond to GATT Article XXIV paragraphs 1 and 2; 3; 4-10; 11; and 12 respectively. The corresponding provisions in the United States Draft Charter appear in Article 33; in the London and New York Drafts, in Article 38; and in the Geneva Draft, in Article 42.

Drafting history: Article 38 of the London Draft Charter contained provisions dealing with the territorial application of Chapter V of the Charter ("General Commercial Policy"), customs unions and frontier traffic.[280] Regarding the question of the territorial application of the general commercial policy rules of the proposed Charter, Article 38:1 of the London Draft provided that Chapter V of the Charter would apply to the customs territories of members of the ITO and that where there were two or more customs territories under the jurisdiction of any member, each such customs territory would be considered as a separate member for the purpose of interpreting the provisions of Chapter V. The second paragraph of Article 38 provided that the commercial policy rules of Chapter V should not be construed to prevent advantages accorded by any member to adjacent countries in order to facilitate frontier traffic, or "the formation of a union for customs purposes" of any customs territory of any member and any other customs territory on the condition that the duties and other regulations of commerce imposed by any such union in respect of trade with other members should "not on the whole be higher or more stringent than the average level of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union". The term "a union of customs territories for customs purposes" was defined in Article 38 as "the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union". Regarding the procedural requirements for the formation of a customs union, the London Draft required any member proposing to enter into a customs union to consult with the ITO and to make available to the ITO such information regarding the proposed union as would enable it to make such reports and recommendations to members as it might deem appropriate. Finally, Article 38 contained a paragraph not included in the original proposal of the United States which recognized that in exceptional circumstances there might be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Such exceptions would be subject to approval by a two-thirds majority of the members of the ITO.

The Drafting Committee of the Preparatory Committee in January and February 1947 in New York made no substantial changes to the text of Article 38 of the Draft Charter.[281]

During discussions during the Geneva meetings of the Preparatory Committee, it was decided to delete the paragraph in Article XXIV (and the corresponding Charter article) corresponding to the present Article XXIV:10. The General Agreement as agreed 30 October 1947 was the same as the Geneva Draft Charter Article 42, with the addition of provisions corresponding to paragraphs 11 and 12 of the present Article XXIV; the customs union provisions of both the Geneva Draft Charter Article and Article XXIV in the original text of the General Agreement were limited to customs unions and interim agreements necessary for the attainment of a customs union.

Article 42 was extensively revised at the Havana Conference. The three subjects which had previously been covered by one Article (territorial application, customs unions and frontier traffic) were divided into three separate Articles. Article 42 (territorial application) was an amended version of the first paragraph of the previous Article 42, while Article 43 (frontier traffic) constituted a modified version of the provisions previously contained in Article 42:2(b) of the Geneva Draft Charter.

Customs unions were dealt with in Article 44 of the Havana Charter, which differed substantially from the corresponding provisions in previous Charter drafts. A Secretariat Note of 1957 concerning the drafting history of paragraphs 4-10 of Article XXIV provides the following account.

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[280]EPCT/33, p. 33.
[281]New York Report p. 32, 77-78.

"*Paragraph 1 (paragraph 4 in present GATT text)* was new. The first sentence resulted from a decision that a redraft of paragraph 5 of Article 1 (Purpose and Objectives) could best be done by inserting this wording here. The second sentence was inserted by the working party.

"*Paragraph 2 (paragraph 5 in present GATT text)* was based on paragraph 2(b) of the Geneva Draft. Important additions, however, were the new provisions relating to the establishment of free-trade areas. This resulted from a proposal for an additional sub-paragraph to the effect that the provisions of this chapter shall not be construed to prevent:

'the formation of a free-trade area by the conclusion of a free-trade agreement involving the substantial elimination of tariffs and other restrictive regulations of commerce between Members belonging to the same economic region'.

"The words 'at the institution of' at the end of the third line of sub-paragraph 5(a) of the present text were inserted at the request of the United Kingdom. Presumably the same principle motivated the drafting of the words 'at the formation of' with respect to free-trade areas in sub-paragraph 5(b).

"In the preamble to the paragraph the words 'as between the territories of Members' were inserted … In sub-paragraph (a) it was recommended that the words 'average level of the duties' be replaced by 'general incidence of the duties' …

"*Paragraph 3 (paragraph 7 in present GATT text)* was based on paragraph 3 of the Geneva Draft. Sub-paragraph (a) incorporated the substance of a proposal by the Italian delegation that any Member proposing to enter into a customs union 'shall inform the Organization and give any …' and it was felt that the revised texts of sub-paragraphs went some way to meet the views of Argentina, Chile and Italy who had proposed the deletion of these sub-paragraphs in the Geneva text which had been more mandatory (e.g. 'no Member shall institute or maintain an interim agreement … if' etc.).

"*Paragraph 4 (paragraph 8 in present GATT text)*. The definition of a customs union, contained in the second sentence of paragraph 4 of the Geneva Draft, was amended and a definition of a free-trade area was added.

"The definition of a customs union in the Geneva Draft read as follows:

'A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of Members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the Members of the union to trade of territories not included in the union.'

Paragraph 5 (paragraph 9 in GATT text). This was a new paragraph which was intended to cover problems which would arise in cases where there were preferential rates of duty in force between a country entering a customs union or a free-trade area and a country remaining outside …

Paragraph 6 (paragraph 10 in GATT text). A new paragraph to cover proposals which do not fully comply with the requirements of the Article provided they lead to the establishment of a customs union or a free-trade area in the sense of the Article. It was the understanding of the Committee that this new paragraph would enable the Organization to approve the establishment of customs unions and free-trade areas which include non-members."[282]

During the First Session of the CONTRACTING PARTIES, which was held at the Havana Conference, the representative of France proposed the immediate replacement of the provisions of Article XXIV by the corresponding provisions of the Charter, stating that this "was a matter of fundamental importance to his

[282]W.12/18, p. 5-6.

Government in view of its plans for a customs union with Italy".[283] A Sub-Committee on Supersession was established and drew up the Special Protocol Relating to Article XXIV of the General Agreement on Tariffs and Trade, which entered into effect on 7 June 1948.[284] See also above at page 810 concerning the addition of Article XXIV:6 during this process.

The Havana Charter Article on "Preferential Agreements for Economic Development and Reconstruction" (Article 15), which expressly recognized the desirability of such preferential agreements and permitted them as an exception to the general most-favoured-nation obligation after approval by a two-thirds majority, was not incorporated into the General Agreement. Article 15 of the Charter was however referred to in connection with preferences between countries formerly a part of the Ottoman Empire, under Article I:3 of the General Agreement; see the chapter in this work on Article I.

During the Review Session in 1954-55 a number of changes to Article XXIV were considered and rejected.[285] Two minor drafting changes were agreed and entered into force in October 1957: "constituent territories" was substituted for "parties" in the second sentence of paragraph 4; and "included" replaced "provided for" after the word "schedule" in the first sentence of paragraph 7(b).[286]

[283]GATT/1/SR.1, p. 2; see also GATT/1/SR.3, p. 6.

[284]Special Protocol Relating to Article XXIV of the General Agreement on Tariffs and Trade, signed at Havana 24 March 1948, entered into force 7 June 1948, 62 UNTS 56. See discussion at GATT/1/SR.4, 11, 13, 14 and report of the Sub-Committee at GATT/1/21.

[285]See 3S/216, para. 24, and W.9/193, p. 13.

[286]See W.9/236 (Report of the Legal and Drafting Committee proposing various drafting changes).

IV. RELEVANT DOCUMENTS

London

Discussion: EPCT/C.II/38, 65
Reports: EPCT/C.II/57 + Add.1
London Report p. 11

New York

Discussion: EPCT/C.6/34, 48
Reports: New York Report p. 32, 77-78

Geneva

Discussion: EPCT/EC/PV.2/22
EPCT/A/SR.13, 35, 42
EPCT/TAC/SR/12, 13, 16
EPCT/TAC/PV/19, 23, 25, 28
Reports: EPCT/135, 146, 189, 196, 209, 214/Add.1/Rev.1
EPCT/W/339
Geneva Report p. 36.
Other: EPCT/W/64, 163, 165, 169, 173, 175, 184, 224, 225, 277, 285, 290, 312, 340

Havana

Discussion: E/CONF.2/C.3/SR.44, 47
E/CONF.2/C.6/SR.38
Reports: E/CONF.2/C.2 and 3/A/14, 15
E/CONF.2/C.3/78, 87, 90
E/CONF.2/C.6/107
Other: E/CONF.2/C.3/1, 11

CONTRACTING PARTIES

Discussion: GATT/1/SR.4, 5, 11, 13, 14
GATT/CP.3/SR.6, 13
GATT/CP.6/SR.23, 24
Reports: GATT/1/21, 41
GATT/CP.3/24
GATT/CP.6/24 and Add.1

Review Session

Discussion: SR.9/25
Reports: W.9/114, 193, 200, 212, 236
L/329, 3S/205
Other: L/189, L/261/Add.1
W.9/45, 48, 55
Spec/3/55, 85/55, 94/55

V. TABLES ON APPLICATION OF ARTICLE XXIV

A. WORKING PARTIES AND DECISIONS UNDER ARTICLE XXIV

Arab Common Market

Report of the Working Party 14S/94
plan and schedule paragraphs 5, 12, 16, 20, 21
substantially all the trade paragraphs 12-13
Conclusions adopted 14S/20

Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)

Report of the Working Party 31S/170
substantially all the trade paragraphs 4-5, 25
"global" and "exclusive" access paragraphs 10-11, 15, 29
duties and other restrictive regulations of commerce paragraphs 25-29
biennial reports- Australia/New Zealand and Free-Trade Area paragraphs 26, 28, 31

Report of the Working Party 14S/115
plan and schedule paragraphs 5, 9, 15-17
agricultural products paragraph 6
substantially all the trade paragraphs 7, 14-17
Conclusions adopted 14S/22

Australia/Papua New Guinea Agreement

Report of the Working Party 24S/63
substantially all the trade paragraphs 6-7, 13
requirement of reverse preferences under Article XXIV paragraphs 7, 11-12
consultations in case of difficulties paragraphs 14-15
reporting procedure paragraphs 14-15, 19

