

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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**COUNCIL**  
**11 December 1995**

**MINUTES OF MEETING**

**Held in the Centre William Rappard**  
**on 11 December 1995**

**Chairman: Mr. W. Armstrong (New Zealand)**

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| 1. | <u>European Economic Community</u>                            |   |
|    | (a) <u>Import régime for bananas</u>                          |   |
|    | - <u>Panel report (DS38/R)</u>                                |   |
|    | (b) <u>Member States' import régimes for bananas</u>          |   |
|    | - <u>Panel report (DS32/R)</u>                                |   |

The Chairman recalled that when it had considered these matters at its meeting in May, the Council had noted that the positions of delegations expressed at previous meetings had remained unchanged and had agreed to revert to these matters at its next meeting. He said that it was his understanding that the positions of governments had still remained unchanged and therefore it would not be possible for the Council to reach a consensus. He proposed that the Council take note of this situation and offered the floor to any delegations which considered it absolutely necessary to reiterate their positions, or which might wish to announce any change in their positions.

The representative of Guatemala, speaking on behalf of Ecuador, Guatemala, Honduras, Mexico and Panama, said that together, they represented the major part of overall suppliers of bananas to the member States of the European Communities, and over a long period of time they had demonstrated the illegalities of the banana-import régime. They had expressed concern that the Commission of the European Communities had continued to violate the multilateral trade rules and had imposed mechanisms on its member States which were incompatible with GATT and the WTO. During the last two years it had been hoped that the recommendations made by the two panels would encourage the Commission of the European Communities to find a global solution, satisfactory to all countries which exported and commercialized bananas in this market. Unfortunately this had not been possible, but Guatemala reiterated that the countries concerned remained open to dialogue. The fact that the European Communities adhered to a régime that did not meet the GATT rules, had created a very bad precedent, prejudicial to all Members of the WTO, including the European Communities, since it undermined the credibility of the Organization as a whole and of the Dispute Settlement system, in particular. At this last meeting of the GATT Council, therefore, Guatemala urged the contracting parties to adopt the recommendations of the two panels, and called on the European Communities to abide by their multilateral obligations as soon as possible.

The Council took note of the statement and also the fact that the positions of delegations that had expressed their views in previous meetings, had remained unchanged.

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| 2. | <u>United States - Restrictions on imports of tuna</u>            |
|    | - <u>Recourse by the European Communities and the Netherlands</u> |
|    | - <u>Panel report (DS29/R)</u>                                    |

The Chairman recalled that the Council had considered this matter at its meeting in May and had agreed to revert to it at its next meeting.

The representative of Venezuela said that once again the question of the embargo imposed by the United States since 1991 on imports of tuna was before the Council. Since then, considerable progress had been made regarding the fishing of tuna, resulting in the reduction of incidental mortality of dolphins to virtually zero. He noted that this had been achieved six years before the deadline set by the international agreement governing tuna fishing under the Inter-American Tropical Tuna Commission (IATTC). Nevertheless, the embargo on imports of tuna from Venezuela continued

to be maintained by the United States. He highlighted two elements of interest related to this issue. First, the members of the IATTC had reached an agreement in October 1995, known as the Panama Declaration, whereby the provisions of the International Programme for the Preservation of Dolphins would become binding, subject to the United States lifting its embargo on imports of tuna and modifying its definition of "dolphin safe" to include tuna catches entailing no dolphin killing. Second, in parallel to this positive development, there were other elements which had given rise to concern, and Venezuela drew attention, in particular, to the proposed reform of the Magnuson Law on the Preservation and Management of Fisheries before the US Congress. In the legislative process with regard to this proposed reform, the House of Representatives had adopted an amendment which, if endorsed by the Congress and applied by the Executive, would imply that: "No fish may be introduced into interstate commerce of the United States unless the Secretary of Commerce certifies that the country of origin of the fish has implemented and is enforcing laws or regulations requiring fish excluder devices on that country's fishing industry in the manner in which these laws are enforced in the United States." Although the legislative process involving the proposed reform of the Magnuson Law had not been concluded, Venezuela was concerned with the possible repercussions this type of legislation could have on international trade, and with respect to its compatibility with the provisions of GATT and the WTO. Venezuela believed that any legislation which gave the right to embargo imports of fish which had not been caught according to the provisions of domestic legislation of a contracting party, would undermine the work which the Committee on Trade and Environment was conducting with respect to the harmonization of trade and environment policies. Venezuela requested the adoption of the Panel report, and reserved its rights to resort to the dispute settlement mechanism of the WTO should no satisfactory solution be found.

