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GENERAL AGREEMENT ON TARIFFS AND TRADE

Second Session

Summary Record of Twenty-third Meeting

Held at the Palais des Nations, Geneva, Switzerland,

on 10 September, 1948, at 3 p.m.

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

REQUEST BY THE GOVERNMENT OF CUBA FOR CONSIDERATION OF THE SITUATION FACING CUBA IN REGARD TO CERTAIN TARIFF ITEMS.

Mr. GUTIERREZ (Cuba) read the introductory and concluding parts of the Request by the Government of Cuba (GATT/CP.2/W12), and outlined the background, history and negotiations relating to each of the items in question. The Cuban Government wished, firstly, to have the "errors" relating to trimmings, galloons and ribbons in Schedule IX rectified, i.e., to be authorized to withdraw these items from the Schedule, secondly to be authorized to increase the tariff on nylon stockings to 50% ad valorem or to withdraw the item from the Schedule, and thirdly to be authorized to raise the tariffs on tyres and inner tubes to 40 cents per kilogramme. The requests were made without prejudice to any consultations and negotiations with the contracting parties affected as regards compensation.

Mr. LEDDY (United States) stated in reply that his delegation could not agree to either the facts or the arguments put forward by the representative of Cuba. There had been no reduction in the Cuban tariff on hosiery, whereas the tariff on nylon yarn had been increased at the request

of Cuba. As for tyres and inner tubes, an additional margin of protection had been provided for Cuba in the form of increased duties. The "errors" referred to by the representative of Cuba in relation to trimmings, ribbons and galloons would seem to be errors of judgment rather than oversight. The question with regard to these items had been raised by the Cuban delegation together with certain other items in October 1947. When it was proved that these other items hadbeen included in the original Cuban offer list and there was no doubt whatever about the agreement of the Cuban negotiating team to the binding on the rates of these items, the Cuban delegation whilst admitting that it had been wrong about these items, had insisted that the United States negotiating team had agreed to drop items 142 A and B, i.e. trimmings, ribbons and galloons. Records of the United States team showed that when the lists of textile items with their rates was read to the Cuban team on September 14th, no objection had been raised to these particular items and it was considered by the United States team that the rates on these two items suggested by the Cuban team at 15 cents and 52 cents respectively had been accepted. The Cuban delegation then notified the United States delegation that the foot-note to Item 140 and 115 with respect to certain other textiles should be changed in order to clarify an error. The suggestion would have the effect of moving these textiles from the area of reductions in duty to the area of increases in duty. The United States delegation informed the Cuban delegation that the United States would be unable to sign the Agreement in respect of Cuba if the Cuban government insisted on so fundamental a change.

The Cuban delegation subsequently suggested that these two items be dropped on condition that no changes be made in the foot-note. While unable to agree to this proposal, the United States delegation agreed instead to accept the full increase of duties on items 142 A and B to 34 cents and $1.90 as suggested earlier by the Cuban delegation on the above-mentioned condition regarding the foot-note. This was suggested in order to maintain these two items in the Schedule and thus exempt them from the surtax and from the transitional import quota under Article XVIII. The matter was then concluded between the two delegations on that basis. The reception of a concession on those certain textiles being an integral part of the bargain, the United States government could not reasonably be expected to discuss the possibility of re-negotiating on items 142 A and B so long as those concessions had not been made effective.

In the view of the United States delegation the reference to Articles XVIII, XIX, and XXIII was groundless because the Cuban government could not approach the CONTRACTING PARTIES before serious injury had been caused or threatened to domestic producers of the like products and there had been no benefit accruing directly or indirectly to Cuba which had been affected.

Mr. GUTIERREZ replied that the facts given by the representative of the United States were entirely different from the records of the Cuban delegation, and the reasons advanced, for the first time, by the representative of the United States was scarcely less astounding. The history of Cuba justified much higher tariffs than the present rates, and its tariffs could hardly be called protective. The Cuban