Canada-United States Free-Trade Agreement

Report of the Working Party 38S/47
effect on third party trade paragraph 19
effects on benefits under GSP paragraph 39
bilateral versus multilateral dispute settlement procedures paragraphs 20-25, 94
relationship between XXIV:4 and XXIV:5(b) paragraphs 62
"other regulations of commerce" paragraphs 40, 88
rules of origin paragraphs 37, 86
"requirement of a plan and schedule" and "reasonable length of time" paragraphs 52, 56, 89
requirements for information paragraph 80
paragraph XXIV:8(b) paragraphs 57, 77, 83, 84
"except where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX" paragraph 45
relationship between Articles XXIV and XIX paragraphs 63, 90
bilateral versus multilateral rules paragraphs 26-31, 93
agricultural products paragraphs 47-59
trade in automotive goods paragraphs 61, 62, 92
periodic reviews paragraphs 97, 98

Caribbean Free-Trade Association

Report of the Working Party 18S/129
substantially all the trade paragraphs 5, 7, 13
agricultural products paragraphs 8-11, 13

The Working Party agreed that the Agreement provided for the establishment of a free-trade area within the meaning of Article XXIV:8(b). paragraph 13

Caribbean Community and Common Market

Report of the Working Party 24S/68
substantially all the trade paragraphs 5, 7
common external tariff paragraphs 5, 7-8
quantitative restrictions/ other regulations of commerce paragraphs 5, 9-10
agricultural products paragraphs 11-13
relation to Part IV, Article XXXVII:1(f) paragraph 11
periodic reports paragraph 14

The Working Party generally agreed that the Caribbean Common Market constituted an interim agreement leading to the establishment of a customs union. paragraph 13

Central American Free-Trade Area (later Central American Common Market)

Participation of Nicaragua 5S/29
(Decision of 13 November 1956 under paragraph 10 of Article XXIV)

Report of the Working Party 10S/98
(see also Nicaragua and El Salvador - Free-trade area)
(see also Nicaragua - Increase in rates of duty, Decision of 23 November 1961) 10S/48

Equatorial Customs Union/Cameroon (later Central African Economic and Customs Union)

Report of the Working Party 12S/73
duties and other regulations of commerce paragraph 6
tariffs on imports from third countries paragraph 8

Czech Republic-Slovak Republic Customs Union Agreement

Report of the Working Party L/7501
coverage of all trade; replacement of external and internal trade regime of former CSFR paragraphs 6, 9-11
absence of transitional period paragraph 5
conclusions paragraphs 13-18

European Communities

European Economic Community

Discussion of Treaty by Intersessional Committee IC/SR.30
Memorandum by Interim Committee for the Common Market L/637
Questions submitted to the Interim Committee and answers L/656
Report by the Intersessional Committee before Twelfth Session L/696
Discussion at Twelfth Session SR.12/2, 8, 20
Discussion in Twelfth Session Committee on the Treaty Establishing the European Community CRT/SR.1-5
Reports of Sub-Groups on Rome Treaty 6S/68-109
relationship between paragraph 4 and paragraphs 5-9 6S/70, paragraphs 2-3
conformity of the common external tariff with paragraph 5(a) 6S/71-74, paragraphs 4-11
relationship between Article XXIV:6 and Article XXVIII 6S/74, paragraph 12
plan and schedule 6S/75-76, paragraphs 17-18
quantitative restrictions 6S/76-81, paragraphs 2-13
simultaneous establishment and co-existence of a customs union and a free-trade area 6S/90-91, paragraphs 2-8; 6S/106, paragraph 2
substantially all the trade 6S/94-101, paragraphs 15-36
application of paragraph 9 (preferences) 6S/95-97, paragraphs 19-24
relationship between Article XXIV and Article XVIII 6S/97, paragraph 26; 6S/106, paragraph 1(c)
trade in agricultural products 6S/81
association of overseas territories 6S/89

Working Party on the Association of Overseas Territories with the EEC IC/WP.1/1-37
Discussion in Intersessional Committee IC/SR.36-42
Discussion at Thirteenth Session SR.13/8, 15, 19
Report of the Intersessional Committee; action at thirteenth session L/886, 7S/69-71

European Atomic Energy Community

Report 6S/109

Association with Certain Non-European Countries and Territories

Report of the Working Party 14S/112
Conclusions adopted 14S/22
Report of the Working Party 18S/143
plan and schedule paragraph 6
substantially all the trade paragraphs 8,9
other restrictive regulations of commerce paragraphs 8, 10-12, 14-15

European Communities - Accessions

Accession of Denmark, Ireland and the United Kingdom

Article XXIV:6 negotiations
time-limit referred to in Article XXVIII:3 C/M/95
termination of negotiations and reservations made by individual contracting parties; time-limit referred to in Article XXVIII:3 not applicable to actions pursuant to these reservations C/M/99
negotiations with Canada; time-limit referred to in Article XXVIII:3 C/M/101, 102, 105

Oral report by the Chairman of the Working Party C/M/107
general incidence of duties and regulations of commerce - variable levies C/M/107

Accession of Greece

Report of the Working Party 30S/168
general incidence of duties and other regulations of commerce paragraphs 12-13, 22, 25, 30, 31-32, 42, 45, 52, 56, 58
quantitative restrictions paragraphs 13, 25-32, 51
compatibility with General Agreement paragraphs 14, 18, 48, 51-53, 55-57, 60
agricultural trade paragraphs 24, 27, 34-36, 46
variable levies, duties and other restrictive regulations of commerce paragraphs 34-35, 37, 45, 47-48, 53-54
inventory of relevant measures paragraphs 38-41
conclusions paragraphs 58-61

Accession of Portugal and Spain

Report of the Working Party	35S/293
general incidence of duties and other regulations of commerce	paragraphs 10-18, 36-44
quantitative restrictions	paragraphs 19-24, 36-39
agricultural and fisheries trade	paragraphs 11-12, 26-32, 36-37
bilateral agreement with United States under Article XXIV:6	paragraph 12
interim versus definitive agreement for a customs union	paragraph 34
relationship between Article XXIV and other GATT Articles	paragraph 35, 37-39, 45
conclusions	paragraphs 46-50

Accession of Austria, Finland and Sweden

Informal notification	L/7614, PC/SCS/W/13
Formal notification	WT/L/7
Working party established	WT/GC/M/

EC - Association Agreements

Association with African and Malagasy States

Report of the Working Party (Yaoundé I)	14S/100
creation of eighteen free-trade areas	paragraphs 4, 19, 24, 30
plan and schedule	paragraphs 5, 6, 11, 23, 24, 30
substantially all the trade	paragraphs 7, 8, 23, 30
application of quantitative restrictions	paragraphs 9, 10
relation to Central African Economic and Customs Union	paragraph 12
free-trade area consisting of developed and developing countries/Article XXIV and Part IV	paragraphs 13, 14, 25, 26, 30, 31
Conclusions adopted	14S/22
Report of the Working Party (Yaoundé II)	18S/133
substantially all the trade	paragraphs 4-5, 8, 11, 12, 27
other restrictive regulations of commerce	paragraphs 7-8, 14, 27, 29
countries with different levels of development	paragraphs 20-23

ACP-EEC Convention of Lomé

Report of the Working Party	23S/46
substantially all the trade	paragraph 4
rules of origin	paragraphs 10-11
reverse preferences	paragraphs 10, 12-13
effects on trade of non-ACP developing countries	paragraphs 14-15
quantitative restrictions	paragraphs 16-17
relation to Part IV	paragraphs 4, 8, 23-24, 26
periodic reports	paragraphs 21, 24-26
conclusions	paragraph 26

ACP-EEC Second Convention of Lomé

Report of the Working Party	29S/119
relation to Part IV	paragraphs 6, 8, 24
effects on trade of non-ACP developing countries	paragraphs 6-8, 11, 15-16
reverse preferences	paragraph 17
rules of origin	paragraph 21
periodic review of operation of the agreement	paragraphs 7, 9-10, 24
conclusions	paragraph 24

ACP -EEC Third Convention of Lomé

Questions and replies	L/6265
Report of the Working Party	35S/221
relation to Part IV	paragraphs 4, 5, 24
implementation by Spain and Portugal	paragraph 11
relation to m.f.n.	paragraph 12
effects on trade of non-ACP developing countries: tied aid	paragraphs 6-8, 11, 15-16
reverse preferences	paragraph 17
rules of origin	paragraph 16-17
compliance with requirement for periodic reports	paragraphs 7-10, 20
conclusions	paragraph 21

Fourth Lomé Convention

Questions and replies	L/7296
Report of the Working Party	L/7502
relation to Part IV	paragraphs 4, 5, 24
compatibility with Article XXIV and Part IV	pages 2-4
rules of origin	paragraph 3
conclusions	page 4
Request for waiver of Article I:1	L/7539, C/W/821+Revs.1-2
Waiver decision	L/7604

Agreement with Algeria

Report of the Working Party	24S/80
substantially all the trade	paragraphs 5, 12
reference to Part IV	paragraphs 5, 9-12, 26
different levels of development	paragraphs 5, 8-10, 15
biennial reports	paragraphs 6, 8, 28
rules of origin	paragraphs 8, 18-19
interests of other developing countries	paragraphs 10-12, 26

Association with Cyprus

Report of the Working Party 21S/94
plan and schedule paragraphs 5-8
different stages of economic development paragraphs 7, 11
elimination of trade obstacles paragraph 12
rules of origin paragraphs 13-17
substantially all the trade paragraphs 20-22

Agreement with Egypt

Report of the Working Party 21S/102
plan and schedule paragraphs 5, 9, 13-15, 19
rules of origin paragraph 18
substantially all the trade paragraphs 16, 19
different stages of economic development paragraphs 6, 13, 19

Report of the Working Party 25S/114
substantially all the trade paragraphs 5, 13
agricultural products paragraphs 5, 12, 14, 28-29
applicability of Part IV paragraphs 12, 18-23
rules of origin paragraphs 11-12, 24-27, 39
biennial reports paragraphs 13-15, 39
consultations paragraph 15
safeguards paragraphs 30-32

