

STATEMENT OF THE DELEGATION OF CUBA
ON MARGINS OF PREFERENCE NEGOTIATED IN ANNEXY

TO THE CONTRACTING PARTIES:

1) The Delegation of Cuba has maintained before the CONTRACTING PARTIES that the equilibrium between concessions granted and received through previous negotiations carried out within GATT cannot be impaired to the detriment of a contracting party without its consent ⁽¹⁾ and without due compensation, for otherwise one of the fundamental principles of GATT would be disregarded.

2) It is evident that the maintenance of margins of preference is considered a positive advantage for the contracting party enjoying the preference, and therefore the reduction or elimination of a margin of preference, maintained through a previous negotiation, cannot be made without causing an unbalancing of these previous negotiations to the detriment of the contracting party whose margin of preference is reduced or eliminated.

3) There is only one way of avoiding this result: namely, by obtaining the previous consent of the affected party through the appropriate negotiation in which the damage be

⁽¹⁾ Except in exceptional circumstances not elsewhere provided for in the Agreement.

duly compensated, in order to maintain the essential equilibrium between concessions granted and received, this consent to be given the express approval of all the contracting parties. One cannot consider as valid within GATT negotiations tending to disturb this equilibrium, that is, those that reduce or eliminate unilaterally and without the consent of the affected party the concessions which it has received through previous negotiations. If this could be done, the Agreement would cease to be multilateral and would become a unilateral instrument for the exclusive benefit of the party which can take those measures.

4) Under date of June 21st, the Delegation of the United States sent to the Delegation of Cuba a copy of the final list of offers which it had presented to the Delegation of Haiti during the negotiations which were concluded on the 18th of that month. The Delegation of Cuba noted that according to the data set forth in the said list some of the tariff advantages which were granted to Haiti reduce or completely eliminate a certain number of preferential concessions enjoyed by Cuba as a consequence of the tariff engagements which our country and the United States entered into during the negotiations carried out at Geneva in 1947.

5) The tariff concessions offered to Haiti in Part I of Schedule XX of the Agreement, which corresponds to the United States, affect Cuban margins of preference in the following manner:

<u>Item</u>	<u>Description</u>	<u>Present Margin of Preference</u>	<u>Reduction in Cuban Prefer- ence Margin Through Offers to Haiti</u>	<u>Margins That Would Be Enjoyed by Cuba</u>
802	Rum	\$0.50 per gallon proof	\$0.50	None
746	Bananas	1.50 per lb.	0.75	\$0.75
747	Pineapples, candied crystallized, or glace	21%	17.5%	3.5%
751	Jellies, jams, marmalades, and fruit butters	6%	6%	None
752	Guavas prepared or preserved	3.5%	3.5%	None
752	Mango and guava (paste and pulp)	14%	10%	4%

6) Under date of April 22nd, the Delegation of the United States transmitted a memorandum to the Delegation of Cuba to which were attached the tentative offers which the Delegation of the United States had presented to the Delegations of Haiti and the Dominican Republic, some of which affected these and other margins of preference enjoyed by Cuban products, for the purpose of learning the views of the Delegation of Cuba with respect to the granting by the United States of tariff advantages which impair preferential concessions which had been negotiated previously with our Government.

7) The Delegation of Cuba, under date of May 13th, 1949, presented to the Delegation of the United States in a memorandum a series of questions in relation to this matter,

based on the Cuban sugar problem and on the offers with regard to sugar which had been made to the Dominican Republic, in which a general thesis was developed with respect to the whole question of margins of preference which Cuba enjoys in the United States market, and in which the Delegation in a very concrete manner expressed the firm view of the Government of Cuba that none of the preferentials enjoyed by any of our products can be reduced or eliminated without previous negotiation and by mutual agreement between the Governments of Cuba and the United States.

8) As proof of the clear manner in which the Delegation of Cuba expressed to the Delegation of the United States in the above mentioned document its views in this respect, there follows a transcription of Point 33 thereof:

"Cuba therefore firmly maintains its interpretation that the margins of preference which were fixed in the General Agreement and in the Exclusive Agreement of 1947 were bound and guaranteed in such manner that they cannot be the object of reduction or elimination without the previous consent of Cuba."

