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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
2 October 1984

MINUTES OF MEETING

Held in the Centre William Rappard on 2 October 1984

Chairman: Mr. F. Jaramillo (Colombia)

1. Observer status in GATT

(a) Progress report by the Chairman on informal consultations

The Chairman recalled that at the Council meeting on 12 July 1984, he had said he would hold informal consultations on the question of observer status, as requested by several representatives at that meeting. Since then, he had held such consultations, which had been positive, and during which a number of issues had been raised. The process was not yet completed, and he intended to continue the consultations.

The Council took note of the progress report.

(b) Requests

(i) World Bank (L/5679)

The Chairman drew attention to a communication from the World Bank, which had been circulated in document L/5679, asking for observer status at Council meetings.

The Council agreed to grant the World Bank observer status for Council meetings.

(ii) Inter-American Development Bank (L/5678)

The Chairman drew attention to a communication from the Inter-American Development Bank, which had been circulated in document L/5678, asking for observer status at Council meetings.

The Council agreed to grant the Inter-American Development Bank observer status for Council meetings.

(iii) Latin American Economic System (L/5683)

The Chairman drew attention to a communication from the Latin American Economic System (SELA), which had been circulated in document L/5683, asking for observer status at Council meetings.

The Council agreed to grant the Latin American Economic System (SELA) observer status for Council meetings.

2. Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT)

- Report of the Working Party (L/5664)

The Chairman recalled that in April 1983, the Council had established a working party to examine the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) in the light of the relevant provisions of the General Agreement, and to report to the Council. The Working Party's report had been circulated in document L/5664.

Mr. Alencar (Brazil) introduced the report on behalf of Mr. Nogueira Batista, Chairman of the Working Party. He noted that the central trade objective of the Agreement, which had entered into force on 1 January 1984, was the elimination of remaining barriers to all goods traded between Australia and New Zealand. The current Agreement was designed to complete the process towards free trade which had begun in 1966 under the New Zealand/Australia Free Trade Agreement (NAFTA). Free-trade was to be achieved gradually and progressively in accordance with the agreed modalities and time-table in the new Agreement; thus no further instrument would be required. The parties to the Agreement had stated furthermore that they were conscious of their GATT obligations, particularly the provisions of Article XXIV, and submitted that the Agreement would create a free-trade area fully compatible with the requirements of that Article. He noted that some contracting parties, while welcoming the Agreement's general intention and objectives, had expressed difficulties in taking a definite position on the full compatibility of some of its provisions with Article XXIV. Concern had also been expressed as to the GATT rights of third parties in connexion with the Agreement. Some contracting parties had reserved their GATT rights with respect to the GATT conformity of the Agreement.

The representative of Australia, speaking on behalf of both parties to the Agreement, said that they could agree to adoption of the report, although Australia and New Zealand did not entirely agree with all the views expressed therein. The two parties considered that ANZCERT fully met the requirements of the General Agreement, in particular Article XXIV. Both countries were committed to an outward-looking approach to trade and to ensuring that the Agreement did not foster the expansion of inefficient industries. More than 80 per cent of their mutual trade was already free of tariffs and quantitative restrictions; this figure would increase progressively, reaching 100 per cent no later than 1995. This would be achieved without raising barriers to the trade of other contracting parties. Both parties were prepared to furnish reports biennially on the Agreement's operations, but saw no need to continue such reporting once full free trade was reached.

The Council took note of the statements, adopted the report (L/5664), and agreed that the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) be added to the calendar for examination, every two years, of reports on developments under regional agreements.

3. Customs unions and free-trade areas; regional agreements

- Biennial reports

The Chairman drew the Council's attention to the biennial reports on the following regional agreements:

(a) Caribbean Common Market (L/5671)

The Council took note of the report.

(b) EEC-Cyprus Association Agreement (L/5668)

The Council took note of the report.

(c) EEC-Malta Association Agreement (L/5667)

The Council took note of the report.

