PROCEDURES FOR ACCESSION TO GATT AND THE ADVANTAGES FOR LESS-DEVELOPED COUNTRIES

Note by the Executive Secretary to the CONTRACTING PARTIES

1. This note on the procedures for accession to the General Agreement and on the advantages in such accession has been prepared in response to numerous enquiries from less-industrialized countries. The note is intended for those countries which have not thus far joined the community of nations which accept the rules of GATT to govern the conduct of their international trade and also for the territories, particularly in Africa, which have recently acquired independent status.

A. PROCEDURES FOR ACCESSION

2. Forty-four countries are now contracting parties to the General Agreement and several others have made special arrangements for association with GATT or for participation in the work of the CONTRACTING PARTIES. Moreover, those contracting parties which are responsible for the foreign relations of certain non-metropolitan territories generally apply the GATT in those territories. Altogether, nearly 90 per cent of world trade is subject to GATT rules. GATT has been applied since 1948 to virtually all the overseas territories whose foreign relations have been in the hands of the Governments of Belgium, France, the Netherlands, and the United Kingdom. For many of these territories the metropolitan power negotiated bindings of the rates of duty for certain products in the tariffs of the territories in exchange for concessions of interest to the export trade of the territories. These bindings are inscribed in a separate section of the schedule of tariff concessions negotiated by the metropolitan power and annexed to the GATT.

3. The procedures whereby a country or territory can accede to the General Agreement are clearly defined in GATT and have been applied consistently since GATT first entered into force in 1948.

Accession through negotiation (Article XXXIII)

4. The rule governing accession is contained in Article XXXIII of GATT. This rule provides that:

A list of contracting parties and associated governments is given on pages 12 and 13.
"A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such governments and the CONTRACTING PARTIES."

Accession is always preceded by tariff negotiations with a view to the exchange of mutually advantageous concessions including a contribution by the acceding government to pay for the benefit of the concessions already negotiated and which will be of interest to its export trade. When a government wishes to accede arrangements are made for the conduct of negotiations, and upon their successful conclusion a protocol of accession is drawn up whereby the acceding government becomes a contracting party and accepts the same rights and obligations as those of other Member governments.

5. Negotiations for the accession of thirteen countries in Europe and Latin America were held at Annecy in 1949 and at Torquay in 1950/51. More recently Israel, Japan, Portugal, Spain and Switzerland negotiated for accession. Argentina, the United Arab Republic and Yugoslavia have acceded provisionally to the GATT pending the carrying-out of negotiations for full accession.

6. This procedure of accession through negotiation is open to territories to which GATT has been applied but which acquire autonomy in their commercial relations. Thus Cambodia and Tunisia are also negotiating for accession and meanwhile they and most of the contracting parties continue to apply the GATT to their mutual trade. Cambodia and Tunisia could have taken an alternative course of becoming contracting parties through Article XXVI, by procedures described below, but they had revised their customs tariffs and preferred to negotiate on the basis of these new tariffs rather than maintain the commitments negotiated by France on their behalf in 1947.

Accession through sponsorship (Article XXVI)

7. Territories acquiring independence have an alternative means of becoming contracting parties in their own right. Paragraph 5(c) of Article XXVI provides that:

"If any of the customs territories, in respect of which a contracting party has accepted this agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party."

Through this procedure of sponsorship, Indonesia became a contracting party in 1950, the Federation of Malaya and Ghana in 1958, Nigeria in 1960, Sierra Leone and Tanganyika in 1961 and Trinidad and Tobago and Uganda in 1962. In becoming contracting parties, Indonesia and Malaya maintained the obligations
which had been accepted on their behalf by the Netherlands and the United Kingdom, including the tariff concessions in the relevant sections of the Benelux and the United Kingdom schedules; these then became the schedules of Indonesia and Malaya. As for the other countries mentioned, the legal situation is the same but, as the United Kingdom did not grant concessions on behalf of the territories in 1947, they have not, in fact, undertaken any specific tariff commitments.

