CONTRACTING PARTIES
Third Session

DELEGATION OF CUBA
MARGINS OF PREFERENCE NEGOTIATED IN ANNECY
(4th Supplementary Statement)

This document, which was distributed to all Delegations at the meeting of the CONTRACTING PARTIES on 8th August, 1949, and which is referred to in Summary Record GATT/CP.3/SR.37, should bear the symbol of the present document. A few extra copies of this Statement are obtainable from the Secretariat.
TO THE CONTRACTING PARTIES:

1) With full cognizance of the great difficulties which confront the CONTRACTING PARTIES in their endeavor to succeed in this great experiment which is being attempted through the maintenance of an international body to regulate and adjust the problems of international trade; with the absolute conviction that every one of the contracting parties, while having to defend its own particular interest, has, nevertheless, a vital concern that international trade be carried out in such a manner as to promote the welfare of the world as a whole; and with the full realization that these aims can only be achieved by the application of measures of equity whenever the cold application of a technicality produces an unjust situation, the existence of which is duly recognized; we hereby address the CONTRACTING PARTIES in an endeavor to reconcile the difficulties which may arise from the solution of the case presented for their study by the Cuban Delegation.

2) In the Havana Charter the parties have pledged themselves to facilitate, through the promotion of mutual understanding, consultation, and cooperation, the solution of problems relating to international trade. Throughout the Charter it is emphasized that the elimination of world trade barriers has to be made on bases reciprocally and mutually advantageous to the parties concerned, as it is stated in paragraph 4 of Article 1 of the Charter. Even Article 17 which establishes the procedure for the reduction of tariffs and elimination of preferences paragraph 2 (b) consecrates the requirement that the concessions granted and received in the negotiations must
balance because no member shall be required to grant them unilaterally.

3) As we have reiterated throughout the presentation of our case to the CONTRACTING PARTIES, in the examination of a problem it is impossible to divert the cognizance of the facts from an application of law, and, as in this case the discrepancy arises from antagonistic points of view presented by the Cuban and the United States Delegations, we shall first relate briefly the factual aspects of the case affecting the relations of these contracting parties within the GATT.

4) As the relations of Cuba and the United States are not only governed by the General Agreement but also by the Exclusive Agreement, which is a complementary disposition thereof, we shall have to refer also to this Exclusive Agreement, not because it is subject to any decision of the CONTRACTING PARTIES, but because it throws a clear light on the interpretation of the General Agreement by both parties which certainly should be considered and analyzed by the CONTRACTING PARTIES in order to reach a decision as to the obligations and rights derived by each of the two parties from the said General Agreement.

I

RIGHTS AND OBLIGATIONS OF CUBA AND THE UNITED STATES IN THE LIGHT OF THE GENERAL AGREEMENT AS CLARIFIED BY THE EXCLUSIVE AGREEMENT:

5) When in 1946 the Government of Cuba was invited by the Government of the United States to attend the First Session of the Preparatory Committee for the creation of ITO and received the draft originally prepared by the United States, the Government of Cuba accepted that invitation with great reluctance. In effect, the idea of changing Cuba's bilateral
preferential relations with the United States, which our country had enjoyed since the inception of the Republic of Cuba, for a multilateral agreement, had to be carefully considered, as the proposed draft of the Charter showed a tendency to eliminate preferential systems.

6) During the First Session of the Preparatory Committee in London, the Cuban Delegation was very careful to protect the principle that prior international commitments could not be changed except with the consent of the interested parties or by their termination in accordance with their terms. This principle was embodied in Article 24 of the London Draft and later on in Article 17 of the Geneva Draft. Cuba, as well as every other party to this Agreement, was led to negotiate at Geneva in 1947 by the assurance that this world experiment was started with the specific objective to better and ameliorate the conditions of international trade, but only through negotiations which had to be reciprocally and mutually advantageous to every one of the parties.

7) After joining the General Agreement on Tariffs and Trade, in which Cuba was certain that its margins of preference were securely bound, the United States and Cuba considered it advisable to subscribe to an Exclusive Agreement which would cover certain points remaining outside of the multilateral negotiations and which affected the trade of the two countries. This agreement, therefore, came to supplement the negotiations agreed to between Cuba and the United States in the multilateral stage. We are enclosing as Exhibit A a copy of the said bilateral agreement between the two countries.

8) When this agreement is examined, the conclusion must be reached that the Delegations of both countries at the time of its signature understood that the provisions of the General
Agreement on Tariffs and Trade fully guaranteed the stability of the preferential concessions which had been incorporated into Part II of Schedules IX and XX.

9) In the first place, sub-paragraph (a) of paragraph 2 of the Exclusive Agreement reiterates the concept that the provisions of Part II of Schedules IX and XX shall be exclusively applied between Cuba and the United States, thus making clear reference to the intention of maintaining a preferential situation with respect to the products enumerated in the said Part II, for otherwise the exclusive application of those provisions cannot be conceived.

