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 THIRTY-SEVENTH MEETING

Held at Hotel Verdun, Annecy,
on Monday, 8 August, at 2.30 p.m.

Chairman: Mr. L. D. Wilgress

Subject discussed: Cuban Statement on Margins of Preference (continued)

The CHAIRMAN said that at the last meeting it had been decided to give the Cuban delegation the opportunity to make a further statement in support of their views. Before the close of the meeting the Norwegian delegate had made a proposal on the legal aspects of the case. This was the first item before the CONTRACTING PARTIES, but decision on this would not mean that the Cuban delegation and other delegations, in discussing the matter later, would be restricted in the field of the discussion.

Mr. VARGAS GOMEZ (Cuba) thought that decision on the Norwegian proposal first would have the effect of closing the debate.

After some discussion it was decided to hear the Cuban statement first.

Mr. VARGAS GOMEZ (Cuba) made a statement which was circulated as an unnumbered document to all delegations at the meeting.

The CHAIRMAN pointed out that pages 26 and 27 of the statement contained definite proposals on the part of Cuba which, together with the Norwegian proposal, were before the meeting. He pointed out that although the bilateral agreement between the United

States and Cuba was outside the purview of the CONTRACTING PARTIES, since it was included in the statement it could be referred to by delegations but could not be taken into consideration in reaching a decision. Any decision must be reached in the light of the provisions of the General Agreement itself. With regard to the proposal of the Cuban delegation in paragraph 68 (b) that the CONTRACTING PARTIES submit the legal aspects of the case to an International Court, he wished to explain that the CONTRACTING PARTIES were not an organization authorized by the United Nations to request advisory opinions from the International Court of Justice. Advisory opinions from the Court may only be sought by the United Nations and by specialized agencies authorized to do so by the Assembly of the United Nations.

Mr. VARGAS GOMEZ (Cuba) reserved the position of his delegation for further investigation to try and find a formula whereby the CONTRACTING PARTIES could bring this case before the Court.

Mr. EVANS (United States) said that his delegation was unable to present a complete answer at this stage and, for the sake of expeditious termination of the work of the CONTRACTING PARTIES, hoped either to refrain from presenting an answer, or to reserve their right to submit a reply at a later date. He wished, however, to make a few points. 1) The bilateral agreement was, as the Chairman said, outside the scope of the CONTRACTING PARTIES. However, since much of the Cuban paper had been devoted to this, he wished to point out that his delegation did not consider the Cuban statement a complete presentation of all the pertinent facts of the bilateral agreement. 2) With regard to the effect of the reduction of these particular preferences, he had stated in the preceding meeting that in the opinion of the United States they would not have any major effects on the Cuban economy. For instance, the products whose preferences were effected constituted 9.7% of the total United States imports from Cuba, and of this percentage only a small fraction consisted of imports where the preference was eliminated entirely. In the other cases the margins of preference remained and in some cases these were substantial. He also read a

decision just reached by the United States to withdraw the offer made to the Dominican Republic involving a reduction in the sugar preference. This statement, he said, should be considered as secret, as all offers were considered secret. 3) With regard to the charges that the United States had refused to negotiate at Annecy, he explained that the Cuban Embassy had sent a note expressing concern that sugar was on the list of items to be negotiated at Annecy and requesting that negotiations be carried on with Cuba as well. The State Department had replied that negotiations had been carried on with Cuba in Geneva and it was not intended to reopen these negotiations. However, the United States would be glad to consult with Cuba on any product in which that Government had expressed an interest. The impossibility of carrying out these consultations arose from the fact that the Cuban request was not for consultation but a demand based on the legal principles they had presented here, and on which the CONTRACTING PARTIES were now asked to take a decision. The United States was unable to accept their interpretation. 4) The present statement of the Cuban delegation again raised the same legal issues on which there had already been much discussion. The Cuban paper raised one new legal argument on page 20, paragraph 53, namely, that the inclusion of preferential rates in the schedule implies the maintenance of the preferential margin. He wished to state that at the time of the negotiations in Geneva, preferential rates were in effect and where they were not immediately eliminated it was in the interest of the country enjoying the preferential rate to have it stated in the schedule. The only mechanism whereby it could be shown was in a separate part of the schedule embodying preferential rates. Furthermore, he pointed out that in Geneva the Cuban delegation had been very interested in the actual rates of preference and their reduction and it was not only the margins of preference that they were concerned with. 5) With reference to the establishment of a working party, he said he had objected and would have to continue objecting to the establishment of a working party which attempted to interpret the bilateral treaty or to discuss the legal interpretations proposed by the Cuban delegation. He would not object to a working party being established eventually to consider the Cuban case under Article XXIII. However,

