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# GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
11 November 1977

## MINUTES OF MEETING

Held in the Centre William Rappard on 11 November 1977

Chairman: Mr. C. DE GEER (Sweden)

Subjects discussed:

## 1. Provisional Accession of the Philippines (L/4586)

The Chairman stated that the Declaration of 9 August 1973 on the Provisional Accession of the Philippines, as extended by the Procès-Verbal of 21 November 1975, and the Decision of the CONTRACTING PARTIES providing for the Participation of the Philippines in the work of the CONTRACTING PARTIES were due to expire on 31 December 1977. The Government of the Philippines had therefore requested an extension of these arrangements as contained in document L/4586.

The representative of the Philippines said that his Government had acceded provisionally to the GATT in 1973 in order to be able to participate fully in the Multilateral Trade Negotiations. It was, therefore, his Government's understanding that the final decision on accession would be contingent upon the termination and the results of the Multilateral Trade Negotiations. Since the negotiations were intended to end in 1978 and the results could not be ascertained at this time, his Government was not yet in a position to make a decision on full accession to the GATT. His Government, therefore, requested a further extension of the Declaration of 9 August 1973 which was due to expire on 31 December 1977.

The Council agreed to extend the arrangements for the Provisional Accession of the Philippines until 31 December 1979, it approved the text of the Second Procès-Verbal Extending the Declaration to 31 December 1979 and agreed that the Procès-Verbal should be opened for acceptance by the parties to the Declaration. The Council approved the text of the Decision extending the invitation to the Philippines to participate in the work of the CONTRACTING PARTIES to 31 December 1979 and recommended its adoption by the CONTRACTING PARTIES at their thirty-third session.

2. Export inflation insurance schemes (L/4552)

The Chairman recalled that, at its meeting in July 1976 the Council had established a working party to examine the question of export inflation insurance schemes and other related matters. The report of the Working Party had been distributed in document L/4552.

Mr. Selmer (Norway), Chairman of the Working Party, stated that several members of the Working Party had held the view that the export inflation insurance schemes under examination were subsidies in contravention of Article XVI:4 and should be notified under Article XVI:1. Furthermore, these and several other members expressed concern over the distortive effect of these schemes on international trade in products covered by the schemes and that they encouraged adoption of similar measures by other nations. They therefore called for the termination of the existing schemes.

Several other members of the Working Party had held the view that export inflation insurance schemes were only in contravention of the GATT where they could be shown to be subsidies under the provisions of Article XVI. Some of these members had considered that schemes operating in long-term financial equilibrium were not subsidies and that they were thus in conformity with the GATT provisions. Since they did not believe that any indication of dual pricing, as defined in Article XVI:4, or of any distortive effects on international trade had been produced in the Working Party, they did not subscribe to the call for the termination of the existing programmes. Thus, the Working Party had not been able to reach a unanimous conclusion as to the compatibility of the export inflation insurance schemes with the provisions of the General Agreement. The Working Party furthermore, had been unable to reach consensus on the question whether certain exchange rate guarantee schemes which had been brought to its attention fell under its terms of reference.

The representative of the United States said that his Government was disappointed by the results arrived at by the Working Party. He noted that only the countries maintaining export inflation insurance schemes had defended them while the other members of the Working Party had been in substantial agreement that the schemes did distort trade and should be eliminated. The countries maintaining the schemes had been unable to answer his delegation's contention that the schemes were subsidies prohibited by GATT. There was, furthermore, evidence that other countries were compelled to adopt similar measures in order to protect their exports. He regretted that there was no indication that steps would be taken to terminate the schemes or to reduce their distortive impact on international trade. It was absolutely necessary that a more satisfactory agreement as to what constituted a GATT illegal subsidy be reached.

The representative of Japan also expressed the view that the export inflation insurance schemes should be abolished as soon as possible.

The representative of Canada also expressed concern about the effects on international trade of export inflation insurance schemes. Some schemes had incurred large budgetary deficits. As none of the schemes contained, in his opinion, the necessary mechanisms to be self-financing, the losses incurred should be considered as subsidies. His Government was under pressure from exporters to institute similar schemes, which showed the danger of proliferation, and a phasing out of the existing schemes was, therefore, necessary.

He proposed, in the light of the unsatisfactory results of the Working Party, that the matter should be pursued further through reference to an independent panel of experts to provide a ruling on the compatibility of these schemes with the General Agreement. Such a panel should not be charged with assessing trade damage which might have resulted from the schemes or of determining the propriety of compensatory withdrawals. The panel should have precise terms of reference and should be provided with the report of the Working Party and the information supplied by the countries maintaining the schemes. The work should focus on the schemes studied by the Working Party and contracting parties should be allowed to make presentations to it. The panel should report its findings to the Council.

Some representatives supported the proposal. Some other representatives considered that some time for reflection was needed.

The representative of the United Kingdom said that his country had operated a cost escalation insurance scheme since 1975. His authorities did not believe that the scheme was incompatible with the provisions of the General Agreement. It was a temporary scheme, of which limited use had been made and was subject to periodic review. He was not in a position, at present, to respond positively to the call for termination of the scheme.

The representative of France said that his delegation had supplied the Working Party with substantial documentation and relevant information on the scheme and on the recent reforms which were intended to eliminate the imbalance of the system. The modifications had increased the insurance burden for the exporters and this therefore associated them with the fight against inflation. The purpose was to obtain a system operating in long-term equilibrium. The balance of the system could not be judged solely from its performance in any particular year; it could only be judged by reference to its financial out-turn in the longer term. The fact that the system had got out of balance was due to the international monetary situation and a sharp increase in world inflation. He stressed that the system was compatible with the provisions of Article XVI and that in the longer term it would prove itself to be self-financing.

The representative of Finland said that not all export inflation insurance schemes were trade distorting. He noted that Finland's system, which had been actively used, was not only in balance, but had even produced a slight surplus. With regard to the proposal of Canada for the setting up of a panel he considered that the terms of reference should cover all systems examined by the Working Party.