The representative of El Salvador placed on record her authorities' concern with respect to the draft amendment to the Magnuson Law under consideration in the United States. Though not yet adopted by the Congress, this type of amendment could have an impact on international trade and could affect the compatibility of that legislation with the rules of GATT and the WTO.

The representative of Mexico appreciated the information provided by Venezuela in its statement and noted certain elements of optimism with respect to a possible solution to the tuna embargo, together with other elements which gave rise to serious concern. Mexico believed that the embargo would be lifted shortly and that the matter would be resolved in a manner favourable to the exporters of tuna. In saying this, he said that he had left aside those elements which had given rise to concern, or elements which might be incompatible with the rights and obligations under the WTO. Having participated in the first panel on tuna,<sup>1</sup> and considering that the Panel report under consideration dealt with the same problem, Mexico reserved its rights under the multilateral trading system, including its rights under the dispute settlement procedures of the WTO.

The representative of the United States said that upon completing an extensive evaluation of the Panel report, his authorities were not in a position to adopt it.

The representative of Costa Rica thanked Venezuela for the information it had provided and expressed concern as a tuna exporter and as a third-party interested in the issue, that the problem continued to remain unresolved and that the United States maintained its opposition to the adoption of the Panel report .

The Council took note of the statements.

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<sup>1</sup>United States - Restrictions on imports of tuna - Recourse by Mexico (BISD 39S).

3. United States - Taxes on automobiles  
Panel report (DS31/R)

The Chairman recalled that the Council had agreed at its meeting in May to revert to this matter at the present meeting.

The representative of the United States said that the Panel's report was generally well-reasoned and its conclusions had followed the common interpretations of the General Agreement. In its review of the US luxury and gas guzzler taxes, the Panel had confirmed the broad latitude available to contracting parties in choosing internal policy instruments that do not discriminate on the basis of origin. The United States was pleased that the Panel had recognized the right of governments to make these decisions and to use a variety of policy instruments. The United States was therefore prepared to join a consensus within the Council for the adoption of the Panel report.

The representative of the European Communities said that the Community's position remained unchanged and that it would therefore not be possible, at this stage, for the Community to accept the adoption of the Panel report.

The Council took note of the statements.

4. Monitoring of implementation of panel reports under paragraph I.3 of the April 1989 Decision on improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/61)

The Chairman recalled that this item was on the Agenda pursuant to paragraph I.3 of the April 1989 Decision (BISD 36S/61), and that in the course of informal consultations held in 1992 and in early 1993 it had been understood that it would continue to appear on the Agenda in its present form. In this connection, he noted that the April 1989 Decision was no longer in effect,<sup>2</sup> and that the monitoring procedures established therein would therefore continue to apply only to those panel reports that had been adopted by the Council during the period in which that Decision was in force.

The representative of Canada expressed disappointment in having to draw the attention of the Council to an area of unfinished business important to Canada, namely, the failure of the United States to achieve any significant progress with respect to the implementation of the Panel report adopted by the Council in June 1992 on US measures affecting alcoholic and malt beverages (DS/23/R). The Panel findings had covered sixty-two measures on taxation, distribution, listing, transportation, license fees and pricing. The United States had periodically reported on its efforts to comply with these findings. After three and a half years, only two States, Mississippi and Michigan, had altered legislation to bring tax measures into full conformity with the Panel report. Canada believed that the onus to implement the report remained on the United States, since the WTO rules in this area remained identical to those of the GATT. Canada intended to continue its pursuance of the implementation by the United States both at the federal level and with state governments. The failure of the United States to achieve any significant progress in implementing the report was unacceptable and disappointing, in view of the continuing adverse effect that existing measures had on access for Canada's exports. Furthermore, it meant that the United States was entering the WTO already in breach of its WTO obligations. Canada therefore urged the United States to take the necessary action to bring its practices into conformity with its international trade obligations with the full onset of the WTO.

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<sup>2</sup>See L/7416.

