

GENERAL AGREEMENT ON TARIFFS AND TRADE
Contracting Parties
Third Session

Request by the Government of Pakistan for a
Decision by the Contracting Parties under Article XXIII

By letter dated 12th February 1949, the Government of Pakistan has requested that the agenda for the Third Session of the Contracting Parties should include the question of discrimination by the Government of India in the rebate of excise duties on certain products exported from India.

The following is the text of the letter:

"Subject:- Refusal of India to grant M-F-N
Treatment to Pakistan.

"I have the honour to refer to the ruling given by the Chairman of the CONTRACTING PARTIES contained in Document No. GATT/CP.2/SR.11, dated the 24th August, 1948 relating to the interpretation of the Most-Favoured-Nation Clause (Article I, paragraph 1 of General Agreement on Tariffs and Trade) sought by the Pakistan Delegation. After giving this ruling the Chairman expressed the hope that the representatives of the two countries would discuss the matter and reach a settlement.

"2. While the Session was in progress, the Pakistan Delegation reported to their Government that in the light of the above ruling an approach may again be made in writing to the Government of India drawing their attention to the discriminatory treatment which was being accorded to Pakistan. Accordingly the Government of Pakistan addressed the Government of India on the 10th September, 1948 requesting them to allow rebate of excise duty on export of goods on which rebate was being allowed by them to other countries. The Government of India considered this request and eventually replied that as the Indian Delegation had reserved its position at the Second Session of the CONTRACTING PARTIES at Geneva and had expressed their inability to make any commitment regarding the interpretation given by the Chairman, the Government of India could not accept the claim that Pakistan was entitled to the same treatment in respect of rebate as was being granted to other countries. The full text of their letter is attached.

"3. In spite of this categorical refusal of the Government of India, the Government of Pakistan continued their efforts to persuade the Government of India to accept the ruling of the Chairman and took up the matter at the Inter-Dominion Conference held at Delhi in December, 1948. The Government of India again refused to grant to Pakistan the right to obtain rebate of excise duty. Relevant extracts of the verbatim record of the statement made by the Leader of the Indian Delegation at the Delhi Conference and supplied to Pakistan at the request of their Leader are reproduced below:

'The Hon'ble Mr.

N. Gopaldaswami Ayyangar: 'I would like, first of all, to say that during the last few days I have tried to give this matter a certain amount of intense study and the first result from that study is that the so-called ruling given at Geneva will not stand examination before any impartial tribunal. I hold the view - and I think it can be maintained - that on the basis of the general agreement with regard to trade and tariffs and the provisions made therein, the interpretation by the person who was in the Chair could be justified only by the words he interpolated into Article I which he was called upon to interpret.'

"4. As there was another occasion to re-open this matter at the Inter-Dominion Conference scheduled for January, 1949 at Karachi, before referring the case to the CONTRACTING PARTIES, the Leader of the Pakistan Delegation requested the Indian Delegation to reconsider their attitude. After discussion at this Conference, the Leader of the Indian Delegation who remained unconvinced summed up the position of his Government as under:

'The Hon'ble Mr.

N. Gopaldaswami Ayyangar: 'We certainly adhere to the position that the Most Favoured Nation clause does not apply to excise duties of this description but we are quite willing to consider the question of rebates even in such excise duties as part of a comprehensive arrangement between the two Dominions. That is our position and if you are going to take your stand merely on the application of the Most Favoured Nation clause to this particular form of duty then we have got to say we cannot agree.'

"5. Since repeated efforts of the Government of Pakistan to bring about a satisfactory settlement with the Government of India on this case have failed, I am directed to say that the Government of Pakistan are constrained to refer the matter to the CONTRACTING PARTIES for their decision under Article XXIII of the General Agreement on Tariffs and Trade. In the opinion of the Government of Pakistan, the Government of India have failed to carry out their obligations under the General Agreement on Tariffs and Trade and have applied measures which conflict with the provisions of Article I of that Agreement and with the principle of non-discrimination on which it is based. A telegraphic request to put this matter on the agenda for the ensuing session of CONTRACTING PARTIES to the General Agreement on Tariffs and Trade has already been sent to the Executive Secretary, Interim Commission for the International Trade Organization which I am directed to confirm. The text of this telegram is reproduced below:

'Number 351/105 stop Kindly refer to Chairmans ruling on interpretation of clause one of GATT vide document GATT/CP.2/SR.11 dated 24th August 1948 stop Under this ruling matter was taken up with India Government in writing in accordance with Article XXIII and also debated with India at Inter-Dominion Conference meetings stop India Government do not repeat not agree that the grant of rebate of excise duty allowed by them to other countries on exportation of goods but denied to Pakistan is in violation of Most Favoured Nation Clause stop Since India refuses to abide by Chairmans ruling and persists in not repeat not granting the rebate thereby discriminating against Pakistan Government of Pakistan

wish to seek redress through good offices of CONTRACTING PARTIES stop Accordingly request that complaint of Pakistan against violation of Most Favoured Nation Clause by India may be registered as item of agenda for the ensuing session of CONTRACTING PARTIES scheduled for April 1949'

"I am to request that this complaint of the Government of Pakistan may be circulated to the CONTRACTING PARTIES sufficiently in advance of the coming session.

"6. In this connection it may be recalled that when this question was raised by the Pakistan Delegation at Geneva they drew attention of the CONTRACTING PARTIES to the recurring loss of about rupees seventy million per annum to Pakistan and in this context they stated that if the ruling was in their favour it should take effect from the date Pakistan and India acceded to the Agreement."

(Enclosure)

"Copy

7/2-CX/48.

GOVERNMENT OF INDIA
MINISTRY OF FINANCE

New Delhi the 24th November 1948.

"From The Secretary to the Government of India.
To The Secretary to the Government of Pakistan,
Ministry of Finance, Karachi.

Sir,

Subject:- Claim for rebate of excise duty on excisable commodities exported from India to Pakistan.

"With reference to your letter No.169-Cus/47 dated the 10th September 1948 on the subject mentioned above, I am directed to say that while the Chairman of the Second Session of the Contracting Parties to the General Agreement on Tariffs and Trade held at Geneva gave at the request of the Pakistan Delegation an interpretation of paragraph I of Article I of the Agreement, he made it clear that the issue before the Contracting Parties was not a dispute between two Contracting Parties, but merely a request by one contracting party for an interpretation of provision of the Agreement. (See G.A.T.T./CP.2/SR.II dated the 24th August 1948). It should also be noted that on that occasion the Indian Delegation reserved its position and expressed its inability to make any commitment regarding the interpretation given by the Chairman. In the light of this, the Government of India regret their inability to accept the claim made in your letter that Pakistan is entitled to the same facilities in respect of rebate and export under bond as are granted to other countries under Rules 12 and 13 of the Central Excise Rules, 1944 in so far as the claim is based on that interpretation. If, however, the Government of Pakistan feel that discussions regarding a comprehensive settlement such as was contemplated in October 1947, which would of course include this particular matter relating to Central Excise, or some other equitable proposal could usefully be started, the Government of India would be prepared to consider the matter further.

Yours faithfully,

Sd/- K. R. K. Menon,

SECRETARY TO THE GOVERNMENT OF INDIA."