

RESTRICTED

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ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

SUB-COMMITTEE ON SUPERSSESSION

REPORT TO THE CONTRACTING PARTIES

1. At the fifth meeting of the First Session of the Contracting Parties a Sub-Committee was appointed to submit concrete proposals, not later than 12 March, on the questions of suspension and supersession arising under Article XXIX and on the amendments proposed during the discussions at the first five meetings.
2. The members of the Sub-Committee were the representatives of Cuba, France, Lebanon, Netherlands, Norway, the United Kingdom and the United States.
3. At the first meeting of the Sub-Committee Mr. Speekenbrink (Netherlands) was elected Chairman.
4. The Sub-Committee held four meetings and prepared two draft protocols for submission to the contracting parties. The texts of these protocols are attached to this Report.
5. Each of these protocols provides for two categories of signatories, namely, the 9 contracting parties which are applying the Agreement under the Protocol of Provisional Application and the remaining 14 signatories of the Final Act of the General Agreement. The Sub-Committee has sought to provide a simplified procedure whereby the representatives of the countries in the first category will sign the protocols with powers similar to those with which they signed the Protocol of Provisional Application, while those in the second category will only require powers similar to those with which they signed the Final Act at Geneva.

Draft Protocol Modifying certain General Provisions

6. The first item in this Protocol provides for the replacement of the first four paragraphs of Article XXIV by Articles 42, 42A and 42B of the Charter. The attached draft incorporates the text of those three Articles as recommended by one of the Conference Sub-Committees, and these will have to be altered in conformity with any amendments effected by the Conference.
7. The representative of France explained that acceptance of the Protocol by his Government would be contingent upon the agreement of the contracting parties to waive one of the obligations of paragraph 5 so as to enable France to proceed

/with the formation

with the formation of a customs union with Italy without first requiring Italy to accede to the General Agreement. The Sub-Committee submits the following resolution for the consideration of the contracting parties:

"The CONTRACTING PARTIES decide,
"in terms of paragraph 5 of Article XXV, that the limitation, to customs
"unions, free-trade areas and interim agreements between the territories
"of contracting parties, of the exception for such arrangements provided
"for in paragraph 5 of Article XXIV, as amended, of the General Agreement
"on Tariffs and Trade, shall not apply to any customs union or interim
"agreement necessary for the formation of a customs union between France
"and Italy in the event that Italy has not become a contracting party by
"the time such an arrangement is concluded, PROVIDED that any such customs
"union or interim agreement shall conform to all of the other requirements
"of Article XXIV."

8. Further, in connection with paragraph 5 (a) of Article XXIV, the Sub-Committee discussed the question of increases in bound rates of duty which might arise from the provision that the duties imposed at the institution of a customs union are not to be on the whole higher than the general incidence of the duties previously applicable in the constituent territories. This question was referred to the representatives of France and the United States who were asked to submit recommendations.

9. Item II provides for the amendment of paragraph 5 of Article XXV by the addition of three new sub-paragraphs dealing with the failure of a contracting party to carry out negotiations in accordance with paragraph 1 of Article 17 of the Charter. The third new sub-paragraph was added to provide that the first two shall not apply until 1 January 1949.

10. The third Item provides in effect for the deletion of paragraph 5 (b) of Article XXVI. This deletion is consequential upon the modifications to Article XXIX provided for in Item IV. The first modification of Article XXIX is the amendment of paragraph 1 to take account of the fact that the United Nations Conference on Trade and Employment is now being held and the Havana Charter will appear as the result. In paragraph 2 the 60-day period after the close of the Havana Conference for contracting parties to lodge objections to the suspension and supersession of certain parts of the Agreement by the corresponding provisions of the Charter has been omitted, and a new provision has been inserted to provide that Part II of the Agreement shall again become effective and that the text of certain Articles of the Agreement shall be replaced, mutatis mutandis, by the corresponding Articles of the Havana Charter in the event that the Charter should at any time cease to be in force. The list of Articles which would in those circumstances be