Association with Greece

Report of the Working Party 11S/149
reasonable length of time paragraphs 6-7
timing of renegotiation under Article XXVIII paragraph 8
substantially all the trade paragraphs 10-11
application of Article XXIV to quantitative restrictions, particularly those maintained for balance-of-payments reasons paragraphs 14-15
compliance with Article XVII paragraphs 20-21
effects of establishing common external tariff on new tariff negotiations under Article XXVIII bis paragraphs 27-29
Conclusions adopted 11S/56

Report of the Working Party 23S/64
compatibility with General Agreement paragraphs 6-9, 11, 14
effects on trade of third countries paragraphs 8, 10-11

Agreement with Israel

Report of the Working Party 18S/158
plan and schedule paragraphs 3, 7, 9, 14-21, 24-26
substantially all the trade paragraphs 3, 7, 22, 28

Report of the Working Party 23S/55
substantially all the trade paragraphs 4, 6-7, 9, 19, 21-22, 24
agricultural products paragraphs 4, 20, 22
plan and schedule paragraphs 4-5, 24
rules of origin paragraphs 6, 10, 17-18
effects on third countries' trade paragraphs 8, 18
quantitative restrictions paragraph 12
different stages of economic development paragraph 23

Agreement with Jordan

Report of the Working Party 25S/133
substantially all the trade paragraphs 5, 14
agricultural products paragraphs 5, 13, 15, 28-29
applicability of Part IV paragraphs 5, 13-14, 18-23
rules of origin paragraphs 12-13, 24-27, 39
biennial reports paragraphs 14-16, 39
consultations paragraph 16
safeguards paragraphs 30-32

Agreement with Lebanon

Report of the Working Party 22S/43
substantially all the trade paragraphs 4, 15-16
plan and schedule paragraphs 10-12
different stages of economic development paragraph 10
rules of origin paragraphs 13-14

Report of the Working Party 25S/142
substantially all the trade paragraphs 5, 14
agricultural products paragraphs 5, 13, 15, 28-29
applicability of Part IV paragraphs 5, 13-14, 18-23
rules of origin paragraphs 12-13, 24-27, 39
biennial reports paragraphs 14-16, 39
consultations paragraph 16
safeguards paragraphs 30-32

Association with Malta

Report of the Working Party	19S/90
substantially all the trade	paragraphs 15, 18
quantitative restrictions	paragraphs 6, 18, 19
plan and schedule	paragraphs 1, 11-13, 21, 23
different stages of economic development	paragraphs 10, 11, 22

Agreement with Morocco

Report of the Working Party	18S/149
plan and schedule	paragraphs 7, 17-20
quantitative restrictions	paragraphs 12-15
territories of contracting parties	paragraph 16
substantially all the trade	paragraphs 22-25, 27
Report of the Working Party	24S/88
substantially all the trade/agricultural products	paragraphs 5, 12
reference to Part IV	paragraphs 5, 9-12
different levels of development	paragraphs 8, 15
rules of origin	paragraphs 8, 19-21, 30
biennial reports	paragraphs 6, 8, 30
interests of other developing countries	paragraphs 10-12, 28

Association with Nigeria

Establishment of a Working Party	C/M/41
(agreement did not enter into force)	

Agreements with Portugal

Report of the Working Party	20S/171
different levels of development	paragraph 4
substantially all the trade	paragraphs 5, 13-17, 34, 38
agricultural products	paragraphs 5-6, 13, 15, 17, 19-21, 34
rules of origin	paragraphs 5-6, 10, 23-30, 34, 35, 38
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effects on benefits under GSP	paragraphs 7, 9, 37, 39
plan and schedule	paragraphs 11, 35
discriminatory safeguard action	paragraphs 31-35

Interim Agreement with Portugal

Report of the Working Party	24S/73
compatibility of Agreement with Article XXIV	paragraphs 7-9, 12, 20, 29
substantially all the trade/agricultural trade	paragraphs 11-14
different levels of economic development	paragraphs 4, 9, 16
rules of origin	paragraphs 19-23
safeguard provisions, application of Article XIX	paragraphs 24-26
consultations	paragraphs 27-28

Agreement with Spain

Report of the Working Party	18S/166
substantially all the trade	paragraphs 6, 17-18, 22
quantitative restrictions	paragraphs 13-14
plan and schedule	paragraphs 17, 20, 22

Agreement with Syria

Report of the Working Party	25S/123
substantially all the trade	paragraphs 5, 13
agricultural products	paragraphs 5, 12, 14, 27-28
applicability of Part IV	paragraphs 5, 12-13, 18-23
rules of origin	paragraphs 11-12, 23-26, 38
biennial reports	paragraphs 13-15, 39
consultations	paragraph 15
safeguards	paragraphs 29-31

Association with Tanzania, Uganda and Kenya

Report of the Working Party	19S/97
quantitative restrictions	paragraph 7
duties or other restrictive regulations of commerce	paragraphs 11-17
substantially all the trade	paragraph 17

Association with Tunisia

Report of the Working Party	18S/149
plan and schedule	paragraphs 7, 17-20
application of quantitative restrictions	paragraphs 12-15
territories of contracting parties	paragraph 16
substantially all the trade	paragraphs 22-25, 27
Report of the Working Party	24S/97
substantially all the trade/agricultural products	paragraphs 5, 12, 24
reference to Part IV	paragraphs 5-6, 9-10, 12, 27
different levels of development	paragraphs 5-6, 8-11
biennial reports	paragraphs 6, 20, 29
rules of origin	paragraphs 8, 19-21, 29
interests of other developing countries	paragraphs 10-12, 27

Association with Turkey

Report of the Working Party 13S/59
reasonable length of time paragraphs 6-7
substantially all the trade paragraph 7
plan and schedule paragraphs 8-9
other regulations of commerce paragraphs 10-14

Report of the Working Party 19S/102
different levels of development paragraphs 2, 5, 8, 13, 14
plan and schedule paragraphs 3-4, 9, 11
reasonable length of time paragraphs 6, 8, 14
other regulations of commerce paragraphs 9, 12, 14

Report of the Working Party 21S/108
different levels of development paragraphs 6, 10, 17
reasonable length of time paragraphs 7, 10
plan and schedule paragraphs 7-9
quantitative restrictions paragraphs 7, 12, 14-17

Agreement with Yugoslavia

Report of the Working Party 28S/115
different levels of development paragraphs 4, 8, 11
substantially all the trade paragraphs 6, 9, 16
references to Part IV paragraphs 6, 9-11, 14
lack of reciprocity paragraphs 9, 16
references to Enabling Clause paragraphs 10, 14
biennial reports paragraphs 10, 12, 25
rules of origin paragraphs 20-21, 25

EC - Agreements with EFTA countries

Agreements with Austria

Report of the Working Party 20S/145

substantially all the trade paragraphs 4, 5, 14-16, 33, 37
agricultural products paragraphs 4-6, 14-16, 18-19, 33
rules of origin paragraphs 4-6, 10, 22-29, 33, 34, 37
effects on third-country trade paragraphs 5, 9
effects on benefits under GSP paragraphs 7, 9, 20-21, 36, 38
plan and schedule paragraphs 11, 34
quantitative restrictions paragraph 17
discriminatory safeguard action paragraphs 30-32

Agreements with Finland

Report of the Working Party 21S/76
substantially all the trade paragraphs 4, 6, 9, 12-14
agricultural products paragraphs 5-8, 12, 13
rules of origin paragraphs 6, 21-22
effects on third-country trade paragraphs 6, 8
effects on benefits under GSP paragraphs 8, 18-20
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Agreements with Iceland

Report of the Working Party 20S/158
substantially all the trade paragraphs 5, 14-19, 37, 41
agricultural products paragraphs 5-6, 14, 16, 19, 21-23, 37
rules of origin paragraphs 4-6, 10, 26-33, 37-38, 41
effects on third-country trade paragraphs 5, 9, 24-25
effects on benefits under GSP paragraphs 7, 9, 40, 42
plan and schedule paragraphs 11, 38
discriminatory safeguard action paragraphs 30-32

Agreements with Norway

Report of the Working Party 21S/83
substantially all the trade paragraphs 4, 6, 9, 14-16, 32, 35
agricultural products paragraphs 4, 6, 14, 16, 19-20, 32
rules of origin paragraphs 6, 11, 24-29, 32, 33, 35
effects on third-country trade paragraphs 7, 32
effects on benefits under GSP paragraphs 8, 21-23, 34, 36
plan and schedule paragraphs 12, 33
discriminatory safeguard action paragraphs 30-31

Agreements with Sweden

Report of the Working Party 20S/183
substantially all the trade paragraphs 5, 15-17, 35, 39
agricultural products paragraphs 5-6, 15-17, 19-20, 35
rules of origin paragraphs 5-6, 10, 24-31, 35-36, 39
effects on third-country trade paragraphs 5, 9
effects on benefits under GSP paragraphs 7, 9, 21-22, 38, 40
plan and schedule paragraphs 12, 36
discriminatory safeguard action paragraphs 32-34

Agreements with Switzerland and Liechtenstein

Report of the Working Party 20S/196
substantially all the trade paragraphs 5, 14-16, 37, 41
agricultural products paragraphs 5-6, 14-16, 20-22, 37
rules of origin paragraphs 5-6, 10, 26-33, 37-38, 41
effects on third-country trade paragraphs 5,9
effects on benefits under GSP paragraphs 7, 9, 23-25, 40, 42
plan and schedule paragraphs 11, 38
discriminatory safeguard action paragraphs 34-36

European Free Trade Association

Examination of Stockholm Convention

Report of the Working Party 9S/70
rules of origin paragraphs 4-10
effects on preferential systems of member States and duty drawback paragraphs 11-18
quantitative restrictions paragraph 19-28
plan and schedule paragraph 31
agricultural products paragraphs 32-45
substantially all the trade paragraphs 47-54
conformity of bilateral agreements paragraphs 55-56
participation of non-contracting parties paragraph 58
Conclusions adopted 9S/20

Association of Finland

Report of the Working Party 10S/101
substantially all the trade paragraphs 3, 8
agricultural products paragraphs 3, 12-16
rules of origin paragraph 7
Conclusions adopted 10S/24

EFTA - Accession of Iceland

Report of the Working Party 18S/174
plan and schedule paragraph 5
substantially all the trade paragraph 6
Conclusions approved C/M/64