8. Other territories which have recently acquired their autonomy in commercial matters are being given the opportunity of becoming contracting parties through the provisions of Article XXVI quoted above. Under the procedures adopted by the CONTRACTING PARTIES for the implementation of Article XXVI, the Executive Secretary consults with the new State. If it wishes to continue to enjoy the rights, and is prepared to take over the obligations of GATT membership, it is deemed to be a contracting party forthwith. But for a new State which requires some time to review its economic policy before taking a definitive stand on its relations with GATT, the CONTRACTING PARTIES grant a delay of two years or more during which they recommend all Member countries to continue to accord GATT treatment to the new State so long as it continues to apply the GATT to them. This arrangement is at present operating for Cyprus, Jamaica, Kuwait, Madagascar and seventeen new States in Africa.

B. ADVANTAGES FOR LESS-DEVELOPED COUNTRIES IN ACCEDING TO GATT

9. Membership in GATT differs in many respects from membership in international organizations. Likewise, the General Agreement is not comparable with the charters or constitutions of other inter-governmental bodies, as it contains a number of substantive commitments and rights which have a considerable effect on the formulation and conduct of the commercial policies of the governments which are parties to the Agreement. It is not, therefore, easy to assess the direct and indirect advantages which result from accession to GATT and participation in the work of the CONTRACTING PARTIES, and it is necessary to set side by side with these advantages the limitations which may be involved in accession.

10. Another consideration which has to be taken into account is the position of countries whose economies rely on the production and export of a few primary products. The effects of the tariff concessions and bindings which they enjoy under GATT can be assessed less easily than in the case of industrialized countries whose exports are diversified.

11. If one considers first the limitations which membership in GATT imposes on a contracting party, it will be seen that there are three main limitations. First, contracting parties are required to refrain from using certain methods of commercial policy, such as quantitative import controls. Secondly, they have to grant automatically to the other contracting parties the advantages
which they grant to any country, whether or not a contracting party. And, finally, they have to limit their tariffs on certain products to a given level which can be modified only after negotiation with the countries concerned.

The ban on import restrictions

12. The first limitation, i.e., the ban on import restrictions other than import duties or taxes, stems from the conviction of the governments parties to GATT (borne out by the experience of the last fifteen years) that, in spite of their apparent attraction, quantitative methods of limiting imports have an adverse effect on the normal flow of goods and do not bring any advantage either to the importing or to the exporting country. In 1947, when GATT was negotiated, a number of countries felt that this ban on import controls was too rigid and tried to introduce exceptions, either in favour of full employment policies or in favour of economic development policies. As a result of the experience gained during the last fifteen years, the industrialized countries have practically abandoned their reservation towards the ban on quantitative restrictions and, although there remains a hard core of import controls in North America and Western Europe which have not been completely dismantled, it is generally recognized today that these are the legacy of the early post-war period and that the countries concerned should accept the GATT philosophy and remove these restrictions except insofar as they are justified by balance-of-payments difficulties.

13. In the case of developing countries there is still the feeling that quantitative restrictions for the protection of infant industries cannot be done away with entirely. GATT has recognized this situation and has accepted, subject to necessary safeguards, that the developing countries, at least those which are in the early stages of development and can afford only a low standard of living, should be able to introduce as a temporary measure some degree of import control.

14. Most of the developing countries which felt some years ago that there should be greater elasticity in the rules governing the application of import controls have recognized that the present text of GATT, and in particular the way in which it is applied, enables them to meet the needs of their economic development and, at present, there does not seem to be any country which is dissatisfied with the GATT provisions relating to import controls. The ban on import controls is, as indicated above, qualified by the provisions of Articles XII and XVIII which enable a country facing balance-of-payments difficulties to resort temporarily to quantitative import controls, if such measures are necessary to safeguard its external financial position. The exercise of this right if defined in precise terms in the Agreement and the country resorting to measures of this sort is under an obligation to consult every year in the case of an industrialized country, or every two years in the case of a developing country, so as to satisfy themselves that the severity of required and that the administration of to enable the CONTRACTING PARTIES to the restrictions is no more than is the controls does not unnecessarily
hamper trade. In addition, as has been mentioned above, the developing
countries which are in the early stages of development and which can only
afford to give to their population a low standard of living may, in specific
cases, introduce controls in order to protect new industries when it appears
impracticable to resort to other measures of protection authorized under the
General Agreement.

