

RESTRICTED

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13 March 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

FIRST SESSION OF THE CONTRACTING PARTIES

REVISION OF DRAFT PROTOCOL CONTAINED IN DOCUMENT GATT/1/21

MODIFYING CERTAIN GENERAL PROVISIONS OF THE

GENERAL AGREEMENT ON TARIFFS AND TRADE

(As Agreed on 13 March 1948)

The Governments of the Commonwealth of Australia, the Kingdom of Belgium, Canada, the Republic of Cuba, the French Republic, the Grand-Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America, acting in their capacity of contracting parties to the General Agreement on Tariffs and Trade, and

The Governments of the United States of Brazil, Burma, Ceylon, the Republic of Chile, the Republic of China, the Czechoslovak Republic, India, Lebanon, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, and the Union of South Africa, acting in their capacity of signatories of the Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment which authenticated the text of the General Agreement on Tariffs and Trade

Being desirous of modifying the text of the general provisions of the General Agreement on Tariffs and Trade, in the light of the text of the Havana Charter for an International Trade Organization, which was authenticated by the Final Act of the United Nations Conference on Trade and Employment

Hereby agree as follows:

I. Article XXIV of the General Agreement on Tariffs and Trade shall read as follows:

ARTICLE XXIV

TERRITORIAL APPLICATION - FRONTIER TRAFFIC - CUSTOMS

UNIONS AND FREE-TRADE AREAS

"1. The rights and obligations arising under this Agreement shall be deemed to be in force between each and every customs territory in respect of which this Agreement is being applied under Article XXVI

/or pursuant

or pursuant to the Protocol of Provisional Application.

"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 substantially all 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; or

(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.

"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 participants. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the parties to it and not to raise obstacles to the trade of other contracting parties with such parties.

"5. The provisions of this Agreement shall not therefore be construed to prevent as between the territories of contracting parties the formation of a customs union or the establishment of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or a free-trade area; Provided, that:

(a) with respect to a customs union, or an interim agreement leading to the establishment 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 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 establishment of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the establishment of such free-trade area, or the adoption of such interim agreement,

/to the trade

to the trade of contracting parties not participating in the arrangement shall not be higher or more restrictive than the corresponding tariffs and other regulations of commerce existing in the same constituent territory prior to the establishment 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) above shall include a plan and schedule for the attainment of such a customs union or the establishment of such a free-trade area within a reasonable length of time.

"6. (a) Any contracting party deciding to enter into a customs union or a free-trade area, or an interim agreement leading to the formation of such a union or free-trade area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or free-trade 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 plans and schedules provided for in an interim agreement under paragraph 5, in consultation with the parties to that agreement and taking due account of the information made available in accordance with the terms of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in a customs union or in the establishment 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. If the parties are not prepared to modify the agreement in accordance with such recommendations they shall not maintain it in force or institute such agreement if it has not yet been concluded.

(c) Any substantial change in the plan or schedule shall be notified 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 achievement of the customs union or the free-trade area.

"7. 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

/(1) tariffs

- (i) tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV, XX and XXI) are eliminated on substantially all the trade between the constituent territories of the union or at least on substantially all the trade in products originating in such territories and
- (ii) 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, subject to the provisions of paragraph 8;
- (b) A free-trade area shall be understood to mean a group of two or more customs territories in which the tariffs and other restrictive regulations of commerce (except, where necessary those permitted under Articles XI, XII, XIII, XIV, XV, XX and XXI) between such territories are eliminated on substantially all the trade in products originating in constituent territories of the free-trade area.
- "8. The preferences referred to in paragraph 2 of Article I shall not be affected by the constitution of a customs union or 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 subparagraphs (a) (i) and (b) of paragraph 7.
- "9. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 4 to 8 inclusive, Provided that they lead to the establishment of a customs union or a free-trade area in the sense of this Article.
- "10. 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 definite basis.
- "11. Each contracting party shall take such reasonable measures as may be available to it to assure observance of the provisions of this Agreement by the regional and local governments and authorities within its territory."