(d) EEC-Algeria, EEC-Morocco, EEC-Tunisia, EEC-Egypt, EEC-Jordan EEC-Lebanon and EEC-Syria Co-operation Agreements (L/5674)

The Council took note of the report.

4. United States - Imports of textiles and clothing (L/5685)

The Chairman drew the Council's attention to a communication from Pakistan, circulated in document L/5685, noting that developing country exporters of textiles and clothing would make a joint statement on recent developments affecting international trade in these products.

The representative of Pakistan, speaking on behalf of those countries, said that they attached importance to the Council's rôle in safeguarding the rights of contracting parties and particularly in surveying implementation of the commitments in the 1982 Ministerial Declaration, particularly its paragraph 7 (BISD 29S/11). In the context of international trade in textiles and clothing, contracting parties had undertaken to pursue measures aimed at liberalizing trade and to adhere strictly to the rules of the Multi-Fibre Arrangement (MFA).[1] Developing country exporters of textiles and clothing had drawn attention in previous Council meetings during 1984 to the impact on trade in this sector of the automatic, discriminatory application of additional criteria adopted by the United States in December 1983, which had established a system of presumption of market disruption; under this system the United States had made more than 100 calls on more than 20 developing suppliers affecting a wide range of textiles and clothing products. Subsequently, in late July 1984, countervailing duty petitions had been filed in the United States on nearly all textiles and clothing products imported from 13 developing countries; the US Department of Commerce had initiated investigations within 20 days of the petitions being filed. Almost simultaneously, new customs regulations had been published which radically transformed existing law and practice on rules of origin. Like the December 1983 measures, these additional measures had disregarded the basic objectives of the MFA and of the 1982 Ministerial Declaration. The impact on and implications of

[1] Arrangement Regarding International Trade in Textiles (21S/3) as extended by the 1981 Protocol (28S/3).

these measures for trade were considerable; the impact of changes in the rules of origin alone could be estimated at more than three billion US dollars. A major importing country was now increasingly relying on measures additional to the extensive safeguard measures provided in the MFA, nullifying its objectives and its Article 9 in particular. Under paragraph 23 of the 1981 Protocol, all participants should refrain from taking measures outside the provisions of the MFA before exhausting all the relief measures it provided.

He said that the reason given for the new US rules of origin was circumvention, for which legal provision existed in the MFA's Article 8. That legal provision had been further elaborated in paragraph 14 of the 1981 Protocol. Instead of using these provisions, which would have exposed US protective intentions, the rules of origin had been radically changed, causing uncertainty, confusion, disruption and even chaos in trade. As for the countervailing duty petitions, even if the Department of Commerce did not reach an affirmative determination leading to imposition of the countervailing duties, the investigations themselves were impediments to trade given the harassment, deterring effects and costs involved; if the countervailing duties were imposed, they would constitute trade restrictions additional to those imposed under the MFA. Discussion of these issues at special meetings of the Textiles Committee in January and September 1984 had shown overwhelming support for the views held by the developing countries. However, the response from the United States had been negative. He said that the United States had presented statistics for import increases which related to the period before the new protective system had been fully put in place. Also, whatever increases occurred had been within quotas negotiated in the recession; there had not been any case where, as a result of the recovery, the quotas of developing countries had increased, as should have been the case. US imports of textiles and clothing from developing suppliers had decreased since May 1984, while those from non-restricted suppliers had shown a sharp upward trend. As a result of these developments, the trading environment between the developing country exporters of textiles and clothing and the United States had deteriorated. They therefore proposed to the United States that it enter into plurilateral consultations so as to find appropriate solutions for rectifying the problems facing their trade.