10) On the other hand, in sub-paragraphs (c) (i) and (c) (ii) of paragraph II of the Exclusive Agreement, it is provided that any product not included in the respective Schedules of Cuba and the United States annexed to the General Agreement, but which was effectively imported into either country during any one of the years 1937, 1939, 1944, and 1945, is entitled to a margin of preference equal to that existing April 10, 1947, for that product. It should be pointed out here that the Exclusive Agreement thus reiterated the existence of margins of preference also with regard to articles not negotiated in the multilateral agreement with the sole proviso that they had, in fact, been imported into the respective country during any one of the said years. Only products which were not negotiated and which were not imported previously into either country in any one of those years were therefore excluded from the preferential system. Thus, the fundamental objective of this Exclusive Agreement, of covering the cases that had been omitted in the multilateral negotiations, was accomplished.
11) The two provisions of the Exclusive bilateral agreement between Cuba and the United States upon which we have commented demonstrate without any doubt that the policy of the United States at the moment of signing this agreement was certainly not to deprive the preferential system of the guarantee of its stability. On the contrary, even in the case of those products which, because of their relative unimportance, were left out of the GATT negotiations, but which, nevertheless, were imported to some extent into one or the other country during certain years chosen as representative, the parties took care to specify in the agreement that such products would continue to enjoy a margin of preference subject to the provisions of Article 17 of the Havana Charter, that is, among others, sub-paragraph (e) of paragraph 2 of this Article which requires the consent of the parties concerned in order to modify previous obligations. And if that was the attitude of the Government of the United States with respect to products of minor importance in the trade of the two countries, how can it be possible to think that that policy was to be different in the case of products which because of their higher trade importance were included in the GATT negotiations.

12) Furthermore, the good faith of the Government of Cuba with respect to the interpretation of the provisions of GATT which it has presented to the CONTRACTING PARTIES is conclusively demonstrated by the contents of paragraph I of the Exclusive Agreement by which it was agreed to suspend the application of the Reciprocal Trade Treaty of 1903 and the Reciprocal Trade Agreements of 1934, 1939, and 1941, between Cuba and the United States, while the two countries should continue to be contracting parties to the GATT.

13) It is impossible to conceive that Cuba would leave with-
out effect treaties protecting its preferences for the maintenance of which it had fought so tenaciously in the London and New York sessions, were it not for the fact that during the life of the Agreement those preferences were guaranteed and consecrated by the Agreement itself. It was only for this reason that Cuba accepted the suspension of the effects of the Reciprocal Trade Treaty and the Trade Agreements which had guaranteed Cuban preferences up to the time of the entry into force of the General Agreement. It was also noted by Cuba that in accordance with the text of the Agreement, the Schedules could not be changed except with the unanimous consent of the parties.

14) If there had been any doubts (but there were none) in the minds of the Cuban negotiators about the fact that the Cuban preferences were perfectly guaranteed during the term of the General Agreement, they would have been dispelled by a letter sent to Minister Clark, Head of the Cuban Delegation, by the Head of the United States Delegation at Geneva and dated October 27, 1947, that is, three days before the General Agreement and the Exclusive Agreement were authenticated and signed. We are enclosing a copy of the said letter as Exhibit B to this statement. In paragraph 2 of the said letter, explaining why the formula of the key years was employed in the Exclusive Agreement, the following was expressed:

"If the key-year formula is dropped but the other language of paragraph (c) is retained, this would continue present margins of preference (subject to the principles set forth in Article 17 of the Draft Charter for an International Trade Organization recommended by the Preparatory Committee of the U.N. Conference on Trade and Employment, as specified in paragraph (c) of the Exclusive Agreement) on all items not now in Part I and Part II of the United States and Cuban Schedules. This would even continue margins on products not produced in Cuba at all, for example, watches. It would continue margins on products of no importance whatever to Cuba. It would tie Cuba's hands in the same way regarding products of no importance whatever to the United States. What we are trying to do in this Agreement, is to continue margins on products in which some experience has shown that Cuba and the United States are
actually interested. We would consider the inclusion of any year which Cuba thinks more fully representative of its interest. But some standard is essential. It is not in the interest of the United States or of Cuba to have their relationships so arranged that each has its hands tied with respect to future negotiations by a technical contractual obligation affecting products in which the other is not really interested. On such items Cuba and the United States should be free to reduce or eliminate the preference, precisely because it is meaningless."

15) Out of this whole paragraph we would emphasize the following:

"It is not in the interest either of the United States or of Cuba to have their relationships so arranged that each has its hands tied with respect to future negotiations by a technical contractual obligation affecting products in which the other is not really interested. On such items Cuba and the United States should be free to reduce or eliminate the preference, precisely because it is meaningless."

16) What would these phrases, coming from the Head of the United States Delegation, mean except that the hands of the two countries were only free to eliminate the preferences that were meaningless, that is, those that affected products that were never imported into either country during the key years, but that the preferential terms on other products covered by the General Agreement, or by the Exclusive Agreement, could not be freely reduced or eliminated by the parties because each of them "has its hands tied with respect to future negotiations by a technical contractual obligation".

17) It was long after Geneva that the Government of Cuba heard for the first time that the interpretation by certain experts of the United States Government was that the United States was free to decrease or eliminate the Cuban margins of preference unilaterally without the consent of Cuba. At that time Cuba made it formally known to the United States that it could not accept and it did not share this interpretation.

18) The position of Cuba, acknowledged by its preceding, contemporaneous, and ulterior actions in respect to the Geneva negotiations, is and always has been that the margins of pref-
erence which were determined and maintained in the Geneva negotiations of 1947, had, within the General Agreement, and the Exclusive Agreement, an identical guarantee as that which they enjoyed by virtue of the Reciprocal Trade Treaty and Agreements which had been suspended.

19) On December 14, 1948, the Cuban Government requested from the United States to be made a party to the negotiations for the reduction and elimination of preferences which the United States had announced that it intended to undertake with certain nations at Annecy. A copy of the Cuban note is enclosed as Exhibit C of this statement. The object of this communication sent by Cuba was that the negotiations on certain products on which Cuba enjoyed preferential rates should be undertaken under sub-paragraph (c) (iii) of paragraph 2 of Article 17 of the Havana Charter, so that the reduction in both the most-favored-nation rate and the preferential rate would be that agreed to by the parties to the negotiation. It is to be noted that the procedure suggested by Professor de Vries at the last meeting of the CONTRACTING PARTIES on the subject had already been followed by the Government of Cuba since December, 1948.

