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70TH ANNIVERSARY OF THE GATT:  
STALIN, THE MARSHALL PLAN, AND THE  
PROVISIONAL APPLICATION OF THE GATT 1947

ROY  
SANTANA\*



\* Note: The author is a member of the Market Access Division of the World Trade Organisation Secretariat. The views expressed here are his own and should not be attributed to Members of the WTO or to the Secretariat. The author would like to thank Dolores Halloran, János Volkei and Trineesh Biswas for their insightful comments and suggestions on an earlier draft, as well as to Ali Khilji for pointing out the

*30 October 1947 marks the 70th anniversary of the conclusion of the negotiations for a “General Agreement on Tariffs and Trade” which became the cornerstone of the multilateral trading system and “provisionally” governed international trade for almost 50 years. Considered the largest trade negotiation of its time, the negotiations were concluded in little over six months thanks to a series of innovative approaches, bold decisions, and a colossal effort by those involved. Surprisingly, not much has been written on the manner in which these negotiations took place, the political events that shaped them, nor the personalities involved, all of which have remained largely ignored by the specialised text books. Based on primary sources and prior work of historians, this paper describes the overall political environment and major political events that shaped the negotiations, as well as the hard political decisions that had to be taken in order to close the deal. Emphasis is placed on the clash between the United States and the United Kingdom concerning the elimination of British Imperial Preferences. The paper also describes the legal and practical hurdles that negotiators had to overcome in order to provisionally apply the GATT, including determining the type of legal instrument that would be used and who could sign it.*

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*role of Stafford Cripps with British India’s partition. This paper consolidates three essays that were published on the WTO webpage on 30 October 2017 to commemorate the 70th anniversary of the signature of the Final Act of the GATT.*

## I. INTRODUCTION

The negotiations of the General Agreement on Tariffs and Trade (GATT) were formally concluded on 30 October 1947. To mark the occasion, a press release from the United Nations Conference on Trade and Employment proudly announced that,

*“...there is no parallel to this achievement in any previous trade negotiations, all of which have been on a more limited scale. The completion of such a large number of simultaneous negotiations of such broad scope in a little over six months is in itself a remarkable feat. Since April 1947, when negotiations were opened, nearly 1,000 scheduled meetings between the representatives of the countries concerned have taken place in Geneva. In addition, there were continuous discussions of a less formal character between the delegations concerned. ... During the time when both tariff negotiations and Charter discussions were proceeding, the delegations and their staff numbered approximately 760 persons.”<sup>1</sup>*

The GATT negotiations were particularly challenging because they took place at the same time that countries were engaged in a larger negotiation, which sought the establishment of the International Trade Organisation (ITO). The negotiations took place in the context of “Preparatory Committee of the United Nations Conference on Trade and Employment” (Prepcom), which was at the time drafting the “Havana Charter for an International Trade Organisation” (ITO Charter, also referred to as the Havana Charter).<sup>2</sup> In other words, the ITO Charter and the GATT were closely intertwined but separate negotiating processes.

How did trade diplomats manage to efficiently conclude such a large negotiation in such a short period of time? What were the key stumbling blocks and how did they overcome them? Inspired by the academic work of Prof. Thomas W. Zeiler,<sup>3</sup> and mostly based on official negotiating documents and internal records kept by the Secretariat of the World Trade Organisation (WTO), this paper seeks to describe the overall political environment and key issues that had to be addressed in order to conclude the GATT. Part 2 will describe the manner in which the

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<sup>1</sup> Press Release, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Adoption and Signature of the Final Act, U.N. Press Release No. 469 (Oct. 27, 1947).

<sup>2</sup> See United Nations Conference on Trade and Employment, Final Act and Related Documents, E/CONF.2/78 (1948), in United Nations Publication, Sales No. 1948.II.D.4 (held at Havana, Cuba from 21 November 1947 to 24 March 1948).

<sup>3</sup> Thomas Zeiler, *GATT Fifty Years Ago: U.S. Trade Policy and Imperial Tariff Preferences*, 26(2) BUS. & ECON. HIST. 709 (1997). For a more detailed description, see D. IRWIN, P. MAVROIDIS & A. SYKES, *THE GENESIS OF THE GATT* (2008).

GATT negotiations were structured. Part 3 will then explain the most difficult issue that had to be tackled by the negotiators from the two key players in the negotiations: the United States and the United Kingdom. Part 4 will then focus on the legal and practical issues that trade diplomats had to tackle in order to conclude the GATT. Earlier versions of these sections were published by the WTO on 30 October 2017 to commemorate the 70<sup>th</sup> anniversary of the signature of the Final Act of the GATT.<sup>4</sup>

## II. THE PLAN AT LARGE

Reestablishing the World's financial order, promoting economic reconstruction, and encouraging open markets became a priority after World War II. One of the recommendations of the Bretton Woods Conference, which had been held from 1 July 1944 to 22 July 1944, was the establishment of the ITO<sup>5</sup> which, together with the "International Monetary Fund" and the "International Bank for Reconstruction and Development" would become the pillars of the new international economic order. In 1946, following an invitation by the United States and the United Kingdom, a large number of countries gathered in London for a Conference on the Expansion of World Trade and Employment. Part of the Conference would be based on proposals which had been developed by the technical staff of the US government in 1945, which included the establishment of the ITO.<sup>6</sup> Fearing that a considerable amount of time would be required to complete the ITO negotiations and, most importantly, to implement the results of the tariff negotiations, the US proposed in November 1946 to launch, in addition, the negotiation of a "Multilateral Trade Agreement Embodying Tariff Concessions". These negotiations would take place amongst the principal trading nations, which would enter into "reciprocal and mutually advantageous

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<sup>4</sup> 70<sup>th</sup> Anniversary of the General Agreement on Tariffs and Trade, WORLD TRADE ORGANISATION, Oct. 30, 2017, [https://www.wto.org/english/news\\_e/news17\\_e/gen\\_30oct17\\_e.htm](https://www.wto.org/english/news_e/news17_e/gen_30oct17_e.htm).

