

M. 293. E

No. 814. II. c) PROTOCOL<sup>1</sup> MODIFYING CERTAIN PROVISIONS OF THE GENERAL AGREEMENT<sup>2</sup> ON TARIFFS AND TRADE. SIGNED AT HAVANA, ON 24 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 Luxemburg, 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 to the Final Act<sup>3</sup> 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 certain 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 CONTRACTING PARTIES may also by such a vote

<sup>1</sup> Came into force on 24 March 1948, by signature.  
<sup>2</sup> United Nations, *Treaty Series*, Volume 55, page 194.  
<sup>3</sup> United Nations, *Treaty Series*, Volume 55, page 180.

“(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 development, 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 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 January 1, 1949.”

II. Paragraph 1 of Article XXXII of the General Agreement on Tariffs and Trade 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 Articles XXVI or 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 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.”

IV. 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.”

V. Notwithstanding the provisions of Article XXX of the General Agreement on Tariffs and Trade, the modifications provided for in Sections I to IV, inclusive, of this Protocol shall become an integral part of the General Agreement on Tariffs and Trade, on April 15, 1948.

Signature of this Protocol by any government which is not at the time of signature a contracting party to the General Agreement on Tariffs and Trade shall serve to authenticate the texts of the modifications of the General Agree-

ment on Tariffs and Trade provided for in this Protocol. 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.

The original 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, duly authorized, have signed the present Protocol.

DONE at Havana, in a single copy, in the English and French languages, both texts authentic, this twenty-fourth day of March, 1948.

- For the Commonwealth of Australia:    Pour le Commonwealth d'Australie:  
H. C. COOMBS
- For the Kingdom of Belgium:            For the Kingdom of Belgium:  
M. SUTENS
- For the United States of Brazil:        Pour les Etats-Unis du Brésil:  
A. DE VILHENA FERREIRA BRAGA
- For Burma:                                Pour la Birmanie:  
M. MYAT TUN
- For Canada:                                Pour le Canada:  
L. D. WILGESS
- For Ceylon:                                Pour Ceylan:  
B. MAHADEVA
- For the Republic of Chile:              Pour la République du Chili:  
W. MÜLLER
- For the Republic of China:<sup>1</sup>            Pour la République de Chine<sup>1</sup>:  
Tingfu F. TSIANG
- For the Republic of Cuba:              Pour la République de Cuba:  
Gustavo GUTIÉRREZ
- For the Czechoslovak Republic:        Pour la République tchécoslovaque:  
Z. AUGENTHALER
- For the French Republic:                Pour la République française  
Jean ROYER
- For India:                                 Pour l'Inde:  
Hardit Singh MALIK
- For Lebanon:                              Pour le Liban:  
Georges HAKIM
- For the Grand-Duchy of Luxemburg:    Pour le Grand-Duché de Luxembourg:  
J. WOLBKOUN

---

<sup>1</sup> See footnote 1 on page 24.

---

<sup>1</sup> Voir note 1 page 24.

For the Kingdom of the Netherlands: Pour le Royaume des Pays-Bas:

A. B. SPEEKENBRINK

For New Zealand:

Pour la Nouvelle-Zélande:

W. NASH

For the Kingdom of Norway:

Pour le Royaume de Norvège:

Arne SKAUG

For Pakistan:

Pour le Pakistan:

M. A. H. ISPAHANI

For Southern Rhodesia:

Pour la Rhodésie du Sud:

Alexander CADOGAN

May 9, 1949

For Syria:

Pour la Syrie:

Husni A. SAWWAR

For the Union of South Africa:

Pour l'Union Sud-Africaine:

Signed with the reservation that the Government of the Union of South Africa do not accept Section IV of the Protocol inserting a new article XXXV in the General Agreement.

J. R. JORDAAN

16 February 1949

This reservation withdrawn by instrument deposited 5 June 1950.

J. R. J.<sup>1</sup>

For the United Kingdom of Great Britain and Northern Ireland:

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord:

STEPHEN L. HOLMES

For the United States of America:

Pour les Etats-Unis d'Amérique:

John W. EVANS

<sup>1</sup> Signé avec la réserve que le Gouvernement de l'Union Sud-Africaine n'accepte pas la Section IV du Protocole qui introduit un nouvel article XXXV dans l'Accord général.

J. R. JORDAAN

16 février 1949

Cette réserve a été retirée par un instrument déposé le 5 juin 1950.

J. R. J.