The Council considered that further reflexion should be given to the proposal for the establishment of a panel and to the drawing up of its terms of reference and agreed to revert to this matter at its next meeting.

The Council adopted the report.

3. Papua New Guinea-Australia Agreement (L/4571)

The Chairman recalled that, in March 1977, the Council had established a Working Party for the examination of the provisions of the Agreement on Trade and Commercial Relations concluded between Australia and Papua New Guinea. The report of the Working Party was contained in document L/4571.

Mr. Barthel Rosa (Brazil), Chairman of the Working Party, said that the representative of Australia had drawn attention to the fact that already a Decision of 24 October 1953 had enabled preferential treatment to be given by Australia to imports from the territory of Papua New Guinea for purposes of economic development. The present agreement ensured that Papua New Guinea would not be placed in a less advantageous position, as far as trade with Australia was concerned, than that enjoyed prior to its independence. The Australian authorities were expected to take formal action to disinvoke the 1953 waiver shortly. The Australian position also was that although Papua New Guinea would not be extending any reverse preferences to Australia under the Agreement,

substantially all the trade between Australia and Papua New Guinea was covered by the Agreement and the requirements of Article XXIV:8(b) had been met. This also implied that there was no obligation for Australia to make regular reports on developments under the Agreement. However, without prejudice to the status of the Agreement under the provisions of the GATT, Australia was prepared to submit a report on the operation of the Agreement for the information of the CONTRACTING PARTIES within a period of two years.

He further stated that some representatives had expressed doubts in the Working Party about the conformity of the Agreement with the provisions of Article XXIV, since no reciprocal reduction of duties by Papua New Guinea was required. The Agreement, in their view, did not provide for a significant further liberalization of trade between the parties, but rather continued for the most part a situation for which waivers had been granted by the CONTRACTING PARTIES. They furthermore considered that in the light of the decision of the CONTRACTING PARTIES to establish a calendar for the examination, every two years, of reports on preferential agreements a regular biennial reporting procedure should be adopted.

The representative of Australia said that substantially all the trade under the Agreement was free from duties and other restrictive regulations, so that the Agreement fully complied with the provisions of Article XXIV:8(b). As there was no time-table leading to a full free-trade area, there was no obligation to provide information regularly. Australia was nevertheless prepared to submit a report on the operation of the Agreement within a period of two years. He hoped that when this report was presented contracting parties would be able to reassess their positions in this regard.

The representatives of Canada, the United States, Japan and Sweden stressed that under the decision of the CONTRACTING PARTIES to establish a calendar for the examination of reports under regional agreements, regular biennial reports were required.

The representative of the European Communities, without taking a position on the case under discussion, pointed out that from a legal point of view there was, in his opinion, no reporting obligation in the case of customs unions and free-trade areas which had been fully completed.

The Council agreed that the question of biennial reporting would be further considered at a later meeting. The Council noted that Australia had agreed to present a report within a period of two years, which would be in October 1979. The Council adopted the report.

4. Agreements between the EEC and Tunisia, Algeria and Morocco (L/4558, L/4559, L/4560)

The Chairman stated that the Council, at its meeting in September 1976, had established three working parties for the examination of the provisions of the Agreements between the EEC and Tunisia, Algeria and Morocco.

Mr. Sandilya (India), Chairman of the three working parties, said that the working parties had discussed a number of issues related to the Agreements, including rules of origin, trade coverage and the Interim Agreements. 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. The parties to the Agreements and several other members of the working parties considered that the Agreements were entirely consistent with the objectives and the relevant provisions of the General Agreement taken as a whole. Other members of the working parties held the view that it was doubtful that the Agreements were entirely compatible with the requirements of the General Agreement.

The Council adopted the three reports and agreed that, in accordance with the Calendar for biennial reports, the first biennial reports on developments under the Agreements should be submitted in October 1979.

5. Committee on Anti-Dumping Practices (L/4587)

Mr. Lemmel (Sweden), who had succeeded Mr. Eggert (Finland) as Chairman of the Committee on Anti-Dumping Practices, introduced the Ninth Report by the Committee (L/4587) which covered the period from October 1976 to October 1977. He said that since October 1976 Poland had adhered to the Anti-Dumping Code. The Committee had examined the anti-dumping legislation notably of Portugal, Poland and the United States. Its discussions had also focused on anti-dumping practices in various countries and had given specific attention to the anti-dumping measures on ball bearings and tapered roller bearings imposed by the EEC and to the provisional measures imposed by the United States on carbon steel plates. Discussion on the case concerning carbon steel plates would be continued if and when deemed appropriate. The Committee had also continued its discussion on the analytical inventory of problems and issues that had arisen under the Code. It was agreed to continue this discussion at an early meeting of the Committee.

The representative of Japan stressed that anti-dumping measures should not constitute an unjustifiable obstacle to international trade and he expressed, in this connexion, his delegation's great concern that the recent surge of protectionism would exert pressure for the application of anti-dumping measures for protectionist reasons. He stressed therefore that the implementation of anti-dumping laws and regulations should be based upon the letter and spirit of the Anti-Dumping Code. He stated in this connexion his delegation's deep concern over the anti-dumping procedures against imported steel introduced by the United States.

The representative of the European Communities shared the concern expressed by Japan. He felt that the United States anti-dumping action was not an adequate answer to the world-wide crisis of the steel industry. Given the world-wide nature of the crisis in this industry, any non-concerted action by major countries was not likely to provide a basis for a generally acceptable solution.

The representative of the United States associated himself with the remarks made that anti-dumping policies should not serve as protective devices. He considered it as a normal reaction that in a period of crisis, when industries were more likely to be injured by unfair trading practices, the recourse to anti-dumping proceedings increased. With regard to the specific application of the anti-dumping procedures, he stressed that the United States administered its anti-dumping law in compliance with both the letter and the spirit of the Anti-Dumping Code.

The Council adopted the report.

