

GENERAL AGREEMENT
ON TARIFFS AND
TRADE

ACCORD GENERAL SUR
LES TARIFS DOUANIERS
ET LE COMMERCE

RESTRICTED
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GATT/CP.3/SR.38
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ORIGINAL: ENGLISH

CONTRACTING PARTIES

Third Session

SUMMARY RECORD OF THE THIRTY-EIGHTH MEETING

Held at the Hotel Verdun, Annecy
on Tuesday, 9th August, 1949 at 10 a.m.

Chairman: Mr. L. D. WILGRESS.

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

Mr. LECUYER (France) expressed his great regret that the Cuban request for a working party to examine the question had not been accepted. It was too late at the present stage to do so. But the matter was of such importance that it could not be left pending in view of its direct bearing on the validity of the Annecy negotiations. Although he saw drawbacks in taking a vote on the Norwegian proposal, he saw no alternative unless the Cuban statement were withdrawn.

Mr. COELHO (India) said the question raised in the Norwegian proposal had not simply arisen out of the Cuban paper but had been before them since the discussions in the Working Party on accession, but even then no decision had been arrived at because of the complexity of the matter. It had been suggested that because the report of the Working Party had been approved by the Contracting Parties, the matter had been decided but, as such, this had not been a matter for the discussion of the Contracting Parties and, rather than approved, he would say that the matter had been noted. He submitted that the question was still very much open.

With reference to the first point of the Norwegian proposal, he thought two possibilities might arise:

a) a bilateral treaty contravened the provisions of Agreement.
This case was foreseen in the Norwegian paper.

b) a bilateral treaty explicitly provided for the jurisdiction of the Contracting Parties. The question then was: could the Contracting Parties accept to exercise jurisdiction in such a case? This point was not raised in the Norwegian paper, although it might conceivably arise.

Passing to the second decision of the Norwegian paper, he said the words used in Article XXX as well as in Article XXVIII were "amendment" and "modifications". It might be that in drafting the Agreement, the word "reduction" was not contemplated as falling within the scope of these words; this seemed hardly likely to him. The mere fact that it was found necessary to use a system of collateral agreement and collateral schedules for the Annecy acceding governments made him feel that there was some doubt in the Working Party on Accession as to the point. The fact that accession of governments and acceptance of the new schedules could be secured on the basis of two-thirds majority did not prejudice this aspect of the question. Another question was whether point 2) of the Norwegian paper implied interpretation of Article XXX. To his mind this was the case, and as such it would require unanimous acceptance. He would like to put the following question: if the m-f-n rate and preferential rates were both bound in a schedule was the difference between the two rates variable or not? Furthermore, as far as he could see, the question of binding of margins of preferences did not arise in the General Agreement. Binding was in terms only of a prohibition against increase and in the case of margins of preference. This was all that was provided for in the General Agreement. To refer, therefore, to binding against decrease seemed to him to suggest a case which could never arise.

He recognized that the spirit of the GATT was to eliminate preferences but as preferences formed part of the mosaic of balanced, multilateral trade negotiations, they could not be destroyed without corresponding compensation.

In his opinion, the Norwegian paper seemed to suggest a step back to bilaterism from the multilaterism which had been developed in the last few years of the working of the GATT.

Mr. EVANS (United States of America) put forward a tentative solution which he thought might provide a basis for discussion:

- (i) The Delegation of Cuba would agree not to press at this session the issues raised in their statement but to consider in bilateral talks with the United States its future position.
- (ii) The ~~Contracting Parties~~ to consider the basic legal issues with relation to accession as already decided, i.e. to confirm, as regarded accession, the relevant passage in pages 6 and 7 of Document GATT/CP.3/37.
- (iii) The United States would accordingly be entitled to proceed with the application of the concessions negotiated at Annecy.

As regards the second point, Mr. Evans added that it would mean that the United States could put into effect their Annecy concessions, although he realised that Cuba would make reservations on their legal validity. He would nevertheless agree, provided no Contracting Party, other than Cuba, were to make reservations.

Mr. THOMMESSEN (Norway) said that in the previous meeting, in reply to India, he had signified Norway's readiness not to press their proposal, provided Cuba withdrew its paper. He was prepared to accept the United States proposal.

Mr. VARGAS GOMEZ (Cuba) stated that his delegation was not in a position to accept either the United States or the Norwegian proposals. If they did accept such decisions of the Contracting Parties on the legal issues discussed by the Working Party on Accession, they would be placed in the position which they were now fighting. That was to say, that the legal issue would be decided against them. His delegation would only be prepared to withdraw its paper if, 1) the Contracting Parties did not consider the legal issues to be decided at this session; 2) the United States withdrew the offers made at Annecy affecting preferences, or 3) the United States maintained their offers but lowered their preferential rates so as to preserve the margins of preference.

Mr. NICOL (New Zealand) referred to the basic principle of jurisprudence, that wherever there was any obscurity in the law, the intention of the legislator should be decisive. He submitted that the intention of the drafters of the Agreement was clear and that there was no legal substance in the Cuban case.

