

GENERAL AGREEMENT ON TARIFFS AND TRADE

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COUNCIL OF REPRESENTATIVES

Draft Report on Work since the Fortieth Session

Addendum

The following addendum summarizes action taken by the Council at its meeting on 10 October 1985.

Item 1 (continued)

Work Program resulting from the 1982 Ministerial meeting

(c) MTN Agreements and Arrangements (C/M/191, 192)

Insert new eighth paragraph on page 8 of C/W/482, to read:

"The Council agreed to the Chairman's proposal."

At the Council meeting on 10 October 1985, the Chairman noted that the consultations had been initiated but not yet concluded.

The representative of Colombia proposed that the Working Group be reconvened for the specific purpose of considering the commitments policy followed by the United States concerning Article 14:5 of the Subsidies Code. Colombia believed that the US practice contravened Article I of the General Agreement.

The representative of the United States considered that further work on specific problems should be undertaken in the relevant MTN Committees and Councils, and that the Council should, if necessary, take stock of such further work at a later date. Were the Working Group to be reconstituted, the United States would oppose any terms of reference that did not include all signatories' actions with respect to all the MTN Agreements.

The representatives of Egypt, Pakistan, Yugoslavia, Uruguay, Thailand, India, Argentina, Chile, Singapore, Brazil and Malaysia supported the proposal that the Working Group be reconvened.

The representative of Egypt said the Working Group should continue with the same terms of reference as before and report to the Council.

The representative of the European Communities said there had been strenuous but unsuccessful efforts in the Subsidies Committee to eliminate the difficulties faced by some developing countries concerning

their possible accession to that Code. The Committee should reconsider and find a solution to this question; were that to fail, any contracting party or parties could bring the problem back to the Council or to a session of the CONTRACTING PARTIES and ask for a working party to examine this particular problem.

The representative of India supported the statement by Egypt. He added that the problem raised by Colombia, although specific, had wider implications because it affected a basic aspect of the Subsidies Code and of Article I of the General Agreement.

The representative of Argentina said that the Working Group's report also reflected problems concerning other MTN agreements, for example the Arrangements on meat and dairy products. Furthermore, the problem with the Subsidies Code affected more than one contracting party.

The representative of Chile said that differing interpretations of the General Agreement, vis-à-vis the MTN Agreements, had serious implications for the rights and obligations of all contracting parties. Chile continued to support all efforts to ensure that developing countries could accede to the Subsidies Code without being required to accept excessive conditions that they could not meet.

The representative of Singapore said he would prefer that the problem be examined in a working group with specific terms of reference concerning the obstacles faced by developing countries in acceding to the Subsidies Code, but would accept having it examined in the Working Group, which would be reconvened with the same terms of reference as before.

The representative of Pakistan said that the CONTRACTING PARTIES had ultimate responsibility for supervising implementation of the MTN Agreements. He agreed with India that such problems had implications for Article I of the General Agreement.

The representatives of Brazil and Malaysia supported the statement by Singapore.

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

(e) Problems of trade in certain natural resource products
(C/M/192)

At the Council meeting on 10 October 1985, the representative of Canada said that because the Secretariat had not been allowed to prepare a study on trade in paper, Canada had submitted a background note on

problems of international trade in forest products, including paper products, which had been circulated in MDF/W/49 and subsequently discussed in the Working Party.

The Council took note of the statement.

Item 2 (continued)

Recent developments in international trade and their consequences for GATT, and status of implementation of the 1982 Ministerial Work Program (C/M/192)

At the Council meeting on 10 October 1985, the Chairman noted that at the informal meeting of Heads of Delegations on 26 September, in preparation for the Special Session, he had suggested that this item be dealt with, as necessary, at the present meeting. The Chairman invited discussion. There were no speakers, and the Chairman proposed that this item be closed.

The Council so agreed.

Item 12 (continued)

United States - Trade measures affecting Nicaragua (C/M/192)

At the Council meeting on 10 October 1985, the Chairman said that following his consultations with a number of interested parties, he could report that the United States, while maintaining its position expressed at the July Council meeting, would not oppose establishment of a panel provided it was understood that the Panel could not examine or judge the validity of or motivation for the invocation of Article XXI:(b)(3) by the United States in this matter. He proposed that a panel be established with terms of reference, reflecting that understanding, to be determined by the Council Chairman in consultation with interested parties and, according to GATT practice, with the agreement of the parties to the dispute, and that the Council Chairman be authorized to designate, in consultation with the parties concerned, the Panel's members.