9) The Delegation of Cuba, under date of June 24th, presented to the Delegation of the United States another memorandum in which it reiterated the points of view already made in the sense that the negotiation carried out between the United States and Haiti could not be made effective without the consent of Cuba given through negotiations in which adequate compensations should be offered to Cuba in a sufficient degree to have it decide to grant that consent because the equilibrium in the compensations resulting from the agreements between Cuba and the United States in the negotiations of 1947 was maintained.

10) Notwithstanding the above, the Delegation of the United States has proceeded to make final the offers enumerated under Paragraph 5 of this statement, without having negotiated with our Government for the purpose of obtaining its consent for the reduction or elimination of the margins of preference through adequate compensation, pursuant to the principles and provisions of the General Agreement.

11) During the tariff negotiations carried out at Geneva in 1947, Cuba and the United States agreed that the negotiations that they were to undertake should be based on the preferential system which had traditionally existed between the two countries, though making the adjustments in the said system that the new economic conditions required. In agreement with those aims both governments proceeded to exchange concessions, and the margins of preference which were maintained as a result of those negotiations were taken essentially into account, in order to seek a balance in the negotiations, following the criterion of equity that the concessions granted in exchange for those received should be fairly compensatory.

12) The preferential concessions that Cuba kept after these negotiations, among which are included those described in Paragraph 5 of this document, determined the adoption of Part II in Schedule XX, and those preferences kept in favor of the United States gave rise to Part II of Schedule IX. These Schedules were approved by the CONTRACTING PARTIES and, together with those corresponding to the other countries, were incorporated in Part I of the General Agreement in accordance with the provisions of Paragraph 7 of Article II.

13) The preferential concessions negotiated between Cuba and the United States and approved by all the contracting parties in the manner set forth, as well as all the other tariff concessions arising from the Agreement, are in force until January 1, 1951. Only after that date and not before, according to the provisions of Article XXVIII, may the contracting parties modify or cease to apply the treatment granted to the products enumerated in the appropriate Schedule, but even then only through the negotiations provided therein.

14) The Delegation of Cuba considers that the said Article XXVIII confers upon the Government of Cuba the right to enjoy the preferential concessions negotiated with the United States at Geneva in 1947 until such date, and that until the period of time existing between the moment in which the Agreement enters into force and January 1, 1951, has elapsed, the United States has not the juridical right to withdraw or amend the said concessions, unless it claims the existence of one of the special situations contemplated in the text of the General Agreement which allow for the waiver of obligations in exceptional circumstances.

15) On the other hand, should the tariff concessions which the Delegation of the United States has offered to the Government of Haiti, and which affect the margins of preference enjoyed by the Cuban products, be made effective, they would bring about modifications in Schedule XX of the General Agreement, which cannot be legally put into effect without compliance with the unanimous consent required under Article XXX for amending Part I of the Agreement of which these Schedules

are an integral part.

16) A simple reading of Article XXX shows that any type of modification effected in Part I of the General Agreement requires the consent of all the contracting parties, and, accordingly, it would not be legal to deprive the Government of Cuba of the preferential concessions which it enjoys, and which are made evident by the inclusion of special rates of duties in Part II of Schedule XX, without obtaining its previous consent.

17) This conclusion is confirmed in the light of the provisions of Article 17 of the Havana Charter which regulate the right to negotiate the margins of preference enjoyed by a contracting party if such a negotiation takes place at the request of another country, provided that the provisions of the Havana Charter are the applicable ones to the contracting parties to the General Agreement on Tariffs and Trade. We shall undertake a brief analysis of Article 17 of the Havana Charter to prove that even if the provisions of this Article were applied, the existing preferences between Cuba and the United States cannot be altered without the consent of our Government.

18) Paragraph 1 of Article 17 of the Charter establishes for all members the obligation of entering into negotiations at the request of any other member for the substantial reduction of the general level of tariffs and the elimination of preferentials. It should be noted that there is no mention of an obligation to eliminate preferences or to reduce tariffs.

Rather the obligation is to enter into negotiations for those purposes.

19) On the other hand, Subparagraph (e) of Paragraph 2 of that Article provides as follows:

"Prior international obligations shall not be invoked to frustrate the requirement under paragraph 1 to negotiate with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of such obligations except (i) with the consent of the parties to such obligations, or in the absence of such consent, (ii) by modification or termination of such obligations in accordance with their terms."

