

No. 814. II. d) SPECIAL PROTOCOL¹ MODIFYING ARTICLE XIV OF THE GENERAL AGREEMENT² 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,

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 Act³ 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. On and after January 1, 1949, Article XIV of the General Agreement on Tariffs and Trade shall read as follows:

“Article XIV

“EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

“1. (a) The contracting parties recognize that the aftermath of the war has brought difficult problems of economic adjustment which do not permit the immediate full achievement of non-discriminatory administration of quantitative restrictions and therefore require the exceptional transitional period arrangements set forth in this paragraph.

¹ Came into force on 9 May 1949, in accordance with paragraph V.

² United Nations, *Treaty Series*, Volume 55, page 194.

³ United Nations, *Treaty Series*, Volume 55, page 188.

“(b) A contracting party which applies restrictions under Article XII may, in the use of such restrictions, deviate from the provisions of Article XIII in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Article XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.

“(c) A contracting party which is applying restrictions under Article XII and which on March 1, 1948 was applying import restrictions to safeguard its balance of payments in a manner which deviated from the rules of non-discrimination set forth in Article XIII may, to the extent that such deviation would not have been authorized on that date by sub-paragraph (b), continue so to deviate, and may adapt such deviation to changing circumstances.

“(d) Any contracting party which before July 1, 1948 has signed the Protocol of Provisional Application agreed upon at Geneva on October 30, 1947 and which by such signature has provisionally accepted the principles of paragraph 1 of Article 23 of the Draft Charter submitted to the United Nations Conference on Trade and Employment by the Preparatory Committee, may elect, by written notice to the CONTRACTING PARTIES before January 1, 1949, to be governed by the provisions of Annex J of this Agreement, which embodies such principles, in lieu of the provisions of sub-paragraphs (b) and (c) of this paragraph. The provisions of sub-paragraphs (b) and (c) shall not be applicable to contracting parties which have so elected to be governed by the provisions of Annex J; and conversely, the provisions of Annex J shall not be applicable to contracting parties which have not so elected.

“(c) The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) or under Annex J in the postwar transitional period shall be designed to promote the maximum development of multilateral trade possible during that period and to expedite the attainment of a balance-of-payments position which will no longer require resort to the provisions of Article XII or to transitional exchange arrangements.

“(f) A contracting party may deviate from the provisions of Article XIII, pursuant to sub-paragraphs (b) or (c) of this paragraph or pursuant to Annex J, only so long as it is availing itself of the post-war transitional period arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund, or of an analogous provision of a special exchange agreement entered into under paragraph 6 of Article XV.

“(g) Not later than March 1, 1950 (three years after the date on which the International Monetary Fund began operations) and in each year thereafter, the CONTRACTING PARTIES shall report on any action still being taken by contracting parties under sub-paragraphs (b) and (c) of this paragraph or under Annex J. In March 1952, and in each year thereafter, any contracting party still entitled to take action under the provisions of sub-paragraph (c) or of Annex J shall consult the CONTRACTING PARTIES as to any deviations from Article XIII still in force pursuant to such provisions and as to its continued resort to such provisions. After March 1, 1952 any action under Annex J going beyond the maintenance in force of deviations on which such consultation has taken place and which the CONTRACTING PARTIES have not found unjustifiable, or their adaptation to changing circumstances, shall be subject to any limitations of a general character which the CONTRACTING PARTIES may prescribe in the light of the contracting party's circumstances.

“(h) The CONTRACTING PARTIES may, if they deem such action necessary in exceptional circumstances, make representations to any contracting party entitled to take action under the provisions of sub-paragraph (c) that conditions are favourable for the termination of any particular deviation from the provisions of Article XIII, or for the general abandonment of deviations, under the provisions of that sub-paragraph. After March 1, 1952, the CONTRACTING PARTIES may make such representations, in exceptional circumstances, to any contracting party entitled to take action under Annex J. The contracting party shall be given a suitable time to reply to such representations. If the CONTRACTING PARTIES find that the contracting party persists in unjustifiable deviation from the provisions of Article XIII, the contracting party shall, within sixty days, limit or terminate such deviations as the CONTRACTING PARTIES may specify.

“2. Whether or not its transitional period arrangements have terminated pursuant to paragraph 1 (f), a contracting party which is applying import restrictions under Article XII may, with the consent of the CONTRACTING PARTIES, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.

"3. The provisions of Article XIII shall not preclude restrictions in accordance with the provisions of Article XII which either

"(a) are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the International Monetary Fund, on condition that such restrictions are in all other respects consistent with the provisions of Article XIII, or

"(b) assist, in the period until December 31, 1951, by measures not involving substantial departure from the provisions of Article XIII, another country whose economy has been disrupted by war.

"4. A contracting party applying import restrictions under Article XII shall not be precluded by Articles XI to XV, inclusive, of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.

"5. A contracting party shall not be precluded by Articles XI to XV, inclusive, of this Agreement from applying quantitative restrictions

"(a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund; or

"(b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein."