<sup>5</sup> See U.S. Dep't of State, The United Nations Monetary and Financial Conference Bretton Woods Final Act, United States Department of State Publication 2866 (1948), at [https://fraser.stlouisfed.org/files/docs/publications/books/1948\\_state\\_bwood\\_v1.pdf](https://fraser.stlouisfed.org/files/docs/publications/books/1948_state_bwood_v1.pdf), at 941. (The recommendation states that main objectives would be to: "(1) reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations; (2) bring about the orderly marketing of staple commodities at prices fair to the producer and consumer alike; (3) deal with the special problems of international concern which will arise from the cessation of production for war purposes; and (4) facilitate by cooperative effort the harmonisation of national policies of Member States designed to promote and maintain high levels of employment and progressively rising standards of living.")

<sup>6</sup>U.S. Dep't of State, Proposals for Expansion of World Trade and Employment, United States Department of State Publication 2411 (1945).

negotiations directed to the substantial reduction of tariffs and the elimination of preferences”.<sup>7</sup> In November 1946, the US idea was adopted with some modifications through a resolution<sup>8</sup>, calling for multilateral negotiations to begin on 8 April 1947. During a broadcast of 21 August 1946, Mr. J.J. Dedman, Minister of Reconstruction of Australia, explained, “*The [ITO] Charter cannot stand by itself. The Charter and the proposed multilateral trade agreement are integral parts of the general plan to expand trade. The success or failure of the whole plan now depends on a similar degree of understanding being reached in the trade negotiations.*”<sup>9</sup>

As a result of the London meeting, delegations agreed on a large number of principles, rules of engagement and procedures for these negotiations,<sup>10</sup> which included a multistage plan that could be summarised as follows:

1. A subgroup of countries representing the main trading nations would begin meeting on 8 April 1947 to hold reciprocal and mutually advantageous negotiations that would, in general, proceed based on the “principal supplier rule”.<sup>11</sup> The overall result should fit into the framework of the ITO and be reflected into a schedule of concessions for each participating country. The best treatment offered to any party in those negotiations would be extended to all the other parties through this legal instrument.<sup>12</sup> If tariff negotiations progressed successfully and schedules could be agreed upon, participants would then incorporate them into a “General Agreement on Tariffs and Trade”.<sup>13</sup>

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<sup>7</sup> Economic and Social Council, Preparatory Committee of the International Conference on Trade and Employment, Resolution Regarding the Negotiation of a Multilateral Trade Agreement Embodying Tariff Concessions - Submitted by the United States Delegation, E/PC/T/27 (Nov. 23, 1946).

<sup>8</sup> Economic and Social Council, Preparatory Committee of the International Conference on Trade and Employment, Resolution Concerning the Second Session of the Preparatory Committee, E/PC/T/DEL/8/Rev.2 (Nov. 21, 1946).

<sup>9</sup> Press release, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Speech to be delivered by M. Max Suetens at the Final Session of the Preparatory Committee, U.N. Press Release No. 475 (Oct. 29, 1947).

<sup>10</sup> See Economic and Social Council, Preparatory Committee of the United Nations Conference on Trade and Employment, Report of the First Session, Annex 7 & Annex 10, E/PC/T/33 (Annex 7 - Resolution Regarding the Negotiation of a Multilateral Trade Agreement Embodying Tariff Concessions).

<sup>11</sup> This meant that each country participating in the negotiations would only be expected to put on the table (i.e. consider granting tariff or preference concessions) products in which the other participant countries were, or were likely to be, the main exporters of that product into that market (i.e. the principal suppliers). Since exporting capacity had been considerably reduced by war, potential exports should also be considered.

<sup>12</sup> *Supra* note 10, Section E – Miscellaneous Rules for Guidance, at 49.

<sup>13</sup> *Supra* note 10, Section H – General Agreement on Tariffs and Trade, ¶ 2, at 50.

2. Even in this early stage, negotiators were aware that having hundreds of pages of tariff schedules would not be enough. In the absence of additional rules, tariff concessions could be easily nullified or impaired through non-tariff measures.<sup>14</sup> A basic framework was needed, but they did not have the time to develop it. Since most of the work for the establishment of an ITO had focused, precisely, on developing trade rules that sought to regulate a number of non-tariff measures, GATT negotiators decided to copy and adjust those draft provisions. Paragraph 2 of Annex 2 of the “Resolution Regarding the Negotiation of a Multilateral Trade Agreement Embodying Tariff Concessions” provided that the GATT should include “either by reference or by reproduction, those general provisions of Chapter V of the Charter considered essential to safeguard the value of the tariff concessions.”<sup>15</sup> This approach had the dual benefit of avoiding duplication and lengthy discussions, as well as allowing negotiators to focus on what really mattered: the tariff negotiations. While a big part of the text could be borrowed from the ITO Charter<sup>16</sup>, it would still be necessary to draft additional provisions to conclude a self-contained General Agreement. For this reason the Resolution provided for the inclusion of “such other provisions as may be appropriate”.<sup>17</sup>

3. The GATT would be “legally independent” from the ITO and “be brought into force as soon as possible after its signature and publication”.<sup>18</sup> The idea was for the GATT to serve as a *temporary* vehicle that would quickly obtain results and achieve the provisional application of the tariff negotiations. The larger rule-making and institutional discussions of the ITO Charter would continue and these were clearly meant to prevail over the GATT. To this end, once the ITO Charter negotiations had been concluded in 1948, and its provisions had entered into force, that important “T” in the GATT (i.e. the tariff concessions) would then be transferred and absorbed by the institutional framework of the ITO.