Unconditional most-favoured-nation treatment

15. The second limitation is the obligation to extend unconditionally most­
favoured-nation treatment to all contracting parties. There was a time,
earlier in this century, when a number of countries were accustomed to grant
most-favoured-nation treatment conditionally; in other words, they were
prepared to extend to a third country the benefit of concessions negotiated
bilaterally only if the third country was prepared to give something in
exchange for this extension. Even before the second world war the idea
of granting most-favoured-nation treatment conditionally had lost much ground
and practically all the main trading nations had recognized that most-favoured­
nation treatment should be applied unconditionally. It is interesting to
note that, although GATT is based on the concept of unconditional most­
favoured-nation treatment, negotiations for tariff reductions and bindings
do, in fact, take place bilaterally between the various countries concerned.
However, the balance of concessions between two countries is not judged, as
is the case in ordinary bilateral negotiations, by the balance between the
direct concessions granted on either side; the balance is struck between
the direct and indirect concessions on both sides. This means that, in the
balance between A and B, A will take into account the value of the concessions
it has granted to C, D and E for B's trade in the products covered by these
concessions. In the same way, B will take into account the value of the
concessions it has granted to third countries. When all the lists of con­
cessions are put together, each country will be clearly seen to have received,
for the concessions it has granted, full payment in the form of concessions
obtained from the main suppliers with whom the negotiations had been conducted
and from secondary suppliers who had to pay something for their share in the
import trade. The adoption by the CONTRACTING PARTIES to GATT of these rules
for tariff negotiations, which have been applied with success during the last
fifteen years, has to a very large extent removed the difficulty which some
countries had at first about accepting the commitment to apply fully
unconditional most-favoured-nation treatment.

The "entrance-fee" for membership

16. The third main limitation which a country accepts when it joins GATT is
the obligation to take action in the tariff field as a quid pro quo for the
concessions which have been already negotiated between contracting parties and
which it will enjoy as a result of its membership. As explained above, the
concessions granted under GATT are different from those which are obtained
through the most-favoured nation clause in bilateral agreements. All the concessions under GATT are granted to all contracting parties; this implies that no contracting party can modify or withdraw a concession without having compensated all other contracting parties which have a substantial interest in the concession, whether these countries actually negotiated the concession or not. In these circumstances it is only fair that a country which joins GATT should give something in return for the valuable concessions it will obtain. Naturally enough the "entrance-fee" is different for each case. A country which has diversified export trade and which will enjoy a very large number of concessions will have to pay a much greater price than a country which relies on the export of a few products. The latter country will be interested only in the concessions granted for those few products and its entrance-fee will not be greater than the value of such concessions. Moreover, if its export products are raw materials or primary products, import duties on these products are likely to be low or nil. The value of the binding of these low duties, or the free entry, will of course be much less than that of a concession which represents a substantial reduction in duty. Finally, the effect of a duty reduction on a primary product may be negligible because of the low price-elasticity of demand. Experience has shown that the primary producing countries have to pay a comparatively small "entrance-fee", and that membership in GATT does not involve for them any substantial limitation of freedom of action in the tariff field. The special position of the developing countries, and in particular their need to use tariffs as a source of governmental revenue, has been duly recognized in GATT Article XXVIII bis, and the CONTRACTING PARTIES have been requested to take this factor into consideration.

17. To sum up, the limitations on the freedom of action of a less-developed country, although they may appear somewhat serious from a theoretical point of view, are certainly very light in practice. As has already been indicated those countries which have been GATT members for a number of years have found that their commitments under GATT have not seriously interfered with the fundamental requirements of their commercial, fiscal or development policies.

