GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED
C/M/185
13 February 1985
Limited Distribution

COUNCIL
29 January 1985

MINUTES OF MEETING

Held in the Centre William Rappard on 29 January 1985

Chairman: Mr. K. Chiba (Japan)

1. United States - Agricultural Adjustment Act - Twenty-seventh annual report by the United States (L/5772)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES are required to make an annual review of any action taken by the United States under the Decision, on the basis of a report to be furnished by the United States. The twenty-seventh annual report had been circulated in document L/5772.

The representative of the United States gave additional information to that in L/5772, noting that because of an imbalance in US sugar supplies which had resulted in lower domestic prices, the US authorities had been required under Section 22 of the Act to impose a fee of 0.2875 cents per pound for the January-March 1985 quarter. This was the first imposition of a fee for sugar under Section 22 since October 1982. The United States considered that in presenting the twenty-seventh annual report, it had fulfilled its obligation under the 1955 Decision.

The representative of Australia noted that considerable discussion concerning possible changes in international agricultural policy was now taking place in both domestic and international bodies. The effects of some of those policies were more fundamental to Australia than was the US waiver. Nevertheless, his country was disappointed that there had been no opportunity to modify the US waiver over the past 30 years. The Section 22 program and the associated waiver remained a fundamental factor in determining world agricultural policies. Australia continued to consider that the annual review under the waiver would best be carried out in a working party established specifically for that purpose. Therefore, his delegation proposed that a working party be established to examine the twenty-seventh annual report and that the terms of reference be agreed among interested contracting parties.

The representative of Canada said that particularly close attention should be paid to the requirement that the United States explain the reasons why it continued to apply trade restrictions, regardless of whether or not they were covered by the waiver. Canada considered that the explanations in L/5772 were less than fully adequate and did not meet the intent of the waiver's conditions. Those conditions also stipulated that the United States must provide information on any steps it had taken to solve the problem of surpluses of agricultural commodities. The United States had indicated its intention in 1955 to continue to seek solutions to that problem; however, 30 years later, the United States still had surpluses. This issue merited full discussion. Canada continued to be concerned at the effect of a number of existing US trade restrictions, as well as at actions recently announced by the United States to impose restrictions on imports of additional sugar-containing products, which adversely affected his country's traditional trade in these products. Canada's objections related both to the substance of the US action and to the lack of prior consultation by the United States. He recalled that the assurances given by the United States in connection with the waiver included an undertaking to discuss proposals under Section 22 with all countries having a substantial interest, prior to taking action, and to give prompt consideration to any representations made to it. The United States had clearly not met the requirements of the waiver in this instance. Furthermore, Canada considered that the US prohibition imposed in June 1983 on the importation of certain sugar blends had been implemented contrary to the terms of the waiver. The US decision to maintain that prohibition had been taken despite extensive discussion in

the Working Party on this subject during 1984 and in the full knowledge that some members considered that the measure went beyond the terms and conditions of the waiver, as indicated in the most recent Working Party's report (L/5707). In the light of these concerns, his delegation supported the proposal that a working party be established with the usual terms of reference to examine the twenty-seventh annual report.

The representative of New Zealand said that his delegation was particularly concerned that the report made no attempt to address seriously the question of alternative approaches to measures maintained under the waiver. He recalled that in November 1984, several delegations had drawn attention in the Council to the concluding paragraph of the most recent Working Party's report (L/5707); this had invited the United States to present for review a report which would provide a detailed examination and critical evaluation of the reasons why measures consistent with the provisions of the General Agreement did not constitute a feasible alternative to those maintained under the waiver. Such an examination was missing from the twenty-seventh report, which was notable for its banality. New Zealand continued to look to the United States to take action which would allow the unilateral withdrawal of the waiver at the earliest possible opportunity, and supported establishment of a working party to examine the twenty-seventh report.

