GENERAL AGREEMENT ON TARIFFS AND TRADE

ACCORD GENERAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

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CUBAN STATEMENT AT MEETING OF CONTRACTING PARTIES ON 2 AUGUST 1949

In the course of the discussion of the Cuban case the opinion has been expressed that in considering a legal problem, it is not possible to forget the situation of fact which has given rise to it. It is for this reason that we consider it indispensable that the Working Party that studies our problem should consider it in all its amplitude and in all its phases of fact as well as of law. Only in such a way could the Working Party make a constructive recommendation to the CONTRACTING PARTIES. We don't consider it practical to present before the CONTRACTING PARTIES the details of the factual situation since we consider that this is a task that should be previously undertaken by the Working Party, but, confronted with the danger that an attempt may be made to divide the solution of the problem, we consider it necessary to present before the CONTRACTING PARTIES other additional considerations in order to convince them that the problem should be transferred in its entirety to the Working Party

In the statement addressed to the CONTRACTING PARTIES we have maintained that the conservation of the equilibrium of previous negotiations is a fundamental principle of GATT and that that equilibrium cannot be broken unilaterally by one of the Contracting Parties to the prejudice of another.

In Geneva in 1947, Cuba and the United States negotiated certain items which affected the preferential system which was incorporated into Part II of the Schedules of Cuba and the United States. At the same time and as a result of the multilateral negotiations, there were incorporated into Part I of those Schedules

the most-favored-nation rates which each country would apply to the other Contracting Parties. From those bilateral and multilateral negotiations Cuba came out with a balance that at that time was considered satisfactory, even if later, in practice, it has been found otherwise. It is not surprising that this should have happened to Cuba at the beginning of an experiment without precedent in world economy. If experience has shown that the negotiations carried out at Geneva and their results were not as satisfactory as it was anticipated, one can imagine what the effect would be on Cuba's economy if it had to be admitted that the situation which was created as a result of those negotiations at Geneva can be altered unilaterally by another country, in this case the United States, with considerable prejudice to Cuba and without Cuba's consent having to be given to such changes.

The United States holds the view that the margins of preference which were maintained for Cuba as a result of the Geneva negotiations can be reduced or eliminated unilaterally without the consent of Cuba, and, following this view, it has proceeded at Annecy to offer reductions or eliminations of Cuban margins of preference without obtaining the previous consent of Cuba. As far as we know, there has been completed up to the present moment only one negotiation affecting those Cuban preferentials, namely that with Haiti, but in negotiations with other acceding Governments, the United States has offered reductions or eliminations of preferences affecting some twenty-odd margins of preference which Cuba enjoys in the United States market, among others the reduction of the Cuban sugar preferential for the maintenance of which Cuba has made so many sacrifices.

In order to make manifest before the CONTRACTING PARTIES what the acceptance of the United States thesis would mean for Cuba, we shall point out specifically as an example two cases which were affected by the negotiation with Haiti: that of rum and that of pineapples.

Let us look first at the case of rum:

During the 1947 Geneva negotiations Cuba requested from the United States a reduction in the rate of duty on rum from $2.00 to $1.00 and the maintenance of the margin of preference. The American negotiators had offered to Great Britain the Cuban preference on rum, and when the Cuban negotiators objected to the lost of our preference, the American negotiators agreed to withdraw such an elimination of the margin of preference in exchange for Cuba's acceptance of a rate of $1.75 instead of the $1.00 rate requested. It should be noted that in this particular negotiation at Geneva, Cuba sacrificed a further cut in the rate of duty in order to maintain that margin of preference with respect to this product.

Let us look at the case of pineapples:

In its efforts to diversify production and to industrialize and taking into account its climatic and soil conditions, it was logical for Cuba to endeavor to develop the pineapple industry. The cultivation of pineapple and its industrialization has constantly increased both with regard to the internal market as well as to the export market which is offering very attractive prospects. During the Geneva negotiations Cuba zealously guarded the margins of preference on pineapple in its various forms because it considered them a very valuable item in the industrialization of Cuba.

Let us look now at the effect which the acceptance of the United States thesis would have in the two cases affected by the Haitian negotiations which we have cited as examples.

The United States considers itself empowered unilaterally to reduce or eliminate the margins of preference maintained by Cuba in the 1947 negotiations, and, as a consequence, in the negotiations just concluded with Haiti at Annecy, it proposes to eliminate the margin of preference on rum and to reduce considerably that margin on certain items in the pineapple schedule. It intends also, as we have mentioned before, to reduce or eliminate other margins through various negotiations.

But the admission of the United States thesis goes much beyond this because it would not only produce this effect in the negotiations already being carried on at Annecy, but it would consecrate the right of the United States to proceed unilaterally to the reduction or elimination, at its convenience, of all other preferences which Cuba enjoys, through further negotiations which it may undertake in the future.