6. Committee on Budget, Finance and Administration (L/4583, L/4510)

Mr. Feij (Netherlands), Chairman of the Committee on Budget, Finance and Administration stated that the Committee had examined the 1976 accounts of GATT, the financing of the 1977 budgets of GATT and the International Trade Centre UNCTAD/GATT, the GATT budget estimates for 1978 and the 1978-1979 estimates of the International Trade Centre. The Committee had also examined the situation of the Building Fund which had been established for the financing of the renovation of the Centre William Rappard.

He said that, on the basis of forecasts, the 1977 budget was expected to close with a budgetary year-end surplus of around Sw F670,000. Of this amount, the Committee recommended that Sw F221,858 be earmarked for the Building Fund. The Committee had paid special attention to the high level of contributions outstanding. He mentioned that in the case of a few countries the arrears went back as far as 1966 and even, in one case, to 1963. He made an earnest appeal to the governments concerned to make at least some effort towards fulfilling their financial obligations.

Referring to the budget estimates for 1978 he said that the Committee had not encountered any difficulties in its examination which could not be solved. The Committee proposed a revised budget level of Sw F38,585,000 which represented a 5.49 per cent increase over the approved 1977 budget. The Committee recognized that the increase had been influenced by the fact that for the first time a full year's rent would have to be paid for the new premises of the secretariat. Furthermore, 1978 was also the year in which the multilateral trade negotiations were expected to end, so that activity should be at a very high level.

As regards the secretariat's new accommodation, he recalled that the CONTRACTING PARTIES had originally established a Building Fund at the level of SwF5 million to cover the cost of renovation of the conference rooms and the adaptation of the office space to the needs of GATT. The final estimate of the costs was now Sw F6.2 million. The Committee felt, however, that the decision of the CONTRACTING PARTIES to move the secretariat to the Centre William Rappard was a wise and economic solution.

He mentioned that the Committee had recommended the formation of an ICITO/GATT Pension Committee and proposed the nomination of Mrs. Michaud (France) as member and of Mr. Stalberg (Sweden) as alternate member to represent the CONTRACTING PARTIES on that Committee. He also referred to the survey of the International Civil Service Commission of general service staff salaries in Geneva and mentioned that the Chairman of the Staff Council had addressed the Committee on this subject and had argued in great detail that anomalies had occurred at many stages of the survey. A note by the Staff Council (INT(77)52) had been distributed to the Council in this connexion.

As regards the International Trade Centre UNCTAD/GATT, he said that the Committee had examined the Centre's revised expenditure estimates for the 1978-1979 biennium and had recommended their approval at the amount of $11,338,000. The Committee had also approved a provision of Sw F6,838,000 for the Centre in the 1978 GATT budget.

With the permission of the Council a representative of the Staff Council addressed the Council on the question of general service salaries in Geneva. He mentioned that the salaries of more than half of the staff of international organizations in Geneva were presently threatened as explained in detail in the note of the Staff Council (INT(77)52). He stated that the recommendations by the International Civil Service Commission were unacceptable to the staff because of the lacunae and weaknesses in the survey and because their implementation would affect the acquired rights of the staff. Continuing on a more general level he referred to three problems for the international staff in Geneva. There was first the question of the subordination of all Geneva organizations to decisions taken somewhere else, in New York, on the basis of often insufficient information. He pointed out that the legal autonomy of the heads of organizations was presently put into question, as the general service staff salaries were presently handled in the UN General Assembly, while so far this matter belonged to the sole competence of the heads of local organizations. As a second point, he mentioned the increasing insecurity in working conditions of the staff of both general service and professional categories, since the contractual relation with the employer could be modified by decisions taken elsewhere on the basis of incomplete information.

In the third place, he drew attention to the important rôle the representatives of the contracting parties could play in this regard. He appealed to the representatives to act as an intermediary between Geneva staff and member governments, so that decisions would not be taken in New York on the basis of insufficient knowledge of the situation in Geneva in respect of the real cost of living.

The Council took note of the statement.

The Council approved the recommendations contained in paragraphs 16, 18, 40, 41, 43, 44 and 48 of the report (L/4583) and approved the nomination of Mrs. Michaud (France) as member and of Mr. Stalberg (Sweden) as alternate member to represent the CONTRACTING PARTIES on the ICITO/GATT Pension Committee. The Council furthermore approved the recommendations in paragraph 21 of document L/4510.

The Council approved the reports L/4583 and L/4510 and recommended their adoption by the CONTRACTING PARTIES, including the recommendations contained therein and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1978 and the ways and means to meet such expenditure.

The recommendation of the Council would be incorporated in the report of the Council to the CONTRACTING PARTIES.

7. Tax legislation

(a) United States tax legislation (DISC) (L/4422)

(b) Income tax practices maintained by France (L/4423)

(c) Income tax practices maintained by Belgium (L/4424)

(d) Income tax practices maintained by the Netherlands (L/4425)

The Chairman recalled that in July 1977 the Council had continued discussions on the reports prepared by the four panels on DISC and Income Tax Practices maintained by France, Belgium and the Netherlands and had agreed to revert to these matters at a later meeting.

The representative of the United States stated[1] that his Government continued to believe that the reports of the four panels should be adopted promptly. His delegation had declined so far to enter into a complex debate on these matters.

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[1] A memorandum by the United States has been circulated in document C/102.

On the question of the definition of export activity that had been raised by the representatives of France, Belgium and the Netherlands, he pointed out that the Panels had a clear idea of what constituted an export. To them there was no difference between a practice that subsidized an export explicitly by differential rates of taxation and one which did so by taxing exports shipped via third countries differently from those shipped directly. He considered that the concept of export activity as advanced by the three delegations was incomplete, as in transactions between related affiliates products frequently moved to their ultimate destination through a subsidiary in a tax haven country. As a result, the origin country did not tax the transaction up to the point where the product entered the country of ultimate destination. This was further aggravated if title was passed to the subsidiary in the tax haven country at less than an arm's length price. The Panels, in his view, had considered these points fully in rendering their opinions. The experts had made it clear that reducing taxes on exports by using a tax haven subsidiary was as much a violation of GATT as was DISC. The United States, therefore, believed that all economic activity associated with a product should be taxed in the country of origin until that product had moved into the country of ultimate destination. Furthermore, the transfer to the country of ultimate destination should be in conformity with the arm's length pricing principle.

