

GENERAL AGREEMENT ON
TARIFFS AND TRADE

COUNCIL
17 May 1978

MINUTES OF MEETING

Held in the Centre William Rappard on 17 May 1978

Chairman: Mr. M. YUNUS (Pakistan)

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1. Agreements between the European Communities and Egypt, Syria, Jordan, and Lebanon (L/4660, L/4661, L/4662, L/4663)

The Chairman recalled that at its meeting in July 1977 the Council considered the texts of the Agreements concluded between the European Communities and the four Mashraq countries and established four separate working parties for the examination of the provisions of these Agreements. Subsequently, and following consultations with interested delegations, Mrs. Breckenridge (Sri Lanka) had been appointed to chair the meetings of the working parties. The four reports had been distributed in documents L/4660-L/4663.

Mrs. Breckenridge (Sri Lanka) introduced the reports and said that the working parties had discussed in each instance a number of general issues related to the Agreements, as well as the applicability of Part IV of GATT, the rules of origin, agriculture and safeguards. She pointed out that there had been wide sympathy in the working parties for the view that the purposes and objectives of the Agreements also reflected those embodied in the General Agreement, including Part IV. Some members of the Working Party had however, expressed the view that the concessions under the Agreement should have been extended to developing countries generally. She said that the parties to the Agreements and several members of the working parties were of the opinion that the Agreements were entirely consistent with the objectives and the relevant provisions of the General Agreement taken as a whole and that they contributed to the economic development of Egypt, Syria, Jordan and Lebanon. Other members of the working parties had expressed doubts that the Agreements were entirely compatible with the GATT. Some members urged that under the GATT procedure for examination of biennial reports on regional agreements the examination of these Agreements should include an analysis of the impact of the rules of origin on third countries' trade.

The Council adopted the four reports.

The Council also agreed that the contracting parties concerned should submit a report on developments under these agreements in April 1980 in accordance with the procedure for the examination of biennial reports on regional agreements.

2. Japan - Measures on imports of thrown silk yarn - Report by Panel (L/4637)

The Chairman recalled that in July 1977 the United States had raised in the Council the question of measures taken by Japan on imports of thrown silk yarn. The United States had sought recourse to Article XXIII in this regard and the Council had referred the matter to a Panel for examination. The report of the Panel had been circulated in document L/4637.

Mr. Ekblom (Finland), Chairman of the Panel, introduced the report and said that the Panel had examined the relevant information submitted by both parties as well as the GATT documentation available. The Panel had also heard a statement by the representative of the European Communities. Following an attempt by the Panel to bring about a compromise between the two parties, the Panel was informed in mid-February that bilateral consultations had been brought to a successful conclusion and that the Government of the United States was satisfied with the way in which the Government of Japan would implement the prior permission system on thrown silk yarn. The Panel had, therefore, limited itself to stating the facts of the case and to pointing out that a mutually acceptable compromise had been reached.

The Council adopted the report and expressed its appreciation to the members of the Panel for the work it had carried out.

3. Canada - Withdrawal of tariff concessions under Article XXVIII:3 -
Report by Panel (L/4636)

The Chairman recalled that at the meeting of the Council in November 1976 the EEC had raised a matter concerning the withdrawal by Canada of certain tariff concessions in accordance with Article XXVIII:3, subsequent on the renegotiation by the EEC of certain concessions in the EEC schedule. He said that the EEC had sought recourse to the provisions of Article XXIII:2 and that the Council had referred the matter to a panel for examination. The report of the Panel had been distributed in document L/4636.