The representative of Jamaica said that his delegation did not believe that the understanding constituted a precedent in relation to Article XXI.

The Council took note of the statements and agreed to the Chairman's proposal.

Item 13 (continued)

Recourse to Articles XXII and XXIII

(a) Brazil

Treatment of electronic data processing equipment (C/M/192)

At the Council meeting on 10 October 1985, the representative of Brazil said that Brazil had held Article XXII consultations with the United States on issues related to trade in informatic goods. His Government recognized no GATT obligation to discuss its informatics law or policy, or potential trade developments in this sector, and reserved its GATT rights, for reasons explained in L/5871.

The representative of the United States said that his authorities, acting under Section 301 of the Trade Act of 1974, had initiated an investigation concerning Brazil's informatics policy. The United States welcomed the statements in paragraph 6 of L/5871.

The Council took note of the statements.

(b) Canada

(i) Measures affecting the sale of gold coins (C/M/192)

At its meeting on 10 October 1985, the Council considered the Panel's report in (L/5863).

The representative of South Africa said that the measure taken by the Ontario provincial government directly contradicted Article III and had impaired the security of market access provided by a Canadian tariff concession, thus violating Article II. In relation to arguments concerning the provisions of Article XXIV:12, he said it was disappointing that the Panel had been unable to find that a reference to the Supreme Court in Canada by the Federal Government should be considered to be a reasonable measure for the purposes of that Article. If the measure had been introduced by a contracting party with a unitary form of government, South Africa's right of redress would have been established by a straightforward finding of violation, with a straightforward recommendation to have the discrimination eliminated. However, in the Panel's opinion, that right had been limited by the provisions of Article XXIV:12 in this particular case. Although South Africa had argued that Ontario had exceeded its powers to regulate trade, his delegation nevertheless accepted the Panel's findings in that regard because South Africa's interest in adopting the report as a whole went beyond that particular aspect. The Panel had found that Article XXIV:12 did not limit the scope of application of GATT

provisions to local governments, but merely the measures to secure their observance by local governments. Consequently, given the finding that the Ontario measure did not accord with Article III:2, South Africa considered that a case of prima facie nullification or impairment had been established, and Canada was therefore obliged to pay compensation in the customary manner, until such time as the balance in rights and obligations between Canada and South Africa had been restored. South Africa believed that adoption of the report would undoubtedly contribute to the resolution of the immediate complaint and to avoiding similar disruptive actions in future. Contracting party exporters of gold coins already faced an identical situation in Quebec, and adoption of the report would obviate a repetition of the same process in its entirety. In these circumstances, South Africa requested adoption of the report by the Council at the present meeting.

The representative of Canada rejected some of the statements and assertions made by the representative of South Africa. Since this was the first time that a panel had examined the scope and intent of Article XXIV:12, its meaning, in the light of the intention of the drafters of the General Agreement, was of key importance to a federal State such as Canada in which the constitution and constitutional practice established a highly decentralized governmental system. Review of the report was not yet completed in his capital, and it also had to be discussed with the appropriate provincial authorities. He proposed that a full discussion be postponed until the Council's next meeting.

The representative of Jamaica asked the Panel Chairman whether the Panel's finding regarding Article XXIV:12 rested primarily or exclusively on interpretation of Article III:2.

The Chairman of the Panel referred Council members to the report, saying he did not think it appropriate to make further comment at this stage.

The representative of Jamaica said he was not able to accept the report at this stage.

The representative of South Africa said his delegation did not understand why Canada needed to consult its provinces at this stage. The Panel's findings and conclusions were addressed to the Federal Government and as such did not recommend any action by Ontario. Any delay in adopting the report would cause mounting trade damage which would only increase the amount of compensation recommended by the Panel. South Africa would reluctantly agree to postpone adoption of the report until the next Council meeting, but certainly not beyond that meeting if possible.

The representative of Canada said his authorities would determine with whom they should consult on the implications of such an important report.

