

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

DPC/18
15 May 1985

Special Distribution

International Dairy Arrangement

INTERNATIONAL DAIRY PRODUCTS COUNCIL

Special Meeting on 11 and 22 February and on 8 March 1985

Report

Chairman: Mr. D.J. Greenfield

Vice-Chairman: Mr. L. Bartha

1. The International Dairy Products Council held a special meeting on 11 and 22 February and 8 March 1985. The meeting was held under the terms of Article IV:6 of the Arrangement, and had been convened in conformity with paragraph 8 of the Resolution adopted on 16 November 1984 (DPC/13), and in pursuance of the Decision of the Council on 18 December 1984 (L/5763).

Meeting of 11 February 1985

2. In opening the meeting, the Chairman recalled that the purpose of the present meeting as agreed at the December meeting was:

- (i) to review the situation in the context of the Resolution adopted on 16 November 1984 (DPC/13 and L/5763); and
- (ii) to review the situation with regard to the United States decision to withdraw from the Arrangement (L/5749 and L/5763).

This agenda was adopted.

Review of the situation in the context of the Resolution of 16 November 1984

(a) Reporting of sales made

3. The Chairman recalled that at the December meeting the Council had noted the statement by the Community that Title II of Regulation (EEC) No. 2956/84 had been abrogated, that contracts for butter sales under that Regulation had been made only with the USSR, and that requests for similar exports to other destinations had not been met. The Council had furthermore noted that the United States had sold some 30,000 tons of butter and butter oil to Egypt.

4. The Chairman reminded participants that at the December meeting it had also been agreed that participants should notify all relevant elements in accordance with Article 4 of each of the Protocols, that such notification should be made within not more than twenty days (DPC/1, Rule 26), and should as far as possible be made on the basis of a standard format circulated by the secretariat.

5. He informed the Council that New Zealand had notified sales of butter to Algeria (23,500 tons) and to the USSR (26,200 tons) at prices of approximately US\$900 per ton and upwards. Australia had also notified to the secretariat sales of butter to the USSR (7,000 tons), to North Africa including Algeria (19,000 tons) and to Iran (18,250 tons), at prices of approximately US\$900 per ton and upwards.

6. The representative of Sweden reported sales of 4,000 tons of butter to North Africa, mainly Algeria, and to the Near East at prices of around US\$1,200 per ton.

7. The representative of Finland reported sales of 5,000 tons of butter to the USSR at a price slightly above US\$1,200 per ton. Replying to a question from New Zealand, the Finnish representative said that he was not aware of any not strictly commercial elements which could have affected the attractiveness of the business.

8. The United States representative referred to a press release from the United States Department of Agriculture, according to which 2,500 tons of butter oil had been sold to Iraq, at a price of US\$1,562 per ton, f.a.s., United States port, with deliveries to be made during the period April 1985 to January 1986.

9. In reply to a question from the Community representative about the quality of the butter sold, the New Zealand representative explained that the butter sold by New Zealand under the transaction notified, would normally be described as fresh butter, since New Zealand did not carry butter stocks of the kind which had caused difficulties for some participants. The prices obtained for New Zealand fresh butter for sales to the USSR were somewhat higher than the average obtained for the two categories of Community butter recently sold to the USSR, reflecting a higher quality, on average.

10. The Chairman said that the secretariat could prepare a list or a register of the sales reported and circulate it to all participants.

(b) Rescinding of the Resolution of 16 November 1984

11. The Chairman recalled that at the 18 December 1984 meeting virtually all members had expressed their full support for the International Dairy Arrangement and were willing to co-operate in the complete application of its provisions in order to restore its viability and credibility at the earliest possible date. In light of certain actions which had been taken in the interim and following informal consultations which he had had with various delegations, he suggested that the best manner in which the viability and credibility of the Arrangement could be restored would be to rescind the relevant provisions of the Resolution of 16 November 1984, under which participants had made sales at prices below the minimum. He referred to a statement by the representative of New Zealand which had been

circulated in document DPC/W/40 just before the meeting and in which some parts of the Resolution of 16 November 1984 had been proposed to be rescinded.

12. The representative of New Zealand in making further comments in this connection, reiterated his proposal to rescind only that section of the Resolution which had specifically permitted participants to the Arrangement to take short-term actions, including sales below the minimum prices, to safeguard their interests against the difficulties created by the breach of the Arrangement by the European Communities. He recalled that New Zealand was one of the countries which had been most affected by Community sales to the USSR as the latter had become a very important outlet for New Zealand butter in recent years. Although New Zealand sales under the Resolution of 16 November 1984 mitigated the adverse effect to New Zealand of the Community sales to the USSR, the impact of the Community action had not been compensated for, and the international market remained weak and destabilized. However, despite a possible short-term advantage of keeping the window open and providing the opportunity for further discount sales, he was persuaded that this would be a grave mistake, as the task of respecting all provisions of the Arrangement would be broader and the risk of failure would increase with the passage of time. The facility to sell below the minimum price had been agreed under exceptional circumstances and explicitly for a short term. The facility had already been in effect for three months and warranted immediate termination.

13. He made it clear that while New Zealand was prepared to undertake not to make further sales below the minimum price, on-going deliveries would continue for some time. It was however, important that exporters and importers should know more definitely that no further sales would take place below the minimum price. This would restore the stability of the market and the effectiveness of the Arrangement.