Mr. Ukawa (Japan), Chairman of the Panel, introduced the report and explained that the basic issue involved in this case was how specific rates of duty should in a correct and reasonable way be converted into ad valorem rates. Closely related to this was the question of the base period to be used for the conversion. He pointed out that there was no clear precedent for the selection of a base period for the purpose of such a conversion. In the absence of agreement between the two parties the Panel had held that the principle of basing negotiating rights under Article XXVIII on imports during the most recent three-year period for which statistics were available should be applied. For the present dispute the Panel concluded that these were the years 1972-74. The Panel noted that the objective of the European Economic Community was to arrive at new ad valorem rates of duty on lead and zinc that were the fair and reasonable equivalents of the bound specific duties, and that the Community had no intention of increasing the margin of protection afforded to Community producers. In the light of this the Panel held that the ad valorem equivalents of the Community offer should have been based on global trade statistics for the years 1972-74 which would have resulted in a rate of 2.64 per cent for zinc rather than the 3.5 per cent as implemented by the Community.

The Panel therefore concluded that the ad valorem rate of duty on zinc implemented by the Community implied an impairment of Canada's GATT rights, and that Canada was entitled to proceed to a withdrawal of concessions. The Panel found, however, that the extent of the Canadian retaliation exceeded the actual damage suffered, considering that account should have been taken of the rebinding of the Community duty and that the withdrawals should have been based on the difference between the ad valorem equivalent of the specific duty, calculated on imports from Canada only, and the new ad valorem rate. Finally, account should also have been taken of the fact that the duty on lead had been fixed by the Community at a level lower than the incidence in respect of imports from Canada. In the interest of maintaining the highest possible level of concessions the Panel concluded that the withdrawn Canadian tariff bindings should be re-established as soon as the Community proceeded either to decrease its duty on zinc or to make tariff concessions on other products of export interest to Canada of an equivalent value.

The representative of the European Communities said that his delegation would not oppose the adoption of the report but wanted to record certain points. The report confirmed the obligation to have recourse to Article XXVIII for the conversion of specific duties into ad valorem duties. The report retained the principle of a reference period of three years for the calculation of such conversion, including partly a period after the formal notification of recourse to Article XXVIII. The report indicated that ad valorem equivalents based on statistics of global imports from all sources should have been used, i.e., in the renegotiation with Canada ad valorem equivalents calculated on the basis of the average price for all imports, and not only for imports from Canada, should have been used. He pointed out that neither the Community nor Canada had at any moment considered renegotiating on that basis. The two parties had during the whole of the renegotiations worked on the basis of bilateral statistics of imports from Canada, as appeared from the written and verbal presentations of the two parties. He noted that this question had never been raised by the Panel in its discussions with the parties and there had not been a suitable opportunity to speak on this aspect which had been introduced in the report even though it constituted in no way an element of disagreement. He further stated that the Community had serious doubts with regard to the interpretation of Article XXVIII:2 in the report. He pointed out that the tariff concessions were initially negotiated with individual suppliers, which was an argument in favour of utilizing statistics relating to bilateral trade and bilateral incidences. Furthermore, Article XXVIII:1 referred specifically to renegotiations not with all contracting parties but with the contracting parties primarily concerned, and those which had a substantial interest. It was clear that if the bilateral incidences led to different ad valorem rates a compensation acceptable to all suppliers should be found, if need be by extending compensation to other products (Article XXVIII:2). To conclude, as was done in the report, that in these conditions the global incidence had to be retained ignored the essentially bilateral nature of renegotiations under Article XXVIII.

He noted that the report, if it constituted a precedent, would have a very substantial significance for future renegotiations concerning the conversion into ad valorem duties of specific duties, which were of great importance for a number of contracting parties.

In conclusion, he stated that in the view of the Community the report led to paradoxical conclusions which might lead to results other than those intended. The report stated in fact that the EEC should have renegotiated with Canada on the basis of the interpretation of Article XXVIII:2 mentioned, and added that if it was not possible to reach an agreement, Canada would be justified only to make compensatory withdrawals on the basis of a bilateral incidence. Since the value of the concessions which the Community had withdrawn was in accordance with the bilateral incidence less than the value in accordance with the global incidence recommended in the report, the Community was quite naturally led to take the path of disagreement and to accept compensatory withdrawals by Canada on the bilateral basis of the bilateral incidence, rather than try to conclude an agreement based on the global incidence.

