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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
14 March 1978

MINUTES OF MEETING

Held in the Centre William Rappard on 14 March 1978

Chairman: Mr. M. YUNUS (Pakistan)

Subjects discussed:

1. Deputy Director-General Posts (INT(78)13)

The Chairman said that the Council would begin its meeting at the level of Heads of Delegations for consideration only of the matter raised in the note by the Director-General in document INT(78)13, namely to take formal action concerning the continuation for a further period of the reclassification of a D.2 post to the level of Deputy Director-General.

The Director-General stated that the matter raised in document INT(78)13 concerned the extension of the contract of one Deputy Director-General because by the end of the term of his contract on 30 June 1978 the multilateral trade negotiations would not yet be completely terminated. The proposed additional period should give time for the negotiations to be fully completed and the results to be effectively implemented.

The Council agreed, as proposed in document INT(78)13, that the reclassified D.2 post in question should continue to be graded at Deputy Director-General level for a further period of thirteen months, i.e. until 31 July 1979.

2. Consultation on trade with Hungary (L/4633)

The Chairman said that the Protocol for the Accession of Hungary provided for consultations to be held between Hungary and the CONTRACTING PARTIES biennially in order to carry out a review of the operation of the Protocol and the evolution of reciprocal trade between Hungary and the contracting parties. The second review under the Protocol had been carried out by a working party; its report was contained in document L/4633.

Mr. Farnon (New Zealand), Chairman of the Working Party, in introducing the report said that discriminatory quantitative restrictions were still maintained in three customs areas. During the discussion it had been stressed that the type of restrictions and the kind of measures adopted with a view to their elimination should be more clearly specified in order to make it possible to assess whether the obligations under the Protocol had been fulfilled. It had also been pointed out that progress towards the elimination of restrictions and the increase of quotas was continuously being made and that the remaining restrictions had not prevented a favourable development of Hungary's exports to the countries maintaining restrictions. In the context of considering Hungary's foreign trade régime the Working Party had furthermore discussed the newly amended licensing system as well as counter-trade practices in connexion with Hungary's imports.

The representative of Japan stated that the discriminatory quantitative restrictions should be abolished as early as possible.

The representative of Hungary said that two opinions had been expressed in the working party as to whether quantitative restrictions were a barrier to trade or not. His authorities were of the opinion that the discriminatory restrictions were a barrier to trade. Furthermore, the Protocol of Accession of Hungary did not make any reference to increases in quotas under discriminatory restrictions.

The Council adopted the report.

3. Bangkok Agreement (L/4635)

The Chairman recalled that the Council had referred the examination of the provisions of the Bangkok Agreement to a working party in November 1976. The Working Party had now circulated its report in document L/4635.

Mr. Lemmel (Sweden), Chairman of the Working Party, introduced the report and said that the parties to the Agreement considered that the Agreement was consistent with the encouragement given to developing countries by the international community and that it fulfilled the commitments and undertakings accepted by developing contracting parties under Part IV of the GATT. The Agreement provided for tariff concessions and for action in the field of non-tariff measures by the participating States. He pointed out that the Working Party had addressed itself to a number of issues including the implications of the Agreement for third countries and its relationship with other preferential arrangements, the questions of further accessions, non-tariff measures, rules of origin and balance-of-payments action. The Working Party proposed that a decision should be adopted to enable the participating contracting parties to implement the agreement.

The Chairman stated that decisions relating to this type of agreements had in the past been adopted by the CONTRACTING PARTIES by consensus. He noted that there was a consensus in the Council, composed of at least one half of the contracting parties, to adopt the Decision annexed to the report. The Decision had, therefore, been adopted by the CONTRACTING PARTIES.

The representative of India, speaking on behalf of the countries which are signatories to the Bangkok Agreement, expressed his appreciation for the way in which the Working Party had dealt with the questions and problems of the developing countries of this region and their efforts in the field of economic development in which international trade played an important part.

The Council adopted the report of the Working Party.

4. Balance-of-payments restrictions

(a) Consultation with Pakistan (BOP/R/98)

Mr. Jagmetti (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, recalled that at the Committee's meeting in May 1977, a full consultation with Pakistan had been requested. This consultation, which was the first since 1969, had now been carried out. The consultation afforded the Committee a clear view not only of Pakistan's balance-of-payments difficulties and trade measures in force, but also of the rôle of external factors on Pakistan's economy. He pointed out in particular, that the Committee had recognized that the international economic recession, difficult access to markets and import restraints had affected Pakistan's export performance and, therefore, its balance-of-payments. The Committee had also noted Pakistan's efforts towards trade liberalization since 1972 and the measures it undertook to reduce its reliance on trade restrictions.