/replaced does

replaced does not include Articles XXII and XXIII which deal with "Consultation" and "Nullification or Impairment", respectively, as it is considered that the form in which these Articles appear in the Charter is not suitable for the General Agreement. Also it should be noted that paragraph 2 as amended does not provide for the supersession of Article I; the changes in the corresponding Articles of the Charter are not of consequence to the General Agreement and it was thought that it would be desirable to retain the most-favoured-nation clause as a permanent part of the Agreement. In this connection it is proposed to add a new paragraph which provides that the provisions of the Agreement shall not be invoked by a contracting party to prevent the operation of any provision of the Charter after the Charter has entered into force; this was introduced to meet, inter alia, the problem raised by the delegations of Chile and Syria in connection with their proposed amendment to Article 16 of the Charter.

11. Item V of this Protocol amends Article XXXIII in order to give effect to the recommendation of the Co-ordinating Committee and the Heads of Delegations of the United Nations Conference that the unanimity rule for accession to the General Agreement should be changed to a two-thirds majority. This amendment gives rise to certain problems of relations between the new contracting party and those old contracting parties with which no negotiations have taken place and to meet these difficulties alternative provisions have been inserted.

Draft Special Protocol modifying Article XIV

12. The second draft protocol attached to this Report provides that Article XIV shall be replaced by Article 23 of the Charter, but whereas the first protocol described above would become effective immediately this second protocol would come into force on 1 January 1949. The Sub-Committee's recommendation of this second protocol is, of course, contingent upon a satisfactory text of Article 23 being agreed upon by the Havana Conference.

13. It is contemplated that this protocol, like the first, will be open for signature at Havana at the close of the United Nations Conference on Trade and Employment, but that the second protocol will remain open at the Headquarters of the United Nations until 1 June 1948 for deferred signatures.

DRAFT PROTOCOL
MODIFYING CERTAIN GENERAL PROVISIONS OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

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 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

- (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 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

(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

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 sub-paragraphs (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

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 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

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 H. 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. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force. If the Havana Charter should thereafter cease to be in force, Part II of this Agreement shall thereupon again become effective subject to paragraph 4 of this Article, provided that the texts of Articles III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, and XXI shall be respectively replaced, mutatis mutandis, by the texts of Articles 18, 19, 32, 33, 34, 35, 36, 37, 20, 21, 22, 23, 24, 25, 30, 13, 40, 43 and 94 of the Havana Charter in the form in which they appear at the time the Havana Charter ceases to be in force.

"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. Pending such agreement the provisions of Part II of this Agreement shall, notwithstanding the provisions of paragraph 2 of this Article, continue to apply as between any contracting party which has not accepted the Havana Charter and the other contracting parties.

"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

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.

"6. No contracting party shall invoke the provisions of this Agreement so as to prevent the operation of any provision of the Havana Charter when it has entered into force.

V. 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. Provided that [the provisions of Article II of this Agreement shall not apply as between any contracting party and any such acceding Government without the consent of such contracting party] [any such acceding Governments shall have negotiated with any contracting party which has requested negotiations]. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority."

VI. The modifications of the General Agreement on Tariffs and Trade provided for in paragraphs I to V inclusive of this Protocol shall become effective on the day of signature of this Protocol.

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.

/DRAFT

DRAFT SPECIAL PROTOCOL
MODIFYING ARTICLE XIV OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

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 Article XIV 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 XIV of the General Agreement on Tariffs and Trade shall read as follows:

[Insert final text of Article 23 of the Havana Charter and any accompanying annexes, etc.]

II. This Protocol shall remain open for signature at the Headquarters of the United Nations until 1 June 1948 on behalf of any government named in the preamble of this Protocol which has not signed it on this day.

III. The modification of Article XIV shall take effect on 1 January 1949.

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, thisday of March, one thousand nine hundred and forty-eight.