The representative of Canada noted the comments made by the representative of the European Communities on certain aspects of the report. It was his understanding that the Community was in a position to adopt the report, which his Government was also in a position to do. The Canadian objective was to arrive at a mutually agreed rate of duty on zinc, and Canada was prepared to consider any reasonable offer by the Communities based on the Panel report.

The Council adopted the report and expressed its appreciation to the members of the Panel for the work carried out.

4. India - Auxiliary duty of customs - request for extension of waiver
(L/4655, C/W/302)

The Chairman drew attention to document L/4655 containing a request from the delegation of India for an extension of the waiver on the Indian auxiliary duty of customs.

The representative of India recalled that the auxiliary duty of customs had been introduced as a temporary measure for the mobilization of resources for development and social welfare needs. He explained that his Government considered expenditure on investment as a key instrument for economic development and mentioned that the current financial year was expected to close with a deficit of Rs 10 billion. He mentioned that his Government inter alia had increased excise duties levied on indigenously manufactured goods, but that this was still insufficient to close the gap in the budget. His Government therefore could not forego the revenue accruing from the auxiliary duty of customs.

He pointed out that there had been a strengthening of India's balance-of-payments position which had enabled his Government to liberalize imports considerably. However, the balance-of-payments situation remained vulnerable to the effects of sudden shocks, such as crop fluctuations. Furthermore, the liberalization measures and the major investment programme would lead to a significant drawing on foreign exchange reserves.

He stated that the rates of the auxiliary duty of customs and conditions governing its levy had remained unchanged. The duty was limited to the level needed to raise resources and exemptions were granted wherever necessary. Exempt from the auxiliary duty were imports of food grains, tallow, books, family planning appliances, raw cotton, agricultural implements, machinery and certain other categories of goods. He said that, except for about four items, the incidence of the auxiliary duty on items in Schedule XII continued to be either nil or 5 per cent. He considered therefore that these duties would not have an adverse effect on imports into

India within the framework of India's obligations under GATT. He reiterated his delegation's willingness to consult with any contracting party which considered that serious damage was caused or threatened to its trade interests. He added that, since the request had been submitted to the GATT, the Indian Parliament had approved the continuation of the measures. He therefore proposed that the text of the draft decision be amended by substituting in the second "Considering" paragraph in the preamble the words "the Parliament has approved" for the words "it has proposed to the Parliament".

The Council approved the text of the draft decision (C/W/302) as amended and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

5. Agreement between Finland and Poland (L/4652)

The representative of Poland introduced the Agreement between Finland and Poland on the reciprocal removal of obstacles to trade (L/4652). He stated that the main objective of the Agreement, which had entered into force on 1 April 1978, was to provide fair conditions of competition on the markets of the Contracting Parties and to promote a dynamic and harmonious development of trade and economic relations between the two parties. To that end the Agreement provided for the progressive removal, in conformity with a schedule established, of customs duties, for all products falling under Chapters 25 to 99 of the BTN and for many items falling under Chapters 1 to 24 of the BTN. However, for a number of sensitive products provision had been made for an extended time schedule. Certain charges, having an effect equivalent to that of customs duties, had been abolished with the entry into force of the Agreement and no new charges would be introduced. The Agreement provided also for the elimination of quantitative import restrictions and of measures having an equivalent effect, with some exceptions. The Agreement foresaw also the application of safeguard provisions.

He said that the two parties, in negotiating this Agreement, were fully aware of their obligations under the GATT, particularly those under Article XXIV.

The representative of Finland confirmed the information given by the representative of Poland.