20) On January 13, 1949, the Government of the United States answered the Cuban request stating that the United States did not plan to undertake negotiations with Cuba or any other contracting party and that negotiations were only to be undertaken with the acceding governments, so that the request from Cuba could not be granted. We enclose as Exhibit D of this statement a copy of the said note.

21) We could not then envisage that the negotiations contemplated could affect us as we were denied any right to intervene in them. It is not possible to admit that a party just by
choosing unilaterally a certain procedure may deprive another of its right to intervene in a negotiation affecting it.

22) Cuba has never varied from her criterion that the margins of Cuban-American preferentials were bound and guaranteed in the General Agreement, and in the Exclusive Agreement, of 1947 at Geneva. And this was confirmed to the United States of America in a long memorandum dated May 13, 1949, explaining our points of view and also the legal reasons for which Cuba understood that this elimination or reduction of preferences could only be made with Cuba's consent obtained through negotiations.

23) Not until the 27th of July, 1949, was this memorandum answered by the United States, and this is the reason that the Cuban case was not brought to the attention of the CONTRACTING PARTIES at an earlier date in this Session, as the Cuban Delegation was always hopeful of reaching a satisfactory solution by dealing directly with the United States representatives.

II

CONCLUSIONS TO BE DERIVED FROM THE PREVIOUS FACTUAL STATEMENT:

24) Before we reach any conclusion regarding these factual statements, we want to emphasize that the exposition of these facts has only one objective: to help the CONTRACTING PARTIES reach a correct interpretation of the mutual contractual rights and obligations of Cuba and the United States under the General Agreement.

25) There is no country in the world which has a higher respect for the United States than Cuba. Together we fought to obtain our independence; the economy of Cuba has been
developed through bilateral economic relations which have been maintained with the United States since the inception of the Cuban Republic for a half a century; the United States has taken on its shoulders at this moment the Cyclopean task of the reconstruction of the world devastated by the Second World War; and finally, it has promoted the Havana Charter and this world experiment. It is, therefore, to them, among all the contracting parties, to which we address this appeal with full confidence in their sense of justice so that the principles of equity so clearly and well expressed in the Havana Charter be applied to our case.

26) The conclusion which, in our opinion, must be drawn from the factual exposition made in part I of this statement is the one that we have already expressed, namely, that Cuba and the United States understood at the moment of signing the General Agreement, and the Exclusive Agreement, that the preferences which were negotiated at Geneva and the ones that were subject to the Exclusive Agreement could not be changed without the consent of both parties, that is, that the contractual guarantees which the preferences enjoyed under the previous Reciprocal Trade Treaty and Agreements were maintained in the General Agreement and in the Exclusive Agreement. On this assumption, it not being necessary then to maintain in force these previous international obligations, such agreements were suspended while both countries were a party to the Geneva Agreements.

27) Furthermore, it is our contention that in order to interpret an agreement, it is not only necessary to read every one of the words which are written therein, but that it is also necessary and fundamental to attend to the intentions of the parties. When its literal reading is not in accordance with
their intentions, the reading of the agreement should be interpreted to concur with the intentions of the parties, and not vice versa.

28) It has to be borne in mind also that the negotiations, which were completed at Geneva by Cuba and the United States both under the General Agreement and under the Exclusive Agreement, were carried out in the light of the provisions of the said General Agreement and of the principles and provisions of the draft charter, and these principles, as we have stated before, require that the negotiations have to be mutually and reciprocally advantageous to the parties. Therefore, the rights and obligations arising for both of the parties have to be construed in the light of these principles, which means that an interpretation of the agreements which would be contrary to these basic principles cannot be considered correct. We, therefore, conclude that the interpretation of the Agreement must be one which maintains its mutually and reciprocally advantageous basis from its inception and throughout the life of the Agreement.

III

DAMAGE PRODUCED TO CUBA IF OUR INTERPRETATION OF THE AGREEMENT IS NOT ACCEPTED:

29) It has been expressed by the Delegation of the United States that Cuba is only relatively affected by the reduction or elimination of preferences which they have carried out as a result of their negotiations with other acceding countries here in Annecy; that in the case of the sugar preference it means very little to Cuba because the important thing is the quota enjoyed by Cuba in the United States market and that the other preferences reduced or eliminated are of secondary importance. First of all, the value of a preference for which a country had paid
should be evaluated by it and not by any other country. Secondly, the value of the sugar preference has always been very highly estimated by Cuba, and the proof of it lies in the fact that in order to maintain this preference, Cuba had made important concessions to the United States, not only in the original Reciprocal Trade Treaty of 1902, but later in the 1934, 1939, and 1941 Trade Agreements. It is said that the quota is the important thing, not the preference, and that the disappearance of the quota system should not be envisaged. But the quota is something the existence of which depends legally upon the will of the United States Congress to maintain it, while a preference is a contractual obligation of both countries which should not be broken without the consent of both parties. Even if we admit that the possibility of removing the sugar quota by the United States is remote, nevertheless, we have to notice that in the same offer which was made to the Dominican Republic for the reduction of the most-favored-nation rate on sugar, a note was appended in which the possibility was envisaged that the quota system in the United States be substantially modified or eliminated. Thirdly, as to the other preferences, they constitute a protection which is needed by Cuba at this moment when our country enjoys a high standard of living and pays higher wages than other possible competitors. Some of those preferences offer an opportunity for the industrialization of Cuba. This could hardly be carried out or even contemplated if the existence of the preferences is left entirely in the hands of the United States.