Government, faced with threats of unemployment was not blaming anybody, but was merely asking for rectifying certain "errors" and correcting certain tariff maladjustments, in each case prepared to offer due compensation to any contracting party which proved that its interests would be prejudiced. The Cuban legislature could not be expected to ratify an agreement if the tariffs listed therein purported to bind the country for ever, and to be incapable of adjustment. At any rate, the requests of certain other contracting parties had met with sympathetic consideration; it was merely the ways and methods to effect the modifications requested that had been the subject of discussion. Believing in the good faith of the contracting parties and principles of the Agreement, the Cuban Government felt sure that a way of meeting the difficult situation of Cuba would be found by the contracting parties under the provisions of some of the Articles of the Agreement; whether Article XIX, Article XVIII or Article XXV met with the requirement was not the question that mattered; what mattered was that a sophisticated interpretation of a complicated text seemed not to be allowed to stand shadowing the dangers of mass-unemployment. On the ground that the case of Cuba was at any rate covered by the provision of (c) in paragraph 1 of Article XXIII, that is to say, certain benefits accruing to Cuba and the attainment of certain main objectives of the Agreement were being impaired as the result of the existence of a certain situation, the Cuban Government simply presented its case to the Contracting Parties and asked them to investigate and to recommend a solution.

Mr. LEDDY thought that for the stability of tariffs and for fairness to those contracting parties which abided by their bargains, the issue should not be reopened at present. The tariffs were never meant to bind for ever, but they should bind over the initial period, i.e. until 1951. As for distresses that might be caused any contracting party as a result of unforeseen developments and of the effect of the obligations incurred by it under the Agreement, recourse could be sought in Article XIX. This being the case, the United States Government had felt not guilty in refusing negotiations with Cuba on the items in question.

The CHAIRMAN said that Cuba, he presumed, was seeking adequate remedies to meet its internal economic situation and requesting the Contracting Parties to explore the situation to see if certain items in Schedule IX could be renegotiated on the understanding that compensatory concessions would be offered by Cuba. The Cuban representative did not base his request on Article XXIII or any specific Article of the Agreement, but wished that the situation should be reviewed so that recourse could be made to any provision of the Agreement which the Contracting Parties should deem applicable. The matter was now brought to the plenary meeting because earlier attempts at a settlement had failed to produce a solution. He would therefore suggest that an ad hoc working party of moderate size should be formed for the purpose.

With the approval of the meeting the CHAIRMAN appointed the representatives of Cuba, India, Netherlands and the United States to form Working Party 7, under his Chairmanship, to deal with the question. As it was contemplated that the

United States statement regarding the Cuban Government Resolution No. 530 might be studied by the same Working Party, the CHAIRMAN postponed announcing its terms of reference until this had been reviewed later at the meeting.

STATEMENT BY THE UNITED STATES DELEGATION REGARDING THE APPLICATION OF THE AGREEMENT BY THE GOVERNMENT OF CUBA (GATT/CP.2/W.13)

The CHAIRMAN introduced the statement that had been submitted by the United States Delegation and indicated that whether this question would be referred to Working Party 7 would depend on the outcome of the present discussion.

Mr. GUTIERREZ (Cuba) said the complaint made by the United States Delegation against the Government of Cuba based on Article XXXIII of the Agreement regarding the issuance of Resolution 530 was a surprise to the Cuban Delegation. The Cuban Government had responded sympathetically to a memorandum presented by the United States Government on July 26, 1948, and had intended to examine the Resolution together with the United States Delegation at the present session of the Contracting Parties. Willingness to discuss the matter was also shown by the Cuban Delegation in Geneva soon after its arrival. At every opportunity the Cuban Government had tried to get the United States Delegation to discuss the points raised before by the Cuban Delegation, but the United States Delegation had insisted that they would not consider a discussion of the Cuban points

until the Cuban Delegation could offer an assurance that Resolution 530 was going to be withdrawn. The Cuban Delegation had not been given an opportunity to discuss the resolution in detail in order to clarify those provisions that had given rise to the fears expressed by the United States Government. The present complaint by the United States Delegation differed from its earlier presentation in that reference was now made to Article XI instead of paragraph 2 of Article VIII. It must therefore be regarded as a new complaint which the Cuban Government had had no reasonable time to consider before it was raised at the meeting of the Contracting Parties. Since the Cuban Government had complied with the provisions of paragraph 1 of Article XXXIII in giving sympathetic consideration to the representation and since the "reasonable time" provided for in paragraph 2 of Article XXIII could hardly be said to have elapsed, it was evidently unjustifiable for the United States Government to present its complaint at present. Particular attention was drawn to the fact that Resolution 530 had been put into effect only two months ago; that the United States Delegation was approached soon after the arrival of the Cuban Delegation in Geneva; only three weeks had elapsed since that date, and the views of the United States Government were not presented to the Cuban Government until barely half a month ago. This being the case, the Cuban Delegation would ask the Contracting Parties not to consider the request of the United States Delegation because the necessary requirements for action under Article XXIII had not been duly fulfilled by the United States Delegation.