The representative of the European Communities stressed again that in the case of the DISC there was question of a tax exemption on export activities which took place in the United States. As to the question of taxation of activities in the country of destination, he considered that it was inconceivable that the definition in GATT of subsidies on exports should depend on the fiscal system of the importing country. It was impossible to conceive that any country could adjust its system of taxes on exports according to the fiscal system of each different country of destination, so as to avoid being accused of subsidizing its exports. The basic question, therefore, was whether in taxing benefits from export activities one should go further than a taxation in accordance with the arm's length principle, in order to respect GATT rules prohibiting export subsidies. These considerations made it clear that it was unjustified to make any link between the DISC and the other tax systems. The link established by the United States was, therefore, purely artificial. It brought into question, however, the dispute settlement procedures under the GATT and there was a danger that this practice might spread to other cases.

The representative of the United States stressed that he had referred to exoneration from taxes which resulted from shipments through tax haven countries. The country of destination was not the key feature in his argumentation.

The representatives of Canada and Japan stated that they maintained their view that, according to the report of the Panel, the DISC system was not compatible with the United States obligations under the General Agreement. They hoped, therefore, that the United States would seriously consider abolishing the system.

The representative of France reaffirmed that in France the taxation of profits resulting from export activities was done on the basis of free competitive prices. No exemption was granted on profits from exports and the arm's length principle applied. Taxable benefits were determined on the basis of prices which were the same whether they were shipped to an independent company, a branch or a subsidiary company. This was specifically laid down in the French fiscal legislation and was strictly applied by the tax authorities.

While underlining that the matter of taxation of the activities of subsidiaries established in low-tax countries was a matter outside the context of the issue before the Panel, he reiterated nevertheless that it was impossible for a French company to escape taxes by creating fictitious companies in low-tax countries. Companies set up in tax havens were considered as being based in France and were thus subject to French taxes. Under the French tax legislation it was not possible for payments effected to a beneficiary of a privileged fiscal régime to be deducted from the basis for the tax unless it had been proved that these payments corresponded to real operations. He recalled that his delegation, in a memorandum (C/97/Add.1) had set out its objections to the definition of export activity applied by the Panel. In the view of his authorities that problem was central to the issue before the Panel and it would be useful if the Chairman of the Council, after appropriate consultations, were to give his opinion in regard to that reasoning. Lastly, they were convinced that the French tax legislation and administrative practices subjected French companies to a tax system which was in conformity with the rules of the GATT.

The representative of Belgium[1] reiterated his Government's reservations with regard to the conclusions by the Panel on Belgian tax practices. He said that these conclusions referred particularly to the reduction to one fourth of the normal rate taxed on profits of Belgian companies established abroad and to the exemption from taxes for Belgian companies of up to 90-95 per cent of dividends derived from permanent participation in foreign companies. He felt that these conclusions led to a totally inadequate comparison between Belgian rules for the avoidance of double taxation and the United States DISC system. Moreover, the conclusions were based on an extensive and erroneous interpretation of the concept of "export activities". He recalled that his delegation had asked two preliminary questions on which it was indispensable to have a reply before the Council could pronounce on the matter.

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[1]The text of the statement has been circulated in document C/98/Add.1.

He said that no provision in the tax code of Belgium was aimed at encouraging export operations. He confirmed that the Belgian authorities strictly adhered to the arm's length principle, which was specifically laid down in the Belgian tax legislation. These provisions had been extended to cover abnormal benefits due to particularly advantageous tax régimes in third countries.

He recalled that the Panel had based its reasoning on an extensive interpretation of the concept of export activities, and he maintained that Belgium could not accept that this concept could go beyond the frontier of the importing country.

The representative of the Netherlands drew specific attention to the declaration by his delegation, as reflected in paragraph 24 of the Panel's report and in the statement distributed in document C/99, that the Netherlands tax administration applied the arm's length principle and that the Netherlands practices in this respect did not differ from that of other tax administrations. As to the issue of "tax havens", he pointed out that this issue had not at all been mentioned in the Panel's conclusions. He stressed that the Panel had not disputed the Netherlands statement contained in the report that if no taxes were levied on the income of a branch in a tax haven the income was fully subject to Dutch tax.

Turning to the question of the definition of "export activities", he expressed his Government's concern that the Council had not been able to draw its conclusions from the Panel's report and that, as a result, doubts had arisen regarding the proper functioning of dispute settlement procedures in the GATT. He therefore appealed for an appropriate procedure which would enable the Council to take a decision on this matter.

The representative of the European Communities supported the statements by France, Belgium and the Netherlands which made it clear that their tax administrations were applying the arm's length principle in the taxation of export activities. The key question thus remained whether under the rules of the GATT export activities did end at the latest at the customs of the country of destination. Because of the present deadlock in the proceedings, he proposed that the Chairman of the Council, after ascertaining the views of persons whose competence in the field of GATT was recognized, would formulate an opinion with supporting considerations as to the concept of "export activities" in terms of the GATT.

A number of representatives supported the suggestion.

The Chairman said that he would wish to reflect on the suggestion, and that further consultations should be held.

The Council took note of the statements made and agreed to refer to the suggestion at its next meeting.

8. European Free Trade Association and Finland-EFTA Association (L/4566)

The Chairman said that in accordance with the Calender of Biennial Reports on developments under regional agreements, the member States of the European Free Trade Association and the Finland-EFTA Association had submitted a report which had been distributed in document L/4566.

Mr. Jagmetti (Switzerland), Chairman of the Working Party, said that the report, taken together with the sixteenth and seventeenth annual reports of EFTA covering the period 1 July 1976 to 30 June 1977 and the publications EFTA Trade 1974 and EFTA Trade 1975, informed the CONTRACTING PARTIES of the developments in EFTA and the FINEFTA Association which had taken place since October 1975. He pointed out that the dependence of the EFTA countries on foreign trade had remained very high and that these countries, which accounted for 1 per cent of the world population, accounted for 7 per cent of world imports and 6 per cent of world exports. The average imports per capita were higher than in any other trading area.