In the case of rum, in which through the Geneva negotiations we accepted a higher rate in order to maintain the margin of preference, we lose the preference and we continue to pay the higher duty. In the case of pineapple, the preference margin which was maintained at Geneva and which is an important element in Cuba's industrialization plan, will be substantially reduced now in certain items of the schedule and may be totally eliminated on others at any time in the future, thus impairing the possibilities for industrial development in this line.

If this theory were carried to its ultimate consequence, it would in fact imply that the United States could unilaterally withdraw from Cuba without compensation each and every one of the preferences for which Cuba has paid the United States by the maintenance on its part of several hundred preferences in the Cuban tariff.

It might be said that the solution of the problem for Cuba lies in its withdrawing from the United States the preferences which it enjoys in the Cuban market, but once this contention is analyzed, its falseness will be readily seen. In the first place, and above all, any damage that might be caused to American exporters in the Cuban market would not constitute a benefit for Cuba, and thus such a measure cannot in any way be considered compensatory for the Cuban economy.

In the second place, the elimination of the American preferences effected through the reduction of the most-favoured-nation rates of duty to the same level which is at present applied on preferences would imply an important reduction in Cuban custom tariffs and furthermore, a loss of revenue to Cuba.

It cannot be argued that an eventual benefit will accrue to Cuba through advantages in the general reduction of tariffs of all other members of GATT due to the multilateral principle which governs the Agreement, for it is evident that the countries that only have a limited number of products for export are not benefited by the advantages that might, theoretically, be obtained in regard to products which they do not export. One must reach the conclusion that the multilateral principle is only beneficial to those countries which have such a variety and quantity of export products that they can, as a national unit, compensate themselves for the loss which they may suffer with regard to a given product with the advantages obtained in another. This, unfortunately, is not the case of Cuba.

Account should also be taken of Cuba's difficult competitive position due to its high standard of living and the payment of wages far higher than its competitors, and it will be understood what disastrous effects the sudden elimination of its margins of preference would entail.

Incidentally, the maintenance of a high standard of living and the payment of high wages to workers are also objectives of this international organization, but in the case before us, they would only contribute to aggravate Cuba's situation.

We deem that these considerations offer ample proof of the economic prejudice which would be caused to Cuba through the acceptance by the CONTRACTING PARTIES of the thesis claimed by the United States. We also consider that such a decision would be totally destructive of the principle of GATT which seeks the collective welfare through negotiations which are mutually advantageous to the CONTRACTING PARTIES. It would certainly be a travesty of this principle to admit that negotiations which were considered mutually

satisfactory when they were concluded may be affected at a later date through the unilateral measures which one of the Contracting Parties may take.

It is not possible to grant that the United States has the right to get, not even partially, the advantages it may obtain for its products in other markets with the benefits already obtained and paid for by Cuba in previous negotiations. It is, therefore, urgently necessary for the CONTRACTING PARTIES to clarify this concept, for if the GATT is to be saved for the benefit of the whole world and to obtain the general acceptance of the CONTRACTING PARTIES, it is indispensable that it must produce collective benefits to those parties, but never at the expense and sacrifice of one of them.

The legal problem that is presented to the CONTRACTING PARTIES is an extremely complicated one, and its solution involves, as has been said, grave consequences. It is said, on the one hand, that one of the objectives of the Agreement is to reduce or eliminate preferences because they constitute barriers to trade. The fact that in order to bring about this result it may be necessary to circumvent the clear and precise text of Article XXX in relation to Paragraph 7 of Article II seems to indicate that this is considered of secondary importance provided that the reduction or elimination of preferences could be carried out.

On the other hand, it is argued that the final objective of the organization is to bring about a general improvement in the trade of all countries through negotiations that are mutually satisfactory to all parties and that the reduction or elimination of preferences without the consent of the affected party may produce an unbalancing of a negotiation and, therefore, break one of the principles of equity that justify and maintain this organization. Against this fundamental argument, Paragraphs 1 (b) and (c) of Article II are then invoked to claim that they only forbid the elevation of duties and that, therefore, *contrario sensu* the reduction of the rate of duty is not forbidden. In the first case, it is apparently argued that in order to safeguard the objective, one must be prepared to infringe on the literal text of the Agreement; in the second place,

apparently one must be prepared to sacrifice the principle in order to carry into effect such a reduction, contending that the text of the Agreement does not prohibit the reduction of a rate of duty.

We then see what basic problems are presented to the legal interpretation of the Agreement. We reiterate, therefore, our request that the CONTRACTING PARTIES, with their high sense of responsibility, transfer to a Working Party, which should be designated for this purpose, the examination in its entirety of the problem presented in order to give Cuba and the United States all the opportunity to present their cases without any restriction or impairment.