

GENERAL AGREEMENT ON TARIFFS AND TRADE

International Dairy Arrangement

COMMITTEE OF THE PROTOCOL REGARDING MILK FAT

Special Meeting

Report

1. In pursuance of Article VII:2(c) of the International Dairy Arrangement, the Committee of the Protocol Regarding Milk Fat held a special meeting on 23 and 24 October 1984 in order to examine a communication from the Permanent Delegation of the Commission of the European Communities which had been circulated as DPC/F/W/15. By that communication, the Commission had notified its intention to make the necessary arrangements to export certain quantities of butter from Community public stocks at a price which, because of the age of the product, would have to be lower than the minimum price currently in force.

2. The Committee had before it document DPC/F/W/15 together with the text of two regulations (Regulations (EEC) No. 2955/84 and No. 2956/84, dated 18 October 1984) furnished by the EEC delegation. Those two regulations had been published in the Official Journal of the European Communities on 23 October 1984 (L/279) and were to enter into force on 5 November 1984.

3. The representative of New Zealand referred to Article IV:6 of the Arrangement which provided that any participant which considered that its trade interests were being seriously threatened may request to convene a special meeting of the Committee on an urgent basis. He stated that in the view of his delegation New Zealand's interests were seriously threatened by the actions contemplated by the EEC and communicated to the secretariat on 16 October (DPC/F/W/15). Since the distribution of this communication a new development had taken place and two regulations had been promulgated in the Official Journal of the European Communities (L/279) of 23 October 1984, i.e. on the day of the present meeting. He noted that the entry into force of both regulations was 5 November 1984. His delegation had made certain calculations based on the information available in the regulations. The finding was that the EEC's f.o.b. benchmark prices for new and old butter were or were likely to be below the minimum export prices currently in force under the Arrangement. His delegation concluded that sales made under these regulations would be or would likely be in breach of the Arrangement. He recalled that under Article IV:6 of the Arrangement the Committee was to determine any measures which may be required to meet the situation. In the view of his delegation, the measure required was for the EEC to rescind the regulations promulgated on 23 October 1984. This would clear the way for discussions without the threat to the market or to the International Dairy Arrangement. In the event of that action, his delegation was ready to address with the EEC and other participants, alternate actions which would be consistent with the objectives, principles and provisions of the Arrangement to try and find a satisfactory solution

to the problems faced by the Committee. He stated that New Zealand rejected unilateral action in breach of the Arrangement and stood for collective action in defence of the Arrangement. His delegation would listen with the closest attention to the explanation by the EEC of its initiative and future intentions with respect to its responsibilities under the Arrangement.

4. The representative of the EEC said that the current special meeting of the Committee should allow the Arrangement's future to be considered with less gravity. His delegation wished to explain the content, scope and possible effects of the measures which the Commission of the European Communities had adopted under the authority conferred upon it by the Treaty. First of all, however, it was appropriate to place those measures in a general context. Since implementation of the common agricultural policy had commenced, the Commission and the Council of the European Communities had had to face problems of surpluses in certain production sectors. Because of technical progress in agriculture and also because of support mechanisms introduced under the common agricultural policy, EEC agricultural output had developed much more rapidly than consumption. The Commission had not awaited the current extent and gravity of the problem before making proposals to the Council with a view to remedying the situation. In 1973 it had made proposals to the Council which had resulted in a co-responsibility levy being adopted for the dairy sector in 1977. Nevertheless, the measures adopted had not met the hopes of the Commission and the Council. In 1983 further measures had been taken and guarantee thresholds had been adopted in the dairy sector. Since those measures had not proved sufficient, on 31 March 1984 the Community had introduced production quotas, inter alia. In the view of the EEC delegation, 1981 had marked a turning-point for the world dairy market, since in that year public and private butter stocks in the EEC had been no larger than United States stocks. In 1981 import demand for butter had begun to slacken and a new exporter had appeared on the market. EEC butter exports had declined in 1983 for the third consecutive year, reaching only 215,000 tons as against 248,000 tons in 1982, 288,000 tons in 1981 and 326,000 tons in 1980. EEC stocks had been increasing continually and on 1 July 1984 total butter - i.e. both public and private - had been at the level of 1,146,000 tons notwithstanding efforts to boost internal consumption and thus reduce stocks. Despite the stock situation, the EEC had continued to import fairly substantial quantities of butter. In the context of the preferential régime for butter imports from New Zealand, the United Kingdom had been authorized, subject to certain conditions, to import 83,000 tons in 1984, 81,000 tons in 1985 and 79,000 tons in 1986. In addition, the EEC had continued its food aid exports. As a result of earlier measures adopted by the EEC, in particular the introduction of a production quota system for milk, butter output had shown a noteworthy decline of 8 per cent between 1 April 1984 and a very recent date. Notwithstanding that positive development, in October 1984 public and private butter stocks had totalled some 1,250,000 tons, representing daily storage costs of approximately ECU 1 million for the Community. At earlier meetings of the Council and the Committee some delegations had suggested that the magnitude of EEC stocks could depress the international market. The EEC had consulted bilaterally with its trade partners to see how any such effect could be eased. In July 1984, it had taken various additional

