

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENTStatement by the Delegate of the United
States on Reservations to the General
Agreement.

In accordance with the decision taken by the Tariff Agreement Committee upon the proposal of Dr. Gustave GUTIERREZ, Delegate of Cuba, the statement made by Mr. J.M. LEDDY, Delegate of the United States, at the meeting of 17 September 1947 is circulated herewith:

"Mr. Chairman, as a preface to the discussion which we are about to take up on reservations, I would like to comment on the Report to which we have just agreed and the bearing which it has on the problem of reservations.

We have witnessed with some reluctance - I might say considerable reluctance - the disappearance of the provision for signature of the Agreement, even though we have recognised all along that signature of the Trade Agreement did not legally commit the signatory country to accept these provisions or apply them. However, we have come to the conclusion that, in the circumstances -- in view of the fact that some of the countries present felt unable to sign the Trade Agreement, even at the time at which they were willing to give provisional application to it -- and in view of the position of some of the countries with regard to reservations, by and large it would be wise to dispense with the provision for signature of the Agreement.

From the point of view of international law and procedure that, of course, makes no legal difference. It is true now, as it has always been, that the binding obligation between the contracting parties takes effect only when the Agreement has been accepted by countries making up 85% of the total number represented at this meeting.

Now, I think before we get into the problem of reservations, we should look very carefully at the way the Agreement stands now and its effect upon the question of reservations.

First, there being no provision for signature of the Agreement, there is, of course, no occasion for any country to reserve its position upon signature. However, it would still be open to any country to reserve its position upon acceptance of the Agreement. I think what Dr. Gutierrez stated the other day with regard to that matter was quite correct: a country may accept the Agreement with a reservation. In that event, of course, the acceptance, in order to be valid in international law as I understand it must be then agreed to by the other countries which have also accepted the Agreement. But I would suggest that there probably will not be any occasion for a country to attach a reservation to its acceptance of the Agreement for this reason: that under the terms of the Agreement, the Agreement may not enter into force until after a decision has been reached with regard to the supersession of the provisions of the Agreement by the Charter. That will give every country which has a reservation to the Charter an opportunity to uphold it in Havana, and if it prevails in Havana and if it should be incorporated in the Charter coming out of Havana, then to propose to the contracting parties under the Suspension and Supersession provisions that

those provisions of the Charter should supersede the provisions of the Agreement. And until a decision is reached upon that, until agreement is reached upon that, the Trade Agreement may not enter fully into force.

Now, there is one other point, that is, signature of the Protocol of Provisional Application. Signature of that instrument commits the signatory Government, and it is on a par with the acceptance of the Trade Agreement. Therefore, any reservations to the Signature of the Protocol of Provisional Application must be accepted and agreed to by all other countries signing the Protocol of Provisional Application. But here again I should think that it would not be necessary for any country to reserve its position with respect to the signature of the Protocol because, after all, it is a protocol of provisional application. Part I of the Agreement, that is the tariff part, is to be applied provisionally, and Part II, that is the general provisions, with respect to which I think most of the reservations in question apply, is to be applied to the fullest extent not inconsistent with existing legislation.

The Protocol of Provisional Application is subject to withdrawal by any country on sixty days' notice, so that if a country is not satisfied with what happens at Havana or with regard to supersession it will be in a position to withdraw from the Agreement at short notice.

Therefore, I suggest that the Report of the Sub-Committee with respect to the Protocol of Signature and the question of signing the Agreement has taken care of the problem of reservations."