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<sup>14</sup> For example, binding a tariff level for a product would be irrelevant if GATT contracting parties remained free to impose import and export bans at will, restrict trade for purely protectionist reasons, impose trade remedies without regulation, or impose measures that discriminate in favor of domestic production.

<sup>15</sup> *Supra* note 10, Section H – General Agreement on Tariffs and Trade, ¶ 2, at 51.

<sup>16</sup> Economic and Social Council, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Report of the Tariff Negotiations Working Party - General Agreement on Tariffs and Trade, E/PC/T/135 (July 24, 1947).

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 10, Section H – General Agreement on Tariffs and Trade, ¶ 3, at 51.



### III. THE MFN DILEMMA

#### A. *Allies with Diverging Views on Trade*

Following months of good progress in Geneva, negotiators eventually entered a delicate phase where the most difficult issues had to be tackled. Chief amongst them was the demand by US negotiators for the new multilateral system to be based on the “most favoured nation” (MFN) principle. With the proposed MFN clause, any privilege granted to any country would have to be extended immediately and unconditionally to all GATT Contracting Parties. Behind this proposal was Mr. Cordell Hull<sup>19</sup>, US Secretary of State and champion of free-trade internationalism, who had been pushing for this idea before the end of World War II and the launch of GATT negotiations. He was convinced that US exporters should not continue to be harmed by the large number of preferential regimes that had proliferated prior to World War II, and in particular the British imperial preferences, which the US considered a protectionist perversion. Political support in the US for eliminating all discriminatory trade practices was strong and extended to President Harry Truman himself. This is not to say, however, that the United States was completely free of protectionist sins. As an ill-conceived response to the Great Depression of 1929, US Congress had passed the Tariff Act of 1930, better known as the Smoot-Hawley Tariff Act, which had raised tariffs on more than 20,000 products.<sup>20</sup>

Since the conclusion of the Franco-British Commercial Treaty of 1860, Great Britain had been the main upholder of the MFN clause. However, over time, it progressively developed a system wherein exports originating in the Commonwealth benefitted from lower tariffs than those applicable to developing countries. Designed in 1898 as a means for commercial integration, imperial preferences progressively evolved into a complex protectionist array. As a response to the Great Depression and the introduction of the Smooth-Hawley Act in the US, the system had culminated in the “Ottawa System of Imperial Tariff Preferences” of 1932.<sup>21</sup> Since US exporters had been particularly hurt by these preferences, Cordell Hull had made the MFN clause the cornerstone of his reciprocal trade agreements program. Well before the end of World War II and the London discussions of 1946, the US had unsuccessfully tried to eliminate the

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<sup>19</sup> *Cordell Hull*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Cordell\\_Hull](https://en.wikipedia.org/wiki/Cordell_Hull) (Cordell Hull is the longest-serving Secretary of State of the United States. In 1945 he received the Nobel Peace Prize for his role in establishing the United Nations).

<sup>20</sup> For more information, see *Smoot-Hawley Tariff Act*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Smoot%E2%80%93Hawley\\_Tariff\\_Act](https://en.wikipedia.org/wiki/Smoot%E2%80%93Hawley_Tariff_Act).

<sup>21</sup> Dana L. Wilgress, *Imperial Preference and GATT* (Mar. 16, 1961), in *The Empire Club of Canada Addresses* 282, <http://speeches.empireclub.org/61402/data?n=16>.

British imperial preferences through different agreements, including the “Atlantic Charter”<sup>22</sup> of 1941, the “Lend-Lease Agreement”<sup>23</sup> of 1941, and the “Anglo-American Financial and Commercial Agreement”<sup>24</sup> of 1945.

The importance of eliminating preference was highlighted in a statement by Mr. Clair Wilcox, from the US delegation, who stressed that “*the members of this Committee will be judged, in the eyes of the world, not only by the words we have written on paper and sent forward to the World Conference, but also by the actions that we shall take, here and now, to give meaning to those words. Our proposal to negotiate for the substantial reduction of tariffs and the elimination of preferences will be laid down side by side with the provisions of our General Agreement on Tariffs and Trade. Our promise in the one will be measured by our performance in the other*”.<sup>25</sup>

During the GATT negotiations, Sir Richard Stafford Cripps, President of the British Board of Trade and lead UK negotiator, expressly disagreed with the US vision as articulated by Cordell Hull, and strongly opposed the dogmatism of the “American free traders”. For the UK, the immediate elimination of the imperial preferences was a red line that could not be crossed, as it would severely impact the already weak post-war economies of the Commonwealth. Back in Britain, the immediate implementation of the MFN clause was perceived as naïve dogmatism and a selfish idea by the US negotiators.<sup>26</sup> While embracing the ultimate goal of eventually achieving MFN trade, the British felt their economy would need considerable time to adjust. They feared an immediate elimination of tariff preferences would lead to a ruinous trade deficit and a balance of payments crisis, as had nearly happened at the beginning of 1947 with the “dollar crisis”.<sup>27</sup> Australia, Canada and other Commonwealth members were also concerned about the American proposal and were not ready to sacrifice their economies in the GATT negotiations. Even John Maynard Keynes, the famous economist, had

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<sup>22</sup> The Atlantic Charter, formally named “Joint Declaration by the President and the Prime Minister”, was a joint declaration by Franklin Delano Roosevelt and Sir Winston Churchill, during a secret meeting that took place in Placentia Bay, Newfoundland, on 14 August 1941. The declaration sought to reaffirm the unity of the United States and the United Kingdom, and described their principles and hopes for a peaceful post-war world, including the policies they agreed to follow once the Nazi Germany had been defeated.

