GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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MINUTES OF MEETING

Held in the Centre William Rappard
on 21 February 1989

Chairman: Mr. John M. Weekes (Canada)

1. United States - Import restrictions on certain products from Brazil - Recourse to Article XXIII:2 by Brazil (L/6386 and Add.1)

The representative of Brazil recalled that this item had been discussed in the Council on 8-9 February, when more than 50 contracting parties had supported Brazil's request for the establishment of a panel to examine its complaint against the United States. So far, that country had failed to give a response in line with the unanimous feeling of the Council on this matter and in line with its own affirmation that GATT was its first choice for settling disputes. Brazil had even suggested the temporary suspension of the 8-9 February Council meeting in order to allow the United States to try to revise its position in the face of the overwhelming response to Brazil's request. The US delegation had not been prepared to do so, and thus had left Brazil with no alternative but to ask for the convening of the present meeting. There was very little else that his delegation could add; this issue was quite clear and simple, and required a straightforward decision by the Council, which had to determine whether the unilateral and discriminatory measures taken by the United States against Brazil warranted examination by a panel. He said that the

Council's opinion had already been manifested and that its task now was to transform that opinion into action by establishing the panel requested by Brazil, thereby giving evidence of contracting parties' collective commitment to the GATT system.

The representative of the United States said that while this item had been framed in terms of the US import restrictions on certain products from Brazil, that country had presented only one side of a long story. Brazil's request ignored the fundamental problem underlying this dispute -- lack of patent protection by Brazil for the pharmaceutical and chemical sectors, and the absence of effective international rules and a dispute settlement mechanism to protect against such unfair trade practices. The United States wanted to place this issue in its proper context. First, this dispute had arisen from Brazil's refusal to provide any patent protection for pharmaceutical products and fine chemicals. Brazil's policy permitted, indeed encouraged, the misappropriation of US inventions worth many millions of dollars a year. The United States had repeatedly asked Brazil to grant adequate intellectual property protection, and Brazil had refused. Had there been adequate international rules requiring the protection of these inventions, and a fair and equitable forum for resolving disputes arising under those rules, the United States would have challenged Brazil's policy in that forum. But no such rules or forum currently existed. That was why the negotiation of rules for adequate and effective protection of intellectual property in the Uruguay Round was such an important objective for so many contracting parties. If GATT was to remain a viable agreement, it was essential that such rules be established. In the face of Brazil's recalcitrance in the case at hand, the United States had no effective international forum to turn to, nor adequate international rules to apply, and thus had imposed increased tariffs on products from Brazil.

He said that the GATT would be ill-served by an examination of the US measures in isolation. What was at issue in this case was an imbalance in rights and obligations -- Brazil could address in GATT a trade dispute affecting its exports, but the United States could not address a practice by Brazil affecting the same amount of US trade. While waiting for appropriate rules -- and dispute settlement procedures -- for intellectual property protection, the United States could not abandon these vital areas of commerce to robbery, by ruling out trade-restrictive measures that might be necessary to defend its interests. All contracting parties bore a responsibility to the world trading system to ensure that all legitimate forms of commerce obtained the protections that GATT was created to promote. In the present case, as in others where the United States took responsive measures, it had not done so for unilateral benefit. Where the United States succeeded in prying open previously closed markets, all exporters of the products in question stood to benefit; where it succeeded in defending the principle that intellectual property was entitled to protection like any tangible form of property, authors and inventors from all nations shared in the fruits of that protection. Of all the contracting parties, Brazil alone had shown no intention of providing any form of patent protection for pharmaceutical and fine chemical products. The United States could not terminate its retaliatory measures without provision by Brazil of patent protection for these products. There should be no illusion that a panel could help to resolve this matter simply by examining one side of the issue.

He said that in these circumstances, the United States would not join, but would not block, a consensus to establish a panel. Should a panel be set up, the United States would ensure that it heard the full story. At the end of the day, the international trading system would not have been served by placing GATT in the position of potentially condoning the theft of intellectual property. The United States would urge all contracting parties to move towards the development of rules to protect the integrity of an increasingly important area of international trade.

The representative of Brazil said that the issue before the Council was the US unilateral measures; however, the United States had chosen to make over-simplistic and distorted generalizations about Brazil's policy regarding intellectual property, and in language unacceptable in the Council. The United States had no moral authority to pass judgement on that policy. Brazil itself had been a victim of wrongdoing in the area of intellectual property protection; it had been the first developing country -- and one of the first three countries in the world -- to adopt comprehensive legislation in this area, and had been from the start a member of both the Paris and Berne Conventions. His country remained ready to discuss any subject related to intellectual property, in the proper forum -- the World Intellectual Property Organization (WIPO). The US allegation that it had been obliged to act unilaterally because there was no other way to protect its rights was a candid admission of its violation of the Uruguay Round standstill commitment. He recalled the Director-General's statement at the 8-9 February Council meeting (C/163) regarding recourse to unilateral measures, which he said made clear the futility of the United States' argument attempting to defend the compatibility of its measures with the General Agreement.

