RESTRICTED

GATT/1/47
19 March 1948

ORIGINAL: ENGLISH

GENERAL AGREEMENT ON TARIFFS AND TRADE

FIRST SESSION OF THE CONTRACTING PARTIES

REVISION OF DRAFT PROTOCAL CONTAINED IN DOCUMENT GATT/1/28
MODIFYING CERTAIN GENERAL PROVISIONS OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE

(As Agreed on 19 March 1948)

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. 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

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CONTRACTING PARTIES may also by such a vote

(i) define certain categories of exceptional 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 sub-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."

II. Paragraph 1 of Article XXXII shall read as follows:

"The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Article XXVI, Article XXXIII or pursuant to the Protocol of Provisional Application."

III. 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

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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. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority."

VII. The following Article shall be inserted in the General Agreement on Tariffs and Trade after Article XXXIV:

Article XXXV

"1. Without prejudice to the provisions of paragraph 5 (b) of Article XXV or to the obligations of a contracting party pursuant to paragraph 1 of Article XXIX, this Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:

(a) the two contracting parties have not entered into tariff negotiations with each other, and

(b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.

2. The CONTRACTING PARTIES may, at any time before the Havana Charter enters into force, review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations."

VIII. Notwithstanding the provisions of Article XXX of the General Agreement on Tariffs and Trade, the modifications of the General Agreement on Tariffs and Trade provided for in Items I to VII, inclusive, of this Protocol shall become an integral part of the Agreement, on this _____ day of March 1948.

Signature of this protocol by any government which at the time is applying the General Agreement on Tariffs and Trade under the Protocol of Provisional Application, shall serve to commit that Government to apply provisionally the Agreement as modified by this Protocol.

Signature of this Protocol by any government which is not at the time a contracting party to the General Agreement on Tariffs and Trade shall serve to authenticate the texts of the modifications of the General Agreement provided for in this Protocol and such governments shall not be required to apply such modifications until they become contracting parties to the General Agreement on Tariffs and Trade as defined in Article XXXII of the General Agreement on Tariffs and Trade. This Protocol shall remain open for signature by any such government, named in the second paragraph of the preamble to this Protocol, until May 1, 1948.

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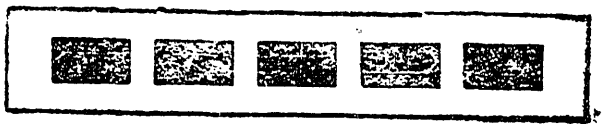
The original texts of this Protocol shall be deposited with the Secretary-General of the United Nations, who is authorized to effect registration thereof.

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.