The representative of Pakistan recalled that even though his authorities had had serious reservations about the justification, need or usefulness of "full consultations" in their case, they had agreed to go through this procedure being mindful of the sanctity of contractual international obligations. He noted the conclusions drawn by the Committee that a number of external factors had affected Pakistan's balance-of-payments situation and that a relaxation of the restraints would have a favourable effect on Pakistan's export possibilities. He also underscored the conclusion by the Committee that Pakistan had pursued a trade liberalization policy since 1972 despite these difficulties. He emphasised that the extent to which restrictions maintained against exports of Pakistan by its principal trading partners would be relaxed, in response to the conclusions drawn by the Committee, would be a measure of the seriousness with which these countries accepted their obligations as contracting parties. Making a few points with regard to the mandate of the BOP Committee, he stated that the consultations should not be a one-sided review of the situation of a contracting party, but a comprehensive review of the problems and difficulties faced by the contracting party and the manner in which its trading partners could help it in overcoming these problems and difficulties. He also proposed that the members of the Committee, even though they represented various governments, should be expected to act independently and objectively in these consultations and not under instructions from their governments. Furthermore, membership of the Committee should reflect a suitable balance between developed and developing contracting parties.

He also referred to a more fundamental imbalance in the present procedures in that the balance-of-payments consultations related generally to the trade policies of developing countries only, while there were no comparable procedures for periodic reviews of measures adopted, mostly by developed countries, under Article XIX. He felt that the Article XIX measures should also be subject to regular periodic review, leading up to appropriate conclusions and recommendations. He stated that his delegation would revert to these questions in the Council should that be found to be necessary.

A large number of delegations associated themselves with the questions raised by the representative of Pakistan. They felt that the problems faced by Pakistan were typical of the problems faced by many developing countries. They emphasised that these questions would have to be dealt with by the Council, in case adequate solutions could not be found to these problems in the framework of the MTN and other appropriate bodies. A number of representatives also emphasised that the normal procedure for consultation with developing countries should be the "simplified procedures".

Some other representatives maintained that the balance-of-payments consultations were always conducted in a positive and constructive spirit and had been useful for all concerned. They were of the opinion that consultations under simplified procedures were an exception to the provisions of Article XVIII:12(b) and were primarily intended for countries in the early stages of development who lacked the machinery to prepare adequately for regular consultations. In the present consultation the delegation of Pakistan had been able to show clearly what difficulties Pakistan was facing, some of which were of external origin. This was very useful and would lead to the examination of the suggestions made.

The Director-General, in referring to the question of lack of balance in the membership of the Balance-of-Payments Committee raised by some representatives, pointed out that the members of the Balance-of-Payments Committee were designated by the Council, and that the Council had never refused an application for membership.

The Council adopted the report contained in document BOP/R/98.

(b) Consultation with Portugal and examination of Portuguese import surcharges (BOP/R/96)

Mr Jagmetti said that the consultation with Portugal had included an examination of the import surcharges introduced in May 1975, which had been increased, modified and extended. The Committee had welcomed the termination of the import deposit scheme on 31 December 1977. The Committee had also invited Portugal to replace the import surcharges with internal fiscal measures, or to phase them out as the balance-of-payments situation permitted.

The Council adopted the report (BOP/R/96).

(c) Consultation with Turkey and examination of the Turkish Stamp Duty (BOP/R/99)

Mr. Jagmetti pointed out that the Committee had recognized that further steps to liberalize the import régime of Turkey could only be undertaken after the present imbalance had been reduced. The Committee had expressed the hope that the views expressed during the consultation would be taken into consideration in the formulation of Turkey's new economic policy.

In respect of the stamp duty he said that the Committee had noted that the stamp duty was a fiscal measure levied for revenue purposes. Its rate had been increased since 1 January 1978 and was currently applied at 22.5 to 25 per cent. Since it could only be replaced by a comprehensive fiscal reform, the Committee recommended to the CONTRACTING PARTIES to grant an extension and a modification of the waiver for the application of the stamp duty.

The representative of the United States, in supporting the waiver, said that the stamp duty should be progressively lowered as circumstances permitted. Furthermore, in respect of the substitution of the stamp duty by other economic measures he noted that such measures had been undertaken by Turkey, including the devaluation of its currency. He expressed therefore the hope that under these circumstances the Turkish Government would consider a reduction of the stamp duty.

The representative of Pakistan expressed the hope that other contracting parties would adopt measures appropriate to assist Turkey in its effort to overcome its economic difficulties.

The Council approved the text of the draft decision in Annex II of the report and recommended its adoption by the CONTRACTING PARTIES.

The draft decision was submitted to a vote by postal ballot.

The Council adopted the report (BOP/R/99).