this was not the proper time for such a working party. Article XXIII calls for an effort by countries to reach a bilateral solution and only after the failure of such an effort to take the case to the CONTRACTING PARTIES. There had been no claim by Cuba for consideration of the case or for compensation under Article XXIII and, consequently, a working party could not be set up at this stage. 6) He had little to add to the Chairman's remarks concerning the International Court but he did wish the CONTRACTING PARTIES to keep clear the difference between submitting a case of the interpretation of the General Agreement to the Court by the CONTRACTING PARTIES and the submission by the United States and Cuba of the bilateral agreement for interpretation. The fact that the CONTRACTING PARTIES could not present the case as drawn up at present would not preclude submission of the case by the United States and Cuba. Finally, he wished to support the Norwegian resolution.

Mr. SHACKLE (United Kingdom) considered the Norwegian proposal in its amended form acceptable. He thought that the three paragraphs contained clear and correct statements of fact. He did suggest, however, that the last sentence of the footnote be eliminated as, although correct, it was irrelevant to the present case. He also pointed out that the draft decision did not purport to relate to all the issues involved, as was shown in the last sentence, and he was confident that the CONTRACTING PARTIES would be glad to give full consideration to any claims brought under Article XXIII. He hoped, however, that Cuba and the United States would be able to reach a solution between themselves. With regard to resort to the Court, he thought that it would be useful, if the case were presented to the Court, that it be presented in such a way that the Court's decision would be helpful to the future work of the CONTRACTING PARTIES. If there were any question of resort to the Court, however, he thought it should not be permitted to delay accession of any new countries.

Mr. COELHO (India) enquired whether Norway still wished to press for a decision on the legal issues, as he understood that Cuba had removed the legal issues from the debate. With regard to the right of the CONTRACTING PARTIES to seek a ruling of the Court, he thought that if this right did not exist it was a serious lacuna in the General

Agreement. He enquired whether it was not rather a case of the competence of the Court to take up such a matter than of the right of the CONTRACTING PARTIES to present it.

The CHAIRMAN said that Mr. Coelho's interpretation was correct. There was nothing in the General Agreement preventing reference to the Court. However, the CONTRACTING PARTIES acting jointly were precluded from presenting a case by the Statute of the Court itself. Article XXV of the Agreement provides for joint action by the CONTRACTING PARTIES and he interpreted the words "with a view to facilitating the operation and furthering the objectives of this Agreement", in paragraph 1, as enabling the CONTRACTING PARTIES acting jointly to interpret the Agreement whenever they saw fit. It was open to any government disagreeing with an interpretation to take the dispute which had given rise to such an interpretation to the International Court, although neither a government nor the CONTRACTING PARTIES acting jointly could take a ruling of the CONTRACTING PARTIES to the Court.

Mr. THOMMASSEN (Norway) said that he had no explanations of a general nature with regard to his proposal. In reply to Mr. Coelho, he stated that, in view of the remarks of the United States, and provided the Cubans would withdraw the item from the Agenda of the present session and undertake bilateral talks with the United States, it was not the wish of the Norwegian delegation to press for a decision on the legal questions now.

Mr. JAYASURIYA (Ceylon) thought it inappropriate for the CONTRACTING PARTIES to debate the Norwegian resolution at this stage, in view of the various possibilities that had been presented. A decision on the legal issues would inevitably prejudice one of the parties to any bilateral attempt to reach a settlement. He suggested postponing consideration of the Norwegian proposal until the results of any bilateral negotiations were known.

In reply to a question from Mr. Reisman (Canada), Mr. VARGAS GOMEZ (Cuba) said that his delegation was not prepared to withdraw the item from the Agenda. They had suggested a procedure in

the conclusions to the paper.