He also pointed out that, in spite of the difficult situation in the world economy, the EFTA countries had taken very little recourse to protectionist measures and this only in exceptional cases and in conformity with GATT procedures. A number of restrictive actions taken earlier had been abolished.

He also drew attention to the important step taken towards free trade in Western Europe when on 1 July 1977 the remaining duties on most industrial products between the sixteen countries in EFTA and the European Communities had been removed on schedule. For the remaining duties on a certain number of industrial products there existed a time-table for their final removal. He stressed that the EFTA countries attached great importance to the MTN and were participating actively in this undertaking.

The representative of the United States mentioned his delegation's distribute continuing concern about the application of the rules of origin under the EFTA-FINEFTA Agreement.

The Council took note of the report.

9. Agreement Finland-Hungary (L/4564)

The Chairman said that, in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the Agreement between Finland and Hungary on the reciprocal removal of obstacles to trade had a report contained in document L/4564.

The Council took note of the report.

10. Agreements between the EEC and Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland (L/4573 - L/4579)

The Chairman said that, in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the Agreements concluded between the European Communities and the seven member States of EFTA and FINEFTA had submitted reports on developments under the agreements contained in documents L/4573 - L/4579.

The representative of Canada expressed his delegation's concern over the rules of origin applied between the European Community and the EFTA and FINEFTA member countries, which, in his opinion, remained unnecessarily stringent and went beyond the requirements necessary to prevent trade deflection. The adjustments made were of a minor and technical nature and did not change the unnecessarily severe nature of the rules of origin.

The representative of the European Communities, supported by the representative of Switzerland on behalf of the EFTA countries, said that the rules of origin were subject to modification in accordance with the economic requirements of the member countries. He pointed out that rules of origin were necessary under each preferential system. The current rules of origin could, in his view, not be considered as unduly restrictive. On the contrary, the rules were very liberal and permitted third countries to participate in the trade expansion of the area.

The Council took note of the seven reports.

11. New Zealand-Australia Free Trade Agreement (L/4589)

The Chairman said that in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the New Zealand-Australia Free Trade Agreement had submitted their Sixth Annual Report on developments under the Agreement, which had been distributed in document L/4589.

The representative of New Zealand introduced the report and said that NAFTA had been in force for more than ten years, during which time it had played a key rôle in increasing the trade flow between Australia and New Zealand to the extent that it had more than tripled total trade between the two countries. He noted that Schedule A trade, which was duty free under NAFTA or on which tariffs were being progressively eliminated, had reached $A 459 million, or 67 per cent of total trade, in 1975/76, and that products coming under Article 3:7 of the Agreement were valued at $A 56 million. Together with trade that was otherwise duty free, this meant that 83 per cent of total trade between the two countries was now free of customs duties. He further stated that at a NAFTA Ministerial meeting in September 1976 the Ministers had reaffirmed the Agreement and agreed that the life of the Agreement be extended for ten years to 31 December 1985.

The Council took note of the report.

12. ASEAN Agreement (L/4581)

The Chairman said that the text of the Agreement on ASEAN Preferential Trading Arrangements had been circulated in document L/4581.

The representative of Indonesia introduced the text of the Agreement on behalf of the five member countries - Indonesia, Malaysia, Singapore, Thailand and the Philippines. He said that the Agreement had entered into force on 31 August 1977. He said that the governments had agreed to establish preferential trading arrangements among them through the adoption of instruments for ASEAN trade expansion. These instruments, inter alia, covered long-term quantity contracts, purchase finance support at preferential interest rates, preference in procurement by government entities, extension of tariff preferences, liberalization of non-tariff measures on a preferential basis and other measures. The preferential arrangements would be applied to basic commodities, particularly rice and crude oil; products of ASEAN industrial projects; products for the expansion of intra-ASEAN trade and other products of interest to ASEAN member States. He mentioned that negotiations on tariff and non-tariff preferences were taking place at present, the results of which would be submitted to GATT in due time.

He stated that the member States of ASEAN were of the opinion that the Agreement was consistent with the provisions and spirit of the GATT and that it would not adversely affect the trade interests of other countries.

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 on ASEAN Preferential Trading Arrangements and to report to the Council.

Membership:

The membership would be open to all contracting parties indicating their wish to serve on the working party.

Chairman:

The Chairman of the Council was authorized to nominate the Chairman in consultation with principally interested delegations.

The Council agreed that contracting parties wishing to submit questions in writing relating to the Agreement should be invited to send in such questions by 15 January 1978 at the latest. The replies to the questions could be expected to be available within six weeks after receipt of the questions.

The Council also agreed that in connexion with the discussions on the ASEAN Agreement the delegation of Thailand should be invited to be represented by observers at the meetings of the Council and at any other meetings at which the Agreement would be discussed.

13. Pakistan - Renegotiation of Schedule (L/4567, C/W/294)

The Chairman drew attention to document L/4567 which contained a request from the Government of Pakistan for a waiver from the provisions of Article II of the General Agreement.

The representative of Pakistan explained the difficult economic situation in his country that had led to increasingly heavy budgetary deficits. Since customs duties were the largest source of public revenue in Pakistan, the Government had found it necessary to revise customs duties on a number of items in an effort to reduce the budgetary deficit, to contain inflationary pressures in the economy and to mobilize additional domestic resources to meet essential expenditures, including capital outlays on development projects. He stated that the number of items on which Pakistan had departed from the bound rates was considerable. However, only twenty-three items involved annual imports of $1 million or more. Out of these twenty-three, bound rates had been exceeded by up to 10 per cent on twelve items and only for eleven items was the increase in duty more than 10 per cent. While his delegation requested a period of up to 31 December 1979 for the completion of the renegotiations under Article XXVIII, it was their sincere desire to complete this process as expeditiously as possible.