The representative of the European Communities reaffirmed his delegation's statements in the September 1984 Textiles Committee meeting (COM.TEX/38). Although he did not agree completely with the statement by the representative of Pakistan, he recognized the developing countries' concerns and wanted to give them full moral and political support. He said that the new US rules of origin had been brought into force in a sudden manner, and he listed the negative effects of the new regulations under five headings: (1) they were complex and difficult to interpret, and had been introduced at a time when the US Administration was pledged to deregulation; (2) they forced trading partners to intervene bureaucratically in trade; (3) the harassing effect on US

importers was causing them to cancel orders; (4) the protectionist effect of the measures would be worse than safeguard action because of the lack of transparency in their preparation and the suddenness of their application; (5) world demand in textiles trade was limited, and the US measures would thus cause diversion to other markets. In short, the instrument chosen was out of all proportion to, and would go beyond, the aim -- which the Community shared -- of preventing and penalizing fraud. Referring to the conclusions of the September 1984 Textiles Committee meeting, he appealed to the United States to withdraw the new rules for reconsideration. Regarding the countervailing duty actions, a fundamental issue for consideration was whether the United States could, under Article I of the General Agreement, renounce in a selective and discriminatory manner the legal coverage of the Protocol of Provisional Application (BISD IV/77) in applying the injury criterion only to those contracting parties that had signed the Subsidies and Countervailing Measures Code.[1] Concerning the consultations that some contracting parties wanted to hold with the United States on these issues, he noted that in the Community's view Article XXIII:1 provided for bilateral rather than multilateral or plurilateral consultations. He concluded by saying that the US measures were unworthy of the United States which was an indispensable partner in world trade, and he called on the United States to conduct its trade policy responsibly, equitably and coherently.

The representative of Japan said that his delegation fully understood the concerns of developing countries in this matter, in view of the great importance that textile trade had for their development. As the Secretariat Study on "Textiles and Clothing in the World Economy" (Spec(84)24) had pointed out, Japan had been actively promoting structural adjustment in the textile field. From that perspective, Japan took a close interest in the new US rules of origin which had been discussed in the Textiles Committee in September 1984, and had joined in asking the United States to reconsider its measures. The Working Party on Textiles and Clothing was now studying the modalities of future trade in textiles; his delegation hoped that by the time of the Textiles Committee meeting on 17 October a broad consensus would emerge among the countries concerned, and Japan would co-operate as much as possible to that end.

The representative of Colombia said that the US countervailing duty investigations were discriminatory; none of the 13 countries whose textile and clothing imports were being investigated were signatories to the Subsidies and Countervailing Measures Code, so the United States did not have to show proof of injury. Colombia, as one of those countries, had indicated in various GATT bodies that it was thinking of signing

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[1] Agreement on Interpretation and Application of Articles VI, XVI and XXIII (BISD 26S/56)

that Code but, because of commitments which the United States intended to impose on Colombia, it had not been able to sign. If Colombia were to sign the Code, it would have to denounce its entire export schemes and at any moment the United States might then start countervailing duty investigations.

The representative of the United Kingdom, on behalf of Hong Kong, supported the statement by the representative of Pakistan. He added that every delegation which had spoken on these issues at the Textiles Committee meeting in September 1984, with the exception of the United States, had expressed either the view that the new US rules of origin should be delayed in their implementation, or the view that they should be withdrawn. Regrettably, the rules had been neither delayed nor withdrawn, and implementation was proceeding. Whereas the Textiles Committee had examined these issues primarily in the context of the MFA, his delegation wanted to examine them in the wider context of the General Agreement. Concerning countervailing duty petitions, there was a distinction between, on the one hand, the normal invocation of provisions that might otherwise be regarded as consistent with GATT, and on the other hand, a concerted industry action carefully timed and targetted against a whole class of exporters (i.e. those that were not signatories to the Subsidies and Countervailing Measures Code) and on a comprehensive basis against the whole range of textile and clothing produced by those exporters. The latter action would appear to amount to little less than harassement and could hardly be regarded as consistent with the aims and objectives of the General Agreement. Reverting to the new US rules of origin, he said that Article VIII of the General Agreement recognized the need "for decreasing and simplifying import and export documentation requirements"; it also envisaged that "the production of certificates of origin should only be required to the extent that is strictly indispensable". The same ideas were contained in Article IX. The unilateral change by the United States of its origin rules for textiles had resulted in cumbersome documentation requirements. They also required the disclosure of commercially sensitive or confidential information which traders were unable to provide. He noted that while discussions in GATT on the rules of origin had been inconclusive, no unilateral right had ever been recognized that enabled one party to make origin rules that would bind its trading partners against their will. Rules of origin should not be applied in the textiles sector outside the framework of the GATT, the MFA and the bilateral agreements. More specifically, the use of origin rules by any contracting party as a protective measure could not be justified in terms of the General Agreement. In such circumstances, affected parties would be within their rights to raise the question of nullification or impairment. The question of impairment was being examined in Hong Kong, and the preliminary assessment was that considerable damage had already been sustained in terms of cancellation of contracts amounting to many millions of US dollars. He supported the call by the representative of the European Communities for withdrawal of the US measures, and the proposal by the representative of Pakistan, on behalf of developing country exporters of textiles and clothing, for plurilateral consultations between the United States and affected countries on these issues.