measures to dispose of certain butter quantities to specific destinations, taking into account its obligations under the Arrangement, and those measures had been notified to the Committee (DPC/F/W/13). Those efforts undertaken in July 1984 had not proved successful, showing that, because of the existence of fresh butter, disposal of certain quantities of old butter involved certain difficulties that were likewise encountered by other exporters. On 16 October 1984, the Commission had announced a general action programme designed to reduce butter stocks. That programme included the sale of old butter for export to certain specified destinations as well as cut-price sales of butter ("Christmas butter") for direct consumption in the Community. His delegation had furnished the text of those regulations to the Committee in order to avoid any misinterpretation and dispel certain rumours. It would be useful to consider, first, the measures that the EEC had adopted by placing them in their overall context. The Committee could first consider the trade effects of the measures and then their impact in the light of EEC obligations under the Protocol.

5. The representative of the EEC recalled that the Commission had recently announced two series of measures, at internal and external level respectively. The measures at internal level consisted of a "Christmas butter" sales drive, involving a subsidy of ECU 160/100 kg. corresponding to half of the intervention price. Efforts had been undertaken to improve the "Christmas butter" arrangements in order to minimize the substitution effect. It was hoped that the measure would boost internal consumption substantially. With respect to measures at external level, only a small quantity - 4,500 tons - of intervention butter had been sold on special terms under Regulation (EEC) No. 2268/84 of 31 July 1984. Further measures had become necessary in order to reduce stocks. Regulation (EEC) No. 2955/84 of 18 October 1984 had, inter alia, amended Regulation (EEC) No. 2268/84, the most important amendment being that butter aged at least six months on the day of signature of the contract was to be sold at a price equivalent to the intervention price less ECU 34.5/100 kg., instead of ECU 33/100 kg. Taking into account various costs, in particular conversion to f.o.b., administrative and financial costs, and likewise operator's margin and the conversion rate of the United States dollar (US\$1 = ECU 1.35), net export prices for butter and butter oil should be in the vicinity of US\$1,254 and US\$1,576 per ton f.o.b. respectively, i.e. above the agreed minimum prices for each of those products under the Arrangement. The second regulation, i.e. Regulation (EEC) No. 2956/84, stipulated that an operator who had purchased at least 50,000 tons of butter in accordance with Regulation (EEC) No. 2268/84 as amended by Regulation (EEC) No. 2955/84 at a price above the minimum price, could submit a purchase application for a quantity not exceeding that amount of butter which had entered storage prior to 1 April 1983, provided that purchase application was accompanied by proof that he had concluded one or more contracts of sale for export of the entire quantity of butter to one of the destinations listed in the annex to the regulation. Butter and anhydrous milk fat sold under that regulation could be exported at prices well below the minimum prices currently in force under the arrangement. The Commission had tried to limit the number of operators and destinations. In fact, the latter would probably be only the USSR and possibly Iran. The

