

Contracting Parties

Third Session

Working Party 10 on new Tariff Negotiations

Statement by the Delegation of the United States regarding certain legal questions relative to the Accession of the Federal Republic of Germany to the General Agreement on Tariffs and Trade.

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Neither the division of pre-war Germany into a number of separate zones of occupation, nor the fact that the foreign relations of the zones have been handled by the occupying countries, has prevented the conclusion by the occupying authorities of many agreements with foreign governments relating to the trade of these zones. They have been concluded by the occupying authorities of single zones and by those of more than one zone in cases where the zones have been more or less merged for purposes of trade. Some of these agreements have continued in effect for several years, in many instances being renewed from time to time. They have covered numerous more or less detailed matters, including the importation and exportation of specified quantities of particular commodities, international payments, and more general undertaking to take steps to encourage the flow of trade between the zone and the other country. Thus there would seem to be ample precedent for the conclusion of detailed agreement relating to trade which apply to only a part of Germany.

It is anticipated that during September 1949, and well in advance of the next round set of negotiations for accession to the General Agreement, the Federal Republic of Germany will be established under the Bonn Constitution. Under this document the Federal President may conclude treaties, with legislative action provided for in the case of some agreements (Art. 59). The Federal Government is given legislative authority with respect to foreign affairs, various specific customs matters, commercial and navigation

agreements, and payments with foreign countries (Arts. 73 and 105). It is also provided that the Federal Government shall succeed to the rights and obligations of the Bizonal Economic Administration, thus apparently recognizing that the rights and obligations under agreements concluded by the occupying authorities shall continue as rights and obligations of the new German Government.

In agreeing to this new Constitution the occupying authorities, in the Occupation Statute promulgated May 12, 1949 and subject to revision at the end of a year, reserved certain powers, among which were those with respect to foreign affairs, including foreign trade (par. 2). However, with respect to the actual exercise of powers in the reserved fields, the occupation statute specifically provides:

"4. The German Federal Government shall have the power, after due notification to the occupation authorities, to legislate and act in the fields reserved to these authorities, except as the occupation authorities otherwise specifically direct, or as such legislation or action would be inconsistent with decisions or actions taken by the occupation authorities themselves."

Thus, in actual practice it is provided that the new government shall itself take the initiative and carry on the various activities involved in the conduct of foreign trade, subject only to the requirements that they notify the occupying authorities and take no action contrary to the specific and general policies established by the latter.

The Charter of the Allied High Commission for Germany of June 20, 1949, reorganizing the occupying authority, in addition to setting up a Foreign Trade and Exchange Committee to observe and advise those authorities with respect to the economic, financial and foreign trade policies of the German Government, specifically envisages that the new German Federal Republic will become a party to the Convention for European Economic Co-operation and will conclude a bilateral agreement with the United States (sec. III, par. 3(b)). Thus it is clearly recognized by the occupying authorities that the new government will have capacity not only to conclude international agreements but also to become a member of the OEEC, an international organization. Consequently, it would

seem that it will have adequate capacity to undertake tariff negotiations and accede to the General Agreement,

Participation in the General Agreement by the Federal Republic is not envisaged pursuant to the provisions of the Final Note to the agreement, which was the basis for the consideration of the most-favored-nation treatment for Western Germany at the Second Session of the Contracting Parties, nor pursuant to the second proviso to paragraph 4 of article XXVI, although it may be pointed out that the latter does provide that a part of a country may become a contracting party under certain circumstances in which it constitutes a separate customs territory. It is envisaged that the German Federal Republic would accede in its capacity as a "government," and in its own right, under Article XXXIII of the General Agreement.

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