<sup>23</sup> An Act to Promote the Defense of the United States, Pub. L. 77-11, H.R. 1776, 55 Stat. 31 (1941) (enacted). It was an agreement between the United States, Free France, the Republic of China, and the United Kingdom.

<sup>24</sup> See *Anglo-American Financial and Commercial Agreements*, U.S. DEP’T OF STATE, [https://fraser.stlouisfed.org/files/docs/historical/martin/17\\_07\\_19451206.pdf](https://fraser.stlouisfed.org/files/docs/historical/martin/17_07_19451206.pdf).

<sup>25</sup> *Supra* note 9.

<sup>26</sup> Zeiler, *supra* note 3, at 709.

<sup>27</sup> Zeiler, *supra* note 3, at 712.

publicly argued that the ongoing British problems required the UK to use tariffs to protect its domestic industries, expand output and increase employment.

B. *Bilateral US - UK Negotiations Hit a Wall*

While the Americans were willing to bargain for a fair deal, they considered the British position to be unacceptable, as the US would have to grant large-scale tariff concessions before Britain would take action to reduce its trade preferences. Frustration within the American delegation was growing. In a letter to the Capital dated 30 September 1947, US delegate Winthrop Brown expressed his irritation by writing: "It is an absolutely beautiful day. The lake is very blue, the hills look like a picture postcard, and the only blots on the landscape are British preferences about which I spend most of the night dreaming."<sup>28</sup>

Following the departure of Cordell Hull in December 1944, the free-trade mantle was picked up by Mr. William Lockhard "Will" Clayton, Undersecretary of State for Economic Affairs. Unfortunately for the British, Clayton was determined to achieve the immediate elimination of all preferences. Why should the US, the most important victor of World War II, be asked to make one-sided sacrifices? During one of the meetings, Sir Stafford Cripps told an infuriated Clayton to simply withdraw some tariff offers if he was unhappy with the British concessions<sup>29</sup>. The Anglo-American alliance entered a tense phase, which was further complicated by the personal animosity between Clayton and Stafford Cripps.

Convinced of the fairness of their own positions, the Americans and the British dug in their heels and grew deeply entrenched. Clayton's problem with the GATT went beyond the MFN clause and Stafford Cripps' defence of the Ottawa Imperial Preferences. Several key provisions that appeared to set strong rules prohibiting or regulating protectionist measures were then followed by exceptions that, in practical terms, nullified their value. For example, Article XI of the GATT was meant to prohibit introducing or maintaining quantitative restrictions, broadly defined as prohibitions or restrictions other than tariffs or taxes, but was immediately followed by Article XII which would allow Contracting Parties to restrict the quantity of the value of imports in order to safeguard their external financial position and balance of payments. At the time, many of the countries negotiating the GATT faced acute balance of payments problems, including key markets such as the UK and practically all other European countries, which meant that the General Agreement would allow them to block American exports. Even worse, the Protocol of Provisional Application contained a grandfather clause that would allow Contracting Parties to continue applying GATT inconsistent

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<sup>28</sup> Zeiler, *supra* note 3, at 709.

<sup>29</sup> Zeiler, *supra* note 3, at 713.

legislation that pre-dated the General Agreement. What then, was the point of having a trade agreement that would open the American market to imports without achieving reciprocal access in the other markets?



Clayton was not shy in expressing his frustration and was growing concerned that such a deal would not be approved by the US Congress. On 6 August 1947, he tasked Clair Wilcox, his deputy, to prepare a “short list” of margins of preference that the UK would have to eliminate, or else the US would walk away from the negotiations. Anticipating a negative answer from Stafford Cripps, Clayton advised the administration to drop the negotiations with the UK and to seek a multilateral deal with the others. Politically, the blame would lie squarely on the British for not moving enough on the preferences.<sup>30</sup> Clayton had had enough with the British stubbornness and proposed to walk away from the negotiating table. Short of a miracle, the GATT negotiations appeared doomed to fail.

<sup>30</sup> Zeiler, *supra* note 3, at 713-14.

### C. *The Larger Political Picture*

While Clayton's strategy was arguably sound from a trade perspective, it failed to take into account the larger geopolitical context that had to be considered by the US administration before making a decision. Two people had the ultimate responsibility for deciding whether to walk away from the GATT: President Truman himself and Robert A. Lovett, Undersecretary of State, who was closely following the discussions.<sup>31</sup> The foreign policy considerations were infinitely more complex than the relatively straightforward trade aspects. Only two years prior to this deadlock, the leaders of the three victorious powers of World War II - Franklin D. Roosevelt, Winston Churchill and Joseph Stalin- had failed to reach consensus at the Yalta Conference of 1945 on how to reconstruct Europe and maintain post-war security.<sup>32</sup>

While the Western allies aspired to a security system based on democratic governments and the peaceful resolution of conflicts through international organisations, the Soviet Union was determined to protect itself from foreign aggression by dominating the internal affairs of the bordering countries, a strategy that eventually became known as the "iron curtain". A Cold War was emerging in the midst of growing tensions between the Soviet Union and the Western allies. In 1947, the "Truman doctrine" was developed as a countermeasure the growing influence of the Soviet Union and with a view to containing communism. A key part of this doctrine was the European Recovery Program, which would assist in the reconstruction of all European countries willing to participate. The program became known as the "Marshall Plan" in honor of General George C. Marshall, who at the time served as US Secretary of State. Both Clayton and Lovett reported to him.