II. On and after January 1, 1949, the Interpretative Notes to Article XIV in Annex I of the General Agreement on Tariffs and Trade shall read as follows:

"ad Article XIV

"Paragraph 1 (g)

"The provisions of paragraph 1 (g) shall not authorize the CONTRACTING PARTIES to require that the procedure of consultation be followed for individual transactions unless the transaction is of so large a scope as to constitute an act of general policy. In that event, the CONTRACTING PARTIES shall, if the contracting party so requests, consider the transaction, not individually, but in relation to the contracting party's policy regarding imports of the product in question taken as a whole.

“Paragraph 2

“One of the situations contemplated in paragraph 2 is that of a contracting party holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.”

III. On and after January 1, 1949, the following Annex shall be added to the General Agreement on Tariffs and Trade:

ANNEX J

EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

(Applicable to contracting parties who so elect, in accordance with paragraph 1 (d) of Article XIV, in lieu of paragraphs 1 (b) and 1 (c) of Article XIV.)

“1. (a) A contracting party applying import restrictions under Article XII may relax such restrictions in a manner which departs from the provisions of Article XIII to the extent necessary to obtain additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraphs 3 (a) and 3 (b) of Article XII if its restrictions were fully consistent with the provisions of Article XIII; *Provided that*

“(i) levels of delivered prices for products so imported are not established substantially higher than those ruling for comparable goods regularly available from other contracting parties, and that any excess of such price levels for products so imported is progressively reduced over a reasonable period;

“(ii) the contracting party taking such action does not do so as part of any arrangement by which the gold or convertible currency which the contracting party currently receives directly or indirectly from its exports to other contracting parties not party to the arrangement is appreciably reduced below the level it could otherwise have been reasonably expected to attain;

“(iii) such action does not cause unnecessary damage to the commercial or economic interests of any other contracting party;

“(b) Any contracting party taking action under this paragraph shall observe the principles of sub-paragraph (a). A contracting party shall desist

from transactions which prove to be inconsistent with that sub-paragraph but the contracting party shall not be required to satisfy itself, when it is not practicable to do so, that the requirements of that sub-paragraph are fulfilled in respect of individual transactions.

“2. Any contracting party taking action under paragraph 1 of this Annex shall keep the CONTRACTING PARTIES regularly informed regarding such action and shall provide such available relevant information as the CONTRACTING PARTIES may request.

“3. If at any time the CONTRACTING PARTIES find that import restrictions are being applied by a contracting party in a discriminatory manner inconsistent with the exceptions provided for under paragraph 1 of this Annex, the contracting party shall, within sixty days, remove the discrimination or modify it as specified by the CONTRACTING PARTIES; *Provided* that any action under paragraph 1 of this Annex, to the extent that it has been approved by the CONTRACTING PARTIES at the request of a contracting party under a procedure analogous to that of paragraph 4 (c) of Article XII, shall not be open to challenge under this paragraph or under paragraph 4 (d) of Article XII on the ground that it is inconsistent with the provisions of Article XIII.

“Interpretative Note to Annex J

“It is understood that the fact that a contracting party is operating under the provisions of Part II (a) of Article XX does not preclude that contracting party from operation under this Annex, but that the provisions of Article XIV (including this Annex) do not in any way limit the rights of contracting parties under Part II (a) of Article XX.”

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

V. Notwithstanding the provisions of Article XXX of the General Agreement on Tariffs and Trade, this Protocol shall enter into force on the day on which it has been signed by all the governments which are at that time contracting parties of the General Agreement on Tariffs and Trade.

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 Agreement on Tariffs and Trade provided for in this Protocol.

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: Pour le Royaume de Belgique:
M. SUETENS
- 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. WILGROSS
- For Ceylon: Pour Ceylan:
B. MAHADEVA
- For the Republic of Chile: Pour la République du Chili:
W. MÜLLER
- For the Republic of China:¹ Pour la République de Chine¹:
Tingfu F. TSIANG
May 7, 1948
- 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. WOULBROUN

¹ See footnote 1 on page 24.

¹ Voir note 1 page 24.

For the Commonwealth of Australia:	POUR le Commonwealth d'Australie: H. C. COOMBS
For the Kingdom of Belgium:	POUR le Royaume de Belgique: M. SUETENS
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: ¹	POUR la République de Chine ¹ : Tingfu F. TSIANG May 7, 1948
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
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For the Grand-Duchy of Luxemburg:	POUR le Grand-Duché de Luxembourg: J. WOLBRONN

¹ See footnote 1 on page 24.

¹ Voir note 1 page 24.

- For the Kingdom of 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. SAWWAF
- For the Union of South Africa: Pour l'Union Sud-Africaine:
S. JACKLIN
25th May 1948
- For the United Kingdom of Great
Britain and Northern Ireland: Pour le Royaume-Uni de Grande-
Bretagne et d'Irlande du Nord:
H. M. PHILLIPS
19 April 1948
- For the United States of America: Pour les Etats-Unis d'Amérique:
John W. EVANS
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