The Council approved the text of the draft decision contained in document C/W/294, and recommended its adoption by the CONTRACTING PARTIES by means of a ballot taken at their thirty-third session.

14. Indonesia - Renegotiation of Schedule (L/4582, C/W/295)

The Chairman drew attention to document L/4582 containing a request from the Government of Indonesia for an extension of its waiver from the provisions of Article II of the General Agreement.

The representative of Indonesia said that a delegation appointed for the negotiation of a new Schedule XXI had been in Geneva since April 1977 and consultations had been conducted with a number of delegations representing most of Indonesia's major trading partners. Some delegations had already indicated tentatively their wishes concerning concessions expected from Indonesia under its new Schedule, while others were expected to do so at the earliest possible time. It would, however, not be possible for his delegation to conclude the renegotiations before 31 December 1977. For this reason, he requested that the time-limit provided for in the Decision of 22 November 1976 be extended for another year.

The Council approved the text of the draft decision extending the waiver until 31 December 1978 (C/W/295) and recommended that the decision be adopted by the CONTRACTING PARTIES by means of a ballot taken at their thirty-third session.

15. EEC - Refunds on exports of malted barley (L/4588)

The representative of Chile said that the European Communities had established in July 1977 new measures for their exports of malted barley. These measures implied a subsidy of $85 per ton. This made it impossible for other producers to compete in international markets since the average price per ton was now below $300. His delegation had addressed the Council on this matter in September 1976 because Latin American exporters of malted barley were being displaced from their traditional markets in their own region. It had then been suggested that bilateral consultations between the parties concerned be pursued in order to find a satisfactory solution to this problem. In spite of the recommendation that a satisfactory settlement be sought, the EEC had continued the system in July 1977.

His delegation therefore invoked the special procedures under Article XXIII adopted in 1966 for developing countries and wished to refer the matter to the Director-General to use his good offices.

The Chairman pointed out that under the special procedures under Article XXIII, adopted by the Decision of 5 April 1966, the matter would be referred, in the first instance, to the Director-General so that he might use his good offices with a view to facilitating a solution. The Council was, therefore, not required to take any action at this stage, but might be required to do so at a later stage in accordance with the above-mentioned procedures.

The representative of Uruguay shared the concern expressed by the representative of Chile.

The representative of the European Communities pointed out that no bilateral discussions or consultations had been held since the matter had been raised in September 1976. He felt that any further action by the delegation of Chile should have been preceded by appropriate consultations. His delegation was fully prepared to conduct bilateral consultations with Chile on this matter.

The Chairman suggested that the matter might be reverted to later so as to enable bilateral consultations to be carried out.

The representative of the United States said that his delegation shared the concern expressed by the representative of Chile on the Community practices that led to the replacement of lower cost producers by higher cost producers in their traditional markets. His authorities had also received complaints from producers on the export subsidies by the European Communities on malted barley. His delegation was pursuing this matter in the context of the Multilateral Trade Negotiations.

16. Trade arrangements between Egypt, India and Yugoslavia (L/4565)

The Chairman recalled that the Decision of 20 February 1970, as amended on 13 November 1973, enabled the three Governments participating in the Trade Expansion and Co-operation Agreement to continue the implementation of the Agreement subject to specific conditions and procedures. In accordance with these procedures, the three participating States had submitted their annual report on the eighth year of operation of the Agreement (L/4565).

The representative of India introduced the report on behalf of the three participating States and pointed out that the statistics for the year 1975-76 showed that the Agreement had continued to have a modest impact in creating new and additional opportunities for trade in non-traditional products between the three partner countries without causing harm to the trade interests of other contracting parties. He furthermore stated that the participating States, according to their declared intentions, would use their best endeavours in the next round of trade negotiations among developing countries to multilateralize, as far as possible, trade concessions exchanged among them.

The Council took note of the report and also noted that the Decision of 13 November 1973, was due to expire at the end of March 1978, so that the Council would have to address itself to this matter at an appropriate time.

17. Provisional Accession of Tunisia (L/4584)

The Chairman stated that the Declaration of 12 November 1959 on the Provisional Accession of Tunisia, as extended by the Tenth Procès-Verbal of 21 November 1975, and the Decision of the CONTRACTING PARTIES providing for the Participation of Tunisia in the work of the CONTRACTING PARTIES, were due to expire on 31 December 1977. A request by the Government of Tunisia for an extension of these arrangements had been circulated in document L/4584.

The representative of Tunisia said that Tunisia's tariff system, established in 1973, still showed many technical imperfections so that Tunisia was not in a position now to undertake negotiations for final accession to the GATT. He therefore, requested a further extension of the Declaration on the Provisional Accession of Tunisia of 12 November 1959.

The Council agreed to extend the arrangements for the provisional accession of Tunisia until 31 December 1979, it approved the text of the Eleventh Procès-Verbal Extending the Declaration to 31 December 1979 and agreed that the Procès-Verbal should be opened for acceptance by the parties to the Declaration. The Council approved the text of the Decision extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES to 31 December 1979 and recommended its adoption by the CONTRACTING PARTIES at their thirty-third session.

18. New Zealand import deposit scheme

The representative of the United States recalled that New Zealand had introduced a temporary import deposit scheme for one year in February 1976. The scheme had been extended for six months in February 1977 and again in August 1977. He said that a Working Party had examined the scheme in June 1976 and had agreed to keep the matter under review. His authorities were of the opinion that, in view of the fact that the measures had been repeatedly renewed, it had become necessary to review the scheme again, which review should preferably be carried out by the Balance-of-Payments Committee.