The representative of Australia supported Canada's statement, and said that this was also an issue of direct trade interest to Australia. Like Canada, Australia was very concerned with the failure of the United States to effectively implement the recommendations of the Panel report and to bring its measures into full conformity with the GATT. He supported the call made by Canada on the United States to fully implement its obligations under the Panel report.

The Council took note of the statements.

5. Committee on Balance-of-Payments Restrictions

- (a) Consultation with South Africa (WT/BOP/R/1 - BOP/R/224)
- (b) Simplified consultation with Egypt (WT/BOP/R/2 - BOP/R/225)
- (c) Consultation with Hungary (WT/BOP/R/3 - BOP/R/226)
- (d) Consultation with the Slovak Republic (WT/BOP/R/4 - BOP/R/227)
- (e) Consultation with Poland (BOP/R/228)
- (f) Note on the meeting held on 25 September (WT/BOP/R/5 - BOP/R/229)
- (g) Simplified consultation with Turkey (WT/BOP/R/6 - BOP/R/230)
- (h) Consultation with Brazil (WT/BOP/R/7 - BOP/R/231)
- (i) Consultation with Sri Lanka (WT/BOP/R/8 - BOP/R/232)
- (j) Consultation with the Philippines (WT/BOP/R/9 - BOP/R/233)

Mr. Witt (Germany), Chairman of the Committee said that all meetings related to the reports before the Council, had been joint meetings of the GATT 1947 Committee on Balance-of-Payments Restrictions and the corresponding WTO Committee, except that on the consultation with Poland, as at the time of consultation, Poland had not yet become a WTO Member. The reports of the consultations held in joint meetings had also come before the WTO General Council. Since the full reports of the consultations were before the Council, he did not find it necessary to speak on them. He informed the Council, however, that the Committee had held a consultation with India the previous week. In the light of its considerations, the Committee had welcomed India's readiness to resume consultations in October 1996, and to notify to the WTO all remaining restrictions maintained for balance-of payments purposes, soon after the announcement of its 1996-1997 export/import policy.

The cessation of the GATT 1947 BOP Committee at the end of the year, did not mean the discontinuation of substantive work in this field, because future consultations would be held in the WTO Committee on Balance-of-Payments Restrictions. He thanked members of the GATT 1947 Committee for the cooperation they had extended to him during his term as Chairman.

The Council adopted the reports contained in BOP/R/224 - South Africa; BOP/R/225 - Egypt; BOP/R/226 - Hungary; BOP/R/227 - Slovak Republic; BOP/R/228 - Poland; BOP/R/230 - Turkey; BOP/R/231 - Brazil; BOP/R/232 - Sri Lanka and BOP/R/233 - Philippines. The Council then took note of the information contained in the Note on the Committee's meeting on 25 September 1995 (BOP/R/229) and of the statement including the oral report on the consultation with India.

6. Committee on Budget, Finance and Administration

- (a) Report of the Committee dated 22 May 1995 (WT/BFA/4 - L/7629)
- (b) Report of the Committee dated 14 August 1995 (WT/BFA/6 - L/7633)
- (c) Report of the Committee dated 18 August 1995 (WT/BFA/7 - L/7634)
- (d) Report of the Committee dated 3 November 1995 (WT/BFA/13 - L/7649)

Mr. Metzger (France), Chairman of the Committee said that the reports before the Council contained several elements which came under the exclusive purview of the WTO and had already been presented to the General Council. He reserved his remarks exclusively to the points that required decisions relative to the joint activities of the GATT and the WTO in 1995. In the report dated 22 May 1995 (WT/BFA/4, L/7629), the Committee had examined several points and had made recommendations on the financial repercussions resulting from the creation of an additional post of a Deputy Director-General (paragraph 9), on the additional resources needed to meet translation requirements (paragraph 13) and on the budget situation of the GATT at the end of the financial year of 1994 (paragraph 15). The points relating to GATT in the report of 14 August 1995 (WT/BFA/6, L/7633), concerned the additional posts for 1996 and the financial report of the Director-General on the accounts of the GATT for 1994, together with the report of the external auditor. With respect to the additional posts for 1996, the recommendation authorized an expenditure in 1995 to the amount of SwF 500,000, required to finance pre-recruitment costs (paragraph 9). Having examined the financial report for 1994 of the Director-General, the Committee had recommended its approval and conveyed its gratitude to the external auditor (paragraph 12 of the report). In the report of 18 August (WT/BFA/7, L/7634) contained only one recommendation relating exclusively to the 1996 budget of the WTO, while the recommendations in the report dated 3 November (WT/BFA/13, L/7649) fell exclusively under the purview of the WTO. This November meeting was the last meeting of the Committee under the GATT. Participation in that Committee had been more restricted than in the WTO Committee on Budget, Finance and Administration, but, he said, work in this new enlarged Committee had continued to be as active and complete in its activities as it had under the GATT.