(d) Consultations with Argentina, Chile and India (BOP/R/97)

Mr. Jagmetti said that the Committee had carried out consultations under the simplified procedures with Argentina, Chile and India. The Committee recommended that Argentina and Chile should be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b). The Committee had noted that Argentina and Chile no longer applied trade restrictions for balance-of-payments reasons which warranted consultations under Article XVIII:12(b). He pointed out that in the case of India a full consultation would be held in the autumn of 1978.

The representative of Argentina said that the fact that his country no longer applied trade restrictions for balance-of-payments reasons implied that Argentina was not required to carry out consultations for the time being.

The representative of India said that India's acceptance of the decision of the Committee for a full consultation was without prejudice to the position taken by his delegation on the general question of procedures for balance-of-payments consultations in respect of developing countries. The simplified procedures for consultations had been devised in view of the long-term structural imbalances faced by developing countries. This was, in his view, not a derogation from the procedure for balance-of-payments consultations applicable to developed contracting parties but only an alternative course. He considered that the authority under Article XVIII:B was different from that under Article XII. The provisions of Article XVIII:B were a recognition of the different situation of developing countries. He maintained therefore that the simplified consultations were the appropriate procedure for developing countries by virtue of their special situation. His delegation wished to follow this question up in appropriate bodies of GATT.

The representative of Chile pointed out that Chile, in view of its balance-of-payments situation, was not required to hold further consultations with the Committee.

The Council adopted the report (BOP/R/97) and noted that a full consultation would be held with India under the applicable procedures.

The Council agreed that Argentina and Chile should be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b). The Council also took note that Argentina and Chile had ceased to apply trade restrictions for balance-of-payments reasons which warranted consultations under Article XVIII:12(b).

(e) Consultations in 1978 (C/W/297)

The Chairman drew attention to document C/W/297 containing a note by the secretariat on the arrangements for consultations in 1978.

The Council took note of the document and requested the secretariat to make the necessary arrangements in consultation with the countries concerned and with the International Monetary Fund for the carrying out of the consultations in the course of the year.

5. EEC measures on animal feed proteins (L/4599 and Corr.1)

The Chairman recalled that, at the meeting of the Council in July 1976, the United States had formally referred a complaint to the CONTRACTING PARTIES under the provisions of Article XXIII:2 regarding certain EEC measures affecting animal feed proteins. The report of the panel had been circulated in document L/4599.

Mr. Kaarlehto (Finland), Chairman of the Panel, pointed out that the report presented a short history leading to the request for the Panel by the United States, the factual aspects of the measures in question, the main arguments presented by the parties and the conclusions reached by the Panel. He pointed out that the conclusions of the Panel and the reasons set out for their findings had been arrived at unanimously.

The representative of the United States expressed his appreciation for the competent work done by the Panel and hoped that the Council would adopt the report.

The representative of the European Communities said that the Panel had disagreed with his delegation on the question relating to the conformity of the measure under consideration with some provisions of Article III of the GATT. The measure had been in force for only a period of some six months in 1976. His delegation was ready to adopt the report of the Panel.

The Council expressed its appreciation for the way in which the Panel had carried out its work. The Council noted that the measure in question had been terminated and adopted the report.

6. United States - Agricultural Adjustment Act (L/4600)

The Chairman said that under the Decision of 5 March 1955 the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the United States Government. The twentieth annual report had been distributed in document L/4600.

The representative of New Zealand referred to the recent major increases in support prices for dairy products and said that the use of the waiver to protect these extremely high price levels from the realities of the international market was difficult to reconcile with the support expressed by the United States for the liberalization of agricultural trade. He interpreted the United States position in respect of dairy products in the multilateral trade negotiations to mean that the United States considered that there was no longer a need for the waiver. He noted that the various measures taken by the United States in an attempt to balance supply and demand had so far not been successful, and urged therefore the United States to consider seriously the termination of the waiver. He noted that the MTN provided an opportunity for the United States to contribute to the liberalization of trade in the dairy sector.

The representative of Australia said that the waiver, granted more than twenty years ago, provided that the United States should promptly undertake a review to determine whether there had been a change in circumstances requiring the modification or termination of the restrictions. He recalled

that his delegation had formally requested the United States that such a review be undertaken. He expressed his Government's concern at the maintenance and increased stringency of the Section 22 quotas on imports of dairy products. He added that although the world dairy problems were being examined in the MTN, this matter should also be examined in the Council and the multilateral negotiations did not absolve the United States of its existing obligation to review its Section 22 quotas. He also stressed that any modification made by the United States to its import system on dairy products in the framework of the MTN should not be considered a concession for which payment should be made.

The representative of Argentina shared the views expressed by New Zealand and Australia. He stressed that although the waiver had been in force for twenty-three years, the United States should not consider these privileges as permanent.