The representative of New Zealand recalled that in October 1976 the import deposit scheme had been modified with the effect of reducing its coverage by $NZ 60 million, from its original coverage of $NZ 180 million. In December 1976 the CONTRACTING PARTIES had been informed that the scheme was to be extended for six months in the light of the serious balance-of-payments situation which New Zealand was facing. In July 1977 the CONTRACTING PARTIES had been informed of a further extension of the scheme until February 1978. He pointed out that the scheme, during its first year, had had significant effects, in particular in discouraging speculative importing. Although imports of goods subject to deposit were increasing, it was hoped that the scheme would prevent this trend from becoming more pronounced. His Government was furthermore concerned that the removal of the scheme would be seen as a relaxation at a time when there was still need for restraint in the light of adverse balance-of-payments prospects. His delegation had no objection to referring the matter again to the Working Party, which, according to its terms of reference, continued to be available for consultation as necessary.

The representative of Canada said that, as a general rule, all trade restrictive measures taken for balance-of-payments reasons should be examined by the Balance-of-Payments Committee. However, since in this case a Working Party already existed, it seemed preferable to have the New Zealand scheme examined by the Working Party.

The Council agreed that the Working Party should be reconvened to examine the New Zealand import deposit scheme.

19. Training activities (L/4550)

The Director-General, in presenting a report (L/4550) on the activities of GATT in the field of training, stated that the commercial policy courses organized by GATT every year constituted one of the activities to which contracting parties and in particular developing countries, whether or not members of GATT, attached considerable importance. The comments made by delegations and the increasing number of requests for admission for each course were proof of the continuing interest of governments in this activity.

He pointed out that the practical value of the courses was greatly enhanced by the study tours and the useful contacts which the participants were able to make with public and private sectors in the countries visited. Thus, in 1977, participants in the English-speaking course had visited the United Kingdom and Finland, and the French-speaking course would soon leave for Italy and Portugal. In addition, each course included a study tour in Switzerland. He was grateful to all governments concerned for their continuing interest in these training activities and for the hospitality extended to the participants during their visits. He thanked UNDP and UNCTAD, as the executing agency of UNDP, for providing fellowships for the training courses and also the representatives of delegations and international organizations for the lectures they had given to the trainees.

The Council took note of the report.

20. Trade with Poland

The Chairman recalled that the Protocol for the Accession of Poland provided for annual consultations during which there should be a review of trade between the CONTRACTING PARTIES and Poland. During these consultations the CONTRACTING PARTIES should also review the measures taken by contracting parties for the progressive relaxation during the transitional period of restrictions maintained against imports of Polish origin. Furthermore, in accordance with paragraph 3(c) of the Protocol, the CONTRACTING PARTIES were required to consider the establishment of a date for the termination of the transitional period. He pointed out that this question had already been examined during the past seven annual consultations on trade with Poland.

The Council agreed to establish a working party to conduct the tenth annual consultation on trade with Poland with the following terms of reference and composition:

Terms of Reference:

To conduct, on behalf of the CONTRACTING PARTIES, the tenth annual consultation with the Government of Poland provided for in the Protocol of Accession; to re-examine the question of the establishment of a date for the termination of the transitional period referred to in paragraph 3(a) of the Protocol; and to report to the Council.

Membership:

| | | | |
|---|---|---|---|
| Argentina | Cuba | Finland | Poland |
| Australia | Czechoslovakia | Hungary | Romania |
| Austria | European Communities | India | Sweden |
| Brazil | and their member | Japan | Switzerland |
| Canada | States | Norway | United States |

Chairman:

The Chairman of the Council was authorized to nominate the Chairman of the Working Party in consultation with the delegations principally concerned.

21. Status of Protocols (C/W/293)

The Chairman drew attention to document C/W/293 containing a report on the status of protocols. He said that action was still required on the Protocol Introducing Part IV, which was now in force amongst all except two contracting parties.

Since the closing date for acceptance of the Protocol Introducing Part IV would expire at the close of the thirty-third session, the Council agreed to recommend to the CONTRACTING PARTIES that the closing date for the acceptance of this Protocol be extended until the end of the thirty-fourth session. The Council approved the text of the draft decision and recommended its adoption by the CONTRACTING PARTIES.

The representative of Japan expressed the hope that those contracting parties which had not yet accepted the Protocol Introducing Part IV would be able to do so at the earliest possible date.

22. Consultations with Hungary

The Chairman recalled that the Council had established in May the Working Party on Trade with Hungary and that it had authorized the Chairman of the Council to nominate the Chairman of the Working Party in consultation with delegations concerned. He informed the Council that Ambassador Farnon (New Zealand) had been nominated to the chairmanship of the Working Party, and that the Working Party was scheduled to meet in the second half of November.

The Council took note of the information.

23. Japan - Import restrictions on thrown silk

The Chairman recalled that the Council had considered in July 1977 the complaint by the United States under the provisions of Article XXIII relating to Japanese restrictive measures on imports of thrown silk yarn. The Council had then requested the two countries concerned to pursue their bilateral consultations under Article XXIII:1 and it had agreed that, if the matter had not been settled satisfactorily on a bilateral basis by 20 August 1977, a panel would be established. The Council had determined the terms of reference of such a panel and authorized the Chairman of the Council to undertake the necessary steps for the establishment of a panel if this was required.

The Chairman now informed the Council that the bilateral consultations between Japan and the United States had not led to a satisfactory solution and a panel had thus been established with the following composition:

Chairman: Mr. Ekblom (Finland)

Members: Mrs. Breckenridge (Sri Lanka)

Mr. Hall (Australia)

The Council took note of the information.

24. Consultative Group of Eighteen (L/4585)

The Chairman recalled that the Consultative Group of Eighteen had been established by decision of the Council of 11 July 1975. Its terms of reference provided that the Group was to submit a comprehensive account of its activities once a year. A report on the work of the Group had been circulated in document L/4585. He also recalled that in November 1976 the Council had confirmed the Decision of 11 July 1975 in all its elements and had agreed to re-examine the situation one year later.