30] In the paper which was read by our Delegation at the last meeting of the CONTRACTING PARTIES in which the case of Cuba was debated, we pointed out as examples the cases of
the preference on rum and on pineapple. Even if the United States would have an opinion that the preference on rum does not mean much to Cuba, it is clear from the Genova negotiations that this opinion is not shared by the Cuban Delegation, as the Cuban negotiators were willing then to accept a higher rate of duty in order to preserve the preference.

31) An analysis of this situation shows that the acceptance of the United States thesis would affect Cuba in three different ways: First, it will leave in the hands of the United States the disposition of the Cuban preferences, making impossible any industrial development based on preferences which may be eliminated at any moment without our consent. Second, it leaves the value of the preference to be appraised by the United States and not by Cuba, which is the interested party. And third, Cuba will have no right to intervene in the negotiations in which such elimination or reduction may result as the United States maintains that only consultation and not negotiation is proper in the circumstances. As to the consultation, we have seen what it means, as, notwithstanding the position taken by Cuba in opposing the reduction of the most-favored-nation rates unless a corresponding reduction was made in the preferential rate or unless negotiations were undertaken to compensate to Cuba's satisfaction the reduction or elimination of the preference, the United States had proceeded to effect the said reductions and eliminations without the previous consent of Cuba.

32) Outside of the actual loss brought about by the reduction or elimination of certain preferences, the acceptance of the United States thesis creates an uncertainty in the maintenance or existence of the said preferences which, just by this fact, reduces fundamentally the value of these preferences to Cuba.
IV

PROPOSED SOLUTION TO THE CUBAN CASE WITHOUT AFFECTING THE LEGAL STATUS OF OTHER CONTRACTING PARTIES:

33) We have been told that certain parties to the Agreement object to the Cuban interpretation on the basis that it would disrupt their own economies which have been based on a different interpretation of the Agreement. They would then find themselves in the situation Cuba would have to face if their interpretation should prevail.

34) It is also the understanding of certain contracting parties that the Cuban interpretation would make impossible the accession of new member countries and the completion of future negotiations.

35) We admit that to give to the Agreement an interpretation favorable to Cuba, but that would create serious difficulties to other countries, is unacceptable because, though the case of Cuba would be solved, a situation might be created by which other contracting parties would find that their negotiations which were mutually and reciprocally advantageous when they were undertaken under a specific interpretation of the Agreement, have ceased to be so in the light of such a new and different interpretation.

36) But we find it equally unacceptable to have an interpretation of the Agreement which, while satisfactory to other contracting parties, if imposed on Cuba would unquestionably create a situation in which the equilibrium of the previous negotiations entered into by Cuba at Geneve would be totally disrupted.

37) It has also been said that other countries which had
preference systems protected them through bilateral agreements against any possible elimination by the operation of the General Agreement. It might also be contended that Cuba by suspending the effects of its previous obligations protecting the said preferences could not be considered as belonging to this category.

38) This is inadmissible, for we have already proven that we took that action only because at the time of signing the Geneva agreements we had the clear understanding that it was not necessary to protect the preferences during the life of the Geneva agreements because they were duly protected by the agreements themselves, and that it has always been the intention of Cuba to maintain this protection. We also had every reason in the world to believe that the United States shared this same opinion as evidenced, among other things, in the letter written by the Head of the American Delegation to the Head of the Cuban Delegation a few days before the signing of the Geneva agreements.

39) As we shall prove hereinafter, in order to permit the modification of the Schedules by a decision other than by unanimous consent, it is necessary to bypass a clear provision of the General Agreement. This means that in order to admit the opposing thesis, it is indispensable to infringe the clear and literal content of one of the most important Articles of the Agreement, that which establishes the requirement of unanimous consent for the modification of certain parts of the Agreement.

40) Nevertheless, in suspending the effect of its previous international agreements Cuba felt that the requisite of the unanimous consent for the modification of Schedules safeguarded also the margins of preference which were maintained
at Geneva, and, therefore, an interpretation which would ig­
nore this requisite would be as detrimental to the equilib­
rium of the Cuban negotiations as the Cuban interpretation
seems to be for the equilibrium of the negotiations undertaken
by other contracting parties.

41) After this analysis, an equitable solution of the prob­
lem presents itself. Let the General Agreement be given, by
unanimous consent, the interpretation which seems to be neces­
sary to maintain the equilibrium in the negotiations of other
contracting parties, and recognize that in their case Cuba
and the United States cannot modify their respective margins
of preference without each other's previous consent. This
could be accomplished by a special resolution of the CONTRACTING PARTIES resolving in equity, within the scope of the
General Agreement, the case which has been submitted to them.
Such a decision would be in force as long as both countries
remain a party to the General Agreement and while the prior
international obligations of Cuba and the United States are
not eliminated by mutual consent or are terminated in accord­
ance with their own terms.
PROCEDURE FOR THE SOLUTION OF THE CUBA-UNITED STATES CASE:

42) In order that the CONTRACTING PARTIES may reach a decision as to the merits of the request made by Cuba in paragraph 41 of this document, it is necessary to analyze and study in all its aspects the rights and obligations of Cuba and the United States under the General Agreement, and this is a task which could hardly be undertaken in a general meeting of the CONTRACTING PARTIES.

43) We believe that Article XXIII of the Agreement gives to the CONTRACTING PARTIES the right and the procedure to study the matter in all its aspects and that to this end a working party should be designated. But, at the same time, it is essential that the working party shall be able to analyze all the said aspects of the case without restriction.