The representative of the United States said he would report to his authorities the concerns over the recent US measures expressed at the present meeting by developing and developed countries. His delegation considered that the appropriate place to discuss these issues was in Washington. He noted that there had been some changes in the US Interim Customs Regulations and that the period for comments had been extended; there had also been amendments to the rules concerning in-bond transit and foreign trade zones. Concerning the countervailing duty petitions, he noted that the time for presenting preliminary determinations had been extended to between 16 and 30 December 1984. Turning to the statement by the representative of the European Communities, he expressed surprise at being advised by the Community on how to run a textile import program, and he thought that some developing countries would also have taken careful note of that statement. While the United States recognized the concerns expressed, the fact remained that its imports of textiles and clothing had continued to increase. There would be an opportunity later in October 1984 in the Textiles Committee to discuss these issues in greater detail. He pointed out that the countervailing duty petitions had been filed by the industry and not by the Government; the petitions met the requirements of US laws and the Administration thus had no alternative in this regard. For those who were hoping that the US measures resulted from election pressures, he cautioned that as long as imports of textiles and clothing continued to increase, the US industry, which was well-organized and powerful, would continue to do everything possible to maximize pressure on the Administration.

The Council took note of the statements.

5. New Zealand - Imports of electrical transformers from Finland

- Recourse to Article XXIII:2 by Finland (L/5682)

The Chairman drew attention to document L/5682 concerning Finland's recourse to Article XXIII:2 over New Zealand's imports of electrical transformers from Finland.

The representative of Finland said that in February 1984 New Zealand had decided to impose an anti-dumping duty on imports of two electrical transformers from Finland. The Finnish Government considered that these transformers had not been sold at less than normal value, according to the criteria in Article VI:1(b)(ii) of the General Agreement, and that this sale had neither caused nor threatened to cause material injury to New Zealand producers. During 1983, imports from Finland had constituted less than two per cent of New Zealand's electrical transformer market. Finland considered the anti-dumping duty unreasonable, and felt it had been used to protect New Zealand's domestic industry from normal and, in GATT terms, legal competition from foreign suppliers. Finland believed that benefits accruing to it under the General Agreement, especially Article VI, had been impaired. Recent consultations and high-level political contacts had not led to a solution. Consequently, Finland asked that a panel be established to investigate the matter.

The representative of New Zealand said that his Government continued to consider that the transformers had been sold at less than normal value, causing or threatening to cause material injury to the domestic industry in terms of Article VI. New Zealand's Minister of Trade and Industry had undertaken to review the case at the request of the Finnish Minister of Foreign Trade, and the review had yet to be concluded. New Zealand was ready to take all practical steps possible to meet Finnish concerns on this issue within the terms of Article XXIII:1. However, if Finland asked for a panel, his delegation would not object.

The Council took note of the statements and agreed to establish a panel to examine the complaint by Finland.