EFTA - Agreement with Spain

Report of the Working Party 27S/127
substantially all the trade paragraphs 4, 10, 15, 27-28
quantitative restrictions paragraphs 5, 20-21
plan and schedule paragraphs 7-11, 13-14, 27-28
bilateral agreements on agriculture paragraphs 4, 15-19
non-discriminatory application of safeguard measures paragraph 21
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EFTA - Agreement with Turkey

Notification, documentation L/6989+Add.1
Questions and replies L/7186+Adds.1-2
Report of the Working Party L/7336
substantially all the trade paragraphs 6, 17, 35-37
exclusion of agricultural sector paragraphs 21-23
transparency regarding other free-trade area agreements to which one party is a party paragraphs 11-13
tariff renegotiations and principal supplier rights paragraphs 14-15
quantitative restrictions paragraph 19

safeguards measures and their application paragraphs 26-28
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EFTA - Agreements with Czech Republic and Slovak Republic
Notification, documentation L/7041+Add.1, L/7220
Questions and replies L/7379+Add.1
Report of the Working Party L/7570
substantially all the trade paragraph 12-14
fiscal duties paragraph 14-15
periodic reviews paragraph 16
substantially all the trade; agricultural products paragraphs 16-23
Relationship with Article XIX paragraph 25
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conclusions paragraphs 29-34
Biennial reporting

Finland/Bulgaria Agreement

Oral Interim Report of the Chairman of the Working Party C/M/117

Finland/Czechoslovakia Agreement

Report of the Working Party 23S/67
nature and compatibility of Agreement paragraphs 7-8, 11, 17-18, 27, 34-35
problems of free-trade arrangements between countries with different economic systems paragraphs 7-10, 17
substantially all the trade paragraphs 5-6, 30
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agricultural products — paragraph 30
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Second Report of the Working Party — 26S/10
compatibility of Agreement with Article XXIV — paragraphs 5-6, 8, 13-14
rôle of customs duties in State-trading countries — paragraphs 6-7
operation of the Agreement — paragraphs 9-12
examination of agreements between countries with different economic systems — paragraphs 13-15
continuation of work — paragraph 17

Finland/German Democratic Republic Agreement

Interim Report of the Working Party — 24S/106
question of compatibility of Agreement with Article XXIV — paragraph 4
continuation of work — paragraph 6
Oral Report of the Chairman of the Working Party — C/M/135

Finland/Hungary Agreement

Report of the Working Party — 22S/47
nature and compatibility of Agreement — paragraphs 7, 19, 30-31
examination of agreements between countries with different economic systems — paragraphs 7, 14-16, 19
rôle of customs duties in State-trading countries — paragraphs 7, 12-13, 15, 28
substantially all the trade — paragraphs 5, 8, 20
agricultural products — paragraphs 8, 20-22
other regulations of commerce — paragraphs 24, 26
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Second Report of the Working Party — 24S/107
operation of Agreement — paragraphs 5-10
nature and compatibility of Agreement — paragraphs 9, 14, 16, 21, 44-45
examination of agreements between countries with different economic systems — paragraphs 10-14, 17, 20, 22, 23, 44-46
rôle of customs duties in State-trading countries — paragraphs 31-33
agricultural products — paragraphs 5, 24-28
other regulations of commerce — paragraphs 36-43
continuation of work — paragraph 48

Finland/Poland Agreement

Report of the Working Party — 27S/136
substantially all the trade — paragraph 5
compatibility of Agreement — paragraphs 6, 8-11, 50-51
question of Polish customs tariff — paragraphs 7, 16, 22, 29, 31, 34, 50-52
agricultural products — paragraphs 19-20
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continuation of work — paragraph 52

Estonia-Finland, Finland-Latvia, Finland-Lithuania: Protocols Regarding Temporary Arrangements on Trade and Economic Cooperation

Notification — L/7130+Add.1-2
Questions and replies — L/7196
Report of the Working Party — L/7339
substantially all the trade; treatment of agriculture — paragraphs 13-17, 25-26
rules of origin — paragraph 18
tariff preference and accession negotiations — paragraphs 9, 23

Estonia-Norway Free Trade Agreement, Latvia-Norway Free Trade Agreement, Lithuania-Sweden Free Trade Agreement

Notification, documentation — L/7104+Add.1
Questions and replies — L/7266
Report of the Working Party — L/7337
substantially all the trade; treatment of agriculture — paragraphs 14-17
rules of origin — paragraph 18
environmental trade restrictions — paragraph 20
tariff preference and accession negotiations — paragraphs 10, 25

Estonia-Sweden Free Trade Agreement, Latvia-Sweden Free Trade Agreement, Lithuania-Sweden Free Trade Agreement

Notification, documentation — L/7036
Questions and replies — L/7207
Report of the Working Party — L/7338
substantially all the trade; treatment of agriculture — paragraphs 14-16, 27
rules of origin — paragraph 17
environmental trade restrictions — paragraph 18
tariff preference and accession negotiations — paragraphs 11, 24

France/Italy Customs Union

Decision of 20 March 1948 under Article XXV:5 — GATT/CP/1

Israel/United States Free-Trade Area Agreement

Report of the Working Party 34S/58
substantially all the trade paragraphs 6, 21
agricultural products paragraphs 6, 11, 13, 14, 21, 22, 23, 24, 26
compatibility of Agreement paragraphs 17-27
continuation of work paragraphs 25-27

Latin American Free-Trade Association - Montevideo Treaty

Report of the Working Party 9S/87
substantially all the trade paragraphs 5, 7
duties and surcharges paragraphs 6, 11
participation of non-contracting parties paragraph 12
other obstacles to trade paragraphs 17-22
agricultural products paragraphs 23-29
Conclusion adopted 9S/21

North American Free Trade Agreement

Working party established

New Zealand/Australia Free-Trade Area

Report of the Working Party 14S/115
plan and schedule paragraphs 5, 9, 15-17
agricultural products paragraph 6
substantially all the trade paragraphs 7, 14-17
Conclusions adopted 14S/22

Nicaragua/El Salvador Free-Trade Area

Decision of 25 October 1951 under paragraph 10 of Article XXIV II/30

South African/Southern Rhodesia Customs Union Agreement

Declaration of 18 May 1949 II/29
Report of the Working Party II/176
plan and schedule paragraphs 16-19

Decision of 17 November 1954 on extension until tenth session 3S/47
Trade relations with Federation of Rhodesia and Nyasaland 8S/154

United Kingdom/Ireland Free-Trade Area Agreement

Report of the Working Party 14S/122
plan and schedule paragraph 8
quantitative restrictions for balance-of-payments reasons paragraph 20
maintenance of existing preferences paragraph 21
reasonable length of time paragraphs 24, 26
Ireland not a contracting party paragraph 25
Conclusions adopted 14S/23

B. PREFERENTIAL TRADE AGREEMENTS NOTIFIED UNDER ARTICLE XXIV, 1948 TO 1994

This table is a compilation of preferential trade agreements notified to GATT since its inception, listed in chronological order according to the date of signature. For each entry, seven columns of information are provided: (i) name of the agreement; (ii) participating countries or contracting parties; (iii) the form in which the contracting parties presented their agreement (for example, free trade area, customs union or preferential trade arrangement); (iv) the document reference for the text of the agreement; (v) the date of signature; (vi) the date of entry into force; and (vii) the GATT action taken and corresponding document references.

In accordance with the Decision of the Council of 25 October 1972 (19S/13), contracting parties that sign an agreement falling within the terms of Article XXIV are to inscribe the item on the agenda of the first meeting of the Council following its signature. Members of the agreement provide copies of the text of the agreement to contracting parties in order to permit them to review the agreement. The third column of the table notes the manner in which the agreement was presented by its members in the GATT (for example, free-trade area, customs union). This information reflects GATT provisions and may consequently not convey other aspects of the agreement (for example, liberalization of services, commitments regarding labour standards or competition policies). The final column reports the last GATT action taken. A working party is generally established which submits a report and recommendations, if any, to the Council. A biennial reporting requirement was established for regional agreements under the Decision of 26 November 1971 (L/3641). Contracting parties claiming to have completed the implementation of free trade areas or customs unions (the EC, ANZCERTA, EFTA, and EC-EFTA agreements) have not submitted reports. The calendar for such reports has not been revived since 1987.

