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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
6 June 1978

MINUTES OF MEETING

Held in the Centre William Rappard on 6 June 1978

Chairman: Mr. M. YUNUS (Pakistan)

Subjects discussed:			Page
	1.	Norway - Restrictions on imports of textiles from Hong Kong	1
	2.	Canada - Withdrawal of tariff concessions under Article XXVIII:3	3
	3.	Export inflation insurance schemes	6
	4.	Uruguay - Surcharges - Request for extension of waiver	6
	5.	Secretariat study on Article XIX	7
	6.	Assessment of additional contribution	7
	7.	New Zealand - Renegotiation under Article XXVIII:4	7
	8.	Spain - Measures on imports of pulp and bleached sulphate	8
	9.	Working Party on Trade with Poland	9
	10.	Working Party on Specific Duties	9

1. Norway - Restrictions on imports of textiles from Hong Kong (C/M/125, L/4671)

The Chairman recalled that at the meeting of the Council on 17 May the representative of the United Kingdom, speaking on behalf of Hong Kong, raised the matter relating to Norwegian restrictions on imports of textiles from Hong Kong. He asked the Council to consider this question urgently at an early meeting under the provisions of Article XXIII:2. A formal request for consideration of this matter had subsequently been circulated in document L/4671.

The representative of the United Kingdom, speaking for Hong Kong, said that his delegation only reluctantly sought recourse to Article XXIII:2 since, so far, problems that had arisen from time to time in the field of textile trade had been resolved through bilateral agreements. He said that in this case Norway had ignored his delegation's offer to extend the previous bilateral agreement in order to have time for further consultations. Instead, Norway unilaterally imposed drastic cut-backs on trade in a discriminatory manner. He pointed out that Norway, in not having had recourse to either the rules of the MFA or the provisions of the GATT, had acted in violation of the principles of the GATT. The justification given

that the imports concerned were low-cost imports was, in his view, clearly inconsistent with GATT provisions. His delegation therefore requested the setting up of a panel to assist the CONTRACTING PARTIES in investigating the matter and in giving a ruling on the Norwegian measures.

The representative of Norway pointed out that Norway's imports of low-priced textiles had increased from NKr 210 million in 1973 to NKr 480 million in 1976 or from NKr 52 to NKr 120 per capita. This represented an increase of 130 per cent during this period. Within these figures Hong Kong's share of Norway's imports of low-priced textiles had risen from 45 per cent to 55 per cent and per capita imports from Hong Kong from NKr 22 to NKr 65, which represented an increase of almost 200 per cent. As a result of this development his authorities were faced with a very serious situation. He stated that Norway, like other signatories to the MFA, had entered into consultations with a number of textile-exporting countries in order to conclude bilateral agreements to pave the way for Norway's acceptance of the extension of the MFA. He pointed out that Norway had been able to settle its textile trade problems in bilateral negotiations with all exporting countries, except Hong Kong. He recalled that during the last round of consultations with Hong Kong on 2 and 3 May, both delegations expressed a willingness to consider any proposal put forward by the other, and did not rule out the possibility of further consultations in the course of the year. This had been interpreted by his authorities to mean that Norway and Hong Kong were still involved in a negotiating process. He regretted therefore that the authorities of Hong Kong had come to the conclusion that there existed no basis for further negotiations and had referred the matter to the GATT. This created a new situation in which his authorities would have to base their action on the provisions of Article XIX of the General Agreement.

The representative of the United States said that it appeared to him that part of the problem had arisen from the fact that the Norwegian measures had been imposed without any reference to the General Agreement. He noted that the representative of Norway had just referred to the provisions of Article XIX. It seemed to him that if Norway wished to invoke Article XIX and serious injury existed or threatened to arise for Norwegian producers within the meaning of Article XIX, the application of restraints under Article XIX on a global basis would be an appropriate course of action. If this was not the case the appropriate action for the Council would be to establish a panel.

The representative of Norway said that he had noted the United States suggestion that Norway should consider applying Article XIX on a global basis. Without prejudice to Norway's position as to selective application of measures under Article XIX his delegation was prepared to recommend to his authorities that they resort to global application in this particular case.

The representative of the United Kingdom, speaking for Hong Kong, regretted that the representative of Norway had not been able to make a more definite statement of the intentions of his Government to apply the measures on a global basis. He recognized that if the Norwegian authorities would be able to accept the recommendation of the Norwegian representative, the legal basis of his delegation's complaint would be changed. However, until this had been done his delegation could not modify its position to seek recourse to the provisions of Article XXIII:2.