The representative of the European Communities also shared the views of the previous speakers. He pointed out that the dairy products sector gave rise to difficulties in many countries and he expressed the hope that progress could be made in the MTN.

The representative of Nigeria noted a certain similarity between the EEC measure on animal feed proteins and certain actions under the United States Agricultural Adjustment Act.

The representative of the United States said that while originally eleven groups of commodities had been under restriction, this number had now been reduced to three commodity groups. He underlined that dairy products were receiving particular attention in the MTN and he was looking forward to liberalized trade in dairy products as a result of these negotiations.

The Chairman concluded that the Council had carried out the annual review required under paragraph 6 of the Decision.

The Council took note of the report.

7. Anglo-Irish Free-Trade Area (L/4619)

The Chairman said that in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the Anglo-Irish Free-Trade Area Agreement had submitted their seventh report on developments in the Free-Trade Area. The report was contained in document L/4619.

The representative of the United Kingdom said that the report covered the final two complete years of progress towards the full accession of both parties to the European Communities, after which the material provisions of the Anglo-Irish Free-Trade Agreement had lapsed. He pointed out that the Agreement had played an important part in Anglo-Irish trade in the period leading up to full customs union with the EEC.

The Council took note of the report and of the statement made by the representative of the United Kingdom that the material provisions of the Agreement had lapsed.

8. Brazil - Renegotiation of Schedule III (L/4629, C/W/298)

The Chairman said that under the Decision of 26 November 1975 the Government of Brazil was authorized to retain in effect the new rates of customs tariffs which were at a higher level than that provided for in its schedule, pending the carrying out and conclusion of appropriate renegotiations. The waiver was due to expire at 31 March 1978. The delegation of Brazil had now submitted a request for an extension of the waiver which had been distributed in document L/4629.

The representative of Brazil said that his authorities had carried out consultations with the most interested contracting parties affected by the measure. However, it had not been possible to conclude the renegotiations within the time period provided for and he therefore had to ask for an extension of the waiver. His delegation had made arrangements for continuing the negotiations within the next few weeks.

The representative of the United States said that he was prepared to approve an extension of the waiver but he also had to express disappointment at the slow progress of the renegotiations.

The representative of the European Communities said that while he was ready to approve the extension of the waiver he hoped that the renegotiations would be terminated before the end of the waiver in parallel with the conclusion of the MTN.

The representatives of Japan and Canada supported the extension of the waiver and stressed that the renegotiations should be concluded as soon as possible.

The Council approved the text of the draft decision (C/W/298) and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

9. Trade arrangements between Egypt, India and Yugoslavia (L/4644, C/W/299)

The Chairman stated that the Decision of 20 February 1970, as amended by the CONTRACTING PARTIES on 13 November 1973, enabled the three governments participating in the Trade Expansion and Economic Co-operation Agreement to continue to implement the Agreement subject to certain specific conditions and procedures. The Participating States had now notified the CONTRACTING PARTES of their intention to extend the Agreement for another five years. They therefore requested an extension of the Decision which was contained in document L/4644.

The representative of India, speaking on behalf of the three delegations concerned, said that the Governments of India, Egypt and Yugoslavia had decided to exchange letters extending the Tripartite Agreement for a further period of five years until 31 March 1983. He pointed out that the Agreement was trade creative in its conception, though in actual practice its trade creative effects may have been modest. It was felt now that progress could not only be made in the field of trade, but also in that of industrial, technical and scientific co-operation, which could lead to a possible increase in the trade covered under the Agreement. He expressed the belief that the trade interests of other contracting parties had not been adversely affected by the Agreement. The Agreement furthermore was open for accession by other developing countries on the basis of mutual benefit. He urged that the CONTRACTING PARTIES should continue their support to this modest venture of three developing countries.

The representative of the United States expressed the view that such preferential arrangements with only a few members which were geographically wide apart, led to the deterioration of the rights of other contracting parties under Article I, while providing little positive benefit to their members. Such agreements therefore were detrimental to the interests of all contracting parties by increasing the complexity of international trade. His delegation could therefore not support a further extension of the decision.

The Council approved the text of a draft decision circulated in document C/W/299.

The Chairman said that decisions relating to this Agreement had in the past been adopted by the CONTRACTING PARTIES by consensus. Since there were more than one half of the contracting parties represented at the Council meeting, it would be fully in order for the Council to adopt the decision if there was a consensus to do so.

The Chairman noted that there was a consensus in the Council composed of more than one half of the contracting parties to adopt the decision. The Decision had therefore been adopted by the CONTRACTING PARTIES.