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
1.	South Africa-Southern Rhodesia Customs Union Agreement[1]	South Africa and Zimbabwe (Southern Rhodesia)	Interim agreement for the formation of a customs union	GATT/CP.3/9	6 Dec. 1948	1 Apr. 1949	Working Party Report adopted on 18 May 1949 (II/176). Declaration of 18 May 1949 (II/29). Decision of 17 Nov. 1954 (3S/47).
2.	El Salvador-Nicaragua Free Trade Area	El Salvador and Nicaragua	Free-trade area	GATT/CP/104/ Add. 1	9 Mar. 1951	21 Aug. 1951	Decision of 25 Oct. 1951 (II/30).
3.	European Economic Community (EEC) and European Atomic Energy Community[2]	Belgium, France, Germany, Italy, Luxembourg and Netherlands	Customs union and common market for nuclear products	L/626	25 Mar. 1957	1 Jan. 1958	Committee Report adopted on 29 Nov. 1957 (L/778, 6S/70). Report of the Intersessional Committee and Thirteenth Session (7S/69).
4.	Participation of Nicaragua in the Central American Free Trade Area[3]	Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	Free trade area	L/891	10 June 1958	2 June 1959	Decision of 13 Nov. 1956 (5S/29).
5.	Equatorial Customs Union and Cameroon	Cameroon,[4] Central African Republic, Chad, Congo and Gabon	Customs union	L/2061	23 June 1959	1 July 1962	Working Party Report adopted on 2 Mar. 1964 (L/2169, 12S/73).
6.	European Free Trade Association (EFTA)[5]	Austria, Denmark, Norway, Portugal, Sweden, Switzerland[6] and United Kingdom	Free-trade area	L/1167	4 Jan. 1960	3 May 1960	Working Party Report adopted on 4 June 1960 (L/1235, 9S/70). Conclusions adopted on 18 Nov. 1960 (9S/20).
7.	Participation of Nicaragua in the General Treaty for Central American Economic Integration[7]	Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua	Interim agreement leading to the formation of a free-trade area and equalization of customs duties and charges	L/1425 and Add.1	13 Dec. 1960	June 1961	Working Party Report adopted on 23 Nov. 1961 (L/1639, 10S/98). Decision of 23 Nov. 1961 (10S/48).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
8.	Latin American Free Trade Association (LAFTA)[8]	Argentina, Brazil, Chile, Peru and Uruguay	Interim agreement leading to the formation of a free-trade area	L/1157	18 Feb. 1960	2 June 1961	Working Party Report adopted on 18 Nov. 1960 (L/1364, 9S/87). Conclusions adopted on 18 Nov. 1960 (9S/21).
9.	Borneo Free Trade Area[9]	Sarawak and North Borneo	Free-trade area	L/1630	1961[10]	1 Jan. 1962	Oral statement by the Chairman of the CONTRACTING PARTIES (L/1630, L/1667, SR.19/2).
10.	EEC-Greece Association Agreement[11]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Greece	Interim agreement for the formation of a customs union	L/1601	9 July 1961	1 Nov. 1962	Working Party Report adopted on 15 Nov. 1962 (L/1829, 11S/149). Conclusions adopted on 15 Nov. 1962 (11S/56).
11.	EFTA-Finland Association Agreement (FINEFTA)[12]	EFTA member States (Austria, Denmark, Norway, Portugal, Sweden, Switzerland and United Kingdom) and Finland	Interim agreement for the formation of a free-trade area	L/1451	27 Mar. 1961	26 June 1961	Working Party Report adopted on 23 Nov. 1961 (L/1521, 10S/101). Conclusions adopted on 23 Nov. 1961 (10S/24).
12.	Ghana-Upper Volta Trade Agreement	Ghana and Burkina Faso (Upper Volta)	Free-trade area	L/1766	28 June 1961	9 May 1962	Working Party established. Oral statement by the Chairman of the CONTRACTING PARTIES referring the agreement to the Working Party established to examine the African Common Market (SR.20/4).
13.	African Common Market	Algeria, United Arab Republic, Ghana, Guinea, Mali and Morocco	Customs union	L/1835	1 Apr. 1962	1 July 1963	Working Party established (SR.20/4).
14.	EEC-Turkey Association Agreement[13]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Turkey	Interim agreement for the formation of a customs union	L/2155/Add.1	12 Sept. 1963	1 Dec. 1964	Working Party Report adopted on 25 Mar. 1965 (L/2265, 13S/59).
15.	EEC-Association with African and Malagasy States (Yaoundé I)[14]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands), and Burundi, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Benin (Dahomey), Burkina Faso (Upper Volta), Gabon, Madagascar (Malagasy Republic), Mali, Mauritania, Niger, Rwanda, Senegal, Somalia and Togo	Interim agreements for the formation of bilateral free-trade areas between the EEC and each member state	L/2160/Add.1	20 July 1963	1 Jan. 1964	Working Party on Yaoundé I and EEC-PTOM I. Report adopted on 4 Apr. 1966 (L/2441, 14S/100). Conclusions adopted on 4 Apr. 1966 (14S/22).
16.	Arab Common Market	Egypt, Iraq, Jordan, Libyan Arab Jamahiriya, Mauritania, Syria and Yemen Arab Republic	Interim agreement for the formation of a free-trade area leading to a customs union	L/2366 and Corr.2	13 Aug. 1964	1 Jan. 1965	Working Party Report adopted on 6 Apr. 1966 (L/2518, 14S/94). Conclusions adopted on 6 Apr. 1966 (14S/20).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
17.	EEC-Association with certain non-European countries and territories maintaining special relations with France and the Netherlands (EEC-PTOM I)[15]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands), and Comoros Archipelago, French Polynesia, French Somali Coast, Southern and Antarctic Territories, Mayotte, New Caledonia and Dependencies, St. Pierre and Miquelon, Suriname, Wallis and Fortuna Islands and Netherlands Antilles	Free-trade area	L/2342	25 Feb. 1964	1 June 1964	Working Party on Yaoundé I and EEC-PTOM I. Report adopted on 4 Apr. 1966 (L/2441, 14S/100). Conclusions adopted on 4 Apr. 1966 (14S/22).
18.	Ireland-United Kingdom Free Trade Area Agreement[16]	Ireland and United Kingdom	Free-trade area	L/2552/Add.1	14 Dec. 1965	1 July 1966	Working Party Report adopted 5 Apr. 1966 (L/2633, 14S/122). Conclusions adopted on 5 Apr. 1966 (14S/23).
19.	Caribbean Free-Trade Agreement (CARIFTA)[17]	Antigua, Barbados, Guyana and Trinidad and Tobago	Free-trade area	L/3074	15 Dec. 1965	1 May 1968	Working Party Report adopted on 9 Nov. 1971 (L/3584, 18S/129).
20.	Australia-New Zealand Free-Trade Agreement[18]	Australia and New Zealand	Interim agreement for the formation of a free-trade area	L/2485/Add.1	31 Aug. 1965	1 Jan. 1966	Working Party Report adopted on 5 Apr. 1966 (L/2628, 14S/115). Conclusions adopted on 5 Apr. 1966 (14S/22).
21.	EFTA and FINEFTA-Accession of Iceland	EFTA member States (Austria, Denmark, Norway, Portugal, Sweden, Switzerland and United Kingdom) and Finland and Iceland	Interim agreement for the formation of a free-trade area	L/3328	4 Dec. 1969	1 Mar. 1970	Working Party Report adopted on 29 Sept. 1970 (L/3441, 18S/174).
22.	EEC-Association Agreement with the East African States (Arusha II Agreement)[19]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Tanzania, Uganda and Kenya[20]	Free-trade area	L/3369	24 Sept. 1969	1 Jan. 1971	Working Party Report adopted on 25 Oct. 1972 (L/3721, 19S/97).
23.	EEC-Tunisia Association Agreement[21]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Tunisia	Interim agreement for the formation of a free-trade area	L/3226/Add.1 and Corr.1	28 Mar. 1969	1 Sept. 1969	Working Party Report adopted on 29 Sept. 1970 (L/3379, 18S/149).
24.	EEC-Association with African and Malagasy States (Yaoundé II)[22]	Member States of Yaoundé I and Mauritius[23]	Bilateral free-trade areas between the EEC and each member state	L/3283	29 July 1969	1 Jan. 1971	Working Party Report adopted on 2 Dec. 1970 (L/3465, 18S/133).
25.	EEC-Morocco Association Agreement[24]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Morocco	Interim agreement for the formation of a free-trade area	L/3227/Add.1 and Corr.1	31 Mar. 1969	1 Sept. 1969	Working Party Report adopted on 29 Sept. 1970 (L/3379, 18S/149).
26.	EEC-Malta Association Agreement	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Malta	Interim agreement for the formation of a customs union	L/3512	5 Dec. 1970	1 Apr. 1971	Working Party Report adopted on 29 May 1972 (L/3665, 19S/90).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
27.	EEC-Turkey Additional Protocol to the Association Agreement and Interim Agreement[25]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Turkey	Additional Protocol and Interim Agreement specifying transitional stage of formation of customs union	L/3554 L/3554/Add.1,2	23 Nov. 1970 27 July 1971	1 Jan. 1973 1 Sept. 1971	Working Party Report adopted on 25 Oct. 1972 (L/3750, 19S/102).
28.	EEC-Association with certain non-European countries and territories (EEC-PTOM II)[26]	Member States of EEC-PTOM I	Free-trade area	L/3467	29 Sept. 1970	1 Jan. 1971	Working Party Report adopted on 9 Nov. 1971 (L/3611, 18S/143).
29.	EEC-Israel Agreement[27]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Israel	Interim agreement for the formation of a free-trade area	L/3428 and Corr.1	29 June 1970	1 Oct. 1970	Working Party Report adopted on 6 Oct. 1971 (L/3581, 18S/158).
30.	EEC-Spain Agreement[28]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Spain	Interim agreement for the formation of a free-trade area	L/3427 and Corr.1	29 June 1970	1 Oct. 1970	Working Party Report adopted on 6 Oct. 1971 (L/3579, 18S/166).
31.	EEC-Egypt Agreement[29]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Egypt	Interim agreement for the formation of a free-trade area; Protocol to the agreement relating to new members of EEC (Denmark, Ireland and United Kingdom)	L/3938/Add.1	18 Dec. 1972 19 Dec. 1972	1 Nov. 1973	Working Party Report adopted on 19 July 1974 (L/4054, 21S/102).
32.	EEC-Lebanon Agreement[30]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Lebanon	Interim agreement for the formation of a free-trade area; Protocol to the agreement relating to new members of the EEC (Denmark, Ireland and United Kingdom)	L/4002	18 Dec. 19726 Nov. 1973	1 Jan. 1975	Working Party Report adopted on 3 Feb. 1975 (L/4131, 22S/43).
33.	EEC-Cyprus Association Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Cyprus	Interim agreement for the formation of a customs union	L/3870	19 Dec. 1972	1 June 1973	Working Party Report adopted on 21 June 1974 (L/4009, 21S/94).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
34.	EEC-Austria Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Austria	Free-trade area; coverage of ECSC products	L/3755/Add.1 L/3783/Add.1	22 July 1972(EEC-Austria) 22 July 1972 (ECSC-Austria)	1 Oct. 1972 (EEC-Austria) 1 Jan. 1974 (ECSC-Austria)	Working Party Report adopted on 19 Oct. 1973 (L/3900, 20S/145).
35.	EEC-Switzerland and Liechtenstein Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Switzerland and Liechtenstein	Free-trade area; coverage of ECSC products	L/3758/Add.1	22 July 1972 (EEC-Switzerland & Liechtenstein) 22 July 1972 (ECSC-Switzerland & Liechtenstein)	1 Jan. 1973 (EEC-Switzerland & Liechtenstein) 1 Jan. 1974 (ECSC-Switzerland & Liechtenstein)	Working Party Report adopted on 19 Oct. 1973 (L/3893, 20S/196).
36.	EEC-Accession of Denmark, Ireland and United Kingdom[31]	EEC member States (Belgium, France, Germany, Italy, Luxembourg and Netherlands) and Denmark, Ireland and United Kingdom	Customs union	L/3677	22 Jan. 1972	1 Jan. 1973	Working Party established. Oral statement of the Chairman (L/3688/Rev.1, C/M/107, Spec(73)11).
37.	EEC-Portugal Free Trade Agreement[32]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Portugal	Interim agreement for the formation of a free-trade area	L/3781/Add.1 and Corr.1	22 July 1972	1 Jan. 1973 (EEC Portugal) 1 Jan. 1974 (ECSC-Portugal)	Working Party Report adopted on 19 Oct. 1973 (L/3901, 20S/171).
38.	EEC-Sweden Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Sweden	Free-trade area; coverage of ECSC products	L/3782/Add.1	22 July 1972 (EEC-Sweden) 22 July 1972 (ECSC-Sweden)	1 Jan. 1973 (EEC-Sweden) 1 Jan. 1974 (ECSC-Sweden)	Working Party Report adopted on 19 Oct. 1973 (L/3899, 20S/183).
39.	EEC-Iceland Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Iceland	Free-trade area; coverage of ECSC products	L/3780/Add.1	22 July 1972 (EEC-Iceland) 22 July 1972 (ECSC-Iceland)	1 Apr. 1973 (EEC-Iceland) 1 Jan. 1974 (ECSC-Iceland)	Working Party Report adopted on 19 Oct. 1973 (L/3902, 20S/158).
40.	Caribbean Community and Common Market (CARICOM)[33]	Barbados, Guyana, Jamaica and Trinidad and Tobago[34]	Interim agreement for the formation of a customs union	L/4083	4 July 1973	1 Aug. 1973	Working Party Report adopted on 2 Mar. 1977 (L/4470, 24S/68).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
41.	EEC-Finland Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Finland	Free-trade area; coverage of ECSC products	L/3973 and Corr.1	5 Oct. 1973 (EEC-Finland) 5 Oct. 1973 (ECSC-Finland)	1 Jan. 1974 (EEC-Finland) 1 Jan. 1975 (ECSC-Finland)	Working Party Report adopted on 21 Oct. 1974 (L/4064, 21S/76).
42.	EEC-Norway Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Norway	Free-trade area; coverage of ECSC products	L/3872 and Add.1	14 May 1973 (EEC-Norway) 14 May 1973 (ECSC-Norway)	1 July 1973 (EEC-Norway) 1 Jan. 1975 (ECSC-Norway)	Working Party Report adopted on 28 Mar. 1974 (L/3996, 21S/83).
43.	EEC-Turkey Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Turkey	Free-trade area; coverage of ECSC products. Extension of association agreement to ECSC products and to new members of the EEC	L/3980	30 June 1973 (ECSC-Turkey) 30 June 1973 (EEC-Turkey)	1 Mar. 1986 (ECSC-Turkey) 1 Mar. 1986 (EEC-Turkey)	Working Party Report adopted on 21 October 1974 (L/4086, 21S/108).
44.	Finland-Hungary Agreement on the Reciprocal Removal of Obstacles to Trade[35]	Finland and Hungary	Interim agreement for the formation of a free-trade area	L/4136/Add.1	2 May 1974	1 Jan. 1975	Working Party Report adopted on 31 Oct. 1975 (L/4203, 22S/47). Second Report adopted on 23 May 1977 (L/4497, 24S/107).
45.	Czechoslovakia-Finland Agreement[36]	Czechoslovakia and Finland	Interim agreement for the formation of a free-trade area	L/4138/Add.1	19 Sept. 1974	1 Jan. 1975	Working Party Report adopted on 14 June 1976 (L/4342, 23S/67). Second Report adopted on 6 Nov. 1979 (L/4837, 26S/327).
46.	Bulgaria-Finland Agreement	Bulgaria and Finland	Free-trade area	L/4137/Add.1	26 Apr. 1974	1 Jan. 1975	Working Party established. Oral interim Report of the Chairman of the Working Party (C/M/117).
47.	Finland-German Democratic Republic Agreement[37]	Finland and German Democratic Republic	Interim agreement for the formation of a free-trade area	L/4211	4 Mar. 1975	1 July 1975	Working Party Interim Report adopted on 2 Mar. 1977 (L/4471, 24S/106).[38]
48.	EEC-Israel Agreement[39]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Israel	Agreement on the implementation of free-trade area treatment; coverage of ECSC products	L/4194/Add.1	11 May 1975 (EEC-Israel) 11 May 1975 (ECSC-Israel)	1 July 1975 (EEC-Israel) 1 May 1978 (ECSC-Israel)	Working Party Report adopted on 15 July 1976 (L/4365, 23S/55).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
49.	EEC-Greece Extension of Association Agreement[40]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Greece	Extension of the association agreement to new members of the EEC (Denmark, Ireland and United Kingdom)	L/4206	28 Apr. 1975	1 July 1975	Working Party Report adopted on 14 June 1976 (L/4340, 23S/64).
50.	ACP-EEC Lomé Convention (First Lomé Convention)[41]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Bahamas, Barbados, Botswana, Burundi, Burkina Faso (Upper Volta), Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Benin (Dahomey), Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea Bissau, Equatorial Guinea, Guyana, Jamaica, Kenya, Lesotho, Liberia, Malawi, Madagascar (Malagasy Republic), Mali, Mauritius, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Tonga, Trinidad and Tobago, Uganda, Western Samoa, Zaire and Zambia[42]	Preferential, non-reciprocal access to the EEC market (Part IV claim)	L/4193, L/4198	28 Feb. 1975	1 Apr. 1976	Working Party Report adopted on 15 July 1976 (L/4369, 23S/46).
51.	Australia-Papua New Guinea Trade and Commercial Relations Agreement (PATCRA)[43]	Australia and Papua New Guinea	Preferential non-reciprocal access to the Australian market	L/4451/Add.1	6 Nov. 1976	1 Feb. 1977	Working Party Report adopted on 11 Nov. 1977 (L/4571, 24S/63).
52.	EEC-Portugal Interim Agreement[44]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Portugal	Extension of free trade agreement	L/4419	20 Sept. 1976	1 Nov. 1976	Working Party Report adopted on 26 July 1977 (L/4518, 24S/73).
53.	EEC-Tunisia Agreement[45]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Tunisia	Preferential non-reciprocal access to the EEC market (Part IV claim); coverage of ECSC products	L/4379	25 Apr. 1976 (EEC-Tunisia) 25 Apr. 1976 (ECSC-Tunisia)	1 July 1976 (EEC-Tunisia) 1 Nov. 1978 (ECSC-Tunisia)	Working Party Report adopted on 11 Nov. 1977 (L/4558, 24S/97).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
54.	EEC-Algeria Interim Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Algeria	Preferential non-reciprocal access to the EEC market (Part IV claim); coverage of ECSC products	L/4380	26 Apr. 1976 (EEC-Algeria) 26 Apr. 1976 (ECSC-Algeria)	1 July 1976 (EEC-Algeria) 1 Nov. 1979 (ECSC-Algeria)	Working Party Report adopted 11 Nov. 1977 (L/4559, 24S/80).
55.	EEC-Morocco Co-operation Agreement[46]	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Morocco	Preferential non-reciprocal access to the EEC market (Part IV claim); coverage of ECSC products	L/4381	27 Apr. 1976 (EEC-Morocco) 27 Apr. 1976 (ECSC-Morocco)	1 July 1976 (EEC-Morocco) 1 Nov. 1978 (ECSC-Morocco)	Working Party Report adopted on 11 Nov. 1977 (L/4560, 24S/88).
56.	Finland-Poland Agreement[47]	Finland and Poland	Interim agreement for the formation of a free-trade area	L/4652	29 Sept. 1976	1 Apr. 1978	Working Party Report adopted on 26 Mar. 1980 (L/4928, 27S/136).
57.	EEC-Lebanon Interim Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Lebanon	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/4524	3 May 1977	1 July 1977	Working Party Report adopted on 17 May 1978 (L/4663, 25S/142).
58.	EEC-Jordan Interim Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Jordan	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/4523	18 Jan. 1977	1 July 1977	Working Party Report adopted on 17 May 1978 (L/4662, 25S/133).
59.	EEC-Syria Interim Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Syria	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/4522	18 Jan. 1977	1 July 1977	Working Party Report adopted on 17 May 1978 (L/4661, 25S/123).
60.	EEC-Egypt Interim Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Egypt	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/4521	18 Jan. 1977	1 July 1977	Working Party Report adopted on 17 May 1978 (L/4660, 25S/114).
61.	EFTA-Spain Agreement[48]	EFTA member States (Austria, Iceland, Norway, Portugal, Sweden and Switzerland) and Spain	Interim agreement for the formation of a free-trade area	L/4867	26 June 1979	1 May 1980	Working Party Report adopted on 10 Nov. 1980 (L/5045, 27S/127).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
62.	EEC-Accession of Greece	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Greece	Customs union	L/4845	28 May 1979	1 Jan. 1981	Working Party Report adopted on 9 Mar. 1983 (L/5453, 30S/168).
63.	ACP-EEC Second Lomé Convention[49]	Member States of the First Lomé Convention[50]	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/5098	31 Oct. 1979	1 Jan. 1981	Working Party Report adopted on 31 Mar. 1982 (L/5292, 29S/119).
64.	EEC-Yugoslavia Agreement	EEC member States (Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Yugoslavia	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/5007 and Add.1	6 May 1980	1 July 1980	Working Party Report adopted on 6 Oct. 1981 (L/5191, 28S/115).
65.	Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERT)[51]	Australia and New Zealand	Free-trade area	L/5475	28 Mar. 1983	1 Jan. 1983	Working Party Report adopted on 2 Oct. 1984 (L/5664, 31S/170).
66.	ACP-EEC Third Lomé Convention[52]	Member States of the Second Lomé Convention and Mozambique[53]	Preferential non-reciprocal access to the EEC market (Part IV claim)	L/6109 and Add.1	8 Dec. 1984	1 Mar. 1986	Working Party Report adopted on 22 Sept. 1988 (L/6382, 35S/321).
67.	EEC-Accession of Portugal and Spain[54]	EEC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands and United Kingdom) and Spain and Portugal	Customs union	L/5936 and Addenda	12 June 1985	1 Jan. 1986	Working Party Report adopted on 19-20 Oct. 1988 (L/6405, 35S/293).
68.	Israel-United States Free Trade Agreement	Israel and United States	Interim agreement for the formation of a free-trade area	L/5862	22 Apr. 1985	1 Sept. 1985	Working Party Report adopted on 14 May 1987 (L/6140, 34S/58).
69.	Canada-United States Free Trade Agreement	Canada and United States	Interim agreement for the formation of a free-trade area	L/6464 and Add.1	2 Jan. 1988	1 Jan. 1989	Working Party Report adopted on 12 Nov. 1991 (L/6927, 38S/47).
70.	ACP-EEC Fourth Lomé Convention[55]	Member States of the Third Lomé Convention, Dominican Republic, Haiti, St. Christopher and Nevis	Preferential, non-reciprocal access to the EEC market (Part IV claim)	L/7153/Add.1	15 Dec. 1989	1 Mar. 1990	Working Party established on 9-10 Feb. 1993. Report adopted on 4 October 1994 (L/7502). Waiver of Article I:1 XXV:5 granted under Article XXV:5 on 8 Dec. 1994 (L/7539 and Corr.1, L/7604, SR.50/1)