The representative of the European Communities referred to Article 9 of the Agreement under which Poland undertook to administer its foreign trade system in conformity with the idea of free-trade agreements. As in centrally-planned economy countries the customs tariff was only a minor factor of foreign trade policy and since Poland had introduced a tariff which it considered to be on an experimental basis, he felt that this was a matter to be considered by the working party to be set up.

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

Terms of Reference:

To examine, in the light of the relevant provisions of the General Agreement, the provisions of the Agreement between the Republic of Finland and the Polish People's Republic on the reciprocal removal of obstacles to trade, and to report to the Council.

Membership:

The membership of the working party should be open to all contracting parties interested and indicating their wish to serve on the working party.

Chairman:

The Council authorized the Chair to nominate the chairman of the working party in consultation with delegations principally concerned.

The Council also agreed that contracting parties wishing to submit questions in writing would be invited to do so until 30 June 1978 and that the participating contracting parties would be requested to submit their replies to the written questions within six weeks after receipt of the questions.

6. Agreement between Finland and Czechoslovakia (L/4664)

The Chairman said that in accordance with the Calendar of Biennial Reports on developments under regional agreements, a report had been submitted by the two parties to the Agreement between Finland and Czechoslovakia.

The representative of the European Communities referred to a statement in the report that no quantitative restrictions regarding products covered by the Agreement existed in Czechoslovakia. He recalled in this connexion the discussions held in the Working Party which had examined the provisions of the Agreement between Finland and Czechoslovakia. He referred in particular to the fact that the Czechoslovak Decree No. 326 of 13 November 1975 provided for mandatory total ceilings for imports from capitalist countries and recalled the views expressed in the Working Party that these ceilings constituted quantitative import restrictions (L/4342, paragraph 28). He enquired, therefore, whether in the light of the statement in the biennial report the external trade system had been modified.

The representative of Czechoslovakia stated that Decree No. 326 dealt with the implementation of the Operational State Plan for the Development of National Economy in 1976 only and had been replaced by new decrees for 1977 and 1978 and that measures under Decree No. 326 were not of limitative nature. As the provisions of these new decrees were not relevant to the operation of the Agreement between Finland and Czechoslovakia no reference

to them was made in the report on this Agreement. However, his delegation was prepared to make available to the representative of the European Community the section of the new provisions as far as they concerned foreign trade.

The Council took note of the report and of the statements made.

7. Export inflation insurance schemes (C/M/123, 124)

The Chairman recalled that the Council had continued at its last meeting in March the discussion on a Canadian proposal that the question of export inflation insurance schemes should be referred to a panel for further examination. The Council had agreed that further consultations on the proposal were necessary. As discussions among delegations were still going on he suggested that the Council might wish to allow for more time for the consultations to be pursued and to revert to the matter at a future meeting of the Council.

The representative of Canada expressed concern that the Council had not yet found a way to deal with the impasse resulting from the Working Party report on Export Inflation Insurance Schemes. Canada was of the view that these schemes were incompatible with the GATT. Although he regretted that so far no agreement had been reached on the terms of reference for a panel on this question, he could accept that the matter be carried over to a future meeting of the Council.

The Council agreed to refer this matter to a future Council meeting.

8. Israel - Adjustment of specific duties (L/4639, C/M/124)

The Chairman recalled that the Council considered in March 1978 a matter raised by Israel concerning the adjustment of specific duties bound in the Israeli Schedule in view of the reduction in value of the Israeli currency under its present floating exchange rate system. Israel had asked that this matter should be considered in accordance with the principles of Article II:6(a). As there were important matters of principle involved the Council had decided to revert to this matter at its next meeting.

The representative of the European Communities considered that there was no real urgency to deal with this matter. In his view, the Council should begin by inviting the International Monetary Fund to make a contribution on this problem. If, however, some representatives were of the opinion that a working party to examine the applicability of Article II:6(a) should be set up, his delegation would not oppose the setting up of a working party with such terms of reference. He stated that the measures adopted by Israel should be considered later in the light of the results of the working party. In the meantime contracting parties fully reserved their rights under the General Agreement.

