GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES
Nineteenth Session

RECOURSE TO ARTICLE XXIII BY URUGUAY

Statement by the Representative of Uruguay on 21 November 1961

1. THE GROUNDS FOR THE ACTION TAKEN UNDER THE PROVISIONS OF THE AGREEMENT

The Uruguayan delegation has been holding consultations by stages with those contracting parties which play a predominant rôle in its foreign trade.

A consultation was held last year with the Federal Republic of Germany under Article XXIII. Later on, two consultations were held under Article XXII, directly with one contracting party (France) and with Italy within a working party set up for this purpose. On 2 November notice was given in writing to both these contracting parties that it was understood that the consultations held under Article XXII satisfied the requirements of Article XXIII paragraph 1, and that, in view of the fact that recourse to Article XXIII had been included on the agenda of the nineteenth session, they were asked to state whether it was possible to adopt any measure which would contribute to the liberalization of imports coming from Uruguay; no replies have yet been received to the respective requests.

On this point I think it appropriate to recall the contents of paragraph 9 of the Procedures approved on 16 November 1960 concerning the examination of new import restrictions (balance-of-payments) and residual restrictions to the effect that "... a country whose interests are affected may resort to paragraph 2 of Article XXIII, it being understood that a consultation held under paragraph 1 of Article XXII would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII".

With eleven further contracting parties and with one acceding country, to which the procedure is applicable, a request was made for consultations on the import restrictions applied to Uruguayan products on 19 and 26 October and 7 November in pursuance of Article XXIII:1. In each case, it was pointed out first in writing and then orally to each delegation concerned that the consultation requested was part of a joint action which included similar conversations with a number of other countries and it should not therefore, be interpreted as being action directed solely or mainly against these contracting parties. Our intention was thus to stress the objective with which we wish to handle the matter.

Eight of these consultations have now been completed - with Denmark, the Netherlands, Belgium, Canada, Norway, Sweden, Finland and Czechoslovakia and one with the United States of America is now in progress, a meeting having been held on 2 November. The consultation with Switzerland will be held this week and, in the case of Austria and Japan, no date has yet been set for the meetings which are expected to take place shortly.

The scope of the consultations undertaken may seem rather unusual because the CONTRACTING PARTIES have very rarely resorted to Article XXIII, but this fact does not affect the applicability, so very clearly established, of procedures whose effectiveness depends on the speed with which the interested parties respond to them, nor the existence of the serious foreign trade problems of my country which, naturally, constitute the raison d'être for these steps.

It should be emphasized that there is no special link whatsoever between Articles XXII and XXIII of the Agreement. If circumstances make it advisable, resort can be had directly to Article XXIII, for there is no provision or interpretation in existence to the contrary. This is what Uruguay has done in several of the individual cases referred to above. There is absolutely no obligation - I wish to stress this again - which would require a contracting party to resort to Article XXII before invoking Article XXIII. Nevertheless, it should be noted that for quite some time and quite frequently, for example, by means of bilateral agreements, concluded through diplomatic channels, Uruguay has notified various contracting parties of its concern over its foreign trade problems. Moreover, anyone who is familiar with the documentation of the Agreement cannot have any misconceptions about the present situation, as can be seen from the reports of Committees II and III approved unanimously last week and from the notifications on residual restrictions. I might add this quotation from the third report of Committee II from paragraph 15 of the general conclusions: "Whilst the Committee notes, in passing, that little if any action has been taken by contracting parties to seek redress (under Article XXIII) for impairment or nullification resulting from the use of non-tariff measures, it is also aware that such action would result in a balancing downward of mutual obligations and benefits". In other words, at the present moment Uruguay is adapting itself not only to the provisions of the Agreement, but also to a very painful course of action that was unanimously provided for by Committee II and unanimously accepted by the CONTRACTING PARTIES.

2. THE GROUNDS FOR THE ACTION TAKEN BY URUGUAY ON FOREIGN TRADE PROBLEMS

In conformity with the first part of paragraph 2 of Article XXIII, the CONTRACTING PARTIES have to be informed that as yet the consultations held have not yielded concrete results to be announced involving any substantial mitigation of the obstacles to trade in Uruguayan products, although it has been possible to identify them with greater precision than in the past. In one case even new restrictions have been imposed since the relevant consultation was held.

On 27 September last, Uruguay made a statement to the Council which was circulated in document L/1572 and which sums up the essential aspects of the situation and which, because of its length, need not be repeated here, particularly since it is understood that this is known to all the contracting parties. At that time there was circulated in document Spec(61)294 a table showing the restrictions applied to Uruguayan products. On 3 October last the delegations of all the countries shown in the table were consulted in writing concerning the accuracy of the relevant data and on the basis of the replies received and of the consultations held under Articles XXII and XXIII, a new text is being prepared which will be distributed shortly.