possibility had also been envisaged of processing butter into anhydrous milk fat with a view to developing the USSR market which had imported virtually none of the latter product since 1980-1981. Expansion of an important market such as that of the USSR would ultimately be beneficial to all exporters. His delegation did not believe that the operation as planned and as likely to develop in the course of 1985 could replace traditional exports to other markets very close to the Community such as North Africa, which had been excluded from the destinations listed in the annex to the regulation under reference. His delegation believed furthermore that over time the operation could contribute to restore a world market level of around 800,000 to 900,000 tons (butter and butter oil in terms of butter equivalent) i.e. the level reached in 1980. The objective of the operation was to avoid any disruption of the international market. In reply to a question, the EEC representative said that intervention butter bought in before 1 April 1983 and still in stock currently totalled some 255,300 tons. The "Christmas butter" operation would allow disposal within the Community of some 200,000 tons of butter, of which 180,000 to 190,000 tons from public and private stocks. In addition, with respect to export measures, some 100,000 tons of butter more than six months old could be exported in 1985 under Regulation (EEC) No. 2955/84. Exports of the oldest butter sold under Regulation (EEC) No. 2956/84 could total between 50,000 and 150,000 tons. The end result of the Community's programme of action could be a 50 per cent reduction of public stocks, i.e. to around 500,000 tons at the end of 1985 as against 1,047,000 tons held currently.

6. The representative of New Zealand noted that trade in butter had grown during the seventies and had decreased since 1981. The EEC was not the only participant which was suffering the consequences and which was experiencing an increase in its stocks. New Zealand, Australia and the United States had also similar problems with regard to their stocks. His delegation had attested in GATT meetings as well as bilaterally to its recognition of the political courage which had been demonstrated by the EEC in trying to resolve the surplus problem. However, the EEC was now with this programme seeking to extend the burden of its surpluses to its competitors in the international market and to those who were participants in the International Dairy Arrangement. The simple consequence of the first package of export actions introduced by the EEC in July 1984 had been a sharp reduction in the international prices with no increase in sales. In three months, international prices had declined by about US\$200 per ton. His country which was the most dependent on exports of dairy products had experienced, as an immediate consequence, a sharp reduction in the returns of producers. It was for that reason that his delegation was deeply concerned at the next scheme announced by the EEC. Referring to the explanations given by the representative of the EEC, he noted that access to the older butter would be available to operators who had conducted transactions involving the sale of 50,000 tons of new butter. According to the regulation, the purchase application by the operator for older butter should be accompanied by proof that he had concluded one or more contracts of sale for export to one of the destinations listed in the Annex of the regulation of the entire quantity of butter. In fact, the effect of this

practice would be to reduce the average international price for all butter. The decrease in prices might spread totally across the international market. This would bring the price of new butter down below US\$800 a ton. Such a development was of fundamental concern to all the members of the International Dairy Arrangement. The sales envisaged under the regulations constituted an infringement of the Arrangement because export prices would be substantially below the minimum prices currently in force. Such sales would have serious consequences in terms of returns of New Zealand producers and harm again an efficient supplier such as New Zealand.

7. The representative of Australia pointed out that the very operation of the system of intervention buying in the EEC had led to the production of surpluses. His delegation acknowledged that the EEC had attempted to take measures which would stop the build-up of stocks of butter. Referring to the statement by the EEC concerning bilateral discussions held by the EEC with its partners on the stock problem, he said that it was true that in the context of the discussions in the previous meetings within the framework of the International Dairy Arrangement and in other bilateral discussions, the stock problem had been raised. However, if the representative of the EEC was referring to these particular series of measures, his delegation wished to make the point that when his authorities had sought information on measures that might be introduced by the EEC in recent times, measures including sales of butter to certain markets at prices lower than the minimum price currently in force under the Arrangement, the response had been that these were just rumours by the trade. His delegation was now confronted with the situation where as stated by the representative of the EEC the regulations had been published to end this speculation. His delegation certainly took no comfort from the publication of these regulations and had no alternative but to view this programme as an infringement of the obligations involved in membership of the International Dairy Arrangement, a display of an unwillingness to consult meaningfully with trading partners on problems confronted by countries engaged in the trade in dairy products and in particular an unwillingness to consult with participants to the Arrangement which was established to try and bring order and stability to the international trade in dairy products. For many of the other points mentioned by the representative of the EEC, his delegation shared the views expressed by the representative of New Zealand. He concluded his statement by asking the representative of the EEC whether the EEC believed that the measures it intended to take were in conformity with the provisions of the International Dairy Arrangement.