14. Furthermore, participants might consider other necessary steps to avert the risk of some traders offering butter below the minimum price on the pretext of currency fluctuations. The New Zealand representative explained that in recent months, Community traders had been able to offer anhydrous milk fat and whole milk powder at prices below the GATT minimum prices, because of the appreciation of the US dollar. He believed that this had occurred somewhat automatically and due to technical reasons, and not necessarily as a result of deliberate action. In rescinding the Resolution, it would therefore be necessary to take supplementary action. The Community should be required to take steps to avoid technical breaches in the future.

15. He also suggested that participants might carefully consider the interrelationship between Community price mechanisms and the basis of the minimum prices of the Arrangement which at present were expressed in US dollars. The matter could be discussed at the March meeting of the Committees of the Protocols. His delegation would be ready to participate constructively in such discussions. He concluded by expressing the hope

that other participants could agree to rescind the Resolution of 16 November 1984 now and devote their attention at the meetings in March to possible ways of facilitating sales to ease the stock situation without causing prejudice to the normal market or the effectiveness of the Arrangement.

16. The representative of Finland, speaking on behalf of the Nordic countries, reiterated his views on the matter that common efforts were needed to restore the effectiveness of the Arrangement. In his view, the proposal to rescind the Resolution of 16 November 1984 should be seen in that context. He was, however, doubtful that any decision taken in this context would restore the stability of the international milk fat market. The sales that had been made below the minimum prices would continue affecting adversely the world market prices for some time. The market was likely to remain distressed as long as deliveries under contracts below the minimum prices were not completed. It was, therefore, necessary to set time-limits for such deliveries, as for instance the end of June 1985. Since it was difficult for some participants to provide an indication of the period of delivery for the butter they had sold, it would be appropriate to postpone the discussion and take a decision on rescinding the Resolution of 16 November at a later meeting. He was of the view that at the present meeting the Council should only fix the deadline for deliveries.

17. He shared the concern of New Zealand concerning the adverse effect of the exchange-rate fluctuations on the operation of the Arrangement. The Nordic countries were prepared to explore various possibilities for solving this problem with an open mind.

18. The representative of the European Communities said that since July 1983, the f.o.b. price expressed in ECU had never been modified for butter, milk powders or condensed milk, and the differences between internal prices and the export refunds had not been revised. Looking at prices expressed in US dollars it was therefore evident that the price level should be reviewed. His calculations showed that in terms of ECU the minimum prices for butter and skimmed milk powder had been doubled from 1980 to 1985, while the increases in the minimum prices expressed in US dollars amounted to only 30 and 41 per cent respectively (see table). This had led to a malfunctioning of the Arrangement, although this was not the only reason. Domestic policies, accumulation of stocks and other factors had contributed to the present critical situation. The Community was not in a position to make concrete proposals at this time, but felt that the Arrangement should be modified so as to make it consonant with the market realities.

19. In principle, he could agree to abrogate the Resolution of 16 November 1984, provided others so agreed, but felt that this should be followed by a review of the Arrangement. He indicated that the sale of 220,000 tons of butter to the USSR had not resulted in increased total sales by the

Community, which remained at the level of previous years. With respect to whole milk powder, he explained that certain offers had been made below the minimum price. This was, however, a result of the appreciation of the US dollar, and due to the competition between whole milk powder, on the one side, and skimmed milk powder and butter oil, on the other, for recombination purposes. The relationship between prices of various products used for recombination of milk should therefore be kept in mind when revising the Arrangement.

20. The representative of Austria found it strange that countries which had been able to benefit from the safeguard clause of the Resolution, were in a hurry to rescind it. He saw this as an attempt to prevent other participants that had so far respected fully the provisions of the Arrangement, from making sales under the Resolution. He forewarned the meeting that instructions from his government requesting a lowering of the minimum prices of the Arrangement might soon be received.

21. The representative of Japan wished to place on record his delegation's desire to rescind the Resolution of 16 November 1984 as soon as possible. He recalled that while accepting the Resolution, his delegation had considered that the Community sales to the USSR were not in conformity with the Arrangement. He had hoped however that the Resolution would help to improve the market situation and had accepted it on that assumption.

22. The representative of Australia supported the rescinding of paragraph (2) of the Resolution of 16 November 1984. In his view the effect would be two-fold. Firstly, it would restore disciplines regarding the observance of minimum prices and contribute to a stabilization of the dairy market. Secondly, it would be a recognition of the fact that sales made under the Resolution were legitimate in terms of the existing provisions of the Arrangement, as modified by the Resolution. He pointed out that deliveries might take place over a period of time after the conclusion of the sale, and recalled that the Community butter sales to the USSR were expected to be completed only on 30 June 1985, assuming normal transport provisions. He enquired whether the Resolution contained any conditions as to the date of delivery that might constitute an obligation on participants authorized to make safeguard sales under the Resolution and thought that it would be arbitrary to introduce a delivery date of 30 June 1985, as Finland had proposed. He was, however, prepared to enter into discussions which could confirm delivery dates for sales concluded in advance of the rescinding of paragraph (2) of the Resolution.

