

GENERAL AGREEMENT  
ON TARIFFS AND  
TRADE

ACCORD GENERAL SUR  
LES TARIFS DOUANIERS  
ET LE COMMERCE

RESTRICTED  
LIMITED B

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Contracting Parties  
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Cuban Statement at Meeting of Contracting Parties  
Monday 1 August 1949 at 10 a.m.

Mr. Chairman:

A country such as Cuba that maintains a system of preferentials and which has taken part in this international organization from the time of the preparatory labors needs must be extraordinarily surprised at an interpretation of the Agreement tending to deny it any guarantee of the preferential concessions which were agreed to by the several contracting parties during past negotiations at Geneva in the year 1947.

From the first session of the Preparatory Committee which took place in London, February, 1946, the problem of preferentials was an object of great controversy. There existed at that time a strong inclination of American policy towards a complete liberation of trade and, accordingly, towards the elimination of the tariff preferential systems within the new trade structure which was then being conceived and to which it was meant to give a decidedly multilateral character.

Nevertheless, the firm position of several of the Delegations which were interested in maintaining the system of preferences made it possible for these systems to be respected and incorporated in the Draft Charter that was being prepared and, later on, into the General Agreement on Tariffs and Trade at Geneva, during the second session of the Preparatory Committee. It was for this reason that in Article I of the Agreement there is inserted Paragraph 2 through which the existence of preferential systems among the several contracting parties is accepted, and that those preferential systems are enumerated in the several subparagraphs of the said Paragraph. It is for this reason also that, when the

structure that is to be given to the Schedules through which the contracting parties maintain in force their preferential systems, it was determined that those Schedules should be divided into two parts: one, comprising the most-favored-nation rate to be applied in general to the other contracting parties, and the other, setting forth the preferential rates of duties which are to be applied exclusively between given contracting parties.

It is inconceivable, therefore, that after the protracted polemics that took place at the first session of the Preparatory Committee, in which, due to the firm policy of the countries that desired to maintain the preferential systems, the permanence of these systems was agreed to, it should be stated now that the provisions of the Agreement offer no guarantee whatsoever of the stability of the margins of preference. It is unquestionable that, if this were true, those countries like Cuba, which manifested from the beginning of this organization such a vigorous stand in regard to their intention of maintaining in force a preferential treatment with respect to certain contracting parties, would not have accepted their incorporation into the General Agreement had they understood that, pursuant to its provisions, they could not guarantee the survival nor the stability of those systems.

The structure of the Schedules of concessions corresponding to the countries that have preferential systems in force is one of the strongest and most solid of the objective arguments that may be presented to demonstrate the inconsistency of an opinion that denies any guarantee or stability to the margins of preference, within the provisions of the Agreement. Countries with preferential systems carried out their negotiations at Geneva on the basis of such a treatment. Pursuing the principles of its traditional trade policy, the representatives of Cuba at Geneva, at the time of the tariff negotiations in 1947, agreed with the representatives of the United States to carry out bilateral negotiations on the basis of preferential treatment. Once the labors of coordination of the several preferential concessions according to their respective values and the balancing of the negotiations between the two countries had been carried out, the United States and Cuba presented their respective Schedules for

the approval of the contracting parties divided into two parts: Part One containing general concessions to the most favored nation, and Part Two comprising only concessions of a preferential nature which the two countries granted one another with an exclusive character. These Schedules received the approval of the contracting parties and, together with those for the other nations, were incorporated into the General Agreement which was signed at Geneva, October 30, 1947.

If these facts are analyzed in conjunction with the provisions of Article XXVIII of the Agreement, it is impossible to understand how anyone can assert that there are no guarantees whatsoever for margins of preference within the structure of the Agreement, and that those margins might disappear at any moment if the most-favored-nation rates are reduced. We shall not cease to repeat that the provisions of Article XXVIII insure the maintenance of all the concessions agreed to at Geneva, whether concessions in the most-favored-nation rates or in preferential rates, for a minimum period of three years, that is, until the 1st of January, 1951.

If the text of this Article is read carefully, it will be seen that no distinction is made between preferential treatment and most-favored-nation treatment, for it states, in an explicit manner, that only after January 1, 1951, can the contracting parties cease to apply or modify the treatment which has been granted to any product described in the appropriate Schedule attached to the Agreement.

On the other hand, how can any stability within the General Agreement be maintained if the margins of preference could disappear through unilateral action by the reduction, at any moment, of the rates of duty in the most-favored-nation tariff? Any measure taken in this respect would bring as a consequence serious unbalancings in the Schedules of the countries with the preferential tariff and would expose them continuously to the loss of the balance and equilibrium of the negotiations in which such concessions were included. It is obvious that if a contracting party were to be permitted to withdraw a concession after having granted it, whether it be of a preferential or of a most-favored-

nation nature, the spirit and the letter of Article XXVIII would be violated, and at the same time a possibility would be given of unbalancing at any moment in a capricious manner the Schedules of countries with preferential systems.

