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ORIGINAL : ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES

SECOND SESSION

NOTE ON THE STATUS OF THE AGREEMENT AND PROTOCOLS

SECOND STATEMENT BY MR. A.J. NORUAL, REPRESENTATIVE OF THE UNION OF SOUTH AFRICA, AT THE EIGHTH MEETING HELD ON 21 AUGUST, 1948

1. The Delegate of France, if we understood him correctly, whilst upholding the validity of the protocols, seems to concede, what we have claimed to be the minimum which could be conceded, namely, that South Africa, not having signed the modifying protocol, is not bound by it. We were gratified to hear that he is prepared to meet our point of view to that extent. That would mean, we take it, that this protocol, according to his view, applies only as between those who have accepted it. To this, of course, there would be the corollary, that also those who have accepted it, would remain bound upon the unamended agreement, as against those who have not accepted it. There would also be the further corollary, that new members acceding to the agreement, could invoke the new Article XXXV as against those who have agreed to it, but not as against those who have not agreed to it. Such an interpretation would not make our Government a party to any departure from the principle which we have been endeavouring to vindicate, and on that clear understanding, our Government would not, we expect, want to quarrel with what other contracting parties may regard as valid between themselves.

2. We cannot help feeling, however, that this matter of validity or invalidity should not be sidetracked as a mere legal technicality. It is of the greatest importance to all of us, that we should proceed with due regard to the legal requirements for the validity of what we embark upon. That, naturally, involves the consideration of legal questions. That is inevitable. We cannot rid ourselves of that necessity by describing such issues as legalistic technicalities, and then conveniently brushing them aside, and forgetting all about them. Ultimately such an attitude will recoil upon all of us, and we may find that the complexities of our relations, have drifted into complete chaos.

3. The delegate of India, and also the United States delegate, have referred in this connection, to what has been described as the basic equities of the situation. That equity should prevail between the contracting parties, and should, in fact, be their constant guide, we would not for one moment dispute. It is only in the practical

application of the considerations of equity that we seem to differ. It is equitable that it should not be made too difficult for parties to the Havana Charter to accede to our agreement. With that we are in full accord. What we object against is that these difficulties should be utilised to break down the basic principles of our agreement, to an extent which exceeds the legitimate requirements and for which there is no equitable justification. In addition, it is not only the difficulties in connection with new members which call for an equitable solution. We are entitled to claim that also in regard to the issue which we have placed before you, the equities should not be disregarded. As to that, Mr. Chairman, we have yet to learn, that the right we had up to 30th June, 1948, to become parties to an unamended agreement, is not supported by the principles of equity. In our submission that right is founded on one of the most elementary of those principles, the principle, namely, that a binding understanding should be given effect to, a principle without which the whole economic structure of every country in the world would simply collapse.

4. We would further submit that we should not lose sight of the fact that the question of the validity of these protocols is not answered by the consideration that it would be embarrassing if they were not valid. The United State's delegate and other delegates, have referred to the history of this modifying protocol, and have stressed the necessity of allowing new members to come in on a majority vote, and of making some provision to meet the situation which would arise where a new member is allowed to accede on such a vote. We are far from saying that new members should not be allowed to come in on a majority vote. It may also be (although we do not wish to express any definite opinion) that there is in fact a necessity to provide for some adjustment as between such a new member and other members who have voted against his accession. But that, quite obviously, does not mean that what has been done to achieve this purpose, has been validly done. What is more, what has been done, exceeds what would be necessary for this purpose. Article XXXV, in its present form, is not restricted to action which may be taken as between a new member and a contracting party who has voted against his accession. It is worded in such a way that it may be invoked also by existing members as between themselves, and also by existing members against a new member, notwithstanding the fact that they have voted in favour of his accession. Under this Article, therefore, you may have the position that, although a new member has been admitted by a two-thirds vote, the agreement will apply between him and considerably less than two-thirds of the other contracting parties. It opens the door, therefore, to the elimination between contracting parties of the basic principles of the agreement, to a much greater extent than can be justified by considerations relating to the accession of new members.

5. The delegate of India has raised one other argument, with which you will allow me to deal briefly. He has referred to the provision in Article XXV(2), for a meeting by the contracting parties, which was to take place not later than March 1, 1948. From this he argues that, inasmuch as it was therefore clearly intended that the contracting parties could act before 30th June, 1948, it must also have been intended that they could amend the agreement before that date under Article XXX. In this argument, Mr. Chairman, if we may say so, there is a patent fallacy. If you will look at Article XXV, you will find that it deals with the contracting parties acting jointly, designated in capital letters, and, I may add, acting ordinarily by a simple majority. If now you will look at Article XXX, paragraph 1, you will find that it does not refer to the contracting parties acting jointly. They are not there designated in capital letters, and what can be done under that Article, can never be done by a simple majority. What is required is unanimity in some cases, in others, acceptance by two-thirds of the contracting parties. In paragraph 2 of this Article, there are, in contrast to paragraph 1, references to the contracting parties acting jointly. That, however, is not in regard to the making of amendments, but in regard to other matters arising in connection with amendments after they have been made. It is quite obvious, therefore, that whether we look to a date before 30th June, 1948, or thereafter, the power to amend does not rest with the contracting parties acting jointly. From the very nature of the matter amendments of the agreement require further agreements between the contracting parties in their individual capacities. The fact, therefore, that the contracting parties acting jointly were empowered to act before 30th June, takes this question no further and is, in our submission, altogether irrelevant.