Mr. LEDDY (United States) stated in reply that the Cuban Government had been approached through the ordinary diplomatic channels several times and no favorable reply had ever been received. As regards a detailed study of the resolution with the Cuban Delegation at Geneva, the United States Delegation was not fully equipped to examine tariff matters at the present session. Since the regulation of imports imposed by this resolution constituted a complete bar to imports of textiles, the provisions of Article XXIII had to be invoked in view of the fact that all the tariff items that had been agreed upon had become of no avail. So long as the regulations existed there would be no use in engaging in any tariff negotiations between the two countries. In the opinion of the United States Government the resolution embodying strict quantitative restrictions must be taken as a whole for it was not the procedures nor the detailed requirements given therein that had been objected to by the United States Government.

Mr. SHACKLE (United Kingdom) proposed that the issue be referred to Working Party 7.

This having been agreed upon, the CHAIRMAN proposed the following terms of reference for the Working Party:

> "To consider, in the light of the factual evidence submitted to it, the request of the Government of Cuba relating to the renegotiation of certain tariff items listed in Schedule IX of the General Agreement and the statement of the United States representatives relating to Resolution 530 of the Government of Cuba on the importation of

textiles, and to recommend to the CONTRACTING PARTIES a practical solution consistent with the principles and provisions of the General Agreement."

The CHAIRMAN invited both parties to furnish the Working Party with factual evidence.

Mr. GUTIERREZ made a statement in which he justified the resolution on the ground that the measures were necessary to force the trade in textiles between the two countries into regular channels so as not to impede the interests of bona fide traders. He denied that any prohibitions or restrictions had been imposed under the resolution for it did not purport to limit the amount of merchandise to be imported into Cuba. The establishment of administrative channels to supervise imports so that the Government could have full assurance of the proper tariff assessment should not be regarded as incompatible with the provisions of the General Agreement. The ensuing reduction in imports of textiles into Cuba since Resolution 530 came into force had been mainly due to the unwillingness of the free lance importers without trading licenses or trade domiciles, engaging in trade under the benefits arising from false declarations and contraband, to comply with the requirements stipulated in the resolution. The sabotage of the measures by these illegitimate traders had been encouraged by certain exporters in the United States by means of a newspaper campaign giving the impression to Cuban importers that the resolution would be short-lived. This transitory measure designed for the benefit of honest traders and

manufacturers, both in Cuba and abroad, should not be prejudged by the Contracting Parties upon any evidence that might have been presented since it had been in existence for only two months. The Cuban Delegation would, therefore, request the Contracting Parties to find that Resolution 530 was not in conflict or did not nullify the provisions of the General Agreement; to recommend to the Government of the United States that it withdraw its complaint; and to advise both parties to resume negotiations with a view to finding a mutually acceptable understanding.

The Contracting Parties gave consent to circulation of this statement for the reference of the Working Party (GATT/CP.2/W.14).

Mr. LEDDY, referring to paragraph 1 of Article XI, pointed out that the provisions of Resolution 530 were of such a nature that they could not be fulfilled without restricting imports into Cuba, and the benefit accruing to the United States under the Agreement had, therefore, been nullified and impaired to the extent that trade was restricted as the result of the failure of Cuba to carry out its obligations under the Agreement and the application by the Cuban Government of a measure in conflict with the provisions of the Agreement. The nullification and impairment, as were provided in paragraph 1 of Article XXIII, were evident in view of the fact that whatever the purpose of the resolution or intention lying behind it, the fact remained that no import licences had been issued up to the present time since the promulgation of the Resolution. The representative

of Cuba had presumably based his argument on Article XX when he stated that a Contracting Party should not be prevented from adopting or enforcing measures necessary to secure compliance with laws or regulations relating to customs enforcement. In that case, due attention should be given to the crucial words "which are not inconsistent with the provisions of this Agreement " in sub-paragraph (d) of paragraph 1 of that Article, and especially to the introductory part of that Article referring to "disguised restriction on international trade."

The meeting rose at 7.30 p.m.