23. With regard to modifying the Arrangement, he was prepared to participate actively in any discussions which would lead to a continued effective operation of the Arrangement. He was, however, not convinced of the feasibility of proposals to change the basis of the minimum prices from US dollars to ECUs or SDRs, as this was likely to reduce the transparency of the operation of the minimum-price mechanism. With respect to the idea that minimum prices should be reduced, he recalled that the Council at its

meeting in September 1984 had agreed that such a move would not improve the market situation and that there were more substantial problems affecting sales of dairy products. In this context, he felt that it would be more appropriate to address problems of stocks and related matters which affected the ability of participants to export dairy products at fair prices.

24. The representative of Poland recalled the worries he had expressed at a meeting in November 1984, i.e., that the situation created by the transactions would be resolved within a relatively short period. He appreciated the New Zealand proposal to rescind the Resolution, but he found a lot of merit in the views expressed by Finland and Austria in that it would be premature to make a final decision on the matter immediately without having the necessary guarantees that such a decision would be respected by all participants.

25. The representative of New Zealand commented that the problems related to exchange rates were indeed complex. In his view, the Community, for its own reasons, operated a price system based on ECU at a time when the US dollar was appreciating strongly and had the effect of depressing prices sought by Community traders. He firmly stressed that this should in no way exonerate the Community from breaches of the price provisions of the Arrangement, and other participants should expect the Community to respect the provisions in spite of currency fluctuations.

26. With regard to the question of modifying the minimum prices under the Arrangement, he noted the factual explanations provided by the Community with respect to a significant increase in ECU equivalents of those prices and agreed that the price question should in the near future be looked at in relation to the current market situation and the current relationship between the US dollar and the ECU. He wondered, however, how many Community or Austrian producers would accept to produce even at the current minimum prices in the Arrangement. He was against a hasty and emotional look at the price question.

27. As to the views expressed that it would be premature to close the window now, he disagreed that the impact of rescinding paragraph (2) of the Resolution would only cease at the moment that no further deliveries under the particular sales could be made. It was important, in terms of the psychology of the market, that a clear message was given to importers and exporters that no further transactions could be concluded below the minimum prices. It would nevertheless be favourable to allow participants that were in the stage of concluding business (and which might be jeopardized by an instantaneous closure of the window), to include these sales in the register. A firm date should be given, in order to return to a situation where the minimum prices of the Arrangement were observed. He urged those delegations which were not yet in a position to agree to rescind the Resolution, to reconsider their positions as a matter of urgency, and at least agree to the closure of the window at a specific date to be set at

this meeting. He stressed that the reference to the short term in the Resolution did not imply six or nine months or a year; it was in the interest of everybody to restore the stability of the market in as short a period as possible.

28. The representative of Switzerland thanked New Zealand for the document submitted, and agreed that the Resolution of 16 November 1984 should be abrogated as a matter of priority. Subsequently, it would be necessary to consider the possibilities for improving the operation of the Arrangement. The exchange rate problem was by no means a new one, nor were the problems related to product quality, age of the product and terms of sale. He was in favour of discussing a modification of the minimum prices in the Arrangement.

29. The representative of Austria said that his country had made no sales under the Resolution. He inferred that the need to adopt the Resolution had in itself shown that the Arrangement had not worked. The rescinding of the Resolution without taking other appropriate measures would therefore not improve the situation. In the light of an appreciation of the US dollar of more than 33 per cent and declining world market prices, it was necessary to fix more realistic minimum prices. If this were not done the whole Arrangement would become inefficient and obsolete. Austria therefore expected the minimum prices to be lowered at the earliest possible date.

30. The representative of Finland, speaking on behalf of the Nordic countries, agreed that the aim was to restore the effective operation of the Arrangement, and that the New Zealand proposal should therefore be seen in that context. He, however, felt that price levels would remain depressed so long as under-priced butter was entering the world market. He was not suggesting that the Resolution should be rescinded after all deliveries under the low-price contracts had been made. A deadline could be fixed for such deliveries, which would set a target date for normalizing the situation. He invited the participants who had made sales below the minimum price, to indicate a realistic deadline for their deliveries. He drew attention to the requirement in the Resolution of showing restraint, a requirement that had been fully met by the Nordic countries.

31. The representative of Poland also warned against making a hasty decision. He did not expect that things would return to normal overnight, especially in the light of the magnitude of the transactions made and also because one major participant was about to withdraw from the Arrangement. He hoped that the present discussions would provide guidance as to how the Arrangement could be adapted to new circumstances.

32. In reply to a question from Finland, the representative of New Zealand promised to obtain the required information with respect to delivery dates for the sales notified. He wondered what amounts of butter were standing in the way for closing the window at this stage. He would therefore appreciate it if those participants that were unwilling to close the window now could give an indication of the dimension of the threat.

33. The Australian representative was also unable to indicate exact delivery dates for the sales made under the Resolution, but undertook to seek the relevant information from his authorities. He agreed with New Zealand that it would be beneficial to the Arrangement to rescind the Resolution as soon as possible. This might be sufficient to restore the confidence of traders in the market. He found it somewhat anomalous to introduce an additional condition in the Resolution post factum.