The Director-General, Chairman of the Group of Eighteen, introduced the report (L/4585) which had been prepared on his own responsibility. He mentioned that the Group had held only one meeting, but that a more frequent pattern of meetings would be regarded as the norm by members of the Group. As outlined in the report, the Group had a further discussion on dispute management, on world trade in agricultural products and on the subject of trade measures taken for balance-of-payments purposes, including the procedures for balance-of-payments consultations with developing countries and measures to improve co-ordination between the secretariats of GATT and the IMF. A new element was the suggestion that the question of the definitive acceptance of the GATT be taken up in the current round of negotiations. One of the principal themes of the Group's discussions had been, furthermore, the growing incidence of protectionist measures. He recalled that the Council would also have to re-examine the situation with regard to the existence of the Group and expressed the hope that it would be possible for the Council to confirm the existence of the Group.

The representative of the European Communities recalled that in November 1976 a number of representatives had expressed the view that the first year's activities of the Group had been useful and justified its further continuation. Some other representatives had considered that their experience with the Group had not yet been long enough. This situation had not yet fundamentally changed. The Community, therefore, proposed that the Council should confirm the existence of the Group and take a decision on the future of the Group at the conclusion of the Tokyo Round, when there would be a clearer view of the new situation.

A large number of representatives supported the proposal of the representative of the European Communities. A number of these representatives indicated that they would have been willing to establish the Group on a more permanent basis, but could accept the EEC proposal as a compromise.

Some representatives supported the suggestion mentioned in the report that arrangements should be made to keep track of and examine existing and newly-imposed trade restrictions. In this connexion, the Director-General indicated that the secretariat was considering how best it could carry out such an exercise.

The Council confirmed the existence of the Consultative Group of Eighteen and agreed to take a decision on the future of the Group at the conclusion of the Tokyo Round when there would be a clearer view of the new situation.

25. Turkey - Stamp Duty

The representative of Turkey drew attention to the fact that the waiver relating to the maintenance by Turkey of the Stamp Duty would expire by the end of the year. He stated that the question of the Stamp Duty was presently being considered by his authorities, but no decision on an eventual prorogation of the legislation concerned had yet been taken. His delegation was therefore not in a position at this moment to make a request for a possible extension of the waiver. As his authorities were likely to take a decision in this regard before the next meeting of the Council he asked that the question be referred directly to the Committee on Balance-of-Payments Restrictions which would carry out a consultation with Turkey in January 1978.

The Council agreed that if there was not to be a meeting of the Council before the expiry of the waiver, the question of the Turkish Stamp Duty should be referred directly to the Committee on Balance-of-Payments, so that the Council could consider the matter in due course, in the light of the Committee's report.

26. Israel - economic measures

The representative of Israel said that on 28 October 1977 the Government of Israel took a series of far-reaching decisions concerning Israel's future economic policy. The decisions concerned the unification of the rate of exchange, the relaxation of foreign controls and the transformation of the Israeli pound into a convertible currency. He explained in detail that the exchange rate system, which previously involved multiple rates and the policy of frequent small depreciations, had been abandoned and was replaced by a floating exchange rate system. This, in terms of the United States dollar, had led to an effective depreciation of the Israeli pound in the order of 40 per cent. His Government had also introduced a liberalization programme which included the removal of most foreign exchange restrictions relating to foreign trade, the abolition of the system of refund of indirect taxes on exports, the abolition of the system of temporary surcharges on imports, the continuation of the programme of import liberalization, a reduction in the scope of government imports, and a large-scale reduction of import duties. He said that most import duties had been reduced, a large part by 20 per cent, many by a larger percentage and some had been completely abolished.

He said that this programme was supported by fiscal and monetary measures to prevent the rapid growth of the money supply and to restrain domestic demand. Thus, the value-added tax had been increased substantially while existing purchase taxes on raw materials had been reduced. Budgetary subsidies on essential items of consumption would be gradually lowered and the Bank of Israel had frozen domestic credit for an initial period of three months.

He pointed out that the depreciation of the Israeli pound would require appropriate adjustments to be made in the specific rates of duty bound in the Israeli Schedule, in accordance with the provisions of Article II:6(a). Furthermore, Israel considered the reductions in the rates of duty to be an important contribution by Israel in the context of the Multilateral Trade Negotiations. He finally stated that full details of the measures from the point of view of their effect on the Israeli balance of payments would be provided to the Committee on Balance-of-Payments Restrictions in the framework of the scheduled consultation with Israel.

The Council took note of the statement.

27. Application of Article XXXV to Japan

The representative of Japan welcomed the fact that, since the last session of the CONTRACTING PARTIES, Kenya had found it possible to disinvoke the application of Article XXXV in respect of Japan. He regretted that there remained still three contracting parties which had not yet found it possible to disinvoke Article XXXV in respect of his country. He expressed the hope that these governments would soon be in a position to do so. His delegation intended to raise this matter at the forthcoming session of the CONTRACTING PARTIES.

The Council took note of the statement.

28. Australia - Article XIX action on passenger motor vehicles (L/4526)

The representative of Japan expressed regret that Australia in July 1977 again introduced import restrictions in respect of passenger motor vehicles under the provisions of Article XIX. Japan reserved its rights under the GATT and had notified its intention to enter into consultations with Australia on this matter.

The representative of Australia stated that following the notification, his delegation had indicated its readiness to enter into consultations with Australia's trading partners. His delegation had agreed with Japan to extend the period normally allowed for such consultations. He hoped that consultations would take place before the end of November.

The Council took note of the statements.

29. Canada - Article XIX action on double-knit fabrics (L/4450)

The representative of Japan expressed regret at the introduction by Canada of import restrictions on double-knit fabrics under the provisions of Article XIX. His delegation requested the continuation of the consultations on this matter under the provisions of the GATT.

The representative of Canada said that, according to his understanding, consultations with Japan had taken place and his delegation was ready for further consultations on this matter.

The Council took note of the statements.

30. Report of the Council (C/W/292)

The secretariat had distributed in document C/W/292 a draft of the Council's report to the CONTRACTING PARTIES on matters considered by the Council since the thirty-second session and any action taken in this respect.

The Council considered the draft and requested the secretariat to insert the amendments proposed as well as suitable additional notes regarding action taken at this meeting of the Council.

The Council agreed that the report with these additions should be distributed and presented to the CONTRACTING PARTIES by the Chairman of the Council.