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
71.	EFTA-Turkey Free Trade Agreement	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Turkey	Interim agreement for the formation of a free-trade area	L/6989/Add.1	10 Dec. 1991	30 Apr. 1992	Working Party established on 30 Apr. 1992. Report adopted on 17 Dec. 1993 (L/7336).
72.	EC-Poland Interim Agreement	EC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom) and Poland	Interim agreement for the formation of a free-trade area; coverage of ECSC products	L/6992/Add.1	16 Dec. 1991	1 Mar. 1992	Working Party on agreements between the EC and the Visegrad countries established on 30 Apr. 1992.
73.	EC-Czech and Slovak Federal Republic Interim Agreement	EC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom) and Czech and Slovak Federal Republic	Interim agreement for the formation of a free-trade area; coverage of ECSC products	L/6992/Add.1	16 Dec. 1991	1 Mar. 1992	Working Party on agreements between the EC and the Visegrad countries established on 30 Apr. 1992.
74.	EC-Hungary Interim Agreement	EC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom) and Hungary	Interim agreement for the formation of a free-trade area; coverage of ECSC products	L/6992/Add.1	16 Dec. 1991	1 Mar. 1992	Working Party on agreements between the EC and the Visegrad countries established on 30 Apr. 1992.
75.	Estonia-Finland Protocol Regarding Temporary Arrangements on Trade and Economic Co-operation	Estonia and Finland	Free-trade area	L/7130/Add.1	13 Feb. 1992	1 May 1993	Working Party on agreements between Finland and the Baltic countries established on 5 Jan. 1993. Report adopted on 17 Dec. 1993 (L/7339).
76.	Lithuania-Sweden Free Trade Agreement	Lithuania and Sweden	Free-trade area	L/7036	17 Mar. 1992	15 Aug. 1992	Working Party on agreements between Sweden and the Baltic states established on 14 July 1992. Report adopted on 17 Dec. 1993 (L/7338).
77.	Czech and Slovak Federal Republic-EFTA Free Trade Agreement[56]	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Czech and Slovak Federal Republic	Interim agreement for the formation of a free-trade area	L/7041/Add.1	20 Mar. 1992	1 July 1992	Working Party established on 14 July 1992. Report adopted on 8 Dec. 1994 (L/7570).
78.	Estonia-Sweden Free Trade Agreement	Estonia and Sweden	Free-trade area	L/7036	31 Mar. 1992	1 July 1992	Working Party on agreements between Sweden and the Baltic states established on 14 July 1992. Report adopted on 17 Dec. 1993 (L/7338).
79.	Latvia-Sweden Free Trade Agreement	Latvia and Sweden	Free-trade area	L/7036	31 Mar. 1992	1 July 1992	Working Party on agreements between Sweden and the Baltic states established on 14 July 1992. Report adopted on 17 Dec. 1993 (L/7338).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
80.	Finland-Lithuania Protocol Regarding Temporary Arrangements on Trade and Economic Co-operation	Finland and Lithuania	Free-trade area	L/7130/Add.1	5 June 1992	1 May 1993	Working Party on agreements between Finland and the Baltic states established on 5 Jan. 1993. Report adopted on 17 Dec. 1993 (L/7339).
81.	Latvia-Norway Free-Trade Agreement	Latvia and Norway	Free-trade area	L/7104/Add.1	15 June 1992	Provisionally applied from 1 July 1992	Working Party on agreements between Norway and the Baltic states established on 4 Nov. 1992. Report adopted on 17 Dec. 1993 (L/7337).
82.	Estonia-Norway Free-Trade Agreement	Estonia and Norway	Free-trade area	L/7104/Add.1	15 June 1992	Provisionally applied from 1 July 1992	Working Party on agreements between Norway and the Baltic states established on 4 Nov. 1992. Report adopted on 17 Dec. 1993 (L/7337).
83.	Lithuania-Norway Free-Trade Agreement	Lithuania and Norway	Free-trade area	L/7104/Add.1	15 June 1992	Provisionally applied from 1 July 1992	Working Party on agreements between Norway and the Baltic states established on 4 Nov. 1992. Report adopted on 17 Dec. 1993 (L/7337).
84.	EFTA-Israel Free Trade Agreement	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Israel	Interim agreement for the formation of a free-trade area	L/7129 and Add.1	17 Sept. 1992	1 Jan. 1993	Working Party established on 9-10 Feb. 1993.
85.	Czech Republic-Slovak Republic Customs Union Agreement	Czech Republic and Slovak Republic	Customs union	L/7212	28 Oct. 1992	1 Jan. 1993	Working Party established on 12 May 1993. Report adopted on 4 October 1994 (L/7501).
86.	Lithuania-Switzerland Free-Trade Agreement	Lithuania and Switzerland	Free-trade area	L/7223/Add.1	24 Nov. 1992	Provisionally applied from 1 Apr. 1993	Working Party established on agreements between Switzerland and the Baltic states on 16-17 June 1993.
87.	Finland-Latvia Protocol Regarding Temporary Arrangements on Trade and Economic Co-operation	Finland and Latvia	Free-trade area	L/7130/Add.1	26 Nov. 1992	1 July 1993	Working Party on agreements between Finland and the Baltic states established on 5 Jan. 1993. Report adopted on 17 Dec. 1993 (L/7339).
88.	EFTA-Romania Free Trade Agreement[57]	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Romania	Interim agreement for the formation of a free-trade area	L/7215/Add.1	10 Dec. 1992	1 May 1993[58]	Working Party established on 16-17 June 1993.