34. The Finnish representative reiterated that the Nordic countries had shown the greatest restraint in conformity with paragraph (3) of the Resolution, in not making sales below the minimum and had no intention to do so. He stressed that the Council should recognize that difficulties still persisted with regard to maintaining prices above the minimum. With respect to the magnitude of trade concerned, he would seek the relevant information and provide it later.

35. The representative of the European Communities shared the view of the Austrian delegation as to the need to redefine the minimum prices in the Arrangement. In his opinion this would be necessary, inter alia, to correct mistakes made in the past. At present, the participants were confronted with a situation in which the minimum prices could not be respected. This was illustrated by recent United States sales to Egypt, with prices at the limit; Community sales to the USSR of quality butter for which the price was respected, and a simultaneous sale of old butter which could only be disposed of at prices below the minimum. Contrary to expectations, these sales had not closed the USSR market, as shown by the recent Australian and New Zealand sales to that market; but these sales of fresh butter had been made at prices below the minimum. He requested Australia and New Zealand to provide evidence in respect of the two conditions of paragraph (3) of the Resolution, i.e. showing restraint and taking fully into account the interests of other participants both for the sales made to the USSR and to Algeria. The fact that these sales had had to be made at prices below the minimum, illustrated quite clearly that the problem was one of prices and justified the Austrian request to look more closely at the prices in the Arrangement.

36. The representative of Austria, commenting on earlier discussions on prices, recalled that his delegation had merely refrained from requesting a lowering of the minimum prices at the regular meetings in 1984, and had not agreed to maintain the minimum prices at their present level.

37. The representative of New Zealand wondered what additional markets would be uncovered by a modest lowering of the minimum prices in the Arrangement, and at what level butter oil could be a substitute for vegetable oils. In his view, offering of milk fat in competition with vegetable oils for industrial uses would be ridiculous and totally unremunerative, and therefore a lowering of the minimum prices was not a panacea. As to the suggestion that New Zealand had taken an excessive advantage of the possibility to sell under the Resolution, he reiterated

that it was the Community that had been in breach of the Arrangement and had created the present situation. Furthermore, he said that the USSR had been a substantial market for New Zealand butter for years, while the particular sales to Algeria were greater than sales in previous years. Prices in the Algerian market had however been influenced by sales from East Germany to Algeria, probably because East German butter had been displaced by Community butter in the USSR. He concluded that whatever had been done was a matter of the past, and what was now important was to get the Arrangement back into operation.

38. The Chairman in summing up the discussion on this point, noted that all delegations shared the objective to restore the viability of the Arrangement. Although most delegates in principle supported the New Zealand proposal to rescind the Resolution of 16 November 1984, some were unable to go along with this proposal in all its specifics. The question with regard to deadlines for deliveries had remained unresolved, and he invited the delegations concerned to provide further information on this. Although it was generally considered to be a matter of urgency to close the window, he felt that in the given circumstances it was not possible to take a decision on this. Furthermore, there were other steps that had to be considered further; such as the disposal of stocks, the reference currency and the level of minimum prices. He proposed to revert to these matters at a subsequent session.

United States withdrawal from the Arrangement

39. The Chairman briefly referred to the United States communication to the Director-General regarding its intention to withdraw from the Arrangement. He invited the United States to report on further developments. The United States representative, however, said that he had nothing new to add to the comments made earlier.

40. The representative of the European Communities found the situation to be a sad one, and regretted that the Director-General had not been successful in his efforts to persuade the United States to change its decision to withdraw. He remembered that the United States had reserved its position at the time of the adoption of the Resolution. This was, however, a very hasty withdrawal. The Community believed that its sales to the USSR and the Resolution had merely been a pretext and not the sole reason. This made the United States withdrawal even more serious and might be an act that put in jeopardy not only the world dairy market but the GATT itself. He recalled that the International Dairy Arrangement resulted from the GATT Multilateral Trade Negotiations, that the United States participated in the negotiation of the Arrangement and that United States participation in the Arrangement had been paid for by the Community and others. This was particularly relevant in light of the significant rôle the United States played in the world dairy market, and also in the light of the important stocks held by the United States. Withdrawal from the

Arrangement created an imbalance in concessions given and it would be reasonable to ask the United States to try to redress the situation or to compensate its partners. He concluded by expressing the hope that the United States would participate as an observer to the Arrangement, and that it would join in any efforts or international disciplines related to market prices.

41. While understanding the reasons for the United States withdrawal from the Arrangement, the Australian representative very much regretted this move. The withdrawal was even more understandable in light of the reluctance manifested at this meeting by so many participants to rescind immediately the Resolution, and the additional difficulties created by adding additional conditions to its abrogation. He, like others, hoped to see the United States back as an active participant soon, or at least as an active observer.

42. The New Zealand representative endorsed the points made by Australia and added that it was now up to those who remained in the Arrangement to make it function effectively and to demonstrate to the United States that its decision to withdraw deserved reconsideration. He recalled the important point made by the United States representative that the United States as a competitive exporter would not do anything to disrupt the international dairy market.

43. The representative of Japan reiterated his earlier appeal to the United States to reconsider its decision to withdraw and to act as a responsible GATT member.

