GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE THIRTY-FIFTH MEETING

Held at Hotel Verdun, Annecy on

Monday, 1 August, 1949 at 10 a.m.

Chairman: Hon. L. D. WILGRESS (Canada)

Subject discussed:

Cuban statement on margins of preference at Annecy.

(Continued)

The Chairman said that in the light of the discussion at the previous meeting in which the Cuban Delegation had presented its case and the United States Delegation had indicated the points on which they would base theirs, it would appear that the Cuban statement gave rise to a clear cut legal issue relating to the interpretation of the General Agreement. He thought the representatives of the Contracting Parties would agree that this legal issue raised by Cuba should be first of all discussed by the Contracting Parties. With reference to the statement issued by Cuba and circulated to delegations, he urged that in view of the mention in that document of particular offers made by the United States at Annecy, the document should be treated as secret.

Mr. SHACKLE (United Kingdom) thought that a number of legal issues were raised by the Cuban statement which concerned: the effect of scheduling rates of duty, the bearing of Article 17 of the Havana Charter on the question, and the possibility of resorting to Article XXIII. This was really a matter of such complexity that the Contracting Parties could not be expected to pronounce themselves

off hand and he consequently could not help feeling, although with great regret at this late stage of the session, that the only possibility of adequately examining the matter would be to set up a Working Party. He wished to add a few general remarks representing his views on the question. In the first place, he shared the views of the United States that the duties bound in the schedules were maxima with no implication of a binding of the margins of preference. With regard to any "prior obligations" if such existed, they were not embodied in any GATT document and were to be considered as a bilateral agreement between the parties and it was questionable whether this fell within the competence of the Contracting Parties. Another point which might have to be investigated would be whether, from the point of view of reciprocal advantages, a case could be made out under Article XXIII.

Mr. THOMMESSEN (Norway) said that though he might agree that there were more than one legal issue, there was no need for a Working Party to go into them. It was clear in his mind that the rates scheduled were maxima and could be reduced without consent, as Part II of Schedule XX made no mention of any binding of specific margins. The Contracting Parties might wish to go into the question of nullification under Article XXIII, but he did not think this possibility had been foreseen by Cuba.

Mr. COUILLARD (Canada) wished to state the position of the Canadian Delegation in relation mainly to the basic and well established principle involved in the specific case before them. He stated that the views of his delegation did not correspond to those contained in the Cuban statement. It was their understanding that the provisions of the General Agreement did not bind margins of preference and that, therefore, unless the margins were otherwise bound, consent was not required for their reduction. Nor did the provisions of the Agreement provide for obligatory direct compenstion in case of reduction or elimination on a margin of preference. This was a question that could only be settled in negotiations. Three fundamental questions were involved in the general matter of preferences and in the case before the Contracting Parties.

1. The first concerned the status of the margin of preference maintained by two countries and permitted by GATT. These margins were either bound or they were not and the question was one of legal fact. There was nothing in the Agreement to say that margins of preferences were bound against decrease. Furthermore, whereas Article 17 of the Charter prohibited an increase it did not prohibit a decrease of margins. There were two ways in which a margin of preference could be bound against decrease:

a) by provision to the effect in the relevant schedule annexed to GATT and this was not so in the case before them.

b) by a separate bilateral agreement between the countries concerned.

This latter, however, would be outside of GATT and consequently a matter for settlement between the two countries. Such bilateral agreements were, of course, public and must not conflict with provisions of the Agreement and the Charter.

Articles I and II of the General Agreement were clear on the point that a country was not prevented from reducing a rate, either M-F-N or preferential. Had the opposite been intended, provision would have been made. It followed that if margins of preference were bound, consent would have to be obtained for their reduction; if they were not bound, no consent was necessary. The Cuban statement on page 8 referring to Article 17, paragraph 2(e) of the Havana Charter on "prior international obligations" was a correct statement of fact but the question which had to be answered was whether the obligation provided for binding of the margins of preference. The provisions of the General Agreement did not bind such margins nor did the Cuban statement offer indication as to how they were bound by such provisions. In any case, it was not for the Contracting Parties to determine whether or not "prior international obligations" in the form of a bilateral agreement bound margins or not.