44) As the solution of the particular difficulties between Cuba and the United States is envisaged in the preceding section of this document, it is not necessary for the working party to make a recommendation on the general interpretation of the Agreement by the Cuban Delegation, but certainly Cuba's thesis cannot be barred from the general discussion in the consideration of the specific case of Cuba and the United States as it is one of the elements which have a bearing on the situation. Likewise, the consideration of the rights and obligations of Cuba and the United States under the Exclusive Agreement must be examined by the working party as they also have a bearing on the rights and obligations of Cuba and the United States under the General Agreement. That is why we were unable to accept the constitution of a working party with restricted terms of reference which would prohibit the discussion or analysis of arguments which we consider fundamental in
the general consideration of the case, at least to the extent that they affect the case under discussion.

45) Article XXIII of the General Agreement considers the possibility that a measure, whether or not in conflict with the provisions of the Agreement, may nullify or impair the benefits accruing directly or indirectly to another party under the said Agreement, but in either case the CONTRACTING PARTIES should investigate the matter, make appropriate recommendations, and, finally, if necessary give an appropriate ruling.

46) We propose that the only limitation which should be imposed upon the working party in the consideration of this problem is that the working party should not consider a general interpretation of the Agreement on the specific legal point raised by Cuba, as this may have a bearing on the legal status of other members, but that the working party should consider specifically the rights and obligations of Cuba and the United States under the General Agreement in order to give a specific solution to this case, allowing Cuba at the same time to present without any limitation such arguments as it may consider appropriate.

47) We suggest, therefore, that the terms of reference of the working party should be:

"to study, without prejudice to the general legal issues raised by Cuba, the action taken by the United States in its negotiations with acceding countries at Annecy, in the light of Article XXIII in order to reach a decision as to whether such action is justified in the present circumstances, due consideration being given to the respective rights and obligations of Cuba and the United States and to the principles of economic cooperation and of mutual and reciprocal advantages in the negotiations which are the basis of GATT; and to make appropriate recommendations in accordance with its findings."
VI

LEGAL ASPECTS OF THE CASE:

48) In the preceding chapter the Delegation of Cuba has made an effort to present to the CONTRACTING PARTIES a solution to our problem which is characterized by its flexibility and equitable spirit. But if this tentative solution is not acceptable to the CONTRACTING PARTIES, the Delegation of Cuba, very much to its regret, would find itself in the necessity of insisting on its legal thesis. We will present it in the following paragraphs not as a mere repetition of what has already been said in our other statements, rather making an effort to refute the main arguments which have been presented against our interpretation of the Agreement.

49) During the negotiations effected at Geneva in 1947 the United States agreed to grant to Cuba, in exchange for other concessions, a series of preferential rates which were specified in Part II (preferential tariff) of Schedule XX annexed to the Agreement. The rates of duty which were granted to Cuban products included in Part II of the said list were not, therefore, of an ordinary kind, but preferential rates of duty which, as their name indicates, can only be enjoyed in an exclusive manner by our country.

50) The circumstances that the duties specified in Part II of Schedule XX should be applied exclusively to the products of Cuba eliminates any doubt with respect to the fact that said exclusive rates of duty imply the existence of a preferential margin, for otherwise it would not be possible to conceive the idea of exclusiveness in the enjoyment of a customs tariff rate. This reasoning demonstrates the falseness of the premise asserted that the concessions specified
in Part II of any Schedule are merely a rate of duty and not a margin of preference.

51) Traditionally, whenever reference has been made to the concession of a preferential rate, the idea of a margin of preference has been considered implicit. Outside of these reasons, however, the provisions of the Agreement confirm the thesis which we maintain.

52) It is precisely in view of this fact that paragraph 3 of Article I was drawn, establishing the limits to margins of preference allowed within the framework of the Agreement. And it is for this reason also that, in an express manner, paragraph (c) of Article II declares that the products described in Part II of any Schedule are entitled to preferential treatment, the concept implied not a narrow and empty concept of the rate of duty, but the idea that can be expressed from a situation of preference, that is the margin of preference.

53) Preferential rates negotiated between Cuba and the United States in 1947 with the margin of preference implied are not preferential duties merely tolerated by the General Agreement. These preferential rates have been included in Part II of Schedules IX and XX annexed to the Agreement, and for this reason, by virtue of the provisions of paragraph 7 of Article II, they form an integral part of Part I of the said instrument. And this is the fact that makes it necessary to apply to those preferential concessions the general provisions of the Agreement relating to the maintenance and protection of the concessions exchanged between the contracting parties in Geneva in 1947, because they are not preferences established outside the orbit of this agreement, and consequently preferences which are merely tolerated, but
rights which have been inserted in the framework of the Agreement.

54) In that case the provisions applicable to the preferential concessions enjoyed by Cuba in the United States market are those presented in the following paragraphs.

55) Article XXVIII of the General Agreement provides that the CONTRACTING PARTIES cannot modify or cease to apply the treatment granted by them to the products described in the corresponding Schedules until January 1, 1951. It is clear that before that date, changes could only be made in the Schedules through the exceptional procedures provided in certain Articles of the Agreement.

56) Article XXX establishes in an express manner the requirement of the consent of all the contracting parties whenever it is desired to introduce any modification to Part I of the Agreement. This is also applicable to preferences. And, since the reduction or elimination of some of the Cuban preferences is carried out through the modification of the rates of duty applicable to the most-favored-nation in Schedule XX, it is unquestionable that it is not possible to make those changes without the unanimous consent of all the contracting parties, and, therefore, of Cuba.

57) Article 17 of the Havana Charter, incorporated into the rules of procedure regulating the tariff negotiations now being carried on at Annecy (GATT /CP2/26), also protects and guarantees the stability of the preferences enjoyed by Cuba in the United States market.