44. The United States representative said that he had taken due note of the comments made and would report them to his authorities. He recalled briefly that when the Resolution was first discussed the United States had expressed its opposition to it, then it had agreed not to stand in the way of its adoption, stating without qualification that it would consider further participation. Subsequently, the United States had merely exercised its rights under the Arrangement to withdraw. Finally, he reconfirmed the United States intention not to disrupt the world dairy market while it remained a competitive exporter.

45. In summing up the discussion on this point, the Chairman said that the Council noted with regret that the United States still maintained its decision to withdraw from the Arrangement, and that this withdrawal would take effect as from 12 February 1985. The Council felt this to be particularly unfortunate as participants in the Arrangement had expressed their continued support for it, and their determination to maintain its future viability. Participants had also expressed the opinion that effective co-operation in the field of trade in dairy products was important in the wider context of solving problems related to agricultural trade generally. In stating its intention to withdraw from the Arrangement, the United States made reference to decisions which it had indicated were inimical to its interests. It hoped, however, that the

Council would take action shortly which would allay some of those concerns. The Council also noted that while the United States had given Notice of Withdrawal, it had also promised not to disrupt the international trade or the prices for dairy products when pursuing its commercial interests. On behalf of the Council, the Chairman appealed to the United States to reconsider its decision to withdraw, and if this were not possible, to seriously consider as a matter of priority the resumption of its participation in the Arrangement at an early date. The Council strongly urged that the United States should participate as an observer in the Arrangement and its Protocols. The Chairman said that he intended to include this summing up in a Note by the Chairman (circulated as document L/5786).

46. The Council then agreed to resume the meeting on 22 February 1985, and then continue its review of the situation in the context of the Resolution of 16 November 1984, and notably consider further the New Zealand proposal to rescind that Resolution.

Meeting of 22 February 1985

Review of the situation in the context of the Resolution of
16 November 1984 (cont'd)

47. When the meeting resumed on 22 February 1985, the Acting Chairman recalled that out of the two items on the agenda, one had been disposed of; namely the United States withdrawal. That left the Council with one task, namely to continue the review of the situation in the context of the Resolution of 16 November 1984, and hopefully reach a conclusion on that matter. Since the meeting on 11 February 1985, the secretariat had established a table of information provided, and circulated it in document DPC/W/41/Add.1. According to that table, as much as 200,000 tons of butter or butter oil might have been sold at prices below the minimum price. This corresponded roughly to 16 per cent of total annual world exports of butter in 1983. The destinations of these discount sales were mainly the USSR (144,000 tons) and Algeria (or other destinations in North Africa) (42,500 tons).

48. The Community representative confirmed that no further sales of butter had been made below the minimum prices. He claimed that the Community sales to the USSR could not possibly have caused any damage to the market, as the butter sold under the minimum price, was of a low quality to be used for mixing into margarine and could hardly be qualified as butter.

49. The representatives of Australia and Uruguay expressed the view that the Arrangement only referred to butter and that there were no particular rules for "aged butter" or butter of inferior quality and that the Protocol Regarding Milk Fat contained no provisions for adjustment of the minimum price according to quality.

50. The New Zealand representative provided the following additional information as to the time of the delivery of the butter sold to Algeria and the USSR:

USSR: deliveries to be made over a year with latest possible date being 31 March 1986;

Algeria: 15,500 tons to be delivered before 31 March 1986, and another 8,000 tons subject to a buyer's option to buy before the end of 1985, and which must be delivered before 30 June 1986.

51. The Australian representative reported that deliveries according to the sales notified would be concluded by 31 March 1986.

52. With regard to the information notified pursuant to Article 4 of each of the Protocols the representative of the European Communities referred to a notification made by his delegation (DPC/W/42). He suggested that any summary of such information should be presented in the form suggested by the secretariat (DPC/P/W/23, DPC/F/W/16, DPC/C/W/24).

53. He recalled that paragraph (2) of the Resolution authorized participants to take action in the short term to safeguard their position, and that paragraph (3) requested participants to show restraint and to take fully into account the interests of other participants. He noted that New Zealand's recent sales to the USSR under the Resolution exceeded earlier sales to that market, and in his view this showed that the special Community sales to the USSR had not affected adversely the position of New Zealand in that market. As to the sales to Algeria, he felt that New Zealand had exaggerated and had not shown restraint as called for in the Resolution, and had not taken fully into account the interests of others. Two thirds of the New Zealand transactions were expected to extend until March 1986, and for another part there was an option for Algeria to buy, with deliveries extending until 30 June 1986. This was far beyond what might be considered short-term transactions and he believed that New Zealand had made improper use of the Resolution.

54. In reply to this, the New Zealand representative reiterated that it was his conception of what would constitute short term that this should not extend much beyond the three months that had elapsed since the Resolution was adopted. He rebutted the Community statement that the New Zealand butter sales to the USSR under the Resolution had exceeded sales in previous years. New Zealand annual sales to that market had during the previous five years been above 34,000 tons. With regard to the sales to Algeria, he explained that these were necessary for New Zealand in order to maintain its share of the world market, and he added that in 1984 the Community had increased its share of the world market for all dairy products, with the exception of butter. Sales to Algeria had to take place below the GATT minimum price, in order to be able to compete with butter of

East European origin which had been displaced from the USSR market by Community sales. After all, the latter was responsible for the present situation.

