

**1 LANGUAGE INCORPORATING GATT 1947 AND OTHER INSTRUMENTS INTO GATT 1994 ..... 1**

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**1 LANGUAGE INCORPORATING GATT 1947 AND OTHER INSTRUMENTS INTO GATT 1994**

**1.1 Text of the language incorporating GATT 1947 and other instruments into GATT 1994**

1. The General Agreement on Tariffs and Trade 1994 ("GATT 1994") shall consist of:
  - (a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;
  - (b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:
    - (i) protocols and certifications relating to tariff concessions;
    - (ii) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);
    - (iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement<sup>1</sup>;
  - (c) the Understandings set forth below:

*(footnote original)* <sup>1</sup> The waivers covered by this provision are listed in footnote 7 on pages 11 and 12 in Part II of document MTN/FA of 15 December 1993 and in MTN/FA/Corr.6 of 21 March 1994.<sup>1</sup> The Ministerial Conference shall establish at its first session a revised list of waivers covered by this provision that adds any waivers granted under GATT 1947 after 15 December 1993 and before the date of entry into force of the WTO Agreement, and deletes the waivers which will have expired by that time.

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<sup>1</sup> By Procès-Verbal of rectification the correct date of document [MTN/FA/Corr.6](#) was rectified to 18 March 1994.

- (i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;
- (ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;
- (iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;
- (iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;
- (v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;
- (vi) Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994; and

(d) the Marrakesh Protocol to GATT 1994.

2. *Explanatory Notes*

- (a) The references to "contracting party" in the provisions of GATT 1994 shall be deemed to read "Member". The references to "less-developed contracting party" and "developed contracting party" shall be deemed to read "developing country Member" and "developed country Member". The references to "Executive Secretary" shall be deemed to read "Director-General of the WTO".
- (b) The references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes *Ad* Article XII and XVIII; and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of GATT 1994 shall be deemed to be references to the WTO. The other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly shall be allocated by the Ministerial Conference.
- (c)
  - (i) The text of GATT 1994 shall be authentic in English, French and Spanish.
  - (ii) The text of GATT 1994 in the French language shall be subject to the rectifications of terms indicated in Annex A to document MTN.TNC/41.
  - (iii) The authentic text of GATT 1994 in the Spanish language shall be the text in Volume IV of the Basic Instruments and Selected Documents series, subject to the rectifications of terms indicated in Annex B to document MTN.TNC/41.

3.
  - (a) The provisions of Part II of GATT 1994 shall not apply to measures taken by a Member under specific mandatory legislation, enacted by that Member before it became a contracting party to GATT 1947, that prohibits the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. This exemption applies to: (a) the continuation or prompt renewal of a non-conforming provision of such legislation; and (b) the amendment to a non-conforming provision of such legislation to the extent that the amendment does not decrease the conformity of the provision with Part II of GATT 1947. This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.
  - (b) The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every

two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail.

(c) A Member whose measures are covered by this exemption shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels as well as additional information on the use, sale, lease or repair of relevant vessels covered by this exemption.

(d) A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference.

(e) This exemption is without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

## **1.2 Paragraph 1**

### **1.2.1 Paragraph 1(a): "the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947 ... as rectified, modified or amended ..."**

1. The negotiations that led to the General Agreement on Tariffs and Trade 1947 (GATT 1947) took place in 1946-47 during and after the sessions of the Preparatory Committee of the United Nations Conference on Trade and Employment. The Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee, signed at Geneva on 30 October 1947, included the 30 October 1947 original text of the GATT 1947, the Schedules of tariff concessions negotiated in 1947, and the Protocol of Provisional Application.

2. The GATT 1947 was provisionally applied from 1 January 1948 and was terminated one year after the entry into force of the WTO Agreement. Concerning provisional application of the GATT 1947, see the GATT Analytical Index, pages 1071-1084. The General Agreement on Tariffs and Trade 1994 (GATT 1994) does not include the Protocol of Provisional Application, nor the provisions in protocols of accession that provided for provisional application of the GATT 1947. The date and source of amendments to the GATT 1947 are provided in the *GATT Status of Legal Instruments*.

