GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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ORIGINAL : ENGLISH

Contracting Parties
Third Session

SUMMARY RECORD OF THE THIRTY-SIXTH MEETING

Held at Hotel Verdun, Annecy
on Tuesday, 2 August 1949, at 2.30 p.m.

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

Subject discussed: Cuban Statement on Margins of Preference (GATT/CP.3/59) (Continuation)

Mr. DE VRIES (Netherlands) considered that this question raised a number of very difficult legal issues. He thought that the interpretation of the General Agreement by the Cuban Delegation, particularly with regard to the Annecy tariff negotiations, should be considered both from the point of view of the General Agreement itself and in the light of the memorandum adopted unanimously by the Contracting Parties on 1 September 1948 concerning tariff negotiations (GATT/CP.2/26). It was on the basis of this memorandum that governments had been invited to negotiate and the rights of the acceding governments as well as of Cuba and the United States must be taken into account. He agreed with other delegates who had previously spoken that the objections of the delegation of Cuba could not be based on Article XXX or Article XXVIII. Nor did he believe that Article XXVIII provided a legal basis for objection to changes in the United States tariff resulting from negotiations with the Dominican Republic and Haiti as Article XXVIII was not intended to prevent the lowering of any most-favoured-nation rates. Also, it was specifically set out on Page 2 of the memorandum on tariff negotiations that no acceding government could be prevented from asking for concessions on products already appearing in the Geneva schedules. Consequently, the Dominican Republic and Haiti were entitled to ask concessions on the most-favoured-nation rate. Whether the United States required the concurrence of Cuba before giving these concessions did not depend on the General Agreement but on specific bilateral arrangements between the United States and Cuba.

Such a case could not be dealt with in this meeting but required extensive research into Cuban-United States relations. For that reason he considered that it would be advisable to set up a working party to go into the details of the question. Furthermore even if the result of the investigation should prove that the United States margin of preference in the case of these particular items was not bound to Cuba he thought that the latter might still have a case although not the one which they had presented. They might still have the right to resort to the procedures of Article XXIII.

Article 17 (c) (1) of the Havana Charter provides for automatic reduction of margins of preference. This Article is quoted in its entirety in document GATT/CP.2/26 and he called attention particularly to sub-paragraph (iii) which provides that reductions negotiated in both the most-favoured-nation and preferential rates shall be agreed by the parties to the negotiations. The difficulty of Cuba in this case arose out of the fact that whereas in 1947 there were negotiations between the United States and Cuba, here the negotiations were between the United States and two new countries. It has always been realized that there would be advantages and disadvantages to the various countries arising out of the fact that some were original contracting parties and some acceding countries, but care has always been taken that there should be no systematic disadvantage for any group.

He considered that if Cuba had requested from the beginning of the Session that the most-favoured-nation rate as well as the preferential rate be negotiated, they would probably have been invited to take part in these particular negotiations. There was still, however, a recourse for Cuba - that provided in the last page of GATT/CP.2/26 where it is set forth that lists of concessions shall be circulated to all countries at the end of each negotiation and these results would be subject to revision and adjustment in the light of other negotiations. He thought that the results of the Annecy negotiations should be subject to this review not only in the light of other negotiations at Annecy but of all the negotiations which had taken place both at Annecy and Geneva.

He envisaged three possible adjustments by the United States and Cuba:

1. That in the discussions between the United States and the three other countries it be agreed not to lower the most-favoured-nation rate as far as negotiated.
2. That the preferential rate between United States and Cuba have some lower adjustment so that it would not be lowered as far as with these negotiations.
3. Or, the solution already suggested by the delegation of Canada of a release by the United States to Cuba for the latter to change its margins of preference granted to the United States.

Mr. LECUYER (France) agreed that it was certainly a very complex problem and that it seemed impossible to study the question fully in the Contracting Parties. There were not only legal difficulties but also economic difficulties, and he considered that the Contracting Parties should fulfill the role of an arbitration commission in this matter. It was the function of the Contracting Parties to try and find solutions to just such difficulties through the General Agreement, and even if the working party were unable to find a solution, its debates might be of assistance to the countries in settling the matter bilaterally.

Mr. HEWITT (Australia) also agreed that the most expeditious course would be to examine at least some of the issues raised in a small group. The importance of determining the form of taking a decision on the legal issue had already been demonstrated with regard to one of the issues already raised by the Cuban delegation in the Working Party on Accession. That particular matter had already received careful consideration by the Contracting Parties as a whole. The other legal issues required careful examination in a working party in order that the form of presentation might be narrowed down for consideration by the Contracting Parties.