The representative of the European Communities questioned the usefulness of setting up yet another working party, when it was clear in advance that this would lead to nothing. The US waiver had become a permanent derogation from the General Agreement and had created a situation of serious imbalance of legal and economic obligations in world agricultural trade. It was very difficult to solve problems in such trade as long as the situation created by the US waiver continued. He wondered whether a decision taken in the circumstances of the 1950s still had any relevance to the realities of international agricultural trade in the 1980s. The time had come for this situation to be reviewed effectively in GATT. Some way had to be found, in a process of give-and-take, to persuade the United States to abandon the waiver. Creating yet another working party would show that GATT was incapable of grappling with this major problem and was reluctant to do so. The proper forum for dealing with the issue was the Committee on Trade in Agriculture.

The representative of Peru said that her delegation would have liked the report to be more comprehensive, as it contained only the most succinct information which in no way justified maintenance of the waiver. Peru supported establishment of a working party, which would not prejudice the possibility that this matter could also be studied in the Committee on Trade in Agriculture.

The Council took note of the statements and agreed to establish a working party open to all contracting parties indicating their wish to serve on the Working Party. The Council authorized the Chairman to draw up the terms of reference and to designate the Chairman of the Working Party in consultation with interested delegations.

2. United States tax legislation (DISC-FSCA) (L/5716, L/5723, L/5774)

The Chairman drew attention to a recent communication from the European Communities, which had been circulated in document L/5774.

The representative of the European Communities recalled that at the November 1984 Council meeting, his delegation had proposed informal consultations so that interested contracting parties could examine the question of taxes deferred under DISC which the FSCA had forgiven, and the GATT compatibility of the FSCA. However, the United States had rejected this request, suggesting that any problems could be dealt with under Articles XXII and XXIII. The Community remained convinced that paragraph 22 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) provided for the type of consultation that it was requesting; however, in view of the US attitude, it had decided to follow the procedures adopted on 10 November 1958 under Article XXII on questions affecting the interests of a number of contracting parties (BISD 7S/24). The Community believed that the consultations it was requesting should focus on the GATT compatibility of the FSCA legislation, including the provision for forgiveness of taxes deferred earlier under DISC.

The representative of the United States said that his delegation's position on this matter was clearly reflected in the minutes of Council meetings in 1984: the United States considered that the FSCA conformed with US obligations under GATT. His delegation was nevertheless prepared to consult under Article XXII with the Community and any other contracting parties which demonstrated a substantial trade interest in this matter, although his delegation had only become aware of the Community's request for consultations under Article XXII:1 when it had received document L/5774. The United States was puzzled by the Community's motives in this matter, since the Community had never taken up previous US offers to consult bilaterally, and given that six Community member States had requested and received certification by the US Government as host countries for US foreign sales corporations under the FSCA. For consultations to be useful on this complex tax matter, he suggested that the Community might want tax experts from its member States to participate, since trade expertise might not be fully adequate. The United States continued to believe that the Community's preoccupation with the forgiveness of taxes deferred under DISC was a quest for back damages, which had never been awarded in GATT dispute settlement proceedings and which were inappropriate to this case. He asked countries asserting a substantial trade interest in the FSCA to notify his delegation, according to the procedures adopted on 10 November 1958.

The Chairman read out the text of the procedures adopted on 10 November 1958 (BISD 7S/24), and noted that the forty-five-day period for any other contracting party to advise the Director-General, and the European Communities and United States, would expire on 4 March 1985.

The representative of Argentina noted that his Government maintained a reservation concerning the criterion of substantial interest in the context of Article XXII consultations; this reservation had been made by Argentina in December 1981 when the Council reached an understanding (L/5271) making it possible to adopt the DISC Panel report, as reflected in C/M/154, page 8. His delegation wanted to leave open the possibility of Argentina's having a substantial interest in the matter under discussion, in the light of that reservation.

The Council took note of the statements.

3. United States ban on imports of steel pipes and tubes from the European Communities (L/5747 and Add.1, L/5773)

The Chairman recalled that the Council, at its meeting in December 1984, had agreed to keep this matter on the Agenda.