58) The Delegation of Cuba considers that in the preceding paragraphs it has been sufficiently demonstrated that obligations existing between Cuba and the United States, entered
into under the provisions of the General Agreement, guarantee the permanence of the preferential concessions in force between the two countries until January 1, 1951. Therefore, those previous obligations, when they are in conflict with the results of the negotiations that are being carried on at Annecy, as in the case in the Haiti negotiations, cannot be modified without the consent of the Government of Cuba, or in the absence of such consent, without the termination of those previous obligations in accordance with their terms, pursuant to the provisions of sub-paragraph (e) of paragraph II of Article 17 of the Havana Charter.

59) The Delegation of Cuba rejects as inconsistent the argument that with respect to the tariff rates set forth in the Schedules the only undertaking in which the CONTRACTING PARTIES have entered is not to increase them, by virtue of the provisions of Article II of the General Agreement. It has been asserted before, and it is reiterated now, that this Article cannot be considered in an isolated way, but in relation to Article XXX which establishes in a general manner the rule of unanimity for modifications of any kind that may be introduced into the Schedules, without making any distinction between modifications that result in an increase and those that result in a decrease in rates therein set forth.

60) The Delegation of Cuba rejects as well the contention that the preferential rates may be eliminated at any moment because the objectives of the Agreement tend to the complete elimination of margins of preference. It is impossible to admit this because the General Agreement sets a date (January 1, 1951) before which no modifications of the concessions negotiated in 1947, among them preferential concessions, may be made, except in special circumstances or with the consent of the parties concerned.
61) On the other hand, the Delegation of Cuba considers that it is an unsound tendency, from the economic point of view and within the objectives of cooperation of the General Agreement, to pretend that preferential systems can be eliminated at any moment in a unilateral manner without the least attention for the situation of the countries that suffer the consequences of such severe measures. The economic philosophy of the Agreement, while expressing the desirability of reducing insofar as possible the existence of preferential systems, accepts such systems in cases where practical realities demand it. Furthermore, Article 15 of the Charter sets forth a procedure for the establishment of new preferentials because it is admitted that under certain circumstances a system of preferences may be necessary to stimulate the development or reconstruction of a country. This was the criterion maintained by the Delegation of the United States when, during the Second Session of CONTRACTING PARTIES, held at Geneva in 1948, it requested and obtained authority for the establishment of a new system of preferences for the benefit of certain islands of the Pacific.

VII

AUTHORITY OF THE CONTRACTING PARTIES TO TAKE A DECISION IN THIS MATTER:

62) Article XXX of the Agreement dealing with amendments states that "amendments to the provisions of Part I of this Agreement shall become effective upon acceptance by all the contracting parties". Paragraph 7 of Article II states: "The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement." Our contention that in accordance with these two Articles the Schedules annexed to the Agreement cannot be changed without the con-
sent of all the parties concerned is not a matter of opinion or interpretation. It is something that is written clearly and it can only be read in the sense in which it is stated.

63) On the other hand, the text of Article XXX is of great amplitude, and it refers in general to amendments to Part I of the Agreement without in any way limiting the concept of those amendments and without making any distinction which would make permissible amendments resulting in a decrease in the rates of duties set forth in the Schedules. This view which we are explaining is not founded on speculative interpretation either, but on the explicit text of Article XXX. Accordingly, any intent to limit the concept of the amendments of which Article XXX speaks in relation to Part I of the Agreement would mean a modification of the text of this Article, a modification which cannot be made without the unanimous consent of all the contracting parties, since this is the requirement which is established in that very Article for amending its text.

64) In accordance with the very peculiar drafting of the General Agreement, the CONTRACTING PARTIES when acting jointly are designated in the Agreement with capital letters, and when they are to be considered individually, they are designated with small letters. Article XXV of the Agreement established the procedure for the joint action of the CONTRACTING PARTIES, and it states that its decisions are to be taken by a majority of the votes cast, except when otherwise provided for in the Agreement. The Agreement also provides for action to be taken by the CONTRACTING PARTIES by a two-thirds majority, and by unani mity, this latter being the vote required in cases of amendments to Part I of the Agreement and to the text of Article XXX. It is clear, therefore, that the legal question submitted by Cuba for the consideration of the CONTRACTING
PARTIES cannot be settled by a simple majority vote nor by a two-thirds majority.

65) If the CONTRACTING PARTIES have no authority to modify the parts of the Agreement hereinbefore mentioned without unanimous consent, it is evident that they have no authority to pass a resolution by which the said requisites be modified or bypassed without the consent of Cuba. That is to say that only a resolution receiving the unanimous consent of every one of the contracting parties can affect or modify the parts of the Agreement which the CONTRACTING PARTIES cannot modify except by unanimous consent.

66) On the basis of the preceding reasons, the Delegation of Cuba regrets to be compelled to raise a question of competence, for it considers that the CONTRACTING PARTIES are not empowered to make a decision settling the legal problem presented and that only the intervention of a neutral body with international authority to hear juridical problems arising between states could offer the possibility of a satisfactory solution.

VIII

APPEAL TO AN INTERNATIONAL JUDICIAL COURT:

67) Taking into consideration the technical legal points involved in the Cuban claim, its far-reaching consequences, and the lack of authority of the CONTRACTING PARTIES to solve this problem, the Delegation of Cuba proposes that, unless the CONTRACTING PARTIES can find a solution in equity to be agreed to by all parties concerned, as envisaged in paragraph 6 of Article 1 of the Havana Charter, the merits of the legal case presented by Cuba be submitted to the consideration and final decision of an international judicial court, and to this effect Cuba submits itself to the decision of the said court. The
Delegation of Cuba wishes to make it clear that it accepts this procedure provided that the application of the negotiations effected at Annecy affecting margins of preference enjoyed by Cuba in the United States market is suspended until a decision is reached by an international court of justice on this matter.