He said that it was incumbent on the Chairman to recognize the overwhelming support for Brazil's request, and on the Council to agree to establish a panel. There was a clear precedent for such action in the 1974 case involving a dispute between Canada and the European Communities.[1] Brazil had taken note that the United States would not block a consensus on this matter, and asked that a panel be established at the present time.

The Chairman said that it was his conclusion, based on the discussion at the 8-9 February Council meeting and at the present meeting, that it was the Council's wish to establish a panel in this matter. He therefore proposed that the Council take note of the statements, agree to establish a panel and authorize him to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

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[1] Canada - Article XXIV:6 negotiations with the European Communities (C/M/102, page 4).

The Council so agreed.

Many representatives expressed their delegations' satisfaction that a panel had been established.

The representatives of the European Communities, Japan, Switzerland, Canada, Korea, Egypt, Thailand, Pakistan, India, Colombia, Yugoslavia, Cuba, Nicaragua and Chile reserved their respective delegations' rights to make a submission to the Panel.

The Council took note of the statements.

2. United States - Increase in the rates of duty on certain products of the European Economic Community (Presidential Proclamation No. 5759 of 24 December 1987)
- Communication from the European Communities (L/6438)

The representative of the European Communities said that his delegation had asked the Council to revert to this item at the present meeting because it had been impossible to conclude consideration of it at the meeting on 8-9 February. Recalling that the United States had been unable to agree at that meeting to consultations, he said that agreement had been reached in the meantime to hold them in the very near future. He could understand, therefore, that the United States could not yet take a position on the Community's request. Nevertheless, the Community intended to remain very firm, even uncompromising, regarding the substance of this issue in seeking to ensure that the CONTRACTING PARTIES condemned all unilateral actions whatever their form or justification. As to other aspects of this matter, the Community remained flexible and patient while waiting for a positive response from the United States.

The Council took note of the statement and agreed to revert to this item at a future meeting.

3. United States - Import prohibition on ice cream from Canada
- Recourse to Article XXIII:1 by Canada (L/6444)

The Chairman recalled that at its meeting on 8-9 February, the Council had considered this item and had agreed to revert to it at the present meeting.

The representative of Canada said that his delegation was concerned to know the time frame under which the United States was conducting the internal review of its ice cream quota. Under Paragraph 1 (Conditions and Procedures) of the 1955 Waiver[1], the United States had to undertake a

[1]Waiver granted to the United States in connection with import restrictions imposed under Section 22 of the United States Agricultural Adjustment Act (of 1933), as amended (BISD 3S/32).

review promptly upon the request of any contracting party which considered its interests to be seriously affected. Canada had first requested a review of the quota in October 1988, and had reaffirmed that request in writing in November. The United States had indicated that a review had begun on 16 December; however, it had not yet provided an anticipated timetable for completion of the review. Canada did not consider it unreasonable, more than four months after the initial request for the review and more than two months after the review had begun, to expect the United States to be in a position to provide this information. Canada therefore asked the United States to provide this information at the present meeting.

The representative of the United States said that the US Department of Agriculture Task Force responsible for conducting the initial investigation in this matter would make its report to the US Secretary of Agriculture by 1 April. Should that Task Force believe there was sufficient evidence to warrant a full investigation, the Secretary of Agriculture would decide whether or not to recommend that the US President request a full investigation by the US International Trade Commission. The latter usually took six months, and the resulting recommendations were then forwarded to the President, who would decide whether or not to make a change in the restrictions.

The representative of Canada noted that the terminal date would be roughly one year from the time of Canada's initial request. He would report this to his authorities who would decide what further action Canada might take.

The Council took note of the statements.

4. Measures affecting the world market for copper ores and concentrates - Note by the Director-General (L/6456)

The Chairman recalled that at the CONTRACTING PARTIES' Forty-third Session in December 1987, the Chairman of the CONTRACTING PARTIES had reported that the European Communities and Japan had jointly requested a conciliation by the Director-General in their dispute concerning certain pricing and trading practices for copper in Japan. The Council had before it the good offices report by the personal representative of the Director-General (L/6456).

The representative of the European Communities said that the Community was satisfied with the report. He emphasized that the Community, for its part, stood ready immediately to follow the consultative advice that the dispute should be resolved once and for all through immediate and mutually beneficial negotiations.

The representative of Japan said that his Government was pleased to note that the good offices report had made it clear that Japan was in no way violating GATT and that the report was explicit in rejecting the Community's assertion as entirely groundless. As the report showed, the Community had been criticizing Japan since the 1960s by asserting that the

high internal price of refined copper in Japan resulted from "questionable practices", including concealed import restrictions, hidden subsidies and a price cartel. Japan had rejected those allegations and finally, after many years and thanks to the help of a third party, Japan's contention had been fully justified.

Regarding the customs duty on copper, the report had concluded that the Japanese tariff in question "is legal under the GATT, it has been cut in past GATT rounds and it is currently applied at a rate below the bound rate". Tariff levels were essentially a matter to be dealt with through negotiations. Japan attached great importance to the tariff negotiations in the ongoing Uruguay Round and would give consideration to the report's advisory opinion (Section III of L/6456) within the framework of those negotiations. He emphasized that, as the advisory opinion had rightly pointed out, the resolution of this issue had to be reciprocal and mutually advantageous.

The Council took note of the statements and of the information in L/6456.