The representative of the European Communities recalled that at its meeting in December 1984, the Council had agreed that the two parties should consult on this matter. These consultations had led to his authorities concluding an arrangement with the United States concerning trade in steel pipes and tubes; this arrangement had been notified in L/5773.

The representative of the United States confirmed that his authorities had reached a satisfactory bilateral arrangement on this matter with the Community. The relevant US notification had recently been sent to the Secretariat for circulation as L/5448/Add.1.

The representative of Singapore said that his delegation noted with surprise the Community's notification in L/5773 concerning a measure taken outside GATT, and the Community's claim that the notification was made under paragraph 3 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). He emphasized the legal principle that notification under that paragraph could not create any legal rights, and stressed that according to paragraph 3 of the 1979 Understanding, such notification would be "without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement." It should be made clear that in disposing of this matter, the Council had in no way conferred any legitimacy or legality to this or any other grey-area measure.

The representative of Australia recalled his delegation's suggestion at the December 1984 Council meeting that there was a need to increase the focus in the Council's special meetings on the increasing number of protectionist measures, including voluntary restraint arrangements. There would be an opportunity to discuss this particular case at the next special Council meeting.

The representative of Japan said there was general awareness of the reasons and circumstances which had led the United States to take the measure under discussion. However, all contracting parties should renew their efforts to live up to their commitment to resist protectionism as contained in paragraph 7(i) of the 1982 Ministerial Declaration (BISD 29S/11). Japan hoped that the measure would be accompanied by vigorous US efforts to accelerate structural adjustment, and that the measure would be terminated as soon as possible. His delegation believed that this particular measure, and other similar ones, should be dealt with in the context of implementation of paragraph 7(i) of the Ministerial Declaration.

The Council took note of the statements.

4. Committee on Balance-of-Payments Restrictions
- Arrangements for consultations in 1985 (C/W/459)

The Chairman drew attention to the 1985 schedule of consultations due to be held by the Committee on Balance-of-Payments Restrictions, which had been circulated in document C/W/459.

The Council took note of document C/W/459.

5. Consultative Group of Eighteen
- Composition for 1985

The Chairman recalled that at its meeting on 17 December 1984, the Council had agreed to revert to this matter at the present meeting.

The Director-General announced the Group's full composition for 1985, as follows: Argentina, Australia, Brazil, Canada, European Economic Community and member States, Egypt, Finland, India, Indonesia, Japan, Nigeria, Pakistan, Peru, Poland, Spain, Switzerland, United States and Zaire.

He added that the alternates would be Austria, Hungary, Israel, Ivory Coast, Jamaica, Korea, New Zealand, Norway and Yugoslavia.

The representative of Korea noted that the criteria for the Group's current membership had been worked out in 1979; since then, his country's exports had doubled from US$ 30 billion to US$ 60 billion, and Korea was now the thirteenth largest trading partner in GATT. In these circumstances, Korea was not satisfied with its continued status of

alternate member in the Group, and wanted to be able to play a rôle in the GATT system commensurate with its status in world trade and with its contribution to the GATT budget. He hoped that the forthcoming consultations on the Group's membership for 1986 would produce a more balanced and adequate representation in the Group, as provided for in its terms of reference.

The Council took note of the statement and approved the Group's composition for 1985.

6. Status of work in panels
- Report by the Director-General

The Director-General made a statement detailing the current status of work in panels established under the General Agreement and under the Agreements resulting from the Multilateral Trade Negotiations.[1] Referring to the delayed submission to the Council of the report of one of the panels[2], occasioned by continued bilateral consultations between the parties concerned, he recalled that the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) stipulated that panels should give the parties to a dispute adequate opportunity to develop a mutually satisfactory solution, and that where the parties failed to do so, the panel should submit its findings to the Council. The Understanding also made it clear that panels should aim to deliver their findings without undue delay, taking into account the obligation of the CONTRACTING PARTIES to ensure prompt settlement of disputes. He said it was unfortunate that in this case, the parties had still not reached a solution after more than six months, nor had the panel report been submitted to the Council. He stressed that the circulation of the report would not preclude continued bilateral contacts.