These major political events not only had a profound influence on the GATT negotiations but, in fact, were determinative of their outcome. When considering Clayton's proposal to walk away from the negotiations with the UK, the Department of State was keenly aware that the Soviets had been closely monitoring the discussions, and appeared ready to fully exploit the emerging disagreement to their advantage. A collapse of the GATT negotiations would have been disastrous to the American foreign policy plans and weakened one of its most important strategic relationships. For the same reason, the US had to avoid weakening the UK economy. Based on derestricted US internal communications from that time, Prof. Zeiler concluded that it was national security officials, and

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<sup>31</sup> Zeiler, *supra* note 3, at 714.

<sup>32</sup> For more on the Yalta Conference, see *Yalta Conference*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Yalta\\_Conference](https://en.wikipedia.org/wiki/Yalta_Conference).

not trade experts, who made the ultimate call. According to him, Lovett successfully convinced President Truman that a “thin agreement” that would preserve international trade co-operation was instrumental to U.S. foreign economic and security policy. As flawed and weak as it was, a General Agreement was “better than none”.<sup>33</sup>

#### D. *Overcoming the Differences*

In September 1947, as expected, Stafford Cripps refused to accept the final “short list” that had been prepared by Wilcox. Following instructions of the highest order, the US delegation began preparing to accept the UK proposal to rebalance the deal by withdrawing concessions that had been initially offered by the US, thereby diminishing its contribution. However, Clayton and his team were not ready to give up without having a final try. Mindful of the leverage given to the US by the Marshall Plan, Clayton made a final attempt to convince Stafford Cripps to eliminate at least some of those preferences. Unmoved, Stafford Cripps replied that the UK Cabinet had a “*large number of people who would not shed tears if the negotiation broke down altogether*”. According to Prof. Zeiler, Stafford Cripps had correctly guessed the political importance that the Americans attached to the GATT and had bet that Secretary of State, George Marshall, would prevent Clayton from walking away.<sup>34</sup>

In the end, Stafford Cripps was proven right as George Marshall instructed Clayton not to insist on the immediate elimination of the imperial preferences and to accept whatever the UK was able to offer. Winthrop Brown, from the US delegation, was tasked with fleshing out the final details of the deal with James Helmore, from the UK Board of Trade. Ultimately, the “Brown-Helmore proposals” laid the foundations on which the GATT negotiations were finally concluded by late October 1947.<sup>35</sup>

The text of Article I of the GATT 1947 remains a testament of Clayton’s lost battle against the Ottawa Imperial Preferences. While paragraph 1 sets the rule that the US negotiators would have liked to prevail, it is then followed by four paragraphs and six annexes setting out exceptions. Contracting Parties were allowed to retain tariff preferences, but the margin of preference was bound in Part

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<sup>33</sup> Zeiler, *supra* note 3, at 714.

<sup>34</sup> Zeiler, *supra* note 3, at 715.

<sup>35</sup> *Preliminary Requests by the United States for Tariff Concessions by the United Kingdom*, WORLD TRADE ORGANISATION (Jan. 1947), [https://www.wto.org/english/docs\\_e/gattbilaterals\\_e/Geneva\\_1947/10000016-0002/10000016-0002.pdf](https://www.wto.org/english/docs_e/gattbilaterals_e/Geneva_1947/10000016-0002/10000016-0002.pdf) (WTO Members agreed to derestrict the documents that informed the bilateral negotiations during GATT).

II of the Schedules and could not be exceeded (i.e. existing discriminatory treatment could be retained, but not increased). Article I:2(a) of the GATT expressly states that the MFN clause shall not require the elimination of any preferences among territories in Annex A, which lists the Commonwealth territories.<sup>36</sup>

#### IV. HOW THE NEGOTIATIONS WERE CONCLUDED

While the US and the UK continued their bilateral negotiations, and in parallel to hundreds of tariff negotiation meetings<sup>37</sup>, trade diplomats began discussing how best to wrap up the negotiations and implement the General Agreement. Eric Wyndham White, Director of the Division on International Trade and Balance of Payments of the United Nations, was in charge of overseeing the larger work of the Prepcom, as well as the more limited GATT negotiations. However, given his multiple responsibilities, the task fell on the shoulders of his 29-year-old deputy, Julio Lacarte Muró, who would be assisted by Alan Renouf, legal counsel at the UN Secretariat.

##### A. *A Legal Conundrum*

In May 1947, negotiators were concerned by the considerable delays that could arise from the domestic legal procedures necessary to ratify an international agreement, and were eager to find ways to expedite the implementation of the tariff concessions. They considered that “*it would not be practicable unduly to defer application of the tariff concessions. In addition, it is desirable that early proof should be given to the world of the benefits accruing from the present negotiations.*”<sup>38</sup> With this goal in mind, negotiators began exploring “*the possibility of arranging for the Agreement to be applied provisionally, in anticipation of its definitive entry into force*”. To this end, they decided to survey whether participating countries could provisionally apply the tariff concessions without having to obtain parliamentary approval and without having to deposit an instrument of acceptance.

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<sup>36</sup> Annex A, General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (the United Kingdom and its dependent territories, Australia and its dependent territories, New Zealand and its dependent territories, the Union of South Africa including South West Africa, Ireland, India, Newfoundland, Southern Rhodesia, Burma and Ceylon).

<sup>37</sup> For an example of these meetings, see Economic and Social Council, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Report by the Tariff Negotiations Working Party on the Progress of Tariff Negotiations, E/PC/T/92 (June 9, 1947).

<sup>38</sup> *Supra* note 16, at 8.

