

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
LIMITED B
GATT/CP.5/9
24 October 1950
ORIGINAL: ENGLISH

CONTRACTING PARTIES
Fifth Session

THE SCOPE OF ARTICLES XXV:5 (b) AND XXXV WITH REFERENCE TO THE TARIFF
NEGOTIATIONS AND THE PROLONGATION OF THE ASSURED LIFE OF THE EXISTING
SCHEDULES

STATEMENT OF THE DELEGATION OF CUBA

1. According to paragraph 4 (b) of Article 17 of the Havana Charter, the provisions of Article 16 shall cease to require, at the end of a period of two years after the entry into force of the Charter, the application to the trade of a member country which by that time has failed to become a contracting party to the General Agreement, of the concessions granted in the appropriate Schedule annexed to the General Agreement by another member which has requested the first member to negotiate with a view to becoming a contracting party but has not successfully concluded negotiations.
2. The text of GATT was amended at the First Session of the Contracting Parties at Havana, through the inclusion of paragraph 5 (b) in Article XXV, in order to conform such text to the spirit of the provision of the above-mentioned paragraph of Article 17 of the Charter. It was considered then that it was only fair that the right that a contracting party will have under Article 17 (4) (b) regarding members which have failed to become contracting parties because they had not successfully concluded negotiations when requested to do so, be extended to countries that had become contracting parties at the conclusion of GATT in Geneva in 1947 vis a vis other contracting parties which had failed to carry out negotiations without sufficient justification, the judgment as to such lack of justification resting with the CONTRACTING PARTIES. At the same First Session of the Contracting Parties at Havana, the GATT was further amended through the insertion of the present Article XXXV providing that the Agreement, or alternatively Article II of the Agreement, shall not apply as between any contracting party and any other contracting party if : (a) the two contracting parties have not entered into tariff negotiations with each other, and (b) either of the contracting parties, at the time either becomes a contracting party does not consent to such application.
3. It is the view of the Delegation of Cuba that although the situation contemplated under Article XXV 5 (b) refers to cases in which a contracting party has failed to carry out negotiations with another, and Article XXXV refers to cases in which two contracting parties have not entered into negotiations, both cases are essentially the same as regards the fundamental question that they have not carried out negotiations as between themselves and that, therefore, their schedules, as finally put into force, do not contain concessions initially negotiated between them. The Delegation of Cuba, with this consideration in mind, suggests that it would be more within the spirit of the Agreement as it stands today, and with the parallel provisions of paragraph (4) (b) of Article 17 of the Havana Charter, if Article XXV 5 (b) were interpreted or, if necessary amended so as to provide that in case where the CONTRACTING PARTIES uphold a complaint of a

contracting party under Article XXV:5 (b), their decision could authorize the complaining contracting party not only to withhold from the other contracting party the concession incorporated in the relevant schedule of the Agreement but also to cease to apply the Agreement as a whole to the contracting party regarding which the decision of the CONTRACTING PARTIES under Article XXV 5 (b) has been taken. The Delegation of Cuba feels that if this interpretation of Article XXV 5 (b) were made, the effects of failure to negotiate would be assimilated to the cases contemplated under Article XXXV.

4. In order to make the assimilation of both articles complete, the Delegation of Cuba suggests that Article XXV 5 (b) should also be amended so as to permit the contracting party regarding which the decision of the CONTRACTING PARTIES has been taken to cease also to apply the Agreement to the contracting party that filed the complaint under Article XXV 5 (b), so that the net effect of a decision of the CONTRACTING PARTIES under Article XXV 5 (b) would be the same as if both contracting parties were in the case contemplated under Article XXXV. It should be remembered, in this connection, that the insertion of sub-paragraph 5 (b) in Article XXV was made at Havana early in 1948, that is, after the GATT had been signed at Geneva in October 1947, and that, therefore, Article XXV 5 (b) sought to provide, for cases in which countries that were already contracting parties were involved, the same solution that Article XXXV sought for countries which were to become contracting parties afterwards. It appears to the Delegation of Cuba that the assimilation of both cases is not complete under the present text of Article XXV 5 (b) and that, therefore, the initial purpose of sub-paragraph 5 (b) of Article XXV could be assured in such way as to assimilate entirely the cases contemplated under Article XXV 5 (b) to the cases contemplated under Article XXXV.

5. The other point the Delegation of Cuba suggests should be taken up for discussion refers to the cases in which negotiations between two contracting parties have been concluded in previous rounds of negotiations, and one of the contracting parties requests the other to carry out new negotiations. It is the view of the Delegation of Cuba that a request by a contracting party to negotiate in a new round of negotiations which meets with failure without justification on the part of the other contracting party should be considered as a case falling within the provisions of Article XXV 5 (b). The Delegation of Cuba considers that Article XXV 5 (b) should be interpreted, or, if necessary, amended, to cover such a situation. The Delegation of Cuba feels that such an interpretation or amendment of Article XXV 5 (b) will have the effect of strengthening the obligation to enter into and carry out negotiations undertaken under paragraph 1 of Article 17 of the Havana Charter and that, therefore, it would tend to broaden and enlarge the number of countries and the volume of international trade covered by GATT.