

GENERAL AGREEMENT ON TARIFFS AND TRADE

*Protocol opened for signature at Havana March 24, 1948, and signed
for the United States March 24, 1948, modifying certain pro-
visions of the General Agreement of October 30, 1947
Entered into force April 15, 1948*

62 Stat. 1992; Treaties and Other
International Acts Series 1763

PROTOCOL MODIFYING CERTAIN 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 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,¹ 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 Act² 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,³ which was authenticated by the Final Act of the United Nations Conference on Trade and Employment,

Hereby agree as follows:

¹ TIAS 1700, *ante*, p. 641.

² TIAS 1700, *ante*, p. 639.

³ Unperfected; for excerpts, see *A Decade of American Foreign Policy: Basic Documents, 1941-49* (S. Doc. 123, 81st Cong., 1st sess.), p. 391.

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

- (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 ⁴ 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 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.”

⁴ For schedules of tariff concessions annexed to the General Agreement, see 61 Stat. A91 or TIAS 1700, p. 87.

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 Agreement 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:
H. C. COOMBS

For the Kingdom of Belgium:
M. SUETENS

For the United States of Brazil:
A. DE VILHENA FERREIRA BRAGA

For Burma:
M. MYAT TUN

For Canada:
L. D. WILGESS

For Ceylon:
B. MAHADEVA

For the Republic of Chile:
W. MÜLLER

For the Republic of China:

For the Republic of Cuba:
GUSTAVO GUTIÉRREZ

For the Czechoslovak Republic:
Z. AUGENTHALER

For the French Republic:
JEAN ROYER

For India:
HARDIT SINGH MALIK

For Lebanon:
GEORGES HAKIM

For the Grand-Duchy of Luxemburg:
J. WOULBROUN

For the Kingdom of the Netherlands:
A. B. SPEEKENBRINK

For New Zealand:
W. NASH

For the Kingdom of Norway:
ARNE SKAUG

For Pakistan:
M. A. H. ISPAHANI

For Southern Rhodesia:

For Syria:
HUSNI A. SAWWAF

For the Union of South Africa:

For the United Kingdom of Great
Britain and Northern Ireland:
STEPHEN L. HOLMES

For the United States of America:
JOHN W. EVANS