20) The principles contained in the above Paragraph are the following:

a) That previous international obligations cannot be invoked to refuse to comply with the request to negotiate the elimination or reduction of preferences made by any other member country.

b) That the agreements resulting from those negotiations, and which may be in conflict with the said previous obligations, shall not determine the automatic modification of the said obligations.

c) That these previous obligations may be modified with the consent of the parties to them.

d) That when that consent is denied, the said previous obligations cannot be modified or terminated except in accordance with their terms.

21) From the point of view of the provisions of the Para-

graph which we have just considered, the previous international obligations which cannot be invoked by any contracting party to refuse to negotiate with any other contracting party on preferentials that may have been granted to a third country, may well be the obligations undertaken at Geneva in 1947. That is to say that in the case which we are considering, the Government of the United States could not refuse to negotiate with the Government of Haiti, but once these negotiations had been carried out, if the engagements therein undertaken are in contradiction to the preferential obligations existing between the United States and Cuba, these cannot be modified until these two parties to the previous obligations have granted their consent. And, if that consent is refused, there is no other remedy than to have recourse to the terms of the previous obligations for their modification or termination. This is to say that in the particular case of any contracting party to the GATT, it would be necessary to introduce these modifications in accordance with the provisions of Article XXX of the Agreement, or, otherwise, to denounce the GATT in accordance with the terms of the Protocol of Provisional Application.

22) The above seems clear to the Delegation of Cuba from the provision of Paragraph 3 of Article 17 of the Havana Charter which declares that the negotiations effected at Geneva in 1947 must be considered as negotiations carried out in accordance with the provisions of the said Article and that any other new negotiation shall be incorporated into the General Agreement in the manner agreed to between contracting parties

t the Agreement. Once the reduction or elimination of preferences contemplated by that Article was effected, through the GATT negotiations, no new negotiations can be carried out tending to eliminate the preferentials which remained after negotiations held at Geneva in 1947, except with the consent of the affected party, as one of the contracting parties, since the reduction or elimination of preferences envisaged in Article 17 was effected at Geneva in 1947, and the preferential rate and the resulting margins of preference agreed to are in force until January 1, 1951.

23) It is evident, furthermore, that if any reduction or elimination of preferences must be the object of due compensation, the latter is only possible if the reductions or eliminations are negotiated to the satisfaction of the damaged party. This negotiation per se implies and makes essentially necessary the previous free consent of the affected party, since the negotiation would not be free if the result were to be previously and compulsorily imposed on one of the parties.

24) Independently of the above, to permit the reduction or elimination of these margins of preference without the previous consent of Cuba would imply the leaving unilaterally in the hands of the United States the possibility of impairing or even of annulling the compensations obtained by Cuba in the aforementioned Geneva negotiations, in exchange for which Cuba made its concessions to the United States. This is an untenable situation that cannot be recognized and approved within an Agreement which has among its objectives the con-

clusion of negotiations on a reciprocal and mutually advantageous basis for the parties to them.

25) On the other hand, this question of the preferentials is of vital importance to Cuba. In effect, since 1902, that is, since the inauguration of the Republic, the economic relations between Cuba and the United States have been based upon a system of tariff preferences. This type of relation, consecrated through half a century of application, constitutes such an essential element for the economy of Cuba that it cannot be changed except through a period of preparation and transition once the two interested countries should agree to its elimination.

26) On the basis of the above, the Delegation of Cuba requests that the CONTRACTING PARTIES declare that the negotiations effected by the United States, through which the margins of preference, maintained in force in favor of Cuba after the conclusion of the 1947 Geneva negotiations, are eliminated, be declared as lacking in efficacy or validity pursuant to GATT unless the previous and express consent of Cuba is obtained.

27) Cuba expects, therefore, that the CONTRACTING PARTIES, with full cognizance of the gravity of the problem presented, will confirm the need for maintaining as the essential basis of this General Agreement on Tariffs and Trade the principle of the equilibrium and mutual advantages of the negotiations undertaken pursuant to its terms and that, therefore, negotiations impairing these principles will be rejected.