Mr. REISMAN (Canada) said that the Cuban paper concerned itself mainly with the bilateral agreement between the United States and Cuba, which was not capable of being judged by the CONTRACTING PARTIES. He thought that, consequently, it raised no new matters. With regard to the suggestion on page 16, paragraph 41, that there be two interpretations, one for all contracting parties and one for the United States and Cuba, he thought this impossible as there must be one set of rules for all and, if such an alternative interpretation were to be based on the bilateral agreement, the CONTRACTING PARTIES were not competent to make it. With regard to setting up the working party, he thought it seemed clear that the legal issues had been considered in great delail and settled in the Working Party on Accession. If a working party were set up under Article XXIII, he agreed with the United States that this could not occur before bilateral talks had taken place between the two governments. As to the International Court, this might perhaps be a solution, but he hoped that it could be settled without this recourse. On paragraph 68 (c), which was one of the solutions proposed by the Cuban delegation, the CONTRACTING PARTIES should take a decision now and this involved acting on the Norwegian proposal. If that were agreed to, it would mean rejecting paragraph (c). He considered that a decision should be taken now on the Norwegian proposal and his delegation would support it.

In reply to a question by the Chairman, Mr. THOMMESSEN (Norway) agreed to the proposed elimination of the last sentence of the footnote.

Mr. MULLER (Chile) thought that a decision could be taken now on paragraphs 2 and 3 and the last sentence. However, he thought paragraph 1 should either be eliminated or, if it were retained, the entire footnote should be retained. Otherwise it would be dangerously general.

Mr. SHACKLE (United Kingdom) said he would not press his suggestion.

Mr. RODRIGUEZ (Brazil) said he was in general in favour of the suggestion but not completely so of its form. He thought it particularly dangerous to accept paragraph 1 without instructions from his Government, as it was such a broad statement. He suggested some drafting modifications in paragraph 3. Namely, the deletion of the last sentence and the addition of the words "being understood, however, that a country which enjoys preferential treatment is entitled to receive compensation in accordance with Article XXIII".

Mr. SHACKLE (United Kingdom) thought that the suggested change would make a general affirmation which was not necessarily correct in all cases.

In reply to a question from the Chairman, Mr. RODRIGUEZ (Brazil) said he would not press his amendment but would then have to abstain from voting on the proposal.

Mr. COELHO (India) proposed postponing, if necessary until after the close of the session, a decision on the Norwegian proposal in order that instructions might be received from governments.

The CHAIRMAN pointed out that this was in effect a proposal to adjourn discussion on the Cuban statement as a whole, as the Chair had already ruled that the Norwegian proposal must be considered first.

Mr. EVANS (United States) spoke against the motion for adjournment. He explained that either the Cubans would have to withdraw their paper or the CONTRACTING PARTIES take the decision proposed in the Norwegian paper here, otherwise the Cuban paper would cast doubt on all the negotiations carried on in Annecy.

Mr. REISMAN (Canada) spoke against the motion for adjournment and pointed out that there had been adequate time to receive instructions.

Mr. JAYASURIYA (Ceylon) spoke in favour of the motion for adjournment for the reasons he had expressed previously, that such a decision taken now would prejudice any bilateral negotiations.

The result of the vote on the motion was two in favour to eleven against, and it was defeated.

Mr. HEWITT (Australia) thought that the merit of the Norwegian proposal was that it made clear, simple statements of fact and did not necessarily dispose of the whole case, as in the last paragraph it recognized the right of resort to Article XXIII. It also had the merit that, against the background of such a decision, other means of deciding upon the Cuban and United States statements would be isolated, such as by means of the provisions of Article XXIII. He disagreed with the change suggested by the delegate of Brazil, as he thought it inadequately referred to Article XXIII. He suggested that the document be taken section by section, which method would enable the differing points of view on the various statements to be isolated.

The CHAIRMAN said he would regard Mr. Hewitt's proposal as a request under Rule 26 that parts of a proposal could be decided upon separately.

Mr. WUNZ KING (China) appealed to the two parties to make a further effort for bilateral settlement. At one point, he considered, they were close to agreement. The Cuban delegation had suggested resorting to Article XXIII and the United States delegation had agreed that this was a possibility. The Norwegian delegate had also stated that he would withdraw his proposal if the Cuban delegation would withdraw its paper, and the Cuban statement that they would have recourse to Article XXIII was tantamount to withdrawal. If this view were accepted, the way was open for the CONTRACTING PARTIES to give a ruling to request that the two parties attempt to reach an agreement under Article XXIII. Both could reserve their right in the event of failure to return to the original Cuban paper and the Norwegian proposal. He therefore formally proposed that the CONTRACTING PARTIES request the two countries to make another attempt to settle the question under Article XXIII, the first stage of which was direct consultation.

The CHAIRMAN proposed adjourning the discussion.

The meeting rose at 6.15 p.m.