It cannot be admitted, for it is contrary to all the principles of logic and to the nature of trade relations, that countries such as Cuba would have joined the General Agreement had they suspected that they would be confronted with this situation where the minimum bases of permanence and stability for the fundamental principles which have traditionally inspired their commercial policy were non-existent. It is impossible to conceive that a nation for which international trade problems are so important could accept its incorporation into a body that only offers to disrupt its foreign trade and only presents to it the possibility of paying in a rather onerous manner for the preferential concessions which it receives and later, in the course of any new negotiation, to have those concessions arbitrarily and capriciously eliminated.

The interpretation which has been given this problem by some of the contracting parties not only attacks the principles of the Agreement but also destroys all idea of a multilaterally organized trade and makes illusory at the same time the claim that the contracting parties can maintain, in the negotiations which they may carry out among them, the principle that those negotiations are always to be mutually advantageous. Such a conception destroys also any sense of equity in international transactions, for it places one of the countries in a position of evident inferiority, not guaranteeing to it, be it only for a minimum period of time, as established in Article XXVIII of the Agreement, the concessions to which it had provisionally agreed and for which it had offered compensatory benefits. Paragraph (c) of Article II states:

"The products described in Part II of the Schedule relating to any contracting party, which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates ...etc."

According to what is stated in this Paragraph, it is recognized that products described in Part II of any Schedule have the right to preferential treatment upon their importation to the territory to which a Schedule refers. If that is so, and the provisions of Paragraph (c) of Article III are complemented by the provisions of Article XXVIII of the Agreement which establishes, as has been stated, the duration of the treatment set forth in a given Schedule until January 1, 1951, it is hard to understand how the admission can be made that, at any moment, the contracting parties are authorized to reduce the rates in the most-favored-nation duty when these reductions bring about the elimination of the margins of preference which have been granted to another contracting party.

If the products described in Part II of any Schedule have a right to enjoy preferential treatment, and if the most-favored-nation treatment or preferential treatment must continue to be applied as agreed until January 1, 1951, in accordance with Article XXVIII, it is evident that no action of the contracting parties can be permitted which would tend to eliminate or to impair in any manner the preferential treatment corresponding to certain products. And it is equally evident that Article XXVIII represents an element of flexibility in the adjustment of tariff concessions but that it is only susceptible of application after the expiration of the initial three year period ending January 1, 1951. No great effort of deduction is necessary to understand that if through the means of reductions the preferential treatment corresponding to articles described in Part II may be affected, such reductions cannot be made.

The isolated consideration of any part of the provisions in a legal text is completely disqualified as a sound method of juridical interpretation. To affirm that the General Agreement only provides for a commitment not to increase tariffs because such

is the wording of Article II is to mystify the mechanics of the Agreement and to break the harmony among the several provisions of the instrument. Article II cannot be properly understood if it is not related to Article XXX. It is true that in the former only the increase of rates is contemplated, but in the latter, in a very broad manner, all modifications of the Schedules are forbidden, thus guaranteeing complete stability for the concessions, even against the danger of an unwarranted reduction of duties. If this were not so, Article XXX would not have been drafted in so broad a manner. Instead of speaking as it does of modifications which are not limited by any additional qualifications, concrete reference would have been made to increases in duties.

The interpretation which we make of Article XXX is not based on theoretical speculation. It is founded on the study of the Agreement and its mechanics as a whole; on the principle of stability which has been embodied in this instrument and in the proof that this stability is broken either by increasing or by reducing tariffs.

It must be admitted that the General Agreement is a relatively incomplete juridical text. It could hardly be otherwise because this multilateral Agreement constitutes an experiment completely new to the world, an experiment in multilateral trade relations. International mercantile law has undoubtedly been enriched by this formidable endeavor which for the first time in international trade relations contemplates the principles of multilateralism for agreements of this sort. It may be stated that through this effort made by the contracting parties to the General Agreement a new type of law has been created tending to embrace and to settle problems which nations have never hitherto attempted to meet. It cannot seem strange, therefore, that such a legal text should have defects and omissions that present grave difficulties of interpretation. But it cannot be denied that that interpretation may be effected with sufficient certainty and clarity when over and above the minutiae of juridical technicalities we consider the reasons of substance that have served as a basis for the setting up of this original organization. And from this point of view it is unquestionable that the interpretation which is offered

by Cuba on these problems is in consonance with the reality and with the substantive nature of international trade problems. It cannot be denied, either, that notwithstanding the deficiencies to which we have referred, the Agreement contains provisions that recognize, with complete clarity and in a direct manner, the fundamental principles of this conception of the Agreement which guarantee the stability of concessions and the existence of preferential systems.