10. Israel - Adjustment of specific duties (L/4639)

The Chairman drew attention to document L/4639, in which Israel sought the concurrence of the CONTRACTING PARTIES to adjust the specific duties bound in the Israeli schedule, in order to take account of the reductions in the value of the Israeli pound.

The representative of Israel recalled that he had informed the Council on 11 November 1977 of the far-reaching measures introduced by his Government on 28 October 1977. Among these measures was the unification of the rate of exchange and the establishment of a floating exchange rate system, which had resulted in a substantial depreciation of the Israeli pound vis-à-vis major currencies. He pointed out that the IMF had taken note of the new exchange arrangements and welcomed Israel's comprehensive liberalization of the exchange system. He also recalled his earlier statement that the depreciation of the value of the pound would require adjustments to be made to the specific rates of duty included in Israel's schedule and that in accordance with the principles of Article II:6(a) of the GATT his delegation would seek the concurrence of the CONTRACTING PARTIES to such a step. A formal request to that effect was contained in document L/4639. He recalled that the CONTRACTING PARTIES had approved a similar request by Israel on 7 February 1975. At that time the par value of the Israeli pound was I£ 6.00 per US$1.00. The value of the pound, as determined by the exchange market, was now approximately I£ 16.00 per US$1.00, which represented a depreciation exceeding by far the 20 per cent limit laid down in Article II:6(a). He stressed that the proposed adjustments in the schedule would not go beyond the effective rate of depreciation and that they would not impair any concessions contained in Israel's schedule. His delegation was ready to provide any additional relevant information if so requested.

He then stated that his delegation was aware of the fact that this request touched on a matter of principle. When Article II:6(a) was drafted, contracting parties maintained the value of their currencies in terms of gold or dollars of a fixed gold content and changes in the par value were made in accordance with the Articles of Agreement of the IMF. Today the par value system was no longer applied and floating exchange rate systems had become the rule rather than the exception. The IMF still exercised a surveillance of exchange practices, but pending the entry into force of the proposed amendments of its Articles of Agreement, it did so on the basis of informal guidelines for the management of floating exchange rates. Many delegations, including his own, had stressed that the breakdown of the

Bretton Woods system required consequential changes in the application of the General Agreement. The application of Article II:6(a) which made specific reference to the par value system was a case in point.

He thought that, before the Council would act on his country's request, the CONTRACTING PARTIES might wish to review the provisions of Article II:6(a) and consult as to their appropriate application under present circumstances. His delegation would have no objection if the decision of the Council be delayed in order to afford the CONTRACTING PARTIES the opportunity to conduct such consultations. In this connexion he stated that the Balance-of-Payments Committee might be the appropriate forum to conduct such consultations. The fact that the Committee would be meeting in May would ensure that the approval of Israel's request would not be delayed beyond a reasonable period of time.

The representative of the United States said that he agreed with the principle that Article II:6(a) should apply under a system of flexible exchange rates. He felt however that a number of questions arose in this regard which required a detailed examination, for example, what standard should be used to determine when a contracting party could invoke this Article and what constituted an appropriate tariff adjustment in the light of a particular shift in exchange rates. He therefore recommended the establishment of a working party to examine the applicability of Article II:6(a) in the context of the current monetary system. It would also be acceptable however to his delegation, if it were the consensus of the Council, to refer this matter to the Balance-of-Payments Committee on the basis of a special mandate. In any case the IMF would have to be involved in this work. He said furthermore that any action of the Council on the Israeli request should wait until the report on this matter was available.

The representative of the European Communities stated that difficult and delicate problems were involved. The question was what should be done and whether something should be done. At this stage, his delegation could not share the view that Article II:6(a) should be applied under a floating exchange rate system. The question of whether fixed points of reference should be abandoned required serious consideration. He noted that Israel was faced with a difficult situation. He considered that before a decision on procedure was taken more time for reflection was needed and proposed that the matter be reconsidered at the next meeting of the Council. The question could be asked whether in the present monetary situation it would not be more advisable to convert specific duties into ad valorem duties under a renegotiation in accordance with the provisions of Article XXVIII, including the special provision in favour of developing countries.

The representative of Switzerland said that while the right to adjust specific duties also under the present monetary system could not be contested, the modalities of application of the provisions of Article II:6(a) raised many questions. How, for example, should the loss of value of a particular currency be calculated? With reference to a specific currency or a basket of other currencies? Furthermore, what would be the base date from which to determine the depreciation of a currency? He felt that the outcome of the request presented by Israel had far reaching consequences since it set a precedent for the future. He referred in this respect to his own country which applied exclusively specific duties. His delegation therefore needed time to analyze all the implications of this request and to consult with interested delegations in order to arrive at carefully prepared terms of reference for whatever group would examine this matter.