Direct advantages of membership

18. So much for the limitations which membership in GATT involves. Against these limitations it is necessary to assess the direct and indirect advantages which accrue from membership. As GATT is based on reciprocity, it follows that the limitations which an acceding country accepts bind all contracting parties and that its export trade will benefit from the limitations which the other contracting parties have accepted. Its exports cannot be subjected to import restrictions in the territories of the other contracting parties, which account for more than 85 per cent of world trade, except in clearly specified circumstances. The industrialized countries can only impose such restrictions when they are experiencing balance-of-payments difficulties; these difficulties
are now rapidly disappearing. In the case of less-developed countries, the obstacles which an acceding country's exports will meet will be subject to the limitations imposed by the GATT rules and the country concerned will be in a position, thanks to the GATT system of periodic consultations, to see to it that its trade does not suffer unnecessarily as a consequence of the difficulties encountered by these countries.

19. In the same way the exports of an acceding country will not be subject to discriminatory treatment in the tariff or the quota fields, as the other contracting parties are committed to accord unconditional most-favoured-nation treatment. There are only a few departures from this rule: these relate to the preferences which existed in 1947 (which have been frozen against increase by common consent) and the exceptions in favour of customs unions and free-trade areas; the exceptions resulting from exchange difficulties are disappearing with the return to external convertibility of a large number of currencies. The commitments regarding most-favoured-nation treatment and the rule of non-discrimination are definitely firmer and stricter than those which are contained in bilateral agreements. Further, GATT has machinery for the settlement of differences which is lacking in bilateral trading.

20. Finally, the specific exports of the acceding country will be protected against increases in the tariffs of other contracting parties, either as a result of tariff bindings, covering those particular exports, negotiated by other contracting parties in the past or, if the acceding country wishes to obtain even better treatment for the exports concerned, as a result of negotiations which it itself has undertaken with other contracting parties prior to its accession. In this connexion it should be noted that GATT has been able to maintain, within a reasonable margin, the stability of tariffs covering a very large percentage of world trade. These tariff bindings are not completely rigid, as it has proved necessary from time to time to adjust certain of the rates. Through the medium of GATT, however, it has been possible, in practically all cases, to maintain the level of concessions and to substitute new concessions for those which have been withdrawn or modified. This tariff stability has certainly contributed to the unprecedented expansion of trade which has taken place since the end of the second world war. Even if a product is not fully protected in all markets, the general climate of stability has certainly encouraged exporters to develop their trade and to enter new markets. This, of course, is particularly true of industrial goods, but trade in agricultural and primary products has also benefited considerably from the effects of tariff stability in general.

21. Apart from these substantial advantages, which are the counterpart of the limitations on an acceding country's freedom of action in commercial policy, it is necessary to mention a number of other advantages which, although indirect, have proved to be very valuable for members of GATT.
Indirect advantages of membership

22. One of the difficulties which exporting countries have faced during the last twelve years in countries which are normally importers has been the development of subsidies and other artificial aids to exports. In the trade of food products and of agricultural raw materials in particular, traditional exporters have had to meet a new situation as a result of increased agricultural production in industrialized countries. The practice of granting guaranteed prices to producers of staple agricultural products has stimulated domestic production of these goods beyond the capacity of the domestic market to absorb them. The governments concerned have been led to enter the export market or to increase their participation in the export trade. As their domestic prices are often higher than those of traditional exporters, they have assisted exports by various means. The terms of such competition are severe for traditional exporters who, although efficient, are not in a position to subsidize their exports to the same extent or to grant the same terms as the financially powerful States. This situation is one which cannot be met by bilateral agreements, except in very exceptional circumstances. GATT, on the other hand, based on a multilateral system of trading, is in a position to regulate the terms of competition. It has banned the use of subsidies in the case of the export of manufactured goods and has condemned the use of subsidies in the case of the export of primary products whenever these subsidies have the effect of giving the exporting countries more than an equitable share of the market. A recent example has shown that this limitation is effective: the Australian Government has been in a position, thanks to its membership in GATT, to protect itself against subsidized exports of flour to a traditional market.

23. Apart from these provisions in GATT the CONTRACTING PARTIES have taken a series of decisions and approved certain recommendations which are directly related to the problem of the disposal of surplus stocks. It has recommended to the countries concerned that they should enter into consultations with traditional suppliers before entering into contracts or agreements which would affect the interests of such exporters and, as a result of the CONTRACTING PARTIES' efforts, a substantial improvement has taken place in the arrangements for the disposal of surpluses. Although the system is not yet perfect the benefits which have already accrued from the efforts of the CONTRACTING PARTIES, which have supplemented those of other international organizations, have proved of particular value to the exporters of the products which are more particularly affected by stock disposals.