The Council requested Norway and the United Kingdom, on behalf of Hong Kong, to pursue their bilateral consultations under Article XXIII:1 on this matter for a further period. The Council agreed that if these consultations did not lead to a mutually satisfactory solution, an appropriate procedure for consideration of the Hong Kong complaint under Article XXIII:2 would be the establishment of a panel. The Council authorized its Chairman to take the necessary steps for the establishment of a panel if the matter had not been settled satisfactorily on the proposed bilateral basis by 30 June 1978. The terms of reference of such a panel would be as follows:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United Kingdom acting on behalf of Hong Kong, relating to imports by Norway of certain textile products from Hong Kong, and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2, and to report to the Council."

2. Canada - Withdrawal of tariff concessions under Article XXVIII:3 (C/M/125)

The representative of the European Communities recalled that in December 1974 the Community had entered into renegotiations under Article XXVIII in connexion with the conversion of its specific duties on lead and zinc into ad valorem duties. He pointed out that these specific duties had existed for a long time. At the end of the Kennedy Round the ad valorem equivalent of these specific duties amounted to over 7 per cent. Thereafter, during the Article XXIV:6 negotiations upon the enlargement of the Community, the ad valorem incidence of these specific duties was estimated at nearly 5 per cent on the basis of the 1970/71 statistics. It was on this basis that in July 1974 the balance of the Article XXIV:6 negotiations was assessed. Thereafter, in December 1974, the renegotiations under Article XXVIII began, during which the Community offered a binding of the ad valorem duty at a level of 3.5 per cent for both products. His delegation felt that this compensation was in conformity with the provisions of Article XXVIII:3. This level had, however, appeared unsatisfactory to Canada which led to compensatory withdrawals by Canada under Article XXVIII:3. The Community considered these withdrawals unjustified, and had therefore introduced a complaint.

He furthermore recalled that at the last meeting of the Council when the report of the panel was adopted the Community had indicated that it was quite naturally led to take the path of disagreement and would accept compensatory withdrawals from Canada on a bilateral basis, rather than try to conclude an agreement based on the global incidence, which would be less advantageous to the Community. Therefore, as far as the Community was concerned, the renegotiation was now over and it was for Canada to adjust its compensatory withdrawals in accordance with the conclusions reached by the panel in the last paragraph of its report.

It was, however, his understanding that on the basis of the very last sentence of the report Canada expected the Community either to decrease the new tariff on zinc or to make tariff concessions on other products of export interest to Canada and that failing such action Canada intended to maintain all its withdrawals. Neither course of action was intended by the Community, so that in its view, in accordance with the panel's report, Canada would then have to adjust its compensatory withdrawals in accordance with the panel's report.

As there appeared to be a difference of opinion between the Community and Canada on this matter the Community requested the Council to give a ruling on the interpretation of the report.

The representative of Canada recalled that the Community had introduced its new rates of duty on lead and zinc on 1 January 1976. These rates had now been in effect for almost two and a half years. As Canada considered that the new rates represented an impairment of concessions, which had been confirmed by the panel, Canada had notified in May 1976 the withdrawal of the bindings in the Canadian Schedule of concessions on certain items. He stressed, however, that no changes had been made in the actual rates of duty of these items. He mentioned that after the panel had been set up, an attempt had been made to bring about a compromise between the two parties in this matter. Canada had remained open throughout to a bilateral solution of this issue through negotiation of other equivalent concessions by the Community, as eventually recommended by the panel, but this had not been possible and the panel report was finally presented to and adopted by the Council on 17 May 1978. The CONTRACTING PARTIES, by virtue of the Council's adoption of the Panel's report have, pursuant to Article XXIII:2, made a finding. The representative of the European Communities did not oppose the adoption of the report. Although he recorded certain points, he did not comment on the finding of the panel as set out in the final sentence of the last paragraph of the report. Nor did the Community comment on the Canadian statement that Canada was prepared to consider any reasonable offer by the Community based on the panel report. His delegation had accepted without reservation the report which, in the interest of maintaining the highest possible general level of concessions called for concessions withdrawn by Canada to be restored, as soon as the Community either had lowered the tariff on zinc or had made concessions on other products of export interest to Canada of an equivalent value. Canada remained prepared to consider any

reasonable proposal by the Community for a settlement based on the panel's report. His delegation believed that the recommendation of the panel and, by virtue of its adoption, the finding of the Council, was clear and unambiguous. He felt that the suggestion by the European Community for restoring balance by having Canada adjust the level of withdrawal of concessions would not give effect either to the recommendation of the panel or to the objectives of Article XXVIII.