The representative of Canada said that his delegation had a preference for examination of the matter in a working party, but he could also agree to the examination being carried out in the Balance-of-Payments Committee. In either case the IMF should take part in this examination.

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

11. Final position of the 1977 budget (L/4631)

The Chairman drew attention to the Report on the Final Position of the 1977 Budget of the GATT (L/4631). He said that Annex A showed the status of outstanding contributions of contracting parties as at the end of the year. Since that time further contributions had been received from Chad, Chile, Indonesia, Mauritania and Tunisia, leaving a total outstanding of Sw F 3,180,340 as of 14 March 1978.

He pointed out that paragraph 5 of the report referred to certain excess expenditure in a particular section of the budget and authority was sought to increase the appropriation accordingly by certain transfers as set out in that paragraph.

The Council authorized the increase in the appropriation and approved the proposed financing.

12. Export inflation insurance schemes

The representative of Canada recalled that when the report of the Working Party on Export Inflation Insurance Schemes was discussed by the Council in November 1977, his delegation had proposed, in the light of the unsatisfactory outcome of the report of the Working Party and of the fact that there had been no indication that the countries applying the export inflation insurance schemes had the intention of phasing them out, that this

matter be pursued further by setting up an independent panel of experts to provide a finding on the compatibility of these schemes with the General Agreement. This work should focus on the export inflation insurance schemes examined by the Working Party. Contracting parties should be allowed to make presentations to the panel. In the light of informal discussions with other delegations he now proposed the following terms of reference for the panel:

> "To make a finding on the compatibility of export inflation insurance schemes maintained by certain contracting parties with the provisions of the General Agreement and to report to the Council."

The representatives of the United States and Japan supported the proposal made by Canada to set up a panel of experts with the terms of reference suggested.

The representative of France recalled that the representative of Canada had indicated at the last Session of the CONTRACTING PARTIES that his delegation would consult on the terms of reference for the panel with the parties principally concerned. However, it was only a few days ago that his delegation received the draft terms of reference. His authorities were still examining the questions of principle involved in the establishment of such a panel and the precise mandate which could be given to it. He added that his authorities did not intend to oppose application of the normal dispute settlement procedure even if this would result in the setting up of a panel. He considered, however, that more time was needed to have the consultations envisaged by the Canadian delegation. As far as his delegation was concerned such consultations could take place on the basis of the provisions of Article XXIII:1 of the GATT, and should be held as soon as possible. These consultations would enable the two parties to obtain a better understanding of each other's concerns and, should the Canadian delegation then still consider that the setting up of a panel was necessary, agreement should be reached on the terms of reference for the panel to be considered by the Council at a further meeting.

The representative of the United Kingdom said that his authorities had taken notice of the Canadian proposal for the setting up of a panel. Informal discussions had taken place since then, but only recently had his delegation received the draft terms of reference. As these gave rise to some problems his delegation was ready to discuss them with the Canadian delegation and other interested contracting parties.

The representative of Finland said that his delegation had not been consulted in advance on the proposed terms of reference for the panel. His impression was that the terms of reference were too general in their formulation, that they did not contain a specific reference to GATT provisions, and that they did not make a differentiation between different kinds of schemes. He noted that his country's scheme had been examined by the Working Party and had been found self-supporting. In conclusion he said that further consultations were necessary in this matter.

The representative of Canada said that it appeared to him that there was agreement in principle for the creation of a panel to examine these schemes, but that there was not yet agreement on the terms of reference. He thought that the Council could therefore take a decision in principle to establish the panel, while consultations would go on on the terms of reference, for a decision to be taken on them at the next meeting of the Council.

The representative of Switzerland felt that before a decision on the panel was to be taken, the terms of reference for the panel should be known. He could not therefore agree with the Canadian proposal.

The Council agreed that further consultations on the Canadian proposal were needed and that the matter should be referred to the next meeting of the Council.

13. Tax legislation

(a) United States tax legislation (DISC)

(b) Income tax practices maintained by France

(c) Income tax practices maintained by Belgium

(d) Income tax practices maintained by the Netherlands

The representative of the European Communities recalled that at the last meeting of the Council, in connexion with the income tax practices maintained by France, Belgium and the Netherlands, his delegation had made the proposal that the Chairman of the Council should be requested, with the advice of persons competent in the field of the General Agreement, to formulate an opinion on the concept of "export activities" in terms of the GATT. He enquired whether a decision in regard to this question could now be taken.

The representative of the United States said that since the last meeting of the Council there had been important developments. He mentioned that the United States President had formally proposed to Congress the phased elimination of the DISC programme in three steps. In respect of the tax practices of France, Belgium and the Netherlands he said that his authorities had given consideration to the proposal made by the European Communities and had developed certain ideas which were being discussed with the European Community and with the countries concerned, both bilaterally and in multilateral fora. He expressed the hope that the proposals made recently to the European Community would lead to a constructive solution and considered that more time should be given to continue this process.