The Council took note of the statement and approved the specific recommendations of relevance in 1995 to the GATT 1947 as outlined by the Chairman in his statement, and adopted the reports contained in WT/BFA/4 - L/7629, WT/BFA/6 - L/7633, WT/BFA/7 - L/7634 and WT/BFA/13 - L/7649.

7. United States - Caribbean Basin Economic Recovery Act (CBERA)  
- Biennial Review (L/7643)

The Chairman recalled that under paragraph 7 of their Decision of February 1985 (BISD 31S/20), the CONTRACTING PARTIES were required, on the basis of reports submitted by the United States, to make a biennial review of the operation of the waiver granted by that Decision. The report submitted by the United States in document L/7643 contained data for the calendar years 1993 and 1994.

The Council took note of the information contained in L/7644.

8. Report of the Council (L/7651)

The Chairman said that the draft report in L/7651 reflects the action taken by the Council at its only meeting held thus far in the year, namely on 4 May. Since the Council report would have to be considered by the CONTRACTING PARTIES at their final Session the following day, there was no time left to incorporate in the report the discussion at the present meeting. He therefore suggested that, given these special circumstances, the discussion at the present meeting be reflected in the minutes to be prepared by the Secretariat under its own responsibility. In adopting the Council's report at their Session, the CONTRACTING PARTIES would authorize the Secretariat to incorporate in an addendum to this the proceedings of the present Council meeting.

The Council so agreed and approved the report in L/7651.

Having declared the official business of the meeting closed, the Chairman noted that contracting parties would be bidding farewell to the GATT 1947 and the final Session of the CONTRACTING PARTIES on 12 December. At this final meeting of the Council, in a Room which had seen so many historic moments, he invited all to reflect on what had emerged over the period and on the past which the GATT had played in transforming the world. The GATT had proved to be remarkably adaptable -- moving with the times and the advance in technology which had facilitated the massive expansion of trade in recent years. At the present time, as one makes the transition from the old to the new, it was useful to keep in mind that the WTO maintained the same fundamental principles on which the GATT had been based. Those principles had been devised by the founders of GATT who, influenced by the ravages of war and the economic depression which had preceded it, had had an overriding desire to build a solid foundation for future peace and security by drawing nations together in a mutual interdependence based on open markets and fair and agreed rules which would best foster growth and prosperity.

Over the years the GATT had been a demonstration of the collective recognition by an increasing number of nations, that the interests of all were best pursued and satisfied through a stable, rules-based multilateral system. This could not be achieved through isolation or bilateralism. The GATT's legacy had been to secure, albeit more slowly in some sectors than others this gradual shift towards more liberal trade and economic policies on the part of a growing number of countries. This process had initially begun in developed countries, but a large number of developing countries had progressively joined the process, leading to significant economic reforms as they made the accepted multilateral trading rules a cornerstone of their domestic policies. That was an eloquent testimony to the soundness of vision of the founders of the GATT. The GATT had not always enjoyed smooth sailing. Storms could blow up unexpectedly on the changing ocean of trade. On occasions the will of the CONTRACTING PARTIES had been sapped by the difficult economic circumstances and protectionist forces. On such occasions it had been the existence of the GATT that had helped governments to meet such challenges through cooperative action, both through continuous discussion under the aegis of the Council and through the successive rounds of trade negotiations it had supervised.

Lessons had been drawn from that work which was being carried over into the WTO. First, there was the practice of pragmatism and flexibility in discussing procedures for future action. Second, there was the practice of consensus in decision-making which, over the years had produced a more solid result than the alternative. Third, the Council had been in the practice of conducting its work in an efficient business-like manner. Those traditions of realism, brevity, pragmatism and cooperation were a legacy to aspire to, as were the achievements and vision of the Council. He hoped that as one closed the final Council meeting, members would spare a moment to contemplate what had been achieved in this institution over the years.