With regard to the points made on pages 15 and 16 of the Cuban statement concerning "modifications of the GATT schedule" this had been fully debated at this session in connection with the Protocol of Accession, and a decision taken providing for accession by a two-thirds majority. It could therefore not be held that a M-F-N rate at present

in a schedule could not be reduced without the consent of all Contracting Parties. Article II did not in fact place any limitation on the reduction of rates and it would be anamolous if it had.

2. The second fundamental question was with regard to the meaning of the term "concessions". As used in the Cuban statement it referred to margins of preference exchanged between two countries in the process of tariff negotiations. The Canadian delegation could not concur with this usage of the term. Concessions under the agreement were multilateral concessions extended to all Contracting Parties. The preferential rates exchanged between two countries like the preference margins which two countries might agree to bind in each others' favor were the result of a bilateral agreement between two countries. This bilateral agreement was a public document, the terms of which had to conform to the General Agreement and to the Charter. This was borne out further by the fact that whilst two countries could negotiate further tariff concessions, they could not negotiate for the establishment of new preferences since this would be forbidden by Article 17 of the Charter. In the course of negotiations, no new preferences were granted but the preferences remaining after the negotiations could be retained. The only "concessions" which could result from such negotiations would result from a bilateral arrangement in which countries agreed to bind these residual margins.

3. The third fundamental question concerned the concept of compensation. The concept of "mutually advantageous" in relation to the reduction of unbound margins of preference could be positive or it could be negative. If a country reduced a margin of preference by reducing the M-F-N rate, the country enjoying the preferential rate had no legal right to claim compenstion but it was free to seek compensation by reducing the margin of preference enjoyed by the other country in the process of negotiations with other contracting parties. It could to some extent restore the balance in this way, by obtaining concessions from third countries. In conclusion he thought the case was clear and he supported the statement of the delegate of Norway to the effect that a Working Party was not needed for the settlement of this question.

Mr. WUNZ KING (China) said that the question had legal aspect and a factual one. He would only deal with the legal aspects

although the two were closely bound. With regard to the legal issue, he thought the majority of the Contracting Parties agreed that the rates contained in the schedules, whether M-F-N, or preferential rates, were maxima and could, therefore, be reduced without prior consent. He wished to make it clear that his country had always been opposed to preferential systems and he feared that as things stood at present, China with the exception of a few other countries would constitute the M-F-N oasis in the desert of preferential arrangements. He was nevertheless in favor of keeping as a final aim the gradual elimination of preferences. He was not quite clear about the interpretation given to the consept of compensation given by the delegation of Canada and would have to study the matter further, but while agreeing that in the present case, the legal aspect was quite clear he thought the question of fact should be given full consideration. He wished to refer to the effect on the Cuban economy of the reduction of the United States M-F-N rates. The Cuban national economy was essentially based on the production and export of a small number of products and any change in the situation would undoubtedly constitute a grave hardship. He, therefore, proposed that the Cuban and the U.S. delegations should make another attempt to clear their differences.

Mr. RODRIGUEZ (Brazil) had not wished to speak at this stage but the Delegate for Canada had put forward several concepts which he thought required further examination with respect to the application of the schedules. He wished to make it quite clear that the attitude of his gogernment was strongly opposed to preferential systems and that anything he might say in the specific case was independent of their attitude towards the general problem. He agreed with the Canadian delegation that the rates contained in the schedule were maxima. He did not agree that preferential arrangements were merely bilateral and thought that further consideration should be given to this matter. A preferential rate was a very real concession. His conclusion was that the U.S. could reduce their M-F-N rates at any time, but that a country which suffered materially would be entitled to fair compensation if its margins of preference were reduced.

Mr. VARGAS GOMEZ (Cuba) then read a statement which is being separately circulated. He wished to add that it could not be argued that the General Agreement was not concerned with preferences or that they were simple bilateral agreements because they were the result of negotiations conducted within the framework of the agreement and approved by the Contracting Parties. Nor did it follow that they could be reduced unilaterally. He admitted that the aim of the GATT was to seek reduction of preferences but this could not be done at any moment and without following the established procedure. He was making brief remarks on some of the points raised but he thought that the discussion in the meeting was a clear demonstration of the complexity of the matter and of the fact that there was not only a legal aspect to be considered. He would also like to speak of the substantial aspect which could not be separated from the legal aspect and appealed to the responsibility of the Contracting Parties for the setting up of the Working Party.

The meeting was adjourned at 12.45 p.m.