The representative of the European Communities noted that after several months the proposal he had made was still under consideration by the United States Government and expressed regret for the long delay in dealing with the matter. He proposed therefore that the questions be referred to a further Council meeting.

The representative of Canada recalled the concern expressed earlier, particularly at the non-implementation of the results of the DISC panel. He was disappointed that no progress could be made with regard to the proposal made by the European Communities that the Chairman of the Council should assist in finding a way out of the impasse. He hoped that the plurilateral consultations would lead to an early solution of the issues involved.

The representative of India expressed concern that no progress had been made in this matter and that, moreover, the questions dealt with could become a bilateral affair. He therefore reminded the Council that the interests and rights of third countries were also involved in this matter. Even more serious for him was the consideration that the dispute settlement procedure of the GATT could become paralyzed in a situation when the question of dispute settlement was also under consideration in other fora, including the MTN. He expressed the hope that further consultations would find a way out of the present impasse.

The representative of the United States said that the President's request to Congress to abolish the DISC programme should be regarded as an important step forward, even though a certain amount of time should be allowed to get results. He reassured the representative of India that the proposals made to the European Community related to a possible way of dealing with the questions of the tax practices of France, Belgium and the Netherlands in the Council. The intention was not to arrive at a bilateral solution of the problem. He agreed with the proposal to consider this matter again at a further meeting of the Council.

The representative of the European Communities recalled that it was his delegation which had multilateralized the DISC problem by bringing it forward under Article XXIII in 1973 and did not intend therefore, to solve this matter in a bilateral way. He pointed out that his delegation did not intend to discuss this matter in the framework of the multilateral trade negotiations.

The Council agreed that the matters be deferred to a future meeting of the Council.

14. United States - Suspension of customs liquidation regarding certain Japanese consumer electronic products

The representative of the United States said that the United States Supreme Court had agreed to consider the Zenith Radio Corporation's appeal of a lower court finding against Zenith in a case in which Zenith had charged that the Japanese Government's practice of rebating commodity taxes on exports of consumer electronic products constituted a subsidy under United States law and would therefore be subject to countervailing duties. The Supreme Court would hear oral arguments in this case during the week of 24 April and was expected to render a decision before the end of the summer. He added that his Administration had taken a position in opposition to that of the Zenith Corporation and would maintain that position in the Supreme Court.

The Council took note of the statement.

15. EEC - Article XIX action on imports into the United Kingdom of television sets from Korea (L/4613)

The representative of Korea referred to a notification by the EEC (L/4613), invoking Article XIX for the imposition of unilateral discriminatory import restrictions on black and white portable monochrome television sets exported from Korea to the United Kingdom. He explained that Korea's exports of these television sets to the United Kingdom amounted to only 2,100 units in 1976, but due to the big demand there had been indications that these exports could increase substantially in 1977. The British Government therefore, requested Korea, in June, to voluntarily restrain its exports. Consultations between the two countries took place the following month.

He pointed out that the EEC had based its argument for the measures on the alleged plans of Korean exporters to increase exports to the United Kingdom in 1977 to 300,000 sets, but that such plans had never existed. He felt, therefore, that the EEC had conjectured the probable situation of severe market disruption on the assumption that Korean exporters were planning to increase their exports to the level mentioned and he asked whether a contracting party could invoke discriminatory import restrictions under Article XIX against another contracting party on the basis of such a conjecture. He considered that the Community's unilateral and discriminatory restrictions were imposed in clear violation of the relevant provisions of the GATT.

He pointed out that while no agreement could be reached in the first round of bilateral consultations, due to divergent views, the Korean delegation was prepared to continue the search for a mutually satisfactory

solution through bilateral consultations. Nevertheless, on 22 July 1977, the British Government took unilateral import restrictions against Korean television sets in the form of a "notice to importers" and quotas were set at the level of 35,000 sets per year during 1977 and 1978. That action was not formally notified to the Korean Government and also the CONTRACTING PARTIES were not informed until four and a half months later, when the EEC notified that it had taken action under Article XIX. He also expressed concern that acquiescence on the part of the CONTRACTING PARTIES in this case might be utilized as a precedent for legitimizing selective import restrictions in the conduct of international trade. He finally urged the EEC authorities to repeal the measure and to seek a mutually agreeable solution through bilateral consultations. He indicated that Korea might wish to revert to this matter in the Council in the light of further developments.