24. One of the indirect advantages which an acceding country can derive from GATT is the readiness of the Member governments to discuss and consider problems of trade in a general setting. In the GATT discussions problems are approached in a more objective manner than they would be in normal bilateral discussions. It has very often been seen that governments are ready to take account of the difficulties of individual countries and, in particular, of countries which are not yet fully developed, and that they have not insisted
on their rights in view of the difficulties encountered by these countries. In other words, participation in a body like GATT softens the harsh and perhaps egoistical attitude which is so common in trading relations. The gradual appreciation of the problems which a developing country faces is illustrated by the very substantial changes which were introduced in 1955 in Article XVIII.

25. The flexibility of GATT is based on a provision which is unique and which enables the CONTRACTING PARTIES, by a decision taken by a qualified majority, to suspend in exceptional circumstances a particular obligation for a particular country. This system has enabled countries facing special difficulties to depart for a certain time from their obligations without losing the benefits which accrued to them by their membership in GATT. In normal bilateral agreements, if one country does not observe the terms of the contract, the partner is free to terminate the agreement altogether. In GATT the situation is quite different since, if it is generally recognized that a country has a good case, it is possible for that country to meet its particular difficulties without losing all the advantages it has secured. Naturally enough this provision is of special interest to countries which are in a weaker economic position because of the structure of their economies or because of their dependence on the export of a few commodities, and experience over the last years has shown that these countries have particularly benefited from these provisions.

Advantages for smaller countries

26. Last but not least, GATT offers a more efficient way of protecting the trade interests of small countries than does the traditional type of commercial agreement. A primer on economics which has been published recently contains the following passage: "foreign trade is not reciprocal but a struggle between the nations in which the weaker go to the wall". This statement may appear to be somewhat excessive but there is no doubt that, in the bilateral system of trading, small countries are at a clear disadvantage and, when they have differences with more powerful countries, their ability to defend their position is limited. GATT has, to a very large extent, changed the position of the small countries vis-à-vis the bigger ones. First of all, no country feels in isolation because it can rely on the support of other countries having similar interests. For instance, a country relying on the export of agricultural products which runs up against obstacles in importing countries can count on the assistance of other countries which are exporting the same type of product and meeting the same type of obstacles. Moreover, in any discussion inside GATT there will be countries which have no particular interest in the dispute but which will tend to support what appears to them to be right and equitable. Unlike bilateral trade arrangements, GATT contains a code which is applicable to all contracting parties and it is in their interest to uphold the provisions of that code.
The smaller countries have a much better chance of redressing the balance in GATT than they have in bilateral discussions with a country which is more powerful. This particular procedure has recently been developed in the form of multilateral consultations under Article XXII. Bilateral consultations only were originally envisaged under this Article; a country which felt that the operation of a particular measure of commercial policy was affecting its export trade could make representations to the country concerned and ask for bilateral consultations. It has now been recognized that the concept of bilateral consultations might be broadened in order to include other countries having similar interests. This has been applied, for instance, in consultations with the European Economic Community; consultations were requested by one country or another, but all other contracting parties having a substantial interest in the export of the products concerned (coffee, cocoa, bananas, etc.) joined in the consultations and the six member States, instead of dealing with each country separately, undertook discussions with a group of countries. Moreover, if such consultations do not lead to satisfactory results, an aggrieved contracting party can still lodge a complaint under Article XXIII of GATT. Experience has shown that this complaint procedure can give very effective results. Very often, bilateral discussions which are hanging fire come rapidly to a close when reference to GATT is proposed and in a number of cases the mere existence of this procedure has enabled countries to achieve satisfactory results. If, nevertheless, the desired result is not obtained, the procedures are such that the complainant or the defendant can be fully satisfied that the facts of the case will be discussed and reviewed by the CONTRACTING PARTIES in an objective manner and that any recommendation they make will not be based on the importance of the countries involved in the dispute but on the actual merits of the case. Although the findings and recommendations of the CONTRACTING PARTIES cannot be enforced by compulsion, the moral pressure which is exerted by a finding or a recommendation by the CONTRACTING PARTIES has a very strong influence on the subsequent action taken by the country against which the decision has been taken. It can be said that all the cases which have been brought to GATT under these procedures have been settled to the satisfaction of the complainants and that the defending countries have agreed that the judgments of the CONTRACTING PARTIES were fair. Needless to say, GATT, in these findings and recommendations, has been able to ignore all considerations which are not of an economic nature but which very often come into play in bilateral negotiations.