He then drew attention to the proposal (L/5752) adopted at the fortieth Session of the CONTRACTING PARTIES concerning the use of non-governmental panelists in dispute settlement panels, and reminded contracting parties that they were requested to indicate to the Director-General the names of persons thought qualified to serve on panels. An airgram related to this request would be circulated shortly (GATT/AIR/2103).

The Council took note of the statement.

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[1]The text of the Director-General's statement was subsequently made available to delegations.

[2]Panel on EEC Subsidies on production of canned peaches, canned pears and raisins.

7. New Zealand - Changes in the scheme under the Generalized System of Preferences (GSP)

The representative of India, speaking under "Other Business" on behalf of the Informal Group of Developing Countries in GATT, drew attention to proposed changes in New Zealand's scheme under the Generalized System of Preferences (GSP). One modification would improve preferential treatment for the least-developed countries by allowing their imports to enter duty free as of 1 July 1985. Developing countries welcomed this move. The second change, to have effect from 1 March 1985, would establish a new threshold beyond which any country with a per capita GNP of 70 per cent or more of New Zealand's would cease to benefit from the GSP scheme. The developing countries viewed this proposal with serious concern, as it sought to introduce differentiation amongst them through the unilateral application of arbitrary criteria. This would be inconsistent with the basic objectives and commitments of the GSP, which was intended to accord generalized, non-reciprocal and non-discriminatory preferences to developing countries. He said that preference-giving countries were committed to avoiding any sweeping or far-reaching withdrawal of unilateral benefits. The exclusion in this manner of some countries from GSP benefits would be contrary to the basic principles of these multilateral commitments and would result in serious erosion of the fundamental principle underlying differential and more favourable treatment for developing countries. The developing countries urged the New Zealand Government not to implement this proposed change in its GSP scheme.

The representative of Singapore endorsed the statement by India and said that the developing countries, once advised by the developed countries to use trade, not aid, to foster their economic development, were now faced with increasingly closed markets for their exports. The net result was that developing countries could neither export nor receive aid. GSP schemes, which were already well safeguarded by competitive-needs criteria, butoirs and exceptions for sensitive products, continued to be made more stringent and inaccessible for the developing country recipients. In his view, the New Zealand proposal was the ultimate in restrictive changes to the GSP; New Zealand would be using its GSP scheme as a divisive tool against the common interest and unity of the developing countries. He said that New Zealand's criterion for determining the level of a country's development was highly controversial; per capita GNP had no direct relationship to a country's level of economic and industrial development and competitiveness, and did not take into account other important factors affecting development. This was reflected in the exclusion of countries such as Singapore, Brunei and New Caledeonia from New Zealand's GSP scheme.

The representative of Korea supported the statements by India and Singapore. He said that Korea had consistently opposed the concept and practice of so-called graduation within the GSP, regardless of the criteria used, as a form of negative trade barrier which aggravated the balance-of-payments situation of developing countries. Korea was extremely concerned by the recent increased use of such barriers by advanced importing countries. The application of graduation by the developed countries was detrimental to implementation of the planned liberalization of Korea's import market and adversely affected the smooth servicing of its external debt.

The representative of the United Kingdom, on behalf of Hong Kong, said that the stated purpose of the New Zealand GSP scheme was to improve the exporting opportunities of developing countries and in so doing to accelerate their economic growth. Fulfillment of this commendable aim was put in question by New Zealand's plan to introduce the new criterion, under which a number of current beneficiaries under the scheme would lose their beneficiary status forthwith; others were threatened, including Hong Kong. He said that per capita GNP was an unreliable and arbitrary yardstick for determining a beneficiary's level of development; it ignored the fact that no single beneficiary was competitive in all products, it failed to give due consideration to the question of equitable treatment, it created double standards, and it would have an adverse influence on other GSP schemes. He joined the representative of India in urging New Zealand to reconsider this matter.