8. The representative of the United States stated that, in the view of his delegation, the proposed action by the EEC was not consistent with the minimum price provisions of the Protocol. He pointed out that there was one minimum price for butter set out in the Protocol which did not contain special provisions as regards the sale of old butter. The sales of butter envisaged under the regulations of the EEC could be effected at a blended price in the neighbourhood of US\$800 or US\$850 per ton, a price which was well below the minimum price of US\$1,200 per ton currently in force under the Arrangement. In the view of his delegation, the sale of old butter

would have the same impact in the market as the sale of new butter. He asked the representative of the EEC to indicate how the proposed programme would fit with the provisions of the Protocol, in particular minimum price provisions. The purpose of the present meeting was to examine this question.

9. The representative of the EEC pointed out that some of the remarks made regarding the Community's programme of action seemed to have been based and justified on the initial plans but were no longer relevant having regard to the regulations just adopted. His delegation could assure the Community's trading partners, and in particular New Zealand, that there was no intention that the Community's partners should bear the consequences of its dairy policy. Since the negotiation of the first arrangement on skimmed milk powder in 1969, the Community had shown a spirit of co-operation in that regard and could not be said to have exported its internal problems. In 1981, a country with butter stock problems had found a purchaser at a price which, although above the minimum price, had been well below international prices ruling at that time. The EEC had tried to understand the situation then facing that country and, albeit with some misgivings, had indicated in a press release that such a sale was ultimately the lesser evil. Thereafter the EEC had realized that its misgivings had been without foundation and that because of the precautions taken that substantial sale had had no depressing effect on the market. His delegation could assure the Committee that with respect to the recent stock disposal programme the Commission had taken as many precautions as the two countries which in 1981 had concluded the butter sale just mentioned. The New Zealand representative had suggested that the measures adopted by the EEC in July had affected the international market. In the view of the EEC delegation the sale of 4,500 tons of butter under the July scheme had not been the factor affecting market prices. The objective of the current operation was to avoid any disruption of the international market and the EEC certainly had no intention of jeopardizing the Arrangement. With respect to the trade impact of the operation, sale of the oldest butter from stocks established prior to 1 April 1983 could not have the effects mentioned by some delegations because, as already underlined, the Commission intended that the butter should go only to one or two specified markets. Having regard to developments in the USSR market in recent years, the Commission believed that that market could be re-won after having been closed in particular because of increased production and competition from vegetable fats. Some questions had been raised as to the consistency of that operation with the provisions of the Protocol. In that connection the oldest butter that could be sold under regulation (EEC) 2956/84 was a very specific product which could, in fact, be purchased by only one or two countries. The Protocol Regarding Certain Milk Powders and the Protocol Regarding Certain Cheeses contained provisions allowing the disposal of denatured skimmed milk powder and buttermilk powder as well as old cheese at prices below the minimum prices fixed for each of those products. The Protocol Regarding Milk Fat, however, contained no corresponding provision, no doubt because at the time when the Arrangement was being negotiated the negotiators had not been far-seeing enough, or perhaps some of them had had no markets for old

butter. The existing machinery of the Protocol Regarding Milk Fat was, therefore, inadequate. The operation undertaken by the Commission should be seen from an economic angle. As to the legal aspect, when certain sales had been discussed within the framework of the Arrangement in 1983, no mention had been made of any infringement of its provisions. In the view of the EEC delegation, a similar attitude should be adopted in regard to the operation under consideration.