Mr. SHACKLE (United Kingdom) thought that the purpose of the working party should be to find out what legal recourse was open to Cuba in the General Agreement and if agreement were not possible within the working party, an analysis of the different aspects could

be prepared setting forth the differing points of view. He considered that the terms of reference should be limited so that the working party should not discuss the question of whether the reduction of an most-favoured-nation rate included in a schedule to the GATT was modification requiring unanimous consent as that had already been decided negatively by the Contracting Parties in their consideration of the Report on Accession. Neither should it be a function of the working party to consider the rights and obligations arising out of the bilateral agreement between the United States and Cuba of October 1947. He proposed that the working party report back to the Contracting Parties by 5 August.

Mr. EVANS (United States) supported the suggestion of a working party subject to being satisfied with its terms of reference. He thought those proposed by Mr. Shackle in general satisfactory. He was not sure, however, that the question of unanimous consent had definitely been decided by the Contracting Parties. If there were any doubt as to that, he thought it important that the Contracting Parties make this decision now. Otherwise the working party would be operating without knowing whether or not the Cuban claim on one of its bases was founded. He also emphasized Mr. Shackle's statement regarding the exclusion of the bilateral agreement between United States and Cuba from the scope of the working party.

Mr. VARGAS GOMEZ (Cuba) made a statement which has been circulated as document GATT/CP.3/63).

He disagreed with the proposal of the United Kingdom that the working party be limited in its terms of reference. The case was a very serious one for Cuba and he considered they should have the right to discuss their problem in its widest aspects. With regard to the question of modifications of schedules, he pointed out that the delegation of Cuba had reserved its right to raise this matter again in the Contracting Parties. Consequently it should not be excluded from the terms of reference of the working party. As to the bilateral treaty, he wished to point out that it was a treaty made as a supplement to the General Agreement and consequently ought to be taken into account in the consideration of the question by the

Contracting Parties. He hoped that the Contracting Parties would insist that the working party deal with this whole matter with wide terms of reference.

Mr. CASSIERS (Belgium) thought the suggestion recently made that the working party go beyond the legal basis of the claim and attempt to give satisfaction on other than legal grounds very dangerous. The purpose seemed to be to find means for any contracting party to redress a disequilibrium arising out of negotiations. If the rules set forth in the General Agreement were ignored all negotiations in the future would be impossible as it would be necessary to have after each one an endless meeting to see whether the prior equilibrium had been upset. Every negotiation would, of course, by its nature upset the previous equilibrium but there was no provision in the Agreement that the relationship between the schedules was permanently bound. He considered the Cuban case should only be considered on the legal principles set forth in the Agreement and that it was the function of the Contracting Parties to see whether Article XXIII would in fact apply to this case. He considered that it did not in its present form and since it was limited he agreed that the working party's terms of reference should be limited as suggested by the representative of the United Kingdom to finding legal recourse for Cuba within the General Agreement itself. The only thing consolidated in the General Agreement is the rate included in the Schedules and that this is a maximum and not also a minimum rate. The original compromise in the drawing up of the General Agreement was between those who considered that preferences should be abolished and those who were in favour of their maintenance - that certain preferences would be allowed to continue but should slowly disappear by negotiation. Consequently it was rather those who suffered from margins of preference than those who enjoyed them who could invoke Article XXIII.

Mr. COEHLO (India) proposed to speak only with regard to the working party, reserving the right to speak on the substance later. He thought that the Contracting Parties had previously attempted to reach acceptable solutions within the General Agreement but without

confining themselves to legal grounds, and he thought that to set themselves up as a court or to separate the legal from the other grounds would be against the spirit of the General Agreement.

Mr. EVANS (United States) said that he had hitherto refrained from going into the actual merits of the complaint, but in view of the Cuban statement on this matter he thought he should make a few replies. Firstly, he wished to assure the contracting parties, although it was probably not necessary, that the United States was not trying to injure Cuba; if it were, there were other very much more effective means of doing so, for instance, in the matter of sugar quotas. He was also afraid that the meeting had received the impression that the preference reductions were seriously damaging ones. The United States Delegation was prepared to show that they were not so serious. Moreover, he wished to point out that the United States had invited the Cuban delegation to discuss the United States offers to acceding countries concerning margins of preference and that this invitation had not been accepted, apparently because the Cuban delegation had, as a condition of the discussion, insisted on the acceptance of the legal issue based on Article XXX to which the United States could not agree. He pointed out that the working party would have the same difficulty if this were not settled. It would be impossible for any working party to discuss the problem adequately without knowing whether margins of preference were bound by the General Agreement or not. This question concerned not only the United States and Cuba but also every negotiation that had taken place in Annecy as all involved some change in the Geneva balance.