To sum up, the table I have referred to covers thirty products, accounting for 97 per cent of Uruguayan exports, and nineteen countries which represent 85 per cent of our export markets. Even if we exclude the prohibitive customs duties, subsidies, bilateral agreements and preferential systems arising from the creation of the EEC and EFTA, all of which are a source of the deepest concern to us because of the adverse effects which may arise or which are already affecting our foreign trade, there are 576 individual restrictions, either allowed by, or in violation of the Agreement which hinder trade in Uruguayan products. This figure may vary in the new version which is being prepared, but the change will not be very great although it is realized that the degree of harm caused by the same type of restrictions can vary widely from country to country depending upon how it is applied.

It should be noted that wheat, flour as well as chilled and frozen beef are subjected to some sort of obstacle in each of the countries included in the table and that wheat, barley and frozen beef and mutton offals are also affected in nearly all those countries.

To give you an idea of the contrasting situation obtaining in Uruguay, I may say that in Uruguay today, it is possible to import any product whatsoever, in any volume, for any use or amount whatsoever from any part of the world without any discrimination.

If this state of affairs is not an illuminating illustration of the nullification or impairment of benefits referred to in Article XXIII, then nothing now makes any sense in the General Agreement. Let me make it quite clear that here I am referring both to the effectiveness of restrictions which are incompatible with Articles XI and XIII, as well as to those which, though they do not necessarily infringe the Agreement, also produce serious prejudicial effects and therefore come within the purview of Article XXIII. These factors combine together to exert adverse pressure on Uruguay's balance of payments by depriving us of the necessary resources for carrying out economic development projects; they contribute to the instability of our earnings; they make full employment very difficult; they conduce to social instability and create inconveniences of all kinds the extent of which it would be hard to underestimate.

Of course these problems are not exclusively peculiar to Uruguay. Many delegates will recognize similar situations which exist in their own countries as can be seen from the incisive conclusions drawn by Committees II and III.

It can, therefore, be said that the initiative taken by Uruguay does not in any way reflect any particular state of affairs. It is merely the first concrete example that has been cited of the imbalance that was definitely acknowledged by Committee II as existing in the case of countries which export agricultural and livestock products and which is in contradiction with the agreed provisions of the multilateral intergovernmental treaty called the General Agreement.

This submission, therefore, and the way in which it is dealt with by the CONTRACTING PARTIES, will create a precedent of considerable importance.

3. SUBMISSION OF THE PROBLEM IN TERMS OF ARTICLE XXIII

Uruguay is pursuing only one objective, namely the elimination of the restrictions which have led to this action because we regard it not only as the solution of our own problem, but as an effective way of helping to achieve the ultimate aims on which the operation of the Agreement is based. This aspect of the problem cannot be over-emphasized, nor can the sincerity with which it is submitted. Our basic and paramount interest lies in the widest possible opening up of markets, and if any initiative or any action is taken or envisaged, which would be consonant with this desirable objective, we shall be in the forefront.

At the same time we would be ignoring facts which cannot now be dissembled, and the scope of which, great as it already is, may become greater, if we do not bring this problem up before the CONTRACTING PARTIES, as we are doing today under the provisions of Article XXIII:2(i).

We ask the CONTRACTING PARTIES to look into this matter promptly and to make adequate recommendations to the contracting parties which feel that they are concerned, or to give a finding, as appropriate.

At the present moment, after waiting literally for years for a solution to be found to the problems of imbalance, already referred to - and may I recall that after three years, the programme for the expansion of international trade has only led to a further recognition, already contained quite clearly in the Haberler report of 1958, of the restrictions which hinder the trade of countries exporting exporting agricultural and livestock products - it is not reasonable or compatible with the Agreement merely to go on recommending patience and holding out prospects of a possible and constantly postponed advent of a better future, of a better tomorrow that never dawns.

The factual situation is well-known and only deeds can remedy it. If the CONTRACTING PARTIES are in a position to have their recommendations converted into tangible deeds, something which is in keeping with the circumstances, we would consider ourselves completely satisfied, and we shall consider that our efforts have been crowned with the best possible results, and, if there is any contracting party which can at this moment decide that it can announce the elimination of any restriction whatsoever, we shall be very anxious to hear what they have to say.

In the contrary event, we feel that there will be no alternative but to resort to the application of Article XXIII, paragraph 2, namely that the circumstances are sufficiently serious to justify Uruguay being authorized to suspend the application to other specific contracting parties. Of course, this would not necessarily mean all the contracting parties with which we are holding consultations, nor would this exclude the possibility of consulting with new contracting parties about the concessions or other obligations of the Agreement which the CONTRACTING PARTIES feel are appropriate in the light of the circumstances.

As regards the practical measures resulting from this statement made by Uruguay, it should be noted, on the one hand, that we are fully prepared to participate in all the work to be done, and on the other hand, that inevitably the time factor which has been working against us should be turned into a positive element by fixing an early date for the introduction of adequate measures by Uruguay. At the same time I should like to stress the urgent necessity for Uruguay to achieve a reasonable balance in its foreign trade before present conditions bring to light even more serious problems - all this within the framework of legality which we wish should be a feature of our action under the Agreement.