The representative of the United States considered that the Council should take a decision to establish a working party to examine the modalities for the application of Article II:6(a) in the current monetary system.

The representative of Switzerland also considered that the matter was not urgent, but his delegation would not oppose the setting up of a working party with the terms of reference suggested by the representative of the United States.

The representative of Israel recalled that his delegation, in raising the Israeli case at the last meeting of the Council, had pointed out that matters of general principle were involved and that the CONTRACTING PARTIES might wish to review the provisions of Article II:6(a) and its application in the present circumstances. His delegation had thus fulfilled its obligations in this regard and it was now for the Council to decide on the principle. His delegation was not opposed to the setting up of a working party as proposed.

The Council agreed to the setting up of a working party with the following terms of reference and membership:

Terms of Reference:

To examine the modalities for the application of Article II:6(a) in the current monetary situation; to consult with the International Monetary Fund on this matter under the provisions of Article XV:2; and to report to the Council.

Membership:

Membership of the working party should be open to all contracting parties interested and indicating their wish to serve on the working party.

Chairman:

The Council authorized the Chair to nominate the chairman of the working party in consultation with the delegations principally concerned.

9. Organization of the Islamic Conference - request for observer status to sessions of the CONTRACTING PARTIES (L/4658)

The Chairman drew attention to document L/4658 containing a request from the General Secretariat of the Organization of the Islamic Conference to be granted observer status to the annual sessions of the CONTRACTING PARTIES.

The Council agreed that the Organization of the Islamic Conference should be invited to be represented by observers at the sessions of the CONTRACTING PARTIES.

10. EEC - Refunds on exports of malted barley

The representative of Chile, raising a matter under Other Business, recalled that at the meeting of the Council in November 1977 he had referred to the question of restitutions granted by the EEC to its malted barley exporters which seriously affected the traditional barley exports from Chile to its markets in Latin America. He had then intended to resort to the procedure under the Decision of 5 April 1966 relating to disputes between developing and developed countries. The Council, however, had recommended that bilateral consultations be held on this matter. He now informed the Council that since that date three bilateral consultations had been held, but that it had not been possible to arrive at a mutually satisfactory solution. His Government had therefore decided to proceed on the basis of the conciliation procedure mentioned.

The representative of the European Communities confirmed that since last November three bilateral meetings had taken place with Chile. He pointed out that the European Community was one of the major malt exporters to the various countries of Latin America. He stated that the delegation of Chile during the consultations had not been able to demonstrate a link between the decrease of its exports to the Latin American market and the export policy of the European Community. The Community was ready to accept the conciliation procedure under the good offices of the Director-General.

The representative of the United States stated that the United States exports of malted barley had also been adversely affected by subsidized exports from the European Community in third country markets, particularly in Japan. He felt that Chile's request for the conciliation procedure was appropriate. He noted that this was one example of how the United States and other countries had encountered difficulties in exporting their products as a result of subsidized competition. It was therefore essential that disciplines on the use of subsidies be negotiated in the MTN.

The Council took note that the matter was now referred by Chile to the Director-General under the Decision of 5 April 1966 so that, acting in an ex officio capacity, the Director-General might use his good offices with a view to facilitating a solution.

11. Norway - Restrictions on imports of textiles from Hong Kong

The representative of the United Kingdom, raising a matter under Other Business on behalf of Hong Kong, said that up to 31 December 1977 Hong Kong had restrained exports of certain textile products to Norway in accordance