It might be felt that this procedure for complaint, even though it has proved very effective, would be outside the reach of small countries, especially when they have differences with more powerful countries. It is true that, during the first years of GATT, some governments hesitated to lodge a complaint because they felt that the other country would consider this move to be unseemly and would oppose the bringing into play of the GATT machinery. This feeling no longer exists, however, because all countries, big and small, have gradually come to accept that their differences can be adequately dealt with in GATT. A number of complaints have been lodged by
small countries against larger countries and by big countries against small ones and this has been done dispassionately. A case in point has been the action taken in 1962 by a small Latin American country under Article XXIII with respect to various measures affecting its exports applied by a considerable number of contracting parties. Strong recommendations came out of the examination of these complaints by the CONTRACTING PARTIES. This procedure is, in fact, being accepted as a normal element in the operation of commercial policy. As a result all contracting parties are relying more and more on the complaints procedure of GATT as an effective means of solving their trade differences.

29. Apart from these advantages which can be derived from membership in GATT, it may be useful to note that representatives of a number of countries, especially in Asia, Africa, South America and the Pacific, have found that GATT meetings afford unique opportunities for meeting those concerned with the formulation of commercial policy in other countries and for discussing privately problems which are of major interest to their export trade, even when these questions are not of the kind which would be brought up officially during the meetings. There have been several instances where very valuable negotiations have been conducted or brought to a successful conclusion through private discussions during GATT sessions. There are also a number of incidental advantages which result from the work of the secretariat: the advice which it can give to governments in solving a number of problems and in providing them with documentation which is not easily available in their capitals. The semi-annual training programme which is arranged by the GATT secretariat has also been found to be of particular interest to developing countries trying to organize their commercial policy departments more effectively. The financial contribution to GATT is very modest and is more than offset, in the view of its members, by the value of participation, even when measured in terms of the incidental benefits alone.
LIST OF CONTRACTING PARTIES AND ASSOCIATED GOVERNMENTS

1. Contracting parties to the GATT (44)

Australia  Greece  Pakistan
Australia  Haiti  Peru
Belgium  India  Portugal
Brazil  Indonesia  Federation of Rhodesia and Nyasaland
Burma  Israel  Sierra Leone
Canada  Italy  South Africa
Ceylon  Japan  Sweden
Chile  Luxembourg  Tanganyika
Chile  Federation of Malaya  Trinidad and Tobago
Czechoslovakia  Kingdom of the Netherlands  Turkey
Dominican Republic  New Zealand  Uganda
Finland  Nicaragua  United Kingdom of Great Britain and Northern Ireland
France  Federation of Nigeria  United States of America
Federal Republic of Germany  Norway  Uruguay

2. Countries which have acceded provisionally (5)

Argentina  Tunisia  Yugoslavia
Switzerland  United Arab Republic

3. Countries which participate in the work of the CONTRACTING PARTIES under special arrangements (3)

Cambodia  Poland  Spain
(Cambodia and Spain are expected to accede in 1963.)

4. Countries to whose territories the GATT has been applied since 1948 and which now, as independent States, maintain a de facto application of the GATT pending final decisions as to their future commercial policy (21):

Algeria  Cyprus  Mali
Burundi  Dahomey  Mauritania
Cameroon  Gabon  Niger
Central African Republic  Ivory Coast  Rwanda
Chad  Jamaica  Senegal
Congo (Brazzaville)  Kuwait  Togo
Congo (Leopoldville)  Madagascar  Upper Volta
5. Other countries which send observers to sessions of the CONTRACTING PARTIES (18)

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