10. The representative of New Zealand said that the transaction effected in 1981 to which the representative of the EEC referred was made between the New Zealand Dairy Board and the United States and it had involved no breach in the minimum price. His delegation rejected any suggestion that there was a parallel between that transaction and the action contemplated now by the Commission. The representative of New Zealand recalled the statement made by his delegation at the meeting of the Committee on 25 September 1984, namely that the scheme announced in July 1984 had been unfortunate, in particular because of the psychological effect on the international market; the very announcement of the scheme had consolidated the weaknesses which had been apparent in the butter market and established it firmly at the lower level. His delegation was not claiming that the Community's action in July 1984 had been the only reason for the decrease in prices but it had certainly been the major factor. He noted that the EEC was arguing that the butter involved in the new programme was a special product because of its age. He noted in this context that the contract signed in 1981 between the New Zealand Dairy Board and the United States had covered butter up to forty months of age. Butter up to that age was still butter. He reiterated that the sales envisaged by the EEC would have an immediate and direct impact on the total international market of butter. Referring to the statement by the EEC concerning the introduction, at the time of the negotiation of the Arrangement, in the Protocol Regarding Certain Milk Powders and in the Protocol Regarding Certain Cheeses of certain provisions allowing certain sales, he noted that the Protocol Regarding Milk Fats contained specific provisions for anhydrous milk fat. The most appropriate way of disposing of butter which under certain adverse storage circumstances might require utilization in some other channel was to convert it into anhydrous milk fat. The arguments presented by the EEC concerning the new disposal programme were not convincing. Therefore, his delegation wished to emphasize that the transaction proposed would be a breach of the International Dairy Arrangement. He called again on the Commission to consider rescinding the regulations promulgated on 23 October 1984. He reiterated that this would clear the way for discussions and that his delegation was ready to address with the EEC and other participants, alternate actions consistent with the provisions of the Arrangement to try and find a satisfactory solution to the problem. He pointed out that the international market had certainly already reacted and was influenced by the Community's announcement. If the Commission proceeded with the proposed sales, the only conclusion to be drawn from the discussion was that the EEC would be in breach with the International Dairy Arrangement and the Committee should report that conclusion to the International Dairy Products Council.

11. The representative of the United States said that he could endorse the views expressed by the representative of New Zealand on the transaction effected in 1981 between the New Zealand Dairy Board and the Commodity Credit Corporation of the United States. He emphasized that his delegation could not accept the analysis made by the representative of the EEC on certain sales effected in 1983. The recollection of the delegation of the EEC and the recollection of his delegation on that matter were quite different. Turning to the purpose of the present meeting he stressed that the issue was the observance of the minimum price for butter. He reiterated that the Protocol provided for one minimum price for this product.

12. The representative of Australia said that his delegation could not accept the proposal made by the representative of the EEC in connection with the question of the compatibility of the measures adopted by the EEC with the minimum price currently in force. Moreover, in the view of his delegation there was no difference between old and new butter in terms of the International Dairy Arrangement. His delegation could support the call made by New Zealand on the Commission to consider withdrawing the regulations. In the event of this action, his delegation also was ready to examine a possible solution which would be acceptable to the members of the Arrangement. If this would not be the case, the Committee should have a clear agreement on the question of the compatibility of the Community's measures with the International Dairy Arrangement. He emphasized that, in the view of his delegation, the measures represented clearly a breach in the minimum prices of the Protocol Regarding Milk Fat.