with the terms of a bilateral agreement under the MFA, which had expired at the end of 1977. During consultations in December between Hong Kong and Norway in order to arrive at a new agreement from 1 January 1978, Norway had proposed on average a 40 per cent reduction of Hong Kong's textile exports to Norway. For some categories of textiles reductions of 60 per cent and in one case as high as 77 per cent were proposed. As no agreement could be reached Hong Kong had offered to limit its exports to Norway for a period of three months up to 31 March 1978 in order to allow the Norwegian authorities time for reflection and to avoid hardship to the commerce between Norway and Hong Kong. He further stated that on 3 January 1978, Norway informed Hong Kong that temporary import controls on certain textiles had been introduced as from 1 January 1978 in the form of licences on imports from all countries other than those of the EEC and EFTA. He pointed out that import licences were issued automatically on presentation of export licences from countries with which Norway had bilateral agreements, so that for imports from Hong Kong Norwegian importers had to apply for quotas. Hong Kong was subsequently informed that the import limits for Hong Kong represented on average a 40 per cent cutback on imports from Hong Kong in 1976.

He further stated that in March 1978 Hong Kong had requested consultations with Norway under Article XXII:1. These consultations took place in early May. Although Hong Kong was prepared to enter into a more restrictive arrangement it could not accept reductions of the order demanded by Norway. In the meantime textile export licences for Norway of the items restricted had declined by 40 per cent in the first three months of 1978 compared with the same period in 1977. Hong Kong was of the opinion that the measure introduced by Norway was a selective one and had therefore decided to seek recourse on this matter to the provisions of Article XXIII:2. He requested the Council to consider this question urgently at an early meeting.

The representative of Norway said that imports of the textile items in question from countries with low costs of production had increased from Nkr 210 million in 1973 to Nkr 481 million in 1976. They amounted to \$22.5 per capita in 1976. This increase had caused serious injury to the Norwegian textile industry and had made it necessary to negotiate bilateral agreements with exporting countries of which Hong Kong was the most important one. Although there had existed bilateral agreements with Hong Kong since the 1960's, with a steady broadening of the scope of the limitations, Hong Kong's exports to Norway had increased drastically. He stated that Hong Kong's share of Norway's imports of low-priced textiles had risen from 45 per cent to 55 per cent during the years 1973-1976.

As the bilateral consultations with Hong Kong in December had not led to an agreement on a level which would limit the injury to the Norwegian industry, his authorities found it necessary to impose unilaterally import restrictions. This was a temporary measure pending the outcome of negotiations with Hong Kong and other exporting countries. He said that consultations with Hong Kong were resumed in May. These consultations did not lead to an agreement but both delegations expressed a willingness to consider any proposal put forward by the other and did not rule out the possibility of further consultations in the course of this year.

A number of delegations supported the request made by the United Kingdom on behalf of Hong Kong for an early consideration of this matter by the Council.

The Council agreed that the matter be referred to the next meeting of the Council which should be held within a reasonably short period.

The representative of India recalled in connexion with the present case that a suggestion had been made at the last meeting of the Council that the secretariat should prepare a factual and analytical study on the application of Article XIX of the General Agreement.

Some representatives supported the proposal to have such a study ready before the next meeting of the Council.

Other representatives noted that certain documentation on Article XIX had been assembled by the secretariat some time ago and they preferred to examine first what additional information was needed.

The Council agreed to refer the question of the preparation by the secretariat of a study on the background and the application, so far, of Article XIX to the next meeting.

12. Uruguay - Import surcharges

The representative of Uruguay, raising a matter under Other Business, referred to the waiver on the Uruguayan import surcharges which would expire on 30 June 1978. He recalled that questions of extension of this waiver had traditionally been referred to the Committee on Balance-of-Payments Restrictions. His delegation was presently consulting on how, in the light of the results of the trade negotiations, the necessities of Uruguay's foreign trade policy could be accommodated. While these consultations were being pursued his delegation would ask, at the next meeting of the Council, for an extension of the waiver until the next session of the CONTRACTING PARTIES.

The Council agreed to revert to this matter at its next meeting.

13. India - Trade in steel

The representative of India, raising a matter under Other Business, enquired whether any representative could give information on discussions between major steel trading countries having the objective of arriving at an arrangement relating to trade in steel.

There was no reply.