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
89.	EFTA-Poland Free Trade Agreement[59]	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Poland	Interim agreement for the formation of a free-trade area	L/7372/Add.1	10 Dec. 1992	15 Nov. 1993	Working Party established on 25-26 Jan. 1994.
90.	North American Free Trade Agreement (NAFTA)[60]	Canada, Mexico and United States	Free-trade area	L/7176/Add.1	17 Dec. 1992	1 Jan. 1994	Working party established on 23 Mar. 1994.
91.	Estonia-Switzerland Free-Trade Agreement	Estonia and Switzerland	Free-trade area	L/7223/Add.1	21 Dec. 1992	Provisionally applied from 1 Apr. 1993	Working Party established on agreements between Switzerland and the Baltic states on 16-17 June 1992.
92.	Central European Free Trade Agreement (CEFTA)	Czech Republic, Hungary, Poland and Slovak Republic	Interim agreement for the formation of a free-trade area	L/7495/Add.1	21 Dec. 1992	Provisionally applied from 1 Mar. 1993	The Council was informed (C/M/261). No subsequent action yet taken.
93.	Latvia-Switzerland Free-Trade Agreement	Latvia and Switzerland	Free-trade area	L/7223/Add.1	22 Dec. 1992	Provisionally applied from 1 Apr. 1993	Working Party established on agreements between Switzerland and Estonia, Latvia and Lithuania on 16-17 June 1992.
94.	EC-Interim agreement with Romania	EC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom) and Romania	Interim agreement for the formation of a free-trade area	L/7618/Add.1	1 Feb. 1993	1 May 1993	The Council was informed (C/M/263). No subsequent action yet taken.
95.	EC-Interim agreement with Bulgaria	EC member States (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom) and Bulgaria	Interim agreement for the formation of a free-trade area	L/7617/Add.1	8 Mar. 1993	31 Dec. 1993	The Council was informed (C/M/263). No subsequent action yet taken.
96.	EFTA-Hungary Free Trade Agreement[61]	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Hungary	Interim agreement for the formation of a free-trade area	L/7360/Add.1	29 Mar. 1993	1 Oct. 1993[62]	Working Party established on 25-26 Jan. 1994.
97.	EFTA-Bulgaria Free Trade Agreement[63]	EFTA member States (Austria, Finland, Iceland, Liechtenstein, Norway, Sweden and Switzerland) and Bulgaria	Interim agreement for the formation of a free-trade area	L/7257 and Add.1	29 May 1993	1 July 1993[64]	Working Party established on 27 Oct. 1993.
98.	Costa Rica-Mexico Free Trade Agreement	Costa Rica and Mexico	Free-trade area			1 January 1995	Council informed on 23 March 1994 of signing (C/M/271).

	Name	Participating countries or contracting parties	Presented as	Text of agreement	Date of signature	Date of entry into force	GATT action taken and document references
99.	Czech Republic-Slovenia Free Trade Agreement	Czech Republic and Slovenia	Free-trade area	L/7447/Add.1	Dec. 1993	Provisionally applied since 1 Jan. 1994	Working Party established on 21 June 1994 (C/M/273).
100.	Slovak Republic-Slovenia Free Trade Agreement	Slovak Republic and Slovenia	Free-trade area	L/7448/Add.1	22 Dec. 1993	Provisionally applied since 1 Jan. 1994	Working Party established on 21 June 1994 (C/M/273).
101.	Free-Trade Agreement between Colombia, Venezuela and Mexico	Colombia, Venezuela, Mexico	Free-trade area			1 January 1995	Council informed on 21 June 1994 (C/M/273)
102.	EEC-Estonia Free Trade Agreement	EC member states and Estonia	Free-trade area				Council informed on 20 July 1994 (C/M/274).
103.	EEC-Latvia Free Trade Agreement	EC member states and Latvia	Interim agreement for the formation of a free-trade area				Council informed on 20 July 1994 (C/M/274).
104.	EEC-Lithuania Free Trade Agreement	EC member states and Lithuania	Interim agreement for the formation of a free-trade area				Council informed on 20 July 1994 (C/M/274).
105.	Bolivia-Mexico Free Trade Agreement	Bolivia and Mexico	Interim agreement for the formation of a free-trade area			1 January 1995	Council informed on 4 October 1994 of signing (C/M/275).
106.	EC-Accession of Austria, Finland, Norway and Sweden	Twelve EC member states, Austria, Finland, Norway and Sweden; Norway did not ratify	Customs union	L/7614/Add.1	24 June 1994	1 Jan. 1995	Council informed on 20 July 1994 (C/M/273, 274). Further notification 15 December 1994 (L/7614, PC/SCS/W/13) formal notification and request for initiation of examination, 20 Jan. 1995 (WT/L/7). Working party established.