The representative of New Zealand said that it was important to put the proposed measures in their proper context. New Zealand had been one of the first countries to introduce a GSP scheme, only six months after the CONTRACTING PARTIES had approved a waiver allowing such measures. New Zealand's scheme, in common with others, remained unilateral, non-reciprocal and non-binding. The Enabling Clause[1] had subsequently provided a more detailed basis for GSP schemes without setting any particular time period for their existence. He said that the only previous substantive change in New Zealand's GSP scheme, in July 1976, had extended its coverage to some 3,300 items, accounting for 70 per cent of those covered by the New Zealand tariff; of the remaining items not covered by the GSP, two-thirds were free of duty irrespective of the country of origin. Consequently, developing countries enjoyed preferential or duty-free treatment on 90 per cent of

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[1]Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

the items in New Zealand's tariff. Furthermore, under the new measures, imports from the least-developed countries would be exempt of duty. He noted that the New Zealand scheme had a number of features not found in all others, such as cumulative rules of origin; one feature, the lack of any specific safeguard mechanism, made it unique among GSP schemes.

New Zealand valued its trading relations with all countries, especially contracting parties. The protection of the trading interests of its trading partners and increased access to its market were among the aims of New Zealand's current liberalization of domestic policy and industry restructuring, particularly the replacement of import licensing by the customs tariff. Developing countries would benefit from enhanced trading opportunities as liberalization proceeded; this would be true not only for those countries covered by the GSP scheme, but also for those whose economic performance had been such that specific preferential treatment was no longer necessary to promote their industrialization or to accelerate their rates of economic growth. He added that the international economic situation and New Zealand's economy in particular had changed dramatically since its introduction of the GSP scheme; so, too, had the economic situation of some of the beneficiaries of that scheme. No country which had requested inclusion in New Zealand's GSP scheme had ever been refused; a large number had been added without any specific request. He said it had become an anomaly that some of the countries which had been entitled to beneficial rates under the GSP scheme now had a per capita GNP approaching or equal to, and in some cases exceeding, that of New Zealand. The decision to limit GSP beneficiaries to those countries or territories whose per capita GNP was less than 70 per cent of New Zealand's was, in his country's view, the fairest, most transparent and most non-discriminatory method that could be used. He noted that for a variety of analytical purposes, the World Bank had adopted a country classification based on the same basic criteria. His Government's decision should not be seen as affecting in any way the obligations New Zealand had towards developing contracting parties under Part IV of the GATT, or under any of the MTN Agreements; it should be seen as a measure taken in the context of New Zealand's own economic situation and comprehensive restructuring program, aimed at lower and more uniform tariffs.

The representative of Trinidad and Tobago supported the earlier statements by representatives of developing countries. Her delegation was concerned by New Zealand's decision to disqualify developing countries for GSP treatment on the basis of arbitrary criteria, thus introducing the element of differentiation among these countries. Trinidad and Tobago had stressed, in other international fora, the inappropriateness of per capita GNP as the sole criterion for determining a country's level of development. The use of such a criterion in determining eligibility for GSP treatment was inconsistent with the objectives of the GSP, particularly in regard to its generalized non-discriminatory and non-reciprocal character. Her delegation hoped that the proposed change would not be implemented.

The representative of Singapore said that when the Enabling Clause had been adopted in 1979, Singapore had placed reservations on paragraphs 3(c), 4, 5 and 7 in the belief that a developing country had the right to determine its own level of development.

The Council took note of the statements.

8. Brazil - Treatment of electronic data processing equipment (L/5775)

The representative of the United States, speaking under "Other Business", said that his Government had requested consultations under Article XXII with Brazil regarding the latter's informatics policy, relevant decrees and recently passed informatics law. A copy of the request had been circulated in L/5775. The purpose of the consultations was to discuss with Brazil how this policy and law might affect the operation of the General Agreement and to gather more information on the new law and its potential trade effects. The United States wanted to draw the attention of other interested contracting parties to the fact that the consultations were being requested pursuant to the 1958 procedures under Article XXII on questions affecting the interests of a number of contracting parties (BISD 7S/24).[1]

The representative of Brazil said that the US request had been transmitted to his authorities, who were considering whether there was a basis under the General Agreement to accept the request.