II. Paragraph 5 of Article XXV of the General Agreement on Tariffs and Trade shall read as follows:

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

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

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

(b) If any contracting party has failed without sufficient justification to carry out with another contracting party negotiations of the kind described in paragraph 1 of Article 17 of the Havana Charter, the CONTRACTING PARTIES may, upon complaint and after investigation, authorize the complaining contracting party to withhold from the other the concessions incorporated in the relevant Schedule to this Agreement. In any judgment as to whether a contracting party has so failed, the CONTRACTING PARTIES shall have regard to all relevant circumstances, including the developmental, reconstruction and other needs and the general fiscal structures of the contracting parties concerned and to the provisions of the Havana Charter as a whole. If in fact the concessions referred to are so withheld, so as to result in the application to the trade of the other contracting party of tariffs higher than would otherwise have been applicable, such other contracting party shall then be free, within sixty days after such action becomes effective, to give written notice of withdrawal from the Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which such notice is received by the CONTRACTING PARTIES.

(c) The provisions of sub-paragraph (b) shall not apply as between any two contracting parties the Schedules of which contain concessions initially negotiated between such contracting parties.

(d) The provisions of sub-paragraphs (b) and (c) shall not apply until 1 January 1949."

III. Paragraph 5 of Article XXVI of the General Agreement on Tariffs and Trade shall read as follows:

"5. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with the Secretary-General of the United Nations on behalf of governments signatory to the Final Act the territories of which account for eighty-five per centum of the total external trade of the territories of the signatories 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. Such percentage shall be determined in accordance with the table set forth in Annex E. The instrument of acceptance of each other government signatory to the Final Act shall take effect on the thirtieth day following the day on which such instrument is deposited."

IV. Article XXIX of the General Agreement on Tariffs and Trade shall read as follows:

"1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures.

"2. Paragraphs 1 and 2 of Article I and Part II of this Agreement shall be suspended and paragraph 3 of Article I shall be subject to any consequential amendments on the day on which the Havana Charter enters into force and the contracting parties shall meet as soon as possible thereafter and agree concerning the transfer to the International Trade Organization of their functions under Article XXIV.

"3. If any contracting party has not accepted the Charter when it has entered into force, the contracting parties shall confer to agree whether, and if so in what way, this Agreement, insofar as it affects relations between the contracting party which has not accepted the Havana Charter and other contracting parties, shall be supplemented or amended.

"4. During the month of September 1949 should the Havana Charter not have entered into force, or at such earlier time as may be agreed if it is known that the Charter will not enter into force, or at such later time as may be agreed if the Havana Charter ceases to be in force, the contracting parties shall meet to agree whether this Agreement shall be amended, supplemented or maintained.

"5. The signatories of the Final Act which are not at the time contracting parties shall be informed of any agreement which may be reached between the contracting parties under paragraph 3 or 4 of this Article.

V. Paragraph 1

V. Paragraph 1 of Article XXXII shall read as follows:

"The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Article XXVI, Article XXXIII or pursuant to the Protocol of Provisional Application."

VI. Article XXXIII of the General Agreement on Tariffs and Trade shall read as follows:

"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 Government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority."

VII. The following Article shall be inserted in the General Agreement on Tariffs and Trade after Article XXXIV:

Article XXXV

"Without prejudice to the provisions of paragraph 5 (b) of Article XXV or to the obligations of a contracting party pursuant to paragraph 1 of Article XXX, this Agreement shall not apply as between any contracting party and any other government becoming a contracting party pursuant to Article XXXIII if:

(a) the two contracting parties have not entered into tariff negotiations with each other, and

(b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application."

VIII. Notwithstanding the provisions of Article XXX of the General Agreement on Tariffs and Trade, the modifications of the General Agreement on Tariffs and Trade provided for in Items I to VII, inclusive, of this Protocol shall become effective, as among contracting parties to the Agreement, on this            day of March 1948.

"Signature of this Protocol by any government which is not at the time a contracting party to the General Agreement on Tariffs and Trade shall serve to authenticate the texts of the modifications of the General Agreement provided for in this Protocol. This Protocol shall remain open for signature by any such government, named in the second paragraph of the preamble to this Protocol, until May 1, 1948."

/In witness

In witness whereof the respective representatives have signed the present Protocol.

Done at Havana, in a single copy, in the English and French languages, both texts authentic, this \_\_\_\_\_ of March, one thousand nine hundred and forty-eight.

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