55. The representative of the European Communities felt it to be urgent to terminate the Resolution, which entitled other participants but not the Community to sell milk fat below the minimum prices. He appreciated New Zealand's conception of short term, this meaning a few months, and stressed that the wording of the Resolution was "making sales", not concluding contracts.

56. The New Zealand representative maintained that it was normal for sales to be made at a certain time and deliveries to extend over a subsequent period which would vary from one market to another. He reiterated once more that unless the window was closed the weakness of the market would persist.

57. The representative of Australia associated himself with the comments made by New Zealand concerning the need to rescind paragraph (2) of the Resolution. His view was that deliveries by 31 March 1986 under sales concluded early in 1985 would constitute action in the short term in terms of the Resolution.

58. The representative of Finland, speaking on behalf of the Nordic countries, while not questioning the right of participants to sell under the minimum price, nevertheless wanted to examine the actions taken in light of the four conditions laid down in the Resolution. He invited all those countries that had made sales below the minimum price to comment and explain what measures they had taken to ensure that the sales made were in fact actions in the short term to safeguard their position, and to what extent they had exercised the greatest restraint and taken fully into account the interests of other participants. The explanations given so far were not fully convincing that sufficient efforts had been made to cope with these requirements. The Nordic countries had interpreted the term "to exercise the greatest restraint" to be a rather strong one and had informed their exporters accordingly, but others had apparently interpreted this term much more liberally.

59. The representative of Uruguay fully endorsed the request from Finland for further clarification and shared the view that the conditions laid down in paragraphs (2) and (3) of the Resolution had not been met by those participants who had made sales below the minimum prices. He recalled that his delegation had expressed great concern when the Resolution was adopted. What had happened subsequently by virtue of paragraph (2) was dangerous to the Arrangement and prejudice had been caused to Uruguay. The USSR and Iran were important outlets for Uruguay, but the recent sales by other participants had displaced Uruguayan exports from these markets, as Uruguay was unable to subsidize its exports and could not accept the low prices at which others were offering butter. He could agree to rescind the Resolution with the hope that the situation would soon return to normal.

60. The representative of Poland expressed the view that it was most realistic not to take as a cut-off date that of a contract, as the market effects of any commercial transactions would continue to exist as long as the goods kept coming on to the market and even longer.

61. In reply to a question from the Community, the representatives of Australia and New Zealand said that they did not have any information as to the calendar of deliveries under the contracts. The Community representative found this to be a rather unsatisfactory answer and insisted that all details on the deliveries were made available to the Council. The representative of New Zealand was unable to share the views of Poland as to the effects of deliveries, and repeated that a rescinding of the Resolution would give a clear message to the market, and would quickly result in more realistic price expectations. In reply to Uruguay, he admitted that prices in Algeria and the USSR might remain depressed for a while, but he was hopeful that reasonable prices could be obtained in Iran. The representative of Australia asserted that in his view the sales made were definitely of a short-term character, and the fact that deliveries would continue would have no impact on the market. Australia was very concerned about the health of the international dairy market and had for that reason alone exercised the greatest restraint and had taken into account the interests of others in making these sales. He also claimed that the sales had been made to safeguard the legitimate interests of Australia.

62. The representative of Austria felt that in light of the lack of flexibility on the part of Australia and New Zealand with respect to their interpretation of what constituted action in the short term, and taking into account the unsatisfactory explanations provided concerning sales at prices below the minimum made under the Resolution and their opposition to an adaptation of the minimum prices to the market situation, he had to state clearly that he could not agree to rescinding the Resolution at present.

63. The representative of New Zealand expressed some sympathy for the situation of Austria and other small exporters which had not so far taken advantage of the facility offered to them to sell below the minimum price. He did not think, however, that this should stand in the way of rescinding the Resolution. He felt the concern of Austria to be rather specific, and it might be appropriate with some indication of the areas where problems might arise. He maintained that Austria had the right to seek a derogation within Article 7 of the Protocol, and he was sure that participants would consider the circumstances associated with a possible request for a derogation in an objective and conscientious way. That might be a better procedure than leaving the window open with the risk that things could go from bad to worse. It was important that participants should seek permission in advance to do something, rather than seeking approval of a breach already committed. As to some information provided by Austria, that New Zealand and Australian butter had, in January 1985, been offered at

prices of US\$950 and US\$924 per ton, the New Zealand representative affirmed that no such offers had been made, apart from the notified sales through the window. He affirmed that the New Zealand Dairy Board was not offering butter below the minimum prices.

64. The Community representative pointed out that one of the shortcomings of the Arrangement was that the Council was always confronted with irrevocable facts, namely sales already made. He had the same information as Austria as to offers made by Australia and New Zealand, and believed that such offers had indeed caused damage to the market.

65. The representative of Japan stated that it was fundamental to rescind the Resolution as an effort to restore a normal situation for the international dairy trade. He expressed sympathy for the ideas advanced by Austria, not least in light of the great sales made by Australia and New Zealand under the Resolution. He assured the Council of a confirmed co-operation by Japan in any efforts to restore the viability of the Arrangement.

66. The representative of Uruguay expressed his understanding for the views expressed by Austria about abrogating the Resolution at this stage. The reference by New Zealand to Article 7 of the Protocol caused concern to his delegation however, and his delegation would be opposed to granting a derogation which would affect Uruguay's exports to the USSR and Iran. On the other side he considered it necessary to abrogate the Resolution, not least in light of further requests for supplies of butter at prices below minimum.