With a view of studying this question, Lacarte and Renouf circulated a questionnaire<sup>39</sup> on 18 June 1947 asking participants to describe the internal procedures that would need to be followed in order to bring the GATT into force and, in particular, to implement the tariff concessions at the national level. Most participants replied that both elements would require ratification by the national Parliament and the preparation of an instrument of acceptance, which meant that the procedures could take several months after concluding the deal.<sup>40</sup> Only a handful of countries, including Chile and the Customs Union of Syria and Lebanon, were in a position to apply the tariff concessions without parliamentary approval. Internal records suggest that the Netherlands initially questioned the overall approach, as they were dubious about submitting the GATT for approval to Parliament while, at the same time, the Prepcorn kept discussing very similar provisions for the ITO Charter. Why would the same or similar provisions have to be submitted twice to Parliament as separate agreements? However, the Dutch eventually changed their mind and did not block the proposed approach.

#### B. *The Practical Challenges*

While the official records reflect the hard legal questions and choices that had to be made by negotiators, the internal records provide a unique window into the practical challenges faced by Lacarte and Renouf. These include a series of “teleprinter messages”<sup>41</sup> exchanged between the UN offices at Geneva and Lake Success, NY, as well as internal memoranda and other informal records. One of the very practical considerations was whether the “U.N. seal” could be used for the signature of the General Agreement, but the idea was considered inappropriate as “the UN as an organisation is not a party to it”.<sup>42</sup> Another teleprinter message from the same date warned that the Spanish translation of the draft ITO Charter would take at least ten more weeks if given priority, which meant that only the English and French versions could be copied. Thus, the Spanish language would need to be dropped from the GATT.

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<sup>39</sup> Economic and Social Council, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Entry into Force of the General Agreement on Tariffs and Trade, E/PC/T/100 (June 16, 1947).

<sup>40</sup> *Supra* note 16, at 8.

<sup>41</sup> *Teleprinter*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Teleprinter> (A teleprinter (teletypewriter, telex, Teletype or TTY) is an electromechanical typewriter that can be used to send and receive typed messages through various communications channels, in both point-to-point and point-to-multipoint configurations).

<sup>42</sup> United Nations, Teleprinter message no. 27 of 17 September 1947.



### C. *Who Can Sign?*

A more complicated issue had to do with the “credentials” of those who would be signing the General Agreement, which involved the question of whether the representatives in Geneva had to demonstrate that they had sufficient authority to sign on behalf of their countries. After initial discussions that began in June 1947, and based on the work by Lacarte and Renouf, instructions concerning credentials<sup>43</sup> were circulated on 9 October 1947, and a subcommittee on credentials was created a few days later.<sup>44</sup> This committee was tasked with ascertaining whether credentials were in the proper form on a case by case basis.

Lacarte and Renouf spent a considerable amount of time contacting delegations and gathering information. At one point, a troubled Renouf questioned the approach as he considered that many of the delegates had insufficient credentials to sign a General Agreement. However, one of the teleprinter messages later clarified that this initial concern could be overcome if, instead, representatives signed a “final act”, which is a formal summary of the proceedings of a diplomatic conference.<sup>45</sup> In that scenario, the representatives would have sufficient credentials, as the assumption would be that the authority to sign derived from the general authority that had been given to delegations when they had been accredited to the Prepcom. On that basis, it appeared reasonable “*that heads of delegations could delegate responsibility to members of his delegation in course of ordinary committee business without securing specific authorisation from home*”.<sup>46</sup>

The discussion on credentials also led to a peculiar problem arising from an important geopolitical change that was taking place in parallel: the partition of British India. The Dominion of India had thus far been represented by a single delegation, but there were plans to adopt an “Indian Independence Bill” on 15 August 1947, which would result in the succession of that government by the Governments of the Dominion of India and the Dominion of Pakistan. Ironically, Stafford Cripps, the lead UK negotiator who was clashing with Will Clayton, had in 1946 been a major player in this political event through his participation in the

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<sup>43</sup> Economic and Social Council, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Credentials, E/PC/T/237 (Oct. 9, 1947).

<sup>44</sup> Economic and Social Council, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Sub-Committee on Credentials, E/PC/T/257 (Oct. 17, 1947).

<sup>45</sup> Michael Wood, *Final Act*, in MAX PLANK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW (May 2013), <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2037#>.

<sup>46</sup> United Nations, Teleprinter message of 18 September 1947

“Cabinet Mission Plan” that eventually led to India’s Partition.<sup>47</sup> By July 1947, Lacarte and Renouf were asked to clarify whether a representative of Pakistan would also need to sign the Final Act. In a letter dated 28 July 1947, Lacarte informed Mr. Banerji from the Indian delegation that, in Renouf’s opinion, it was possible for Pakistan to sign. However, Renouf felt that *“it would be preferable, although not absolutely essential, that the Agreement be signed on behalf of India and Pakistan by different individuals each possessing and producing the necessary credentials from the two governments concerned.”*

## V. DECISION TIME

In August 1947, trade diplomats adopted key decisions that shaped the future of the General Agreement. First, they confirmed that it would not be necessary to submit the GATT for approval to the larger Economic and Social Council, effectively decoupling it from the ITO Charter negotiations. Secondly, rather than signing the General Agreement itself, they agreed to sign a “final act”<sup>48</sup>, which would record in brief terms what had taken place, and would attach the text of the GATT<sup>49</sup> and, crucially, the tariff schedules. This would effectively prevent further changes to the negotiated texts and the tariff concessions that had been exchanged.