IX

CONCLUSION:

68) In accordance with what has been expressed in this memorandum:

a) The Delegation of Cuba requests the appointment of a working party in order to proceed to the study of the proposal expressed in paragraph 41 of this memorandum, and with the following terms of reference:

"to study, without prejudice to the general legal issues raised by Cuba, the action taken by the United States in its negotiations with acceding countries at Annecy, in the light of Article XXIII in order to reach a decision as to whether such action is justified in the present circumstances, due consideration being given to the respective rights and obligations of Cuba and the United States and to the principles of economic cooperation and of mutual and reciprocal advantages in the negotiations which are the basis of GATT, and to make appropriate recommendations in accordance with its findings."

b) In case the foregoing petition is not approved, taking into consideration the reasons expressed in sections IV and VII of this document, the Cuban Delegation proposes that the CONTRACTING PARTIES submit the legal aspects of the case presented by Cuba to an international court for its decision, taking all the necessary steps to this end.

c) In case that the foregoing petition is not granted, the Delegation of Cuba proposes that in accordance with the legal arguments presented by Cuba to the CONTRACTING PARTIES and those contained in this memorandum, the CONTRACTING PARTIES declare that the Schedules attached to the Geneva agreements
cannot be affected or modified without the unanimous consent, explicit or implied, of the contracting parties and that the concessions obtained by any one of the contracting parties in the previous negotiations, among which preferentials are included, cannot be affected without the consent of the parties concerned.
EXCLUSIVE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF CUBA SUPPLEMENTARY TO THE GENERAL
AGREEMENT ON TARIFFS AND TRADE

The Governments of the United States of America and the
Republic of Cuba,

Having participated in the framing of a General Agreement
on Tariffs and Trade, hereinafter referred to as the General
Agreement, and a Protocol of Provisional Application, the texts
of which have been authenticated by the Final Act adopted at
the conclusion of the Second Session of the Preparatory Commit­
tee of the United Nations Conference on Trade and Employment,
signed this day,

Hereby agree as follows:

1. The Convention of Commercial Reciprocity between the
United States of America and the Republic of Cuba signed Decem­
ber 11, 1902, and the Reciprocal Trade Agreement between the
United States of America and the Republic of Cuba signed August
24, 1934, with its accompanying exchange of notes, as amended
by the supplementary trade agreement signed December 18, 1939,
with its accompanying protocol and exchange of notes, and by
the supplementary trade agreement signed December 23, 1941,
with its accompanying exchange of notes, shall be inoperative
for such time as the United States of America and the Republic
of Cuba are both contracting parties to the General Agreement
as defined in Article XXXII thereof.

2. For such time as the United States of America and the
Republic of Cuba are both contracting parties to the General
Agreement, the products of either country imported into the
other shall be accorded customs treatment as follows:

(a) The provisions of Part II of Schedule IX of the
General Agreement shall apply exclusively to products of the
United States of America, and the provisions of Part II of
Schedule XX of the General Agreement shall apply exclusively
to products of the Republic of Cuba.

(b) Products of the United States of America de­
scribed in Part I, but not in Part II, of Schedule IX of the
General Agreement, imported into the Republic of Cuba, and
products of the Republic of Cuba described in Part I, but not
in Part II, of Schedule XX of the General Agreement, imported
into the United States of America, shall be subject to the
customs treatment provided for in Part I of the applicable
Schedule.

(c) Subject to the principles set forth in Article
17 of the Draft Charter for an International Trade Organiza­
tion recommended by the Preparatory Committee of the United
Nations Conference on Trade and Employment—

(i) any product of the United States of
America not described in either Part of Schedule IX of the
General Agreement which would have been subject to ordinary
customs duty if imported into the Republic of Cuba on April
10, 1947, any temporary or conditional exemption from duty
to be disregarded, and which is of a kind which the Govern­
ment of Cuba shall determine to have been imported into its
territory as a product of the United States of America in
any quantity during any of the calendar years 1937, 1939,
1944, and 1945, shall be entitled upon importation into the
Republic of Cuba to a margin of preference in the applicable rate of duty equal to the absolute difference between the most-favored-nation rate for the like product existing on April 10, 1947, including any such rate temporarily suspended, and the preferential rate likewise existing on that date in respect of such product of the United States of America, and

(ii) any product of the Republic of Cuba not described in either Part of Schedule XX of the General Agreement, which would have been subject to ordinary customs duty if imported into the United States of America on April 10, 1947, any temporary or conditional exemption from duty to be disregarded, and which is of a kind which the Government of the United States of America shall determine to have been imported into its territory as a product of Cuba in any quantity during any of the calendar years 1937, 1939, 1944, and 1945, shall be entitled upon importation into the United States of America to a margin of preference in the applicable rate of duty equal to the absolute difference between the most-favored-nation rate for the like product existing on April 10, 1947, including any such rate temporarily suspended, and the preferential rate likewise existing on that date in respect of such product of the Republic of Cuba.

(d) any product of the United States of America or of the Republic of Cuba for which customs treatment is not prescribed above shall be dutiable, when imported into the other country, at the most-favored-nation rate of duty of the importing country for the like product.

(e) Nothing in this Agreement shall require the application to any product of the Republic of Cuba imported into the United States of America of a rate of ordinary customs duty higher than one and one-half times the rate existing in respect of such product on January 1, 1945, any temporary or conditional exemption from duty to be disregarded.

3. The term "most-favored-nation rate" in this Exclusive Supplementary Agreement means the maximum rate which may be, or could have been, applied consistently with the principles set forth in Article I of the General Agreement to a product of a country which is a contracting party to that Agreement.