The Council authorized the Chairman, in consultation with the two parties concerned, to decide on appropriate terms of reference and to designate the members of the Panel.

6. Switzerland - Review under Paragraph 4 of the Protocol of Accession (L/5423, L/5596, L/5673)

The Chairman drew attention to documents L/5423, L/5596 and L/5673 containing the three most recent annual reports by Switzerland under paragraph 4 of its Protocol of Accession.

The representative of Switzerland said it was clear from the reports that during the period 1981-83 there had been no change in the Swiss system of import restrictions and the products covered. On a per capita basis, his country was the highest ranking importer of agricultural products. The main feature of Switzerland's agricultural policy remained unchanged: it sought to safeguard a small core of domestic production for strategic and security reasons, while at the same time leaving wide access to its market for foreign produce.

The representative of Australia noted that paragraph 4 of the Protocol required that the CONTRACTING PARTIES conduct a thorough review of its application every three years (BISD 14S/8). An in-depth examination of the Protocol's operation was necessary to ensure that the terms and conditions of Swiss accession were being adhered to, particularly the conditions of access for agricultural products and the non-discriminatory application of import measures covered by the Protocol. Australia therefore proposed that the examination be carried out by a working party whose objectives should be to review the operation of the terms of Switzerland's accession so that the CONTRACTING PARTIES could assure themselves (1) that Switzerland's reservation on Article XI was being utilized only to the extent necessary to permit it to apply import restrictions pursuant to legislation specified in paragraph 4 of the Protocol; (2) that Switzerland, in applying its import restrictions, was nevertheless observing to the fullest possible extent the appropriate provisions of

the General Agreement; (3) that these restrictions were applied in such a manner as to cause minimum harm to the interests of contracting parties; and (4) that all restrictions imposed under the laws mentioned in paragraph 4 were in accordance with the principle of non-discrimination. With these objectives in mind, Australia could agree to terms of reference similar to those adopted by the Working Party established in 1981.

The representative of New Zealand endorsed the statement made by the representative of Australia and supported the request for a working party. He noted that when the text of the Swiss Protocol had been submitted to the CONTRACTING PARTIES for approval, the Chairman had stated that the reservation could be considered analogous to a waiver granted under Article XXV:5 (SR 23/7, page 104).

The representative of Switzerland said that a review of the Protocol in a working party would be a normal development, and suggested that it be conducted on the same basis as the 1981 review, as there had been no changes since then.

The Council took note of the statements and agreed to establish a working party with the following terms of reference:

Terms of reference

"To conduct the sixth triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland, and to report to the Council".

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with delegations.

7. Norway - Termination of quantitative restrictions on imports from Hungary

The representative of Hungary, speaking under "Other Business", drew attention to document L/5675 announcing that as of 13 July 1984 Norway had abolished all quantitative restrictions, referred to in paragraph 4 of Hungary's Protocol of Accession, on imports from Hungary. He expressed his country's appreciation for this measure, and noted that the member States of the European Economic Community were the only contracting parties maintaining quantitative restrictions, inconsistent with Article XIII of the General Agreement, on imports from Hungary.

The Council took note of the statement.

8. Trade in Counterfeit Goods

- Statement by the Chairman

The Chairman, speaking under "Other Business", recalled that at the 12 July 1984 Council meeting, he had informed the Council that it was expected that informal consultations would take place on trade in counterfeit goods and that the Council would revert to this matter in the autumn. Such informal consultations were taking place; they were focussing on a number of points that were considered to need examination in order to prepare for the decisions that the Council was called upon to take by the Ministerial Declaration on Trade in Counterfeit Goods (BISD 29S/19). It was to be expected that the Council would revert to this matter at its next meeting, with a view to considering what action it should take pursuant to the Ministerial Declaration.

The representative of the United States said that problems of trade in counterfeit goods were growing daily; he urged delegations to give serious thought to this matter before the next meeting of the Council so that it could make the decisions called for in the Ministerial Declaration.

The Council took note of the statements.