The representative of the United Kingdom, on behalf of Hong Kong, said that the Panel had reached the only conclusion possible as to the question of whether Canada could avoid its obligations under Article III:2 by invoking the provisions of Article XXIV:12. However, in supporting adoption of the report, Hong Kong saw considerable merit in the points made by Canada (paragraph 46) on the difficulties of quantifying or even identifying the damage caused by the Ontario measure.

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

(c) European Economic Community

(i) Production aids granted on canned peaches, canned pears, canned fruit cocktail and dried grapes (C/M/192)

At the Council meeting on 10 October 1985, the representative of the United States said his delegation expected the Panel report to be adopted at the present meeting.

The representative of the European Communities said that the Community was ready to adopt the report on the basis of an understanding by the Council covering the relationship between obligations of signatories under the Subsidies Code, and their obligations under GATT Articles, in disputes between those signatories; the understanding should also deal with the question of nullification and impairment of effectively bound tariff concessions. The Community was ready to consult with the United States and any other interested contracting party on the terms of such an understanding, in order to be able to conclude this matter at the next Council meeting.

The representative of the United States insisted that the report be adopted without qualification. He reiterated his delegation's major arguments on the issues in this case. In the US view, the Community's willingness to adopt the report provided that the Panel's conclusions were nullified, was the same as blocking adoption.

The representative of Switzerland said his delegation could accept adoption of the report provided that the Panel's interpretation, and the manner in which it was formulated, particularly in paragraph 80, were not understood as restricting application of Article XVI or the Subsidies Code.

The representative of the European Communities said that the Community had made progress over recent months in attempting to resolve this matter both in terms of procedure, in agreeing to adoption of the report, and in terms of actual practice.

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

Item 15 (continued)

delegates proposed a 'TFAD' objective addressed to 'international
Customs unions and free-trade areas; regional agreements' in addition

(a) Agreement between Israel and the United States (C/M/192)
The representative of Brazil said his delegation had no objection to the proposal.
At its meeting on 10 October 1985, the Council considered a communication from the United States and Israel in L/5862 and Add.1 in which they submitted the text of the Agreement on the establishment of a free-trade area.

The representative of Brazil proposed that the Council postpone consideration of this item until its next meeting.
The representatives of Israel and the United States urged the Council to follow standard practice and to set up a working party at the present meeting.

The Chairman then suggested that a working party be established with the standard terms of reference used for such agreements in the past.

The representative of India said his delegation would agree to setting up the Working Party at the present meeting, but wanted to consider carefully the terms of reference proposed by the Chairman before agreeing to any decision.

The representatives of Japan, European Communities, Canada, Chile, Australia, Spain and New Zealand supported establishing a working party as proposed by the Chairman.

The representative of Brazil said his country had reason to believe that some of the Agreement's provisions and complementary documentation might introduce matters outside the competence of the General Agreement. His delegation could agree to establishing the Working Party at the present meeting, and proposed that its terms of reference be decided at the next Council meeting.

The representative of Nicaragua supported the statement by Brazil.

The representative of Uruguay said his delegation wanted to serve on the Working Party and to be involved in any consultations concerning its terms of reference, which would have to be decided in the Council.

The representative of Chile said that should an agreement between two contracting parties cover areas not within GATT's competence, for example services, then GATT would not have to pronounce on them.

not arbitrating (ART 20) should be necessary but not necessary on the other hand not having to decide on the interpretation of Article 19(1)(b) in respect of services not covered by GATT.

Consequently, if elements outside GATT's competence were included in the present Agreement, this should not prevent or delay the Council from dealing with this item.

The representative of Norway suggested that the Council establish the Working Party at the present meeting and that the proposed terms of reference would be agreed ad referendum. If there were no objections to those terms of reference by the next Council meeting, they would then be considered definitively agreed.

The Council took note of the statements and agreed to establish a working party. The Council agreed that the terms of reference would be discussed in further consultations and would be considered definitive unless amended at the next Council meeting. The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

(c) Biennial reports

(iii) South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) (C/M/192)

At its meeting on 10 October 1985, the Council considered document L/5794, containing information given by the parties to the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA).

The representative of Australia noted that his country had announced that across-the-board duty-free access would take effect on 1 January 1987 for all exports from South Pacific Forum Island countries, apart from a narrow range of items which had specific concurrent trade liberalization régimes.