The CHAIRMAN repeated the points raised by the representative for Cuba, and Mr. EVANS (United States of America) said that his previous statements on the matter made it clear that they could not accept them.

The CHAIRMAN stated that as he understood the United States proposal; they wished to consider the legal issues as already decided as regards accession and he asked the representative for Cuba if, in the light of this, he did not foresee the possibility of accepting the proposal of the United States.

Mr. VARGAS GOMEZ (Cuba) regretted he could not accept the proposal, because the United States would then have the right to put Ancey concessions into effect without the concurrence of Cuba.

Mr. HEWITT (Australia) thought it was of the greatest importance that agreement be reached if at all possible. He therefore wished to comment upon some aspects of the United States proposal. The Contracting Parties had already agreed that the United States could reduce their most-favoured-nation rates, since the Agreement fixed maximum and not also minimum rates. Rates could therefore be reduced even by action taken outside the General Agreement. The Cuban Government would then be left to consider the effect of this reduction on its own economy. He also thought that the fact that the reduction in m-f-n rates of duty was being questioned should not be allowed to obstruct the accession of other countries to the General Agreement. Two additional points could be considered in relation to the United States suggestion:- 1) the action which might be taken between sessions if bilateral discussions with the United States did not succeed, 2) the position regarding the use of Article XXIII. The delegations could engage in bilateral discussions, failing which the matter could be considered urgently by the Contracting Parties acting jointly in the light of the bilateral discussions and of Article XXIII.

The CHAIRMAN stated that in his understanding, Mr. Hewitt's was a modification of the United States proposal in that the United States and Cuba should consider the possibilities of a solution in the light of Article XXIII, and that an inter-sessional procedure be set up if the bilateral negotiations did not succeed.

Mr. VARGAS GOMEZ (Cuba) wished to thank Mr. Hewitt for his effort at conciliation, but he feared he could not accept any solution which implied a unilateral reduction of margins of preference, as he was acting on precise instructions from his Government. He agreed that m-f-n rates could be reduced outside the General Agreement on Tariffs and Trade but it was the intention of his delegation that preferential rates were guaranteed by agreements which could not be modified unilaterally.

Mr. SHACKLE (United Kingdom) asked if he were right in believing that the effect of the United States proposal would be that Cuba could reserve its position on the understanding that this should not operate to prevent the accession of countries to the GATT.

Mr. EVANS (United States) thought the United States position was slightly different. His proposal was based on Cuba not pressing for further action at this session. If the Cuban delegation wanted to resort to Article XXIII, then they should go through the procedure and in case of a failure, the matter would come back to the Contracting Parties, but that they should not attempt to block accession.

Mr. MULLER (Chile) envisaged the possibility of the failure of the bilateral discussions and a subsequent decision of the Contracting Parties in favour of Cuba. In such a case the decision would not redress the position. He wondered, therefore, whether the legal issue could not be kept pending. His suggestion was that the United States should commit themselves now to renegotiate the advantages granted to other countries if no agreement were reached in bilateral discussions with Cuba and if a subsequent decision of the Contracting Parties were to be in favour of Cuba. This, in his opinion, would allow Cuba to reserve its position and the legal issues would be left unprejudiced.

Mr. EVANS (United States of America) said that the United States proposal did not contemplate leaving the legal issues pending. They recognized Cuba's right to reserve its position. They agreed that Cuba might subsequently persuade the Contracting Parties that the decision was wrong, but they wanted to go ahead and consider the legal issues as having been decided at least once.

Mr. WUNZ KING (China) thought it was important to avoid getting lost in the legal issues. The first point in the Norwegian proposal was a legal one and was quite clear but he thought the second and third points provided matter for discussion between Cuba and the United States in the light of Article XXIII.

The CHAIRMAN said the shortage of time required an effort on the part of the Contracting Parties in order to reach their objective. There were before the meeting the proposal of the United States and the counter-proposal of Cuba. The United States had put forward their proposal subject to its acceptance by Cuba; if the acceptance were not forthcoming, then it would be considered as withdrawn. Nor had the counter-proposal put forward by Cuba been accepted by the United States. He asked whether his understanding was correct that the two proposals were to be considered as no longer before them.

Both Mr. EVANS (United States of America) and Mr. VARGAS GOMEZ (Cuba) agreed.

The CHAIRMAN then asked whether the Norwegian delegation maintained their proposal and Mr. THOMMESSEN (Norway) replied in the affirmative.

Mr. COELHO (India) asked whether the Chilean and Chinese proposals had been withdrawn.

Mr. MULLER (Chile) said that he had made an effort to find a compromise and he repeated his previous suggestion that the United States should commit themselves to renegotiate the concessions granted at Annecy in the event that a subsequent decision of the Contracting Parties should go against them.