IN WITNESS WHEREOF the representatives of the Governments of the United States of America and the Republic of Cuba, after having exchanged their full powers, found to be in good and due form, have signed this Exclusive Supplementary Agreement.

DONE in duplicate, in the English and Spanish languages, both texts authentic, at Geneva, this thirtieth day of October, one thousand nine hundred and forty-seven.

For the Government of the United States of America:

WINTHROP G. BROWN

For the Government of the Republic of Cuba:

S.I. CLARK
MEMORANDUM TO: Minister Clark, Head of Cuban Delegation

FROM: Winthrop G. Brown

SUBJECT: Exclusive Agreement

The object of the key-year formula in the Exclusive Agreement as now written is to continue present margins of preference on products of Cuba and of the United States not included in Part I or Part II of the United States and Cuban Schedules, but in which Cuba and the United States have an actual interest. We desire (and we are sure that Cuba would feel the same) to identify these products and to make it clear in the proclamation of our President establishing new rates, what these products are, so that they may be assured of the preferential rate. If we do not make this clear, questions are sure to arise on both sides, and much trouble will be caused to our respective customs authorities. To identify the Cuban products entitled to this preference, it is necessary to examine in detail several thousand statistical classifications, and for practical purposes, we have suggested that such examination be limited to a few representative years; hence only 1939 and 1944 were specified. However, there is no objection to adding another year or to using other years.

If the key-year formula is dropped but the other language of paragraph (c) is retained, this would continue present margins of preference (subject to the principles set forth in Article 17 of the Draft Charter for an International Trade Organization recommended by the Preparatory Committee of the U.N. Conference on Trade and Employment, as specified in paragraph (c) of the Exclusive Agreement) on all items not now in Part I and Part II of the United States and Cuban Schedules. This would even continue margins on products not produced in Cuba at all, for example, watches. It would continue margins on products of no importance whatsoever to Cuba. It would tie Cuba's hands in the same way regarding products of no importance whatever to the United States. What we are trying to do in this agreement, is to continue margins on products in which some experience has shown that Cuba and the United States are actually interested. We would consider the inclusion of any year which Cuba thinks more fully representative of its interest. But some standard is essential. It is not in the interest either of the United States or of Cuba to have their relationships so arranged that each has its hands tied with respect to future negotiations by a technical contractual obligation affecting products in which the other is not really interested. On such items Cuba and the United States should be free to reduce or eliminate the preference, precisely because it is meaningless.

The proposed new section is superfluous as far as duty rates themselves are concerned, because there is nothing in the General Agreement to prevent Cuba or the United States from lowering or raising the duty on any product not in Part I or Part II of Schedules IX and XX. If this section is to be inserted in place of paragraph (c), there would be no con-
Continuation of preferences on any Cuban products not in Part II of Schedule XX and on any United States product not in Part II of Schedule IX. We would be disposed to agree to this, but we do not believe Cuba desires such a result.

/s/ Winthrop G. Brown
EXHIBIT C:

Cuban Embassy
Washington 9, D.C.

December 14, 1949

Excellency:

I have the honor of addressing myself to Your Excellency with reference to the public notice dated November 5, 1948, issued by the Department of State setting forth the lists of tariff items on which the United States is prepared to consider concessions at the coming negotiations agreed to by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade for the accession of new countries to the Agreement, and among which are included Items 501 and 502 relative to sugars and molasses.

Your Excellency will not fail to understand the deep preoccupation of the Government and the people of Cuba in the maintenance of the status of Cuban sugar in that market in relation to other countries, due account being taken of the existing situation and of the equilibrium between the concession granted to Cuba by the United States on this basic item of its economy and the numerous preferential concessions made by Cuba in its turn to the United States.

In view of these considerations and of the provisions of Article XXIX of the General Agreement on Tariffs and Trade and of Article 17 of the Draft Charter for an International Trade Organization, my Government takes this opportunity to express its wish to participate, as an interested party, in the negotiations which are to be held by the United States and Peru and the Dominican Republic in regard to Items 501 and 502.

Accept, Excellency, the assurances of my highest consideration.

/s/ G. Belt
Ambassador

To His Excellency, Robert A. Lovett
Acting Secretary of State
Washington, D.C.
EXHIBIT D:  

DEPARTMENT OF STATE  
WASHINGTON  
January 13, 1949  

Excellency:  

I have the honor to acknowledge the receipt of your note of December 14, 1948 which refers to the interest of the Government and people of Cuba in maintaining the tariff preference which Cuba now enjoys on imports into the United States of sugar and molasses and which expresses the wish of the Cuban Government to participate as an interested party in the negotiations which will be held by the United States with Peru and the Dominican Republic with respect to these products next April.  

As Your Excellency is aware, the negotiations which are to take place beginning next April at Annecy will be held principally between thirteen new countries and the existing Contracting Parties to the General Agreement on Tariffs and Trade, which include Cuba and the United States. The United States therefore does not plan to undertake negotiations with Cuba or any of the other Contracting Parties in the sense that negotiations are being undertaken with the thirteen countries, including Peru and the Dominican Republic. However, in the event that consideration is given by the United States to a reduction in the most-favored-nation rate of duty on sugar or molasses, the United States Delegation will be glad, during the course of these negotiations, to give consideration to the information contained in Your Excellency's note. Furthermore, should the Cuban Delegation at the conference wish to consult with regard to this subject, the United States Delegation would be glad to discuss the matter at any time during the course of the negotiations.  

Accept, Excellency, the renewed assurances of my highest consideration.  

For the Secretary of State:  

(f) Willard L. Thorp  

His Excellency  
Senor Guillermo Belt,  
Ambassador of Cuba.