The Council took note of the statement and of the report.

(iv) Agreement between Finland and Hungary (C/M/192)

At its meeting on 10 October 1985, the Council considered document L/5867, containing information given by the parties to the Agreement between Finland and Hungary.

The Council took note of the report.

Item 19 (continued)

Consultations on trade

- Romania (C/M/192)

The Protocol for the Accession of Romania (BISD 18S/5) provides for biennial consultations to be held between Romania and the CONTRACTING PARTIES in a working party to be established for this purpose, in order

to review the development of reciprocal trade and the measures taken under the terms of the Protocol. In November 1984, the Council had established a working party to carry out the fifth consultation with Romania and to report to the Council.

At its meeting on 10 October 1985, the Council considered the Working Party's report (L/5856). The Working Party had heard how the negative impact of the general economic and financial crisis had affected Romania's foreign trade with contracting parties. The majority of contracting parties had no quantitative restrictions on imports from Romania; a positive development had been obtained through an agreement between Romania and the European Community concerning industrial products, providing for substantial progress to be made in eliminating discriminatory trade restrictions by the end of 1985. Romania favoured a GATT program to eliminate discriminatory restrictions which affected its export possibilities. The Working Party had also discussed the decline of Romanian imports from contracting parties, which was related to a shortage of convertible currencies.

The Council adopted the report.

Item 22 (continued)

Japan - Further opening of the Japanese market (C/M/192)

At the Council meeting on 10 October 1985, the representative of Japan referred to L/5858, which gave details of his Government's Action Program to improve market access. Japan hoped that the Action Program would be a confidence-building measure paving the way for launching a new round of multilateral trade negotiations.

The Council took note of the statement.

Item 28 (continued)

Administrative and financial questions

(b) Committee on Budget, Finance and Administration

(i) Membership (C/M/192)

At the Council meeting on 10 October 1985, the Chairman reported that the consultations were not yet concluded and had so far centred on possible enlargement of the Committee to include three additional members.

The representatives of Australia, Egypt, Japan, Korea, New Zealand, Singapore, United States and Uruguay said that the Committee should be open to all contracting parties.

The representative of the European Communities, speaking on behalf of their member States, said that the Committee's membership should reflect a balance. In the interests of the Committee's efficiency, they opposed the idea of opening membership to all contracting parties.

The representatives of the Philippines, Pakistan, United States and Uruguay favoured the immediate admission of the three interested contracting parties.

The representative of Brazil said his country had decided to withdraw from the Committee, but might reconsider that decision if the membership was increased.

The representative of Romania said that his Government had sought membership five years earlier but had continued as an observer in the Committee.

The representative of Spain considered that the Committee's present membership was well balanced, and cautioned that enlargement might lead to inefficiency in the Committee's work.

The Director-General proposed that the Council decide to invite four additional members to sit on the Committee: Greece, Jamaica, Korea and Singapore, and that the Council take note of the fact that between the present meeting and the November CONTRACTING PARTIES Session or the first Council meeting in 1986, the Council or the CONTRACTING PARTIES would decide on membership for 1986.

The Council took note of the statements and adopted the Director-General's proposal.

Item 32 (continued)

Arrangements for the forty-first Session (C/M/192)

At its meeting on 10 October 1985, the Council agreed on the dates for the forty-first Session.

New Item

International trade in agriculture (C/M/192)

At the Council meeting on 10 October 1985, the representative of Australia introduced a report entitled "Agricultural policies in the European Community" prepared by the Australian Bureau of Agricultural Economics, an independent research organization, which examined the

effects of the Community's agricultural policies on Australian interests. He outlined the conclusions of the report and said that a copy would be furnished to all contracting parties; a summary had been circulated in L/5874.

The representative of the European Communities regretted the manner and means utilized by the Australian authorities to circulate to contracting parties their very particular views on the Community's policy. The Community also regretted that the GATT Secretariat had allowed itself to circulate as a GATT document a non-governmental study; this study could not be taken into account in the work of GATT.

The Director-General said that in this case the Secretariat had followed normal procedures regarding the distribution of information to contracting parties.

The representative of New Zealand commended the study to all contracting parties and said that his delegation would welcome a response by the Community to the study's conclusions.

The Council took note of the statements.