Thirdly, elements concerning the provisional application would be removed from the GATT itself and moved into a specially designed Protocol of Signature.<sup>50</sup> Unfortunately, there were also problems on that front. Following a series of discussions, it became apparent that only eight “key” countries would be in a position to sign the Protocol, while six other countries would only be able to do it

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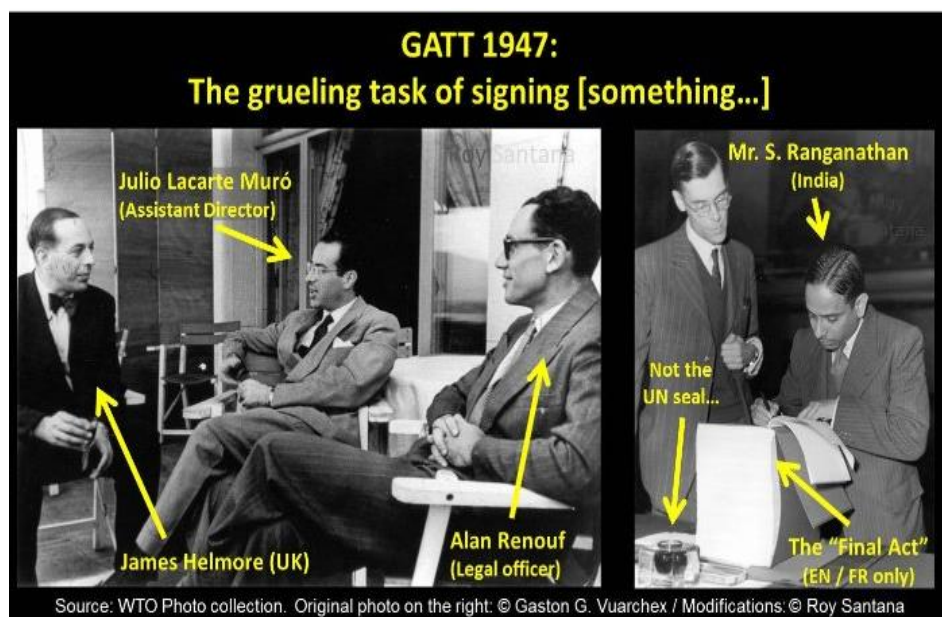
<sup>47</sup> 1946 Cabinet Mission to India, WIKIPEDIA, [https://en.wikipedia.org/wiki/1946\\_Cabinet\\_Mission\\_to\\_India](https://en.wikipedia.org/wiki/1946_Cabinet_Mission_to_India).

<sup>48</sup> See Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee – Draft – Final Act, E/PC/T/W/315 (Sep. 1, 1947).

<sup>49</sup> See Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee – Secretariat, E/PC/T/196 (Sep. 13, 1947).

<sup>50</sup> See Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee – General Agreement on Tariffs and Trade – Protocol of Signature, E/PC/T/W/332 (Sep. 13, 1947); see also Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Report of the Tariff Negotiations Working Party General Agreement on Tariffs and Trade 9, E/PC/T/135 (July 27, 1947).

later on.<sup>51</sup> Lastly, delegations agreed on a detailed timetable, which intertwined with the Conference that would take place in Havana later that year.<sup>52</sup>



## VI. A PROVISIONAL HAPPY ENDING FOR THE GATT

The efforts by Lacarte and Renouf finally paid off on 30 October 1947, when the “Final Act of the General Agreement on Tariffs and Trade” was signed by its 23 Contracting Parties, with English and French as the only authentic languages. On the same day, eight of these 23 countries were meant to sign the so-called “Protocol of Provisional Application” (PPA)<sup>53</sup>, thereby committing to provisionally apply the GATT and its tariff concessions: Australia, Belgium,

<sup>51</sup> Brazil, Cuba, New Zealand, Norway, South Africa, and Southern Rhodesia.

<sup>52</sup> See Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee, E/PC/T/W/301 (Aug. 15, 1947); see also Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee – Decisions Reached in the course of the Consideration of Document E/PC/T/W/301, E/PC/T/W.313 (Sep. 1, 1947); Economic and Social Council, Second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, Tariff Agreement Committee – Signature of the Final Act, Agreement and Protocols, E/PC/W/W/333 (Sep. 13, 1947).

<sup>53</sup> See Provisional Application of the General Agreement: GATT Analytical Index, [https://www.wto.org/english/res\\_e/booksp\\_e/gatt\\_ai\\_e/prov\\_appl\\_gen\\_agree\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/prov_appl_gen_agree_e.pdf).

Canada, France, Luxembourg, the Netherlands, United Kingdom, and the United States. However, only six were able to sign that day, as Australia and France had to be given until 15 November to do it.<sup>54</sup> The six key signatures were those of P.A. Forthomme (Belgium), L.D. Wilgress (Canada), J. Storm (the Grand-Duchy of Luxembourg), A.B. Speekenbrink (Netherlands), T.M. Snow (United Kingdom), and Winthrop G. Brown (United States).