The CHAIRMAN said that Mr. Muller's words confirmed his understanding that they were not confronted with a formal proposal but with an effort at conciliation. The same applied to the representative of China. Neither having met with success the Contracting Parties were therefore left with the Norwegian proposal and as the time had come to take a decision, he proposed, in accordance with the suggestion at the previous meeting of the representative of Australia, to take the points of the Norwegian proposal one by one,

The CHAIRMAN asked whether there were any objections to the opening sentence.

Mr. COELHO (India) asked if the points he had raised earlier in the meeting could be elucidated by the representative for Norway and Mr. THOMMESSEN (Norway) replied that the footnote to his paper clearly answered his questions.

The CHAIRMAN proposed to take the footnote in conjunction with the first sentence.

Mr. COELHO (India) asked whether such a decision would preclude the jurisdiction of the Contracting Parties, even in a case in which such a jurisdiction had been foreseen by a bilateral treaty.

The CHAIRMAN replied that obviously a bilateral treaty which made reference to the Contracting Parties would entitle the Contracting Parties to take note of such an agreement.

The first sentence, together with the footnote, was approved by 15 votes in favour, none against and two abstentions (Brazil and Cuba)

Mr. COELHO (India) said that his vote in favour was given on the understanding that his question to Mr. Thommessen and Mr. Thommessen's reply would be recorded.

The second sentence was approved by 15 votes in favour and one against.

Mr. COELHO (India) referred to the question he had earlier put, whether this sentence involved an interpretation of Article XXX. In his opinion this was the case and it followed that the decision would have to be approved unanimously.

The CHAIRMAN said that Article XXX only spoke of "amendments" and not of "interpretations", which fell under Article XXV and which did not require unanimity.

Mr. COELHO (India) in connection with the third sentence of the Norwegian proposal repeated his earlier remarks to the effect that there being a provision in the agreement that margins could not be increased,

he could not understand how such margins could be "bound against decrease". He suggested the term "a preferential rate" instead of "a margin of preference".

The CHAIRMAN thought this was contrary to the intentions of the representative for Norway and Mr. Thommessen of Norway agreed. He added that there was nothing in the agreement to prevent the binding of a margin against decrease.

Mr. COELHO (India) said he would abstain from the vote on this sentence because he could not envisage the case in which this could arise.

Mr. RODRIGUEZ (Brazil) did not press his proposal of the previous day but said he would abstain from voting because it was the feeling of his delegation that if the m-f-n rate could be reduced the country enjoying the preferences should be entitled to compensation.

Mr. MULLER (Chile) asked that the third point and the following sentence be taken together. The two sentences were put to the vote and approved by 14 votes in favour, one against and two abstentions.

Mr. VARGAS GOMEZ (Cuba) read a statement which is being circulated separately and which announced the Cuban decision that in view of the vote taken, his delegation considered that it must withdraw from the present session of the Contracting Parties for the purpose of informing its government. At the end of his statement Mr. Vargas Gomez withdrew from the meeting.

Dr. AUGENTHALER (Czechoslovakia) wished to explain his vote on this question. When the Norwegian proposal had been presented, he had found himself in a difficult position. He was concerned with the legal situation and with the consequences of the Annecy negotiations which should not be endangered. At the same time, he had the greatest sympathy for the damage suffered by Cuba. His vote on the Norwegian proposal had been given after full consideration of the importance of the matter to the General Agreement and of its possible consequence. He could not take into consideration an exclusive agreement between the

United States and Cuba, but, as that agreement had been mentioned here in the meeting, he wished to say that that Agreement had misguided the Cuban delegation into believing that they had certain rights which in his opinion they had not. He wished to say that the agreement was contrary to the spirit of the General Agreement and contrary to the principles which had always been proclaimed by the United States. He therefore hoped that Cuba would receive some compensation, but as the exclusive agreement mentioned was outside the General Agreement on Tariffs and Trade, the compensation to be granted should also be outside the General Agreement.

Mr. WOODEBURY WILLOUGHBY (United States of America) expressed the regret of his delegation for the decision of Cuba to withdraw from the present session and reiterated the willingness of his delegation to discuss the matter directly with Cuba in order to reach a solution. While the United States delegation found themselves in a position of difference on a number of points with the Cuban delegation, he wished to acknowledge that the latter had presented its case before the Contracting Parties with great dignity and in a manner which was a credit to the Contracting Parties.

The CHAIRMAN stated that all Contracting Parties would share with him and with the United States delegation the greatest regret for Cuba's decision. He also felt sure that the Contracting Parties in taking the decision proposed by the Norwegian delegate had no other intention but to give clarity to the position. The legal issue having been resolved, the way was left open to resort to the provisions of Article XXIII. He felt that they should now consider the proposal of the representative of China that discussions be held in the light of paragraph 1 of Article XXIII.

The Contracting Parties agreed to recommend that the United States and Cuba undertake bilateral discussions as envisaged in paragraph 1 of Article XXIII with a view to reaching a satisfactory solution.

The meeting adjourned at 1.00 p.m.