The representative of the European Communities recognized that when Canada had made the withdrawals it had done so on a strictly legal basis without effectively increasing the tariff rates. It was clear, however, that the items concerned were now unbound and that Canada could now make use of this situation. Indeed, Canada had already indicated its intention to do so in the context of negotiations. He recalled that under the provisions of Article XXVIII concessions could be renegotiated but contracting parties were obliged to endeavour to maintain a general level of concessions not less favourable to trade than that prior to the negotiations. If this proved impossible paragraph 3 of Article XXVIII provided that compensatory withdrawals could be made by the contracting party affected. If the panel's report were to be interpreted as Canada interpreted it, it would mean that the panel considered that Article XXVIII provided an absolute obligation to afford full compensation, which would be contrary to paragraphs 2 and 3 of Article XXVIII. He repeated that Canada only emphasized the last sentence of the last paragraph while the Community emphasized the panel's conclusions as a whole.

The representative of the United States noticed that both contracting parties had referred to the general interest of maintaining the highest possible level of concessions. He suggested that the two parties should continue their discussions with appropriate assistance from the secretariat in the interest of arriving at a solution.

The representative of Canada indicated that the conclusions section of the panel's report reviewed all of the factors which the panel considered to be relevant and then set forth, in its final sentence,the sole finding of the report. It was incontrovertible that there were only two options and that the onus for action was placed squarely on the Community.

The Chairman pointed out that the matter was too complex for the Council to make a determination at this meeting. He suggested that the two parties, having the benefit of the panel's opinion, should make a further attempt to reach a reasonable understanding on this matter.

The representative of the European Communities said that for months the parties had tried to reach an understanding, and the Community had now arrived at a decision not to take any further action. In conformity with Article XXVIII:2 the EEC had endeavoured to come to an agreement but without success. Under Article XXVIII:3 Canada had the right to withdraw concessions. The Council was now requested to determine that the report permitted this third course of action, as foreseen in Article XXVIII. He asked that the Council give an interpretation at its next meeting.

The Council agreed that the two parties should make a renewed attempt to consider the matter further bilaterally in order to arrive at an understanding. This would provide the Council with time for reflection so that the Council would be in a better position at a subsequent meeting to deal with this case.

3. Export inflation insurance schemes (C/M/123, 124, 125)

The Chairman recalled that the Council had continued at its meeting in March the discussion on a Canadian proposal that the question of export inflation insurance schemes should be referred to a panel for further examination. He noted that since that meeting and since the Council meeting in May, active consultations among the principally interested delegations had continued. It was his understanding that these consultations had now been concluded, on the basis of which he would now propose that the Council establish a panel with the following terms of reference:

> "To examine, pursuant to Article XVI:5 and taking into account the Report of the Working Party on Export Inflation Insurance Schemes (L/4552), whether and under what conditions export inflation insurance schemes are export subsidies within the meaning of Article XVI:4, and to report its findings to the Council."

This was agreed.

The Council authorized the Chairman to nominate the chairman and the two members of the panel in consultation with the delegations principally concerned.

The representative of Canada expressed his understanding that all interested contracting parties would be able to make a presentation to the panel.

4. Uruguay - Surcharges - Request for extension of waiver (C/M/125, L/4672, C/W/303)

The Chairman recalled that at the last meeting of the Council the representative of Uruguay had drawn attention to the fact that the waiver on the Uruguayan import surcharges was due to expire at the end of June. A request for an extension of the waiver until the end of 1978 was now before the Council in document L/4672. Furthermore, in order to assist the Council in its considerations, the secretariat had prepared a draft decision, circulated in document C/W/303.

The Council approved the text of the draft decision and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

5. Secretariat study on Article XIX (C/M/124, 125)

The Chairman recalled that on 14 March and 17 May the Council had considered a suggestion that the secretariat should be requested to make a factual and analytical study on the application of Article XIX. The Council had agreed to refer this matter to its next meeting.

The representative of the European Communities stated that since the last meeting, informal consultations had been held. He informed the Council that the European Communities could accept the preparation by the secretariat of a descriptive study on the provisions of Article XIX since 1947 and its application to date.

The EEC considered, nevertheless, that to be objective and useful, the study should:

(i) describe the various discussions in GATT and the different opinions expressed concerning the provisions of the Article;

(ii) describe not only the formal modalities of the action taken, but likewise the modalities for its practical application (such as reference periods, apportionment of shares, etc.).

The representative of Pakistan stated that his own proposal for this study had been more modest and more precise. The proposal by the European Communities involved a wider coverage of legislative and case history of Article XIX. He had no objection to the preparation of such a study, provided it was understood that the objective of the study was the identification and tracing as clearly and precisely as possible of the consensus views of the CONTRACTING PARTIES on this matter.

The Council agreed that the secretariat should be requested to prepare a study on Article XIX as proposed.

6. Assessment of additional contribution (L/4665)

The Chairman drew attention to document L/4665 containing a proposal that since Suriname had become a contracting party in accordance with the provisions of Article XXVI:5(c), an additional contribution to the 1978 budget, as well as an advance to the Working Capital Fund, should be assessed on Suriname.