Through the PPA, these countries undertook “to apply provisionally on and after 1 January 1948: (a) Parts I and III of the General Agreement on Tariffs and Trade, and (b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation.” Paragraphs 3 and 4 of the PPA allowed the remaining Contracting Parties to also provisionally apply the GATT at a later date. The PPA is also a good reflection of the overall plan that was explained in Section 2 above. *Part I* of the GATT encompassed Article I (MFN) and Article II (Schedules of concessions) and, most importantly, the Schedules of concessions for each Contracting Party. *Part II* of the GATT reflected the draft provisions that had been copied from the ITO Charter, i.e. Articles III to XXIII. Finally, *Part III* of the GATT, comprised Articles XXIV to XXXIV, dealt with the “treaty” aspects of the GATT.<sup>55</sup>

A few months later, other countries signed the PPA including Brazil, Ceylon (Sri Lanka), Cuba, Czechoslovakia, India, Burma (Myanmar), New Zealand, Norway, Pakistan, South Africa, and Southern Rhodesia (Zimbabwe). Although Lebanon and Syria also submitted an acceptance, they individually withdrew from the GATT at the beginning of the 1950s. While Chile and Uruguay failed to submit an acceptance by 1948, they became Contracting Parties subsequently, through a “Protocol of the Accession of Signatories of the Final Act”. Many other countries quickly joined the GATT ranks either through the acceptance of dedicated protocols or through the figure of succession.<sup>56</sup>

While describing the importance of signing the Final Act of the GATT, Mr. Max Suetens, a Belgian diplomat and Chairman of the Prepcom, recalled that:

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<sup>54</sup> Press Release, Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, ITO Preparatory Committee Final Meeting and Signing of Final Act and of Protocol of Provisional Application, U.N. Press Release No. 479 (Oct. 30, 1947).

<sup>55</sup> Readers should bear in mind that the “GATT 1947” that is nowadays published in the WTO website incorporates a large number of changes that took place subsequently so the numbering does not necessarily match the amended version.

<sup>56</sup> For detailed description of the accessions, see GATT, Status of Legal Instruments, GATT/LEG/1, Supplement No. 15 (Dec. 1993). [https://docs.wto.org/gtd/GATTstatusoflegal/GATT\\_STATUS%20OF%20LEGAL%20INSTRUMENTS\\_E.pdf](https://docs.wto.org/gtd/GATTstatusoflegal/GATT_STATUS%20OF%20LEGAL%20INSTRUMENTS_E.pdf).

*“5. The work undertaken by our Committee, under the auspices of the United Nations cannot be considered on its own. It is integrated into a wider economic field which extends over many objectives. This line of approach began to be foreseen during the war. I need only cite the Atlantic Charter, which laid down the principles for the basis of this collaboration, the Hot Springs decisions, concerning food, the Bretton Woods decisions relating to exchange stability and aid in event of temporary disequilibrium in the balance of trade. It remained to create the basic foundation for collaboration in the field of employment and commerce. In this particular sphere no mere symbolical act, no mere expression of a desire, would be sufficient. It was necessary to achieve a really constructive framework which would allow for the revival of international trade.*

...

*8. It may not be generally realised that the General Agreement offers far wider benefits than a series of bilateral agreements; for under its terms, each negotiating country will be contractually entitled, in its own right and independently of the most favoured nation clause, to enjoy each of the concessions in the schedules of the other negotiating countries. The multilateral form of the tariff schedules is designed not only to assure broad action for the reduction of tariffs, but to give countries a right to particular tariff concessions which they might wish to obtain, but which under bilateral agreements they would find it difficult to obtain because they could not claim to be of the main suppliers of the product concerned.”<sup>57</sup>*

## VII. EPILOGUE

Although it is tempting to draw lessons from these often-ignored historical events and the overall political context in which the GATT negotiations took place, it is perhaps more enlightening to focus on how quickly things changed afterwards. The tariff preferences that Stafford Cripps so ardently defended were quickly dismantled in the first three rounds of tariff negotiations that followed (Annecy 1949, Torquay 1951 and Geneva 1955-56) once the Commonwealth economies began recovering. This was largely made possible by the Marshall Plan and the increased security, transparency and predictability for traders that resulted from the General Agreement. Moreover, fortune had bigger plans for the “thin agreement” that Clayton so despised. When the US Congress refused to ratify the ITO Charter in 1950, it not only killed the possibility of having an International Trade Organisation as had been originally envisaged, but also placed the GATT as the last bastion of multilateral trade. The GATT was not the perfect agreement, but rather the agreement of what was possible at the time.

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<sup>57</sup>*Supra* note 9.

What is perhaps less known is that the GATT, as an international treaty, never entered into force either. Unknown to the 23 delegations celebrating 70 years ago, it was the signing of the PPA by those six “key” countries, and not the 23 signatures of the “Final Act” of the GATT which ultimately provided the legal hook that saved the multilateral trading system. The PPA allowed for the provisional application of the GATT for almost 50 years and was finally terminated on 1 January 1996, one year after the entry into force of the Marrakech Agreement Establishing the WTO.<sup>58</sup>

The events that took place between 1946 and 1948 had a profound impact on the professional lives of those involved in the negotiations. According to Prof. Zeiler, Clayton had such a hard time digesting what he considered a terrible deal that he resigned shortly after the conclusion of the talks citing personal reasons. Alan Renouf eventually became the Secretary of the Department of Foreign Affairs of Australia, and the Australian ambassador to Washington.<sup>59</sup> Eric Wyndham White and Julio Lacarte remained deeply involved in the early work of the GATT and eventually became legends of the multilateral trading system. Additionally, thanks to the 10-week delay in the translation, it took decades for Spanish to become an official language in the GATT.

As we commemorate the 70th anniversary of the signature of the GATT, let us not forget the tough decisions that had to be taken at the highest level and, more importantly, how perceived losses can often be transformed into major victories.

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<sup>58</sup> Preparatory Committee for the World Trade Organisation, Transitional Arrangements, L/7583 (Dec. 13, 1994) (Transitional Co-existence of the GATT 1947 and the WTO Agreement, Decision of 8 December 1994).

<sup>59</sup> See Cavan Hogue, *Straight Talker in Diplomatic Ranks*, THE SYDNEY MORNING HERALD May 29, 2008, <http://www.smh.com.au/news/obituaries/straighttalker-in-diplomatic-ranks/2008/05/28/1211654116394.html>.