67. The representative of Switzerland reiterated the opinion his delegation had expressed earlier, namely that the Resolution should soon be rescinded in its entirety. Notifications of sales made since November clearly showed that the facility had been abused. Any information on terms of sale was not provided in the notifications and he thought it would be interesting to include such information in a revised table of sales made under the Resolution. He could understand the position of Austria and other participants that had shown restraints in using the facilities open to them under the Resolution. When the Community sales to the USSR were first raised in November 1984, his delegation was in favour of considering a derogation, but that solution had not been acceptable at that time, and it was surprising to hear it proposed again.

68. The representative of South Africa expressed sympathy for the views expressed by Austria. In his view the house was not in order, but ought to be before rescinding the Resolution. So far, only certain participants had been able to dispose of the surpluses of their problem products. South Africa had not been able to do so, because it was its policy not to produce butter in excess of domestic needs, and it held a surplus of other dairy products. He felt it to be reasonable that an opportunity should be given to dispose of surpluses of other dairy products than butter.

69. Commenting on remarks made by other delegations, the Community representative could agree that the granting of a derogation under Article 7 of the Protocol, which had to be agreed to by consensus, might not be the best solution. The Community had not asked for a derogation at the time because it knew that its request would be refused. The situation of the Community was now untenable, as it was the only participant that was obliged to respect the disciplines of the Arrangement, while others could continue to sell butter below the minimum price, and continue to abuse the facilities. To him it was fundamental to return to equal footing, for instance by adjusting the minimum prices in the Arrangement. He saw a link between a modification of prices and the abrogation of the Resolution. However, as it was the competence of the Committees of the Protocols to modify the minimum prices, he would suggest to adjourn the Council and proceed to an examination of the Austrian proposal in the Committees.

70. It was then agreed to suspend the meeting.

71. The Council resumed after the joint special meeting of the Committees of the Protocols, but as no agreement had been reached in that meeting it was agreed to suspend again and to resume the meeting immediately following a joint special meeting of the Committees to be held on 7 and 8 March 1985.

Meeting of 8 March 1985

Review of the situation in the context of the Resolution of 16 November 1984 (cont'd)

72. When the meeting resumed on 8 March 1985, the Chairman recalled that when suspending the meeting on 22 February, it had been agreed to resume immediately after the session of the Committees, and the agenda item which remained unfinished was the review of the situation in the context of the Resolution of 16 November 1984 (DPC/13 and L/5763). He also recalled that in the meantime, the Committees of the Protocols had held a joint special meeting to take a decision on requests by Austria and South Africa to redefine minimum prices in the Arrangement. He then called upon the Chairman of the Protocol Committees to report on the outcome of that meeting.

73. The Chairman of the Protocol Committees reported that a joint special session of the Committee of the Protocol Regarding Certain Milk Powders, the Committee of the Protocol Regarding Milk Fat and the Committee of the Protocol Regarding Certain Cheeses had started on 22 February 1985 and continued on 7 and 8 March 1985. The purpose of the meeting was to examine a communication from the Permanent Mission of Austria circulated under a triple symbol, DPC/P/W/25, DPC/F/W/17, DPC/C/W/22. In this communication,

Austria had requested the convocation of a special meeting in order to redefine the levels of minimum prices in the Arrangement. Subsequently, the Permanent Mission of South Africa submitted a proposal for modifying the minimum prices of certain cheeses (DPC/C/W/23). In spite of generous efforts made to meet these requests, it had not been possible to bring together the elements necessary for reaching a consensus on the matter.

74. The representative of Austria had subsequently proposed to suspend the price provisions provided for in Article 3 of each of the Protocols. As the positions of various delegations also on this proposal differed considerably, it had not been possible to bring together the necessary elements for reaching a consensus.

75. A request, subsequently made by Austria, for a general derogation under Article 7 of each of the Protocols was discussed, but no decision was taken. Most delegations had not had sufficient time to reflect on the request and had not had an opportunity to seek instructions. Preliminary statements made it clear that the request for a derogation would meet with some difficulties. Austria had made it clear that it would need to have decisions before Wednesday the following week and the Chairman had suggested that the meeting should resume already on the following Monday.

76. The Chairman thanked the Chairman of the Committees of the Protocols for an admirable precise summary of the work in the Committees, and invited comments from delegates.

77. The representative of Finland, speaking on behalf of the Nordic countries, recalled that in the Committees he had referred to particular difficulties, connected with the granting of a derogation as requested by Austria, caused to other countries operating in the same markets. Upon further reflection, the delegations of the Nordic countries could now agree to accept the proposal, but on the stated condition that a general derogation would be extended to cover also the Nordic countries.

78. The representative of the European Communities held a view similar to that of the Nordic countries, and could agree to accept the Austrian proposal provided that the derogation would include the Community. Furthermore, he would require that the Resolution of 16 November 1984 should be abrogated simultaneously to the granting of the derogation.

79. The representative of Uruguay needed time for passing the request by Austria on to his authorities asking for instructions. But, the reaction by the Nordics and the Community made him believe that the granting of a derogation would in fact amount to a suspension of the price provisions of the Arrangement, something he would not be in the position to agree to. The representative of Argentina shared the views expressed by Uruguay.