### **1.2.2 Paragraph 1(b): Legal instruments under the GATT 1947**

#### **1.2.2.1 "decisions on waivers granted under GATT 1947 and still in force ..."**

3. The GATT 1994 incorporated some, but not all, of the waivers granted under Article XXV:5 of the GATT 1947 that were in force as of 1 January 1995. The list in MTN/W/FA referred to in footnote 6 omitted the 1955 waiver granted to the United States in connection with import restrictions imposed under Section 22 of the U.S. Agricultural Adjustment Act.<sup>2</sup> A revision of this list was issued in 1995.<sup>3</sup>

4. The Understanding in Respect of Waivers of Obligations under the GATT 1994 provides:

"Any waiver in effect on the date of entry into force of the WTO Agreement shall terminate, unless extended in accordance with the procedures [in the Understanding] and those of Article IX of the WTO Agreement, on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier."<sup>4</sup>

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<sup>2</sup> BISD 3S/32.

<sup>3</sup> [WT/L/3](#) and [WT/L/3/Corr.1](#).

<sup>4</sup> See the document on Article XXV of the GATT 1947 (Practice).

## **1.3 Paragraph 2**

### **1.3.1 Allocation of functions of the CONTRACTING PARTIES acting jointly**

5. Paragraph 2(b) of the GATT 1994 incorporation text provides that the references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes *Ad* Articles XII and XVIII of the GATT 1994, and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of the GATT 1994, shall be deemed to be references to the WTO. These powers of the CONTRACTING PARTIES are therefore exercised by the Ministerial Conference or by the General Council.

6. Paragraph 2(b) also provides that the other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly may be allocated to the various WTO organs by decision of the Ministerial Conference. As of 30 September 2011, such a decision had not taken place.

### **1.3.2 Authentic texts of GATT 1994**

7. The text of Parts I through III of the GATT 1947 was authentic in English and French only. Part IV of the GATT 1947, introduced in 1966, was authentic in English, French and Spanish. The Secretariat prepared and published on its own responsibility a Spanish translation of the text of the GATT 1947, as in force on March 1, 1969, in Volume IV of the Basic Instruments and Selected Documents series. No authentic Spanish text was ever agreed for Parts I through III of the General Agreement, Parts I-III of the Spanish-language text of the GATT 1947 had no formal status.

8. During the final Uruguay Round legal drafting process, participants noted a lack of concordance between the French and Spanish versions of the Uruguay Round texts and the French and Spanish texts respectively of the GATT 1947. They also noted instances of a lack of concordance between the English, French and Spanish texts of the GATT 1947. Upon discussion, participants concluded that the preferable course would be to conform the French and Spanish texts of the GATT 1947 to the linguistic usage reflected in the English-language text and in the Uruguay Round Agreements. In addition, Spanish-speaking participants sought to establish an authentic text of Parts I-III of the GATT 1947 in Spanish.

9. Participants decided to implement these objectives by preparing lists of rectifications to the French and Spanish texts of the GATT 1947 and by providing in paragraph 2 of the GATT 1994 incorporation text that the GATT 1994 would reflect those rectifications. With the agreement of participants, a list of agreed corrections to the authentic French text of the GATT 1947 and to the Spanish text published in Volume IV of the BISD were drawn up by the Secretariat Translation and Documentation Division and were circulated as annexes to MTN.TNC/41, a Decision of the Trade Negotiations Committee (TNC) on "Corrections to be Introduced in the General Agreement on Tariffs and Trade". The French and Spanish language texts of the GATT 1994 published by the Secretariat incorporate those rectifications. For further discussion regarding this process, see the GATT Analytical Index, pages 913-915.

## **1.4 Paragraph 3**

10. The measures referred to in paragraph 3 were notified to the Director-General of the GATT.<sup>5</sup> The General Council conducted reviews of these measures in 1999-2000, 2002, 2005, 2007, 2009, and 2011.<sup>6</sup>

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<sup>5</sup> [WT/GC/W/228](#).

<sup>6</sup> [WT/GC/M/48](#), [50](#), [53](#), [55](#), [57](#), [61](#) (1999-2000); [WT/L/44](#), [WT/GC/M/72](#), [74](#), [75](#), [77](#) (2002); [WT/GC/M/92](#), [100](#) (2005); [WT/GC/M/107](#), [112](#) (2007); and [WT/GC/M/124](#) (2009).