The Council took note of the statements.

9. Sweden - Import liberalization

The representative of Sweden, speaking under "Other Business", said that his Government had taken a further step to liberalize its import régime. With effect from 1 January 1985, quantitative import restrictions affecting some 35 product categories had been lifted with regard to imports from Czechoslovakia, Hungary, Poland and Romania. The exact details of this import liberalization measure would be notified shortly.

The Council took note of the statement.

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[1]The forty-five day period for any other contracting party to advise the Director-General, Brazil and the United States, would expire on 14 March 1985.

10. Canada - Measures affecting the sale of gold coins

The Chairman recalled that at its meeting on 6-8 and 20 November 1984 the Council had decided to establish a panel to examine South Africa's complaint concerning Canadian measures affecting the sale of gold coins. It had also authorized the Chairman to decide, in consultation with the parties concerned, on appropriate terms of reference and to designate the Panel's members.

He then announced that agreement had been reached on the following terms of reference:

> "To examine, in the light of relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by South Africa, that is, whether the action taken with effect from 11 May 1983 in respect of the levying of the retail sales tax on gold coins by the Province of Ontario accords with the provisions of Articles III and II of the General Agreement; whether Canada has carried out its obligations in terms of Article XXIV:12 of the General Agreement; whether any benefits accruing to South Africa under the General Agreement have been nullified or impaired; and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or giving the rulings provided for in paragraph 2 of Article XXIII".

It was his understanding that agreement on these terms of reference had been reached on the basis of the understanding that in its proceedings, the Panel would hear arguments as to whether the Ontario provincial retail sales tax measure on gold coins, referred to in the terms of reference, accorded with the provisions of Articles III and II of the General Agreement, and would provide its view thereon to the parties involved before proceeding to hear any additional arguments relating to the remaining elements outlined in the terms of reference.

He said that the two parties had also reached agreement on the composition of the Panel, but as one of the potential panelists had had difficulties in making himself available for this task, the composition could not yet be announced. He hoped to be able to circulate a document giving the names of the panelists shortly.

The representative of the European Communities said that the Community was also involved in a separate dispute with Canada which, although it had not yet reached the stage of a panel, was related to similar provisions of the General Agreement. The Community reserved its right to appear before the Panel should it come to deal with the question of the applicability of the General Agreement and the action by Canada in relation to Article XXIV:12.

The Council took note of the statements.

11. Dispute settlement procedures

The Chairman recalled that informal consultations had been held in November 1984 on three proposals concerning dispute settlement procedures. One of the proposals (L/5752), to establish a short roster of non-governmental panelists, had later been adopted by the CONTRACTING PARTIES at their fortieth Session. The other two proposals - one submitted by Canada (L/5720) and the other by Nicaragua (L/5731) - were to be considered further by the Council. He said that informal consultations on this matter, open to interested delegations, would be held on 11 February 1985.

The Council took note of this information.

12. Pension matters
- Statement by the Director-General

The Director-General recalled that in December 1984 the United Nations General Assembly had taken a number of decisions regarding the United Nations Joint Staff Pension Fund, in which the GATT was a participating organization. These decisions referred in particular to the introduction as from 1 January 1985 of a new scale of pensionable remuneration which affected the level of contributions paid into the Fund by a large number of GATT staff members, as well as the level of pensions paid out of the Fund. The decisions also envisaged a study of the legal questions raised by the new scale with respect to the protection of acquired rights, that is the "no loss aspect" for present staff. He said that the result of this study would be forwarded to the General Assembly later in 1985. Given the intricacies of these decisions, the heads of the institutions located in Geneva had decided to implement them in a coordinated way pending further examination, in particular by the Governing Body of the International Labour Organization.

The Council took note of the statement.