80. The representative of Austria said that the request for a derogation was made as a last effort to avoid his country's withdrawal from the Arrangement. In reply to Uruguay, he said that the reactions by the

Nordics and the Community only showed that the only realistic method to cope with the present situation was to suspend the price provisions as he had proposed in the Committees.

81. The representative of New Zealand would convey the Austrian proposal to his authorities. His position on the question of the suspension of prices remained unchanged. He noted the inability of the Committees to reach agreement on the initial proposals by Austria and South Africa, and reiterated his opinion that a reduction of minimum prices should not be a prerequisite for rescinding the Resolution. He had also noted widespread expression of willingness to engage in serious discussions of the factors that had contributed to the current problem affecting the operation of the Arrangement. Some adjustment could perhaps be considered in conjunction with the closing of the window. It seemed to be necessary to reflect further on the need to overcome the problems created by the currency situation, to look at new areas of derogations having regard to particular types of problems facing the operation of the Arrangement. He would suggest that these questions might be considered at the next regular sessions of the Protocol Committees and the Council.

82. The representative of Australia gave his full support to the views and ideas expressed by New Zealand. It was important to get to grips with the problems as a matter of urgency. Delegations seemed to have difficulties in assessing the consequences of the proposals that had been made and it seemed to be necessary to have a better knowledge of what the problems were and to have a better background of facts as a basis for further consideration. The data required for an objective review of minimum prices would include information on: the current level of stocks causing problems; details on price offers for any problem stocks and assessment of prices at which sales could be made to reduce the problem; projections of problem stock levels at the end of 1985; estimates of current operative market price levels; assessment of the trend of total sales in recent years; and assessment of whether total sales could increase if minimums were reduced. With respect to the Austrian request for a derogation, he was prepared to discuss that further if it could be narrowed, but it was unacceptable to Australia in its present form.

83. The representative of the European Communities expressed doubts about the value and utility for the Council to engage in further studies and felt that the Australian suggestion would lead nowhere, be a waste of valuable time and should be rejected. There were deadlines that would have to be observed. The threat from exports by non-participants meant that the Community was faced with the risk of losing most of its markets. It was therefore indispensable to abrogate the Resolution as a matter of urgency and not delay that decision by further studies. The discrimination against the Community resulting from the maintenance of the Resolution and the menace of heavy exports by non-members of the Arrangement had made the Community's position insupportable, and the Community consequently reserved the right to safeguard its interests. He also expressed doubts as to the utility of holding the meeting of the Committees on Monday as had been suggested by the Chairman of the Protocol Committees.

84. The representative of Uruguay could not renounce his opposition to the granting of a derogation to Austria under Article 7 of the Protocol, notably because Austria was not willing to agree to the abrogation of the Resolution even with a derogation in its hand.

85. In reply to a question from the Chair, the representative of South Africa said that as it seemed impossible to arrive at a consensus on his proposal to modify the minimum price for certain cheeses, he saw no reason for pursuing the matter further at this meeting.

86. The representative of Austria wished to place on record that no agreement had been reached on his proposal to modify the levels of the minimum prices of the Arrangement, on a subsequent proposal to suspend the price provisions nor on his request for a derogation under Article 7. The Arrangement was not working and the situation was not at all satisfactory for Austria. In these circumstances, he had been authorized to announce that Austria had the intention of withdrawing from the Arrangement.

87. In closing the meeting, the Chairman made the following summing up of the discussion on the situation in the context of the Resolution of 16 November 1984 and which has been circulated in a Note by the Chairman (document L/5786):

"At the session on 8 March 1985, the Council received an oral report from the Chairman of the Committees of the Protocols. The Committees had held a series of joint special meetings in order to consider requests from Austria and South Africa to redefine the levels of minimum prices in the Arrangement. However, no agreements had been reached with respect to a modification of the levels of minimum prices. Neither was any agreement reached on a subsequent proposal by Austria to suspend the price provisions of the Arrangement until the end of 1985. Subsequently, the Austrian delegation requested a general derogation under Article 7 of each of the Protocols. Delegates had not been in a position to pronounce on this request at the meeting of the Committees and the Chairman of the Committees had suggested that the Austrian request for a derogation be considered further.

Subsequent discussion in the Council revealed that it was unlikely that the Austrian request for a derogation under Article 7 of each of the Protocols would succeed and that there would be no purpose in continuing the discussion in the Committees.

The Council took note of the report by the Chairman of the Committees and of the comments made by delegations.

The Council urged the Committees of the Protocols to pursue further their considerations of prices and other current problems facing the Arrangement at their regular meetings in March 1985.

In these circumstances the Council noted that it was unable to reach a decision on the proposal by New Zealand to rescind the Resolution of 16 November 1984, and agreed to revert to the matter at its regular session on 27 March 1985, with a view to reaching a decision at that time.

The Council took note of a suggestion by Australia for data required for an objective review of minimum prices (DPC/P/W/27, DPC/F/W/18, DPC/C/W/24).

Finally, the Council took note of a statement by the Austrian delegate whereby he informed the Council of the intention of his Government to withdraw from the Arrangement."