The representative of the United Kingdom, speaking for Hong Kong, emphasized that Article XIX was not susceptible to being invoked on a discriminatory basis. He referred to discussions during the Havana Conference when an interpretative note was added to the Charter, which stated expressly that any action under the Article "must not discriminate against imports from any Member country". Similarly, discussions in 1953 on the accession of Japan and subsequently in 1960 on the question of market disruption made clear that there was no disagreement that Article XIX action had to be non-discriminatory. The only derogation from this principle of non-discrimination was in the Textiles Arrangements, which would not have been necessary if Article XIX had been capable of being used in a selective manner. The Hong Kong delegation therefore, considered the action notified by the EEC to be inconsistent with the provisions of the General Agreement.

A large number of representatives also spoke on the matter and expressed the opinion that Article XIX did not provide for the discriminatory application of measures to limit potentially disruptive imports. They considered the measures in question to be clearly inconsistent with GATT provisions. Some delegations expressed serious concern about the use of Article XIX on a selective basis, in particular when this was done in a manner discriminating against a developing country. Some delegations noted with regret that the United Kingdom and the EEC had not notified the measure promptly to the CONTRACTING PARTIES as provided in Article XIX. Concern was also expressed that this action could complicate the MTN safeguard negotiations which included the issue of achieving adequate international discipline over the use of safeguards. Many representatives urged that the parties concerned should find a bilateral solution to the question.

The representative of India pointed out that Article XIX as it existed, provided that action under these provisions had to be taken on a most-favoured-nation basis. The only latitude permitted to contracting parties in this regard was that permitted under Part IV in favour of developing countries.

The representative of Finland, speaking on behalf of the Nordic delegations, said he did not find that the action and modalities of implementation by the European Communities could be considered to contradict the provisions of Article XIX. As regards the earlier reference by one representative to the Havana Charter, he pointed out that the interpretative note in question also specifically provided that "such action should avoid, to the fullest extent possible injury to other supplying Member countries".

The representative of the European Communities stated that his delegation had only been informed of the inclusion of this item on the agenda one day before the meeting of the Council while his delegation's notification had been circulated on 15 December. He also stated that Korea had not held bilateral consultations with the European Community since this notification had been circulated. He furthermore observed that while in this case questions of principle were raised, no such questions had been raised in connexion with certain selective actions notified earlier by another contracting party, relating to footwear and colour television sets. He stated that the interpretation of Article XIX had frequently been subject to discussions, reflecting the fact that the text of that Article was not clear in some respects. This matter of interpretation was presently being taken up in the multilateral trade negotiations and he expressed the hope that an understanding could be reached on the aspect of selective application of safeguard measures. He expressed a reservation on the statements made by various speakers on the legal status of the EEC measures in terms of the General Agreement. He concluded by stating that various types of measures could be taken to meet the problems, foreseen in Article XIX.

The representative of Pakistan referring to the possibility that a solution might be found between the parties on a bilateral basis, pointed out that such approach would not be possible for a large number of contracting parties which were unable to defend their interests on their own. He pointed out that voluntary restraint agreements were often forced upon the weaker members of the GATT and stressed that there was no provision in the General Agreement that provided a legal basis for discriminatory restraints, even when they were supported by an agreement of a voluntary nature. His delegation was therefore not in favour of the approach suggested by some representatives. Furthermore, since doubts had been raised about the interpretation of Article XIX he enquired whether the secretariat could give advice on the manner in which Article XIX had been interpreted in the past or the precedents that had been established and were on record.

The Director-General said that the secretariat would be ready to make a study on the way Article XIX had been applied up to the present if so requested by the Council.

The representative of the United Kingdom, speaking for Hong Kong, supported the request for a study.

The representative of the European Communities said that if it were decided to ask for such a study it should not limit itself to interpretation, but should also cover the practice in dealing with Article XIX types of situations since 1947.

The Chairman suggested that further consultations might be carried out between the parties with a view to reaching a satisfactory conclusion. As matters of great importance and principle were involved, which were presently also being discussed in the context of the MTN, the Council agreed to revert to this matter at a later meeting if necessary.

16. EEC - Minimum import prices for processed fruits and vegetables

The Chairman recalled that following a recourse to Article XXIII:2 by the United States relating to the EEC programme of minimum import prices, a panel was established by the Council in July 1976. Subsequently, in November 1976, the Council was informed of the composition of the panel. He pointed out that before the panel was able to conclude its work two of its members were assigned by their governments to other functions and had left Geneva. This made it necessary to appoint two new members to the panel and the new composition of the panel was thus as follows:

Chairman: Mr. Jagmetti (Switzerland)

Members: Mrs. Breckenridge (Sri Lanka)
Mr. Hagfors (Finland)
Mr. Segalla (Austria)
Mr. Sigmundsson (Iceland)

The Council took note of the new composition of the panel.