The Council adopted the assessment.

7. New Zealand - Renegotiation under Article XXVIII:4 (SECRET/245)

The Chairman said that the Government of New Zealand had submitted a request for authority under the provisions of Article XXVIII:4 to renegotiate a number of concessions included in the New Zealand Schedule. The request had been circulated in document SECRET/245.

The representative of New Zealand said that his authorities had undertaken a review of New Zealand's customs tariff with a view to updating and simplifying it, taking account of the phasing-out of preferential tariffs, and with a view to establishing tariff rates at levels appropriate to the requirements of New Zealand's industry. The number of industrial tariff lines had been reduced and account had been taken of amendments in tariff nomenclature agreed upon in the Customs Cooperation Council. The resulting tariff schedule was intended to enter into effect on 1 July 1978.

He pointed out that although most tariff rates would be maintained at current levels and in some cases would be reduced, for some items increased rates were anticipated. Since the increases would in some cases affect the rates contained in New Zealand's Schedule XIII, his authorities were seeking authorization from the CONTRACTING PARTIES to renegotiate those concessions under Article XXVIII:4. He pointed out that many of the items concerned had only minimal trade cover or no trade at all and that the total average trade affected was about $7.5 million. On the other hand New Zealand offered compensatory bindings on a number of items having a total average trade value of $9.7 million. His delegation was ready to enter as soon as possible into discussions with those countries which considered themselves to be affected by these tariff rate changes.

The Council agreed to grant the authority sought by New Zealand and invited any contracting party which considered that it had a principal supplying interest or a substantial interest, as provided for in Article XXVIII:1, to communicate its claim in writing and without delay to the Government of New Zealand, and at the same time to inform the Director-General. Any such claim recognized by the Government of New Zealand would be deemed to be a determination within the terms of Article XXVIII:1.

8. Spain - Measures on imports of pulp and bleached sulphate

The representative of Sweden, speaking on behalf of Finland, Norway and Sweden raised a matter under Other Business. He said that since 21 April, Spain had withheld the issuance of licences for imports of pulp. Although on 2 June, their authorities had been informed that the measure had been discontinued, licences were still being withheld. He furthermore stated that according to his information this measure had been superseded by a quantitative restriction on imports of bleached sulphate to 12,000 tons per month, which amounted to a reduction of about 40 per cent of the present import level. He had understood that this measure would be in force from 1 May to 1 October 1978. The authorities of the three Nordic countries considered these measures with seriousness since their countries had a substantial share in imports of bleached sulphate into Spain. The Nordic delegations were therefore seeking clarification from the Spanish representative as to whether this information was correct, whether the measures had been notified to GATT and what was the justification for the measures.

The representative of the United States also expressed concern at these measures in the light of American trade interests in these goods.

The representative of Spain said that due to the short notice he had not been able to obtain complete information from his authorities. He could confirm however, that there had been certain difficulties with regard to imports of wood pulp due to the large increase in volume of these imports in the last month. This situation had, however, become normal again and the authorities of the three Nordic countries had been informed of this fact. He furthermore stated that imports of bleached sulphate were not subject to any type of quantitative restriction. His delegation was ready to give any further information on this matter if so requested.

The representative of Sweden said that according to his information the Spanish Ministry of Commerce and the domestic pulp and paper producers had reached an agreement on 26 May to limit imports to 12,000 tons per month. It was his understanding from the information just given, that no such limitations on imports had been agreed so that importers were still free to import without restraints. Due to the seriousness of the situation he asked that this item be kept on the agenda so that more information on this matter could be obtained at the next meeting of the Council.

The Council took note of the statements and agreed to revert to this matter at its next meeting.

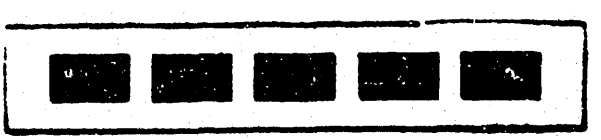
9. Working Party on Trade with Poland

The Chairman recalled that in November 1977 the Council had established a working party to conduct the tenth annual consultation on trade with Poland and that it had authorized the Chair to nominate the Chairman of the Working Party in consultation with the delegations principally concerned.

The Chair was now in a position to inform the Council that Mr. Barthel Rosa (Brazil) had been nominated as Chairman of the Working Party.

The Council took note of the nomination.

10. Working Party on Specific Duties (C/M/125)

The Chairman said that on 17 May the Council had established the Working Party on Specific Duties and that it had authorized the Chair to nominate the Chairman of the Working Party in consultation with the delegations principally interested. He informed the Council that Mr. Lemmel (Sweden) had been nominated Chairman of the Working Party.

The Council took note of the nomination.