Mr. VARGAS GOMEZ (Cuba) in reply to Mr. Evans' remarks, said that his delegation had submitted on May 13th to the United States delegation an extensive document comprising 100 points on the question of preferences; in which were raised not only the legal issues but also economic, historical and political reasons for the maintenance of the preferential system. This memorandum was not answered until a few days ago and consequently the ample discussion which the Cuban delegation had hoped to have never materialized. With regard to the statement that the elimination of these preferences was not seriously prejudicial, he wished to reply that the preferential system had been in effect during the entire existence of the Cuban Republic

and the United States now proposed to alter it without giving Cuba any transitional period in which to adjust itself to the change. So radical a change in the entire economic system of a country must inevitably injure it. He said that if the working party were not permitted to discuss this question in all its aspects, his delegation would prefer to continue discussing it before the Contracting Parties.

Mr. COUILLARD (Canada) agreed that it would be preferable to set up a working party and suggested that the following questions be excluded from its terms of reference:

1. The question of veto right with regard to modification of the schedules. This had already been discussed in the accession working party whose report had been approved by the Contracting Parties and the Tariff Negotiations Committee; it was unnecessary to raise it again.
2. The bilateral agreement between the United States and Cuba on which the Contracting Parties could hardly sit as judges.
3. The legal question of binding margins of preference - There was nothing in the general provisions of the Agreement which bound margins of preference and the inclusion of preferential rates would not automatically bind the margin between that rate and the most-favoured-nation rate.

With regard to considering the matter in its moral aspects he agreed that such an approach would be ideal, but thought it impracticable to leave the legal basis and the rules of the General Agreement itself. He agreed with the United States delegate that the first issue concerning modifications of schedules must be settled here before the Working Party was set up.

The CHAIRMAN thought that a very useful discussion had been held and, until the last statement by the Cuban delegation, he had thought there was agreement on the setting up of a working party and that the only difference concerned the terms of reference. However, the Cuban delegate had stated that he would prefer to discuss the matter in the Contracting Parties if the terms of reference of the working party were not sufficiently wide. He felt bound to say in the light of the discussion at these meetings and at the time the working party on

accession was set up and made its report, that the Contracting Parties had already decided on the question of modification of schedules by reductions in tariff rates which was the basis of the Cuban case. In this connection he read the relevant passages in the report of the Working Party on Accession (GATT/CP.3/37) which had been accepted by the Contracting Parties with a reservation on the part of Cuba to raise the question again. This they had now done in their statement on margins of preference.

In the ensuing discussion all the speakers but one were opposed to the Cuban legal interpretation, and that one did not speak on this aspect of the argument. He could only conclude that the Contracting Parties had decided to confirm their earlier decision. However, he con idered the request of the delegation of Cuba to have a further discussion in the Contracting Parties of this question rather than referring it to a working party, to imply that they had further arguments to present and he believed that the Contracting Parties would wish to give them full opportunity to present their arguments. He therefore proposed adjourning the discussion and continuing it on 6 August.

Mr. VARGAS GOMEZ (Cuba) thanked the Chairman for his suggestion and requested two further days to prepare the Cuban case, i.e. until 8 August.

Mr. THOMMESSEN (Norway) thought it unlikely that any new arguments would change the view of the majority and thought this postponement would only jeopardize the chance of the Contracting Parties finishing by 13 August. He, therefore, proposed that a working party be set up now, on the basis of the following decisions by the Contracting Parties:

1. That the reduction of tariff rates constitutes no modification of schedules.
2. That the United States - Cuba bilateral agreement was outside the scope of the General Agreement.
3. That the inclusion of preferential rates in the Schedules do not bind preferential margins.

He also formally moved the closure of the debate in accordance with Rule 19.

The CHAIRMAN read Rule 19 and said that Mr. Thommessen's proposal would be voted upon after the motion for closure had been voted and provided it were accepted.

Mr. RODRIGUEZ (Brazil) spoke against closure. He said he was also of the opinion that there was no provision in the General Agreement forbidding reduction either of the most-favoured-nation or preferential margins, but he thought it was necessary to have more time to consider the full implications of such a decision as proposed by the delegate of Norway in his third point. He did not think that the debate had yet been exhausted.

In reply to a point of order raised by M. COEHLO (India) the CHAIRMAN replied that closure could be moved on one aspect only of a question.

Mr. VARGAS GOMEZ also spoke against closure. He said he did not understand the objection to further consideration by the Contracting Parties. The seriousness of the case for Cuba alone should be enough justification for the fullest consideration by the Contracting Parties. He said that his delegation had not yet had time to give all the arguments both on the legal and the substantive aspects of the case.

A vote was taken on the proposal for closure, the result of which was 4 to 12 against closure.

The CHAIRMAN stated that the question would be adjourned until the next meeting where the Norwegian proposal would also be taken up.

The meeting adjourned at 6 p.m.