

RESTRICTED

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ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

Second session of the contracting parties

(Item 7 of the Provisional Agenda)

COMMUNICATION FROM THE GOVERNMENT OF THE UNION OF
SOUTH AFRICA TO THE UNITED NATIONS

The following communication has been received by the Secretary-General of the United Nations from the representative of the Union of South Africa to the United Nations:

"1. The Government of the Union of South Africa are provisionally applying the General Agreement on Tariffs and Trade as contained in the Final Act signed at Geneva on 30 October 1947, and as corrected by the protocol rectifications to the General Agreement on Tariffs and Trade, signed at Havana on 24 March 1948, by all signatories to the Final Act.

2. The Special Protocol modifying Article XIV of the General Agreement on Tariffs and Trade was signed on behalf of the Union Government on 25 May 1948. For reasons set out in Paragraph 4 the Union Government are of the opinion that if all the other signatories to the Final Act signed at Geneva on 30 October 1947, who on or before 30 June 1948, signed the Protocol of Provisional Application attached to the Final Act, have also signed this Protocol, the Union Government will regard the amendment of Article XIV as operative between the states who signed the Protocol of Provisional Application.

3. In regard to the protocol designed to modify certain provisions of the General Agreement on Tariffs and Trade, the Union Government have not signed this protocol and do not consider it operative for the following reasons:-

The General Agreement in its final application is not yet in force, In relation to its final application there is at present no more than a draft agreement. By signing the Final Act, authenticating the General Agreement on Tariffs and Trade which was signed at Geneva on 30 October 1947, the twenty-three signatories state that they agree that this Draft Agreement which they had framed together i.e. the document in specific terms which they authenticated by their signatures - and no other - was to be deposited with the Secretary-General of the United Nations and was to be open for acceptance by any Government signatory to the

Final Act. To the terms of this document as a Draft Agreement which is to lie for acceptance, each signatory has bound itself and to such terms each signatory is entitled as against all others. It follows therefore in the opinion of the Union Government that this document cannot now while it is lying for acceptance, as agreed, be amended except with the consent of all signatories to the Final Act.

4. In regard to the General Agreement in its provisional application the Union Government hold the view that in terms of Article IV of the Protocol of Provisional Application, which Protocol was also authenticated by the Final Act, the Signatories to the Final Act are entitled to sign the Protocol up to 30 June 1948 and thereby become parties to the General Agreement in its provisional application. The right conferred is the right to become a party to a particular agreement and that agreement is an agreement in terms agreed and likewise authentic. This right is conferred for a definite period ending on 30 June 1948. During this period, therefore, the rights of contracting parties for the time being to amend this agreement in such a manner as to bind later signatories must be held to be suspended. They must wait until it can be established who all the contracting parties are i.e. for the full period which they have undertaken to allow for signatures and thereafter only can amendments be made in accordance with the provisions of the agreement. Any amendment deemed necessary before the expiry of this period would require the consent of all the signatories to the Final Act.

5. The Union Government therefore consider that they and the other signatories of the Protocol of Provisional Application are bound by and should apply the provisions of the General Agreement as contained in the Final Act signed at Geneva on 30 October 1947, corrected as mentioned in paragraph 1 above and modified by the Special Protocol relating to Article XIV when the condition mentioned in paragraph 2 above has been fulfilled."

The questions raised in the communication of the Government of the Union of South Africa would appropriately be considered under Item 7 of the Provisional Agenda in connection with the Note on the Status of the Agreement and Protocols (see GATT/CP.2/4).