NOTES

1. Agreement terminated on 1 July 1955 and immediately superseded by a preferential trade agreement notified to GATT (Working Party Report adopted on 3 December 1955 (L/468, 10S/72)), and the subject of a waiver from Article I:1 under the Decision of 3 December 1955 (10S/17).
2. In 1952, the members of the European Coal and Steel Community (ECSC) obtained a waiver from Article I:1 under the Decision of 10 November 1952 (1S/17) which expired in 1958. Denmark, Ireland and the United Kingdom acceded to the EC on 1 January 1973, Greece acceded on 1 January 1981, Portugal and Spain acceded on 1 January 1986.
3. Nicaragua was the only member of the Multilateral Central American Free Trade and Economic Integration Treaty which was a GATT contracting party at the time of its formation. See entry for the participation of Nicaragua in the General Treaty for Central American Integration.
4. Cameroon joined the customs union on 23 June 1961. The common external tariff was implemented on 1 July 1962.

5. Denmark and the United Kingdom withdrew from EFTA on 1 January 1973 upon accession to the EC, and Portugal withdrew on 1 January 1986 upon accession to the EC. Iceland acceded to EFTA on 1 March 1970, Finland acceded on 1 January 1986, and Liechtenstein acceded on 1 September 1991.
6. The GATT Protocol of Accession of Switzerland provides that the customs territory of Switzerland is deemed to include the territory of the Principality of Liechtenstein as long as the customs union treaty with Switzerland is in force.
7. The 1961 Treaty reduced the period for the establishment of a free-trade area among members of the Central American Free Trade Area from 10 to five years and provided for the equalization of import duties within five years.
8. The 1980 Montevideo Treaty establishing the LAIA superseded the 1960 Montevideo Treaty establishing the LAFTA.
9. At the time of the formation of the free trade area, Borneo and Sarawak were dependent territories of the United Kingdom. On 30 October 1963, the government of Malaysia assumed the responsibility for the conduct of the external affairs of the former states of the Federation of Malay, including the states of Borneo and Sarawak (L/2077).
10. The date of signature is not available to the GATT Secretariat.
11. The Association agreement was extended in 1973 to cover the accession of Denmark, Ireland and the United Kingdom to the EC. Greece acceded to the EC on 1 January 1981.
12. On 1 January 1986, Finland acceded to EFTA.
13. The Association agreement was supplemented by an Additional Protocol (with effect from 1 January 1973) establishing conditions, arrangements and a timetable for a transitional stage to the customs union. The Association agreement was extended in 1973 to ECSC products and to new members of the EEC (with effect from 1 March 1986).
14. Superseded by the 1971 Yaoundé II, which was superseded by the 1976 First Lomé Convention and its Second, Third and Fourth successor agreements.
15. Superseded by the 1971 EEC-PTOM II.
16. Ireland and the United Kingdom acceded to the EC on 1 January 1973.
17. Superseded by the 1973 CARICOM.
18. Superseded by the 1983 Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).
19. Superseded by the 1976 First Lomé Convention and its Second, Third and Fourth successor agreements.
20. Kenya, Tanzania and Uganda concluded the Treaty for East African Co-operation in 1967.
21. Superseded by the 1976 Co-operation Agreement.
22. Superseded by the 1976 First Lomé Convention and its Second, Third and Fourth successor agreements.
23. An Association Agreement between Mauritius and the Yaoundé Convention was signed on 12 May 1972 and entered into force on 1 June 1973.
24. Superseded by the 1976 Co-operation Agreement.
25. Supplemented the 1964 Association Agreement. The Association agreement was extended in 1973 to ECSC products and to new members of the EEC (with effect from 1 March 1986).
26. Superseded the 1964 EEC-PTOM I.
27. Superseded by the 1975 Agreement on the implementation of free-trade area treatment and extended to cover ECSC products.
28. Spain acceded to the EC on 1 January 1986.
29. Superseded by the 1977 Agreement.
30. Other agreements covering trade matters between the EEC and Lebanon include the 1965 Agreement on Trade and Technical Cooperation, and the 1973 Protocol relating to the Agreement. The Agreements notified to the GATT in 1973 include one Agreement between the original six members of the EEC and Lebanon signed in 1972, and a Protocol extending the Agreement to Denmark, Ireland and the United Kingdom, signed in 1973.
31. Denmark and the United Kingdom withdrew from EFTA upon their accession. Ireland and the United Kingdom had concluded a free-trade agreement in 1966. The notification also concerned the proposed accession of EFTA member Norway, which did not subsequently ratify the treaty with the EC.
32. Portugal acceded to the EC on 1 January 1986.
33. Superseded the 1968 CARIFTA.
34. Bahamas, Belize, Dominica, Grenada, Montserrat, St. Lucia and St. Vincent acceded to the Treaty establishing the CARICOM in May 1974; Antigua and Barbuda and St. Kitts and Nevis acceded in July 1974.
35. See also the 1993 EFTA-Hungary Free Trade Agreement. The 1975 Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the later Agreement.

36. See also the 1991 EFTA-Czech and Slovak Federal Republic Free Trade Agreement. The 1975 Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the later Agreement. Following the dissolution of the former Czech and Slovak Federal Republic as of 1 January 1993, agreements were signed by the two successor states with EFTA that provide for the continuing application of the 1991 Agreement (L/7220).
37. The Agreement is no longer in force following the unification of Germany in 1989.
38. The Working Party had planned to reconvene in 18 months' time after the adoption of the Interim Report to continue its examination of the Agreement.
39. Superseded the 1973 Agreement.
40. Supplemented the 1962 Agreement. Greece acceded to the EC on 1 January 1981.
41. The membership of the Agreement includes that of the 1971 Yaoundé and Arusha Agreements.
42. Accessions to the First Lomé Convention include Cape Verde on 28 March 1977, Comoros on 13 September 1976, Djibouti on 2 February 1978, Dominica on 26 February 1979, Kiribati on 30 October 1979, Papua New Guinea and Sao Tome and Principe on 28 March 1977, St. Lucia on 28 June 1979, St. Vincent and the Grenadines on 27 February 1980, Seychelles on 27 August 1976, Solomon Islands on 27 September 1978, Surinam on 16 July 1976, and Tuvalu, on 17 January 1979.
43. Australia obtained a waiver from Article I:1 for preferences granted to products imported from Papua New Guinea under the Decision of 24 October 1953 (2S/18). PATCRA covers trade and commercial relations between Australia and Papua New Guinea, while Papua New Guinea obtains trade concessions from New Zealand under SPARTECA (see under Enabling Clause in the chapter on Article I).
44. Supplemented the 1973 Agreement. Portugal acceded to the EC on 1 January 1986.
45. Superseded the 1969 Agreement.
46. Superseded the 1969 Agreement. An Interim Agreement allowed for the trade provisions to be implemented with effect from 1 July 1976.
47. See also the 1993 EFTA-Poland Free Trade Agreement. The 1978 Agreement shall remain in force until the substance of the mutual benefits under the earlier Agreement has been fully overtaken by the later Agreement.
48. Spain acceded to the EC on 1 January 1986.
49. Superseded the First Lomé Convention. Successor agreements are the Third and Fourth Lomé Conventions.
50. Greece acceded to the EEC on 1 January 1981. Antigua and Barbuda acceded to the Second Lomé Convention on 30 July 1982, Belize on 5 March 1982, Vanuatu on 18 March 1981 and Zimbabwe on 1 March 1982.
51. Superseded the 1966 Australia-New Zealand Free Trade Agreement.
52. Superseded the Second Lomé Convention. Successor agreement is the Fourth Lomé Convention.
53. Portugal and Spain acceded to the EEC on 1 January 1986.
54. Superseded previous Agreements between the EEC and Portugal and Spain.
55. Superseded the Third Lomé Convention.
56. See also the 1975 Czechoslovakia-Finland Agreement. This Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the 1992 Agreement. Following the dissolution of the former Czech and Slovak Federal Republic as of 1 January 1993, agreements were signed by the two successor states with EFTA that provide for the continuing application of the 1991 Agreement (L/7220).
57. See also the Finland-Romania Long-term Trade Agreement signed 30 October 1981 and which entered into force 1 January 1982. The Long-term Agreement was notified under Paragraph 3 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (L/5283).
58. Entered into force for Sweden and Romania on 1 May 1993. The Agreement is being provisionally applied by Switzerland and Liechtenstein pending ratification. The Agreement will enter into force for other EFTA member states when ratification is completed.
59. See also the 1978 Finland-Poland Agreement. This Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the 1993 Agreement.
60. See 1989 Canada-United States Free Trade Agreement.
61. See also the 1975 Finland-Hungary Agreement. This Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the 1993 Agreement.
62. Entered into force for Austria, Hungary, and Sweden on 1 October 1993. The Agreement and arrangements are also being provisionally applied since 1 October 1993 by Switzerland and Liechtenstein pending their ratification. The Agreement and arrangements will enter into force for Finland and Iceland when the ratification process is completed.
63. See also the 1975 Finland-Bulgaria Agreement. This Agreement shall remain in force until the substance of its mutual benefits has been fully overtaken by the 1993 Agreement.
64. Entered into force for Sweden on 1 July 1993. The Agreement and arrangements are being provisionally applied since 1 July 1993 by Norway, Switzerland and Liechtenstein, pending their ratification. The Agreement and arrangements will enter into force for Finland and Iceland when the ratification process is completed.