13. The representative of Uruguay said that the EEC representative's explanations regarding the butter sale programme had given rise to keen concern which seemed justified. His delegation could see no reason for the EEC to sell butter at less than the minimum price currently in force and was all the more worried because the markets mentioned by the EEC were precisely those in which certain countries, after numerous efforts, had succeeded in selling butter in recent years. The EEC's desire to win back certain markets could for other exporters imply irremediable losses of those same markets. It would in fact be impossible for such exporters to sell on the markets in question, having regard to prices prevailing and to the undertakings they had given by signing the International Dairy Arrangement. Accordingly, his delegation could support the New Zealand proposal to inform the International Dairy Products Council of the situation thus created and the problems arising from it. In the view of his delegation, the measures adopted by the EEC were not consistent with the provisions of the Arrangement and should not be made effective.

14. The representative of Japan stated that his country, as a member of the International Dairy Arrangement and although being a net importer of dairy products, was concerned about the strict observance of the provisions of the Arrangement. With regard to the impact of the programme proposed by the EEC on the world market, his delegation sympathized with other delegations. In the view of his authorities, a careful examination of the compatibility of the programme proposed by the EEC with the provisions of the Arrangement was needed.

15. The spokesman of the Nordic countries said that the delegations of Finland, Norway and Sweden had taken note of the programme of the EEC to reduce stocks. The Nordic countries acknowledged the difficulties faced by the EEC in its efforts to reduce stocks. Taking into account that detailed information on this programme had just been furnished, it was too early to give a final analysis of the situation and possible implications of the measures decided upon. However, as a preliminary comment, the Nordic countries wished to state that sales at prices well below the minimum price for the purpose of reducing stocks did not correspond to the spirit of the International Dairy Arrangement and thus they should be avoided. Such sales would have a negative effect on the dairy products market and they would run contrary to the interests of all signatories of the Arrangement. The matter presently discussed raised concerns because of the question of its conformity with the Arrangement and because of its wider implications. Sales of this kind, effected at prices below the minimum price, contained the risk that they might lead to a decrease in the price level of the world butter market in general. The delegations of the Nordic countries recognized that in this particular case, the butter had been in stock for more than eighteen months and that this was a factor that might affect the price. However, this did not justify such a considerable difference with the minimum price. Finally, the delegations of the Nordic countries wished to emphasize the importance they attached to the strict observance of the International Dairy Arrangement and in particular to the minimum price provisions contained in that Arrangement.

16. Referring to remarks by some delegations regarding the butter transaction carried out between two participants in 1981, the representative of the EEC said that while that transaction had indeed been carried out at a price higher than the minimum price, it had nevertheless not been consistent with the provisions of other GATT instruments. In his delegation's view that transaction had been a lesser evil. He wondered whether it would be preferable for the EEC to maintain its existing stocks of butter - i.e. 1,250,000 tons - or to try to implement a set of measures covering on the one hand internal consumption and which, on the other, could enlarge the international market without adversely affecting it. If the EEC maintained its butter stocks, international prices would be affected because the very existence of such a substantial surplus had a depressive and corrosive impact on the international market. His delegation was not convinced by certain remarks by delegations according to which the Commission's measures would have a market impact. Having regard to the precautions taken to ensure rational disposal of certain quantities of butter from Community stocks, the measure under reference could only have a beneficial effect provided the Community's trading partners kept calm, for otherwise a nervous psychological reaction on their part could affect the market. In legal terms there was an infringement of the Arrangement. Nevertheless, there were circumstances which, even if not foreseen in the Arrangement, meant that the product in question, because of its age, was no longer quite the product corresponding to the minimum price set by the Arrangement. In the view of his delegation it was not reasonable for the future of the market to ask the Commission to reconsider its position. It was to be hoped that other delegations would reconsider their own position and ultimately arrive at the same conclusion as the Commission, namely that the measures adopted were a lesser evil.

17. The representative of Switzerland said that, like a number of other participants, Switzerland would obviously wish signed agreements to be respected. The EEC representative had proposed that the Committee first consider the trade effects of the measures and thereafter their impact in the light of the EEC's obligations under the Protocol, i.e. from the legal aspect. The latter point should also be examined in order to find a legal solution that could preclude any recurrence of such a situation in future.

18. The representative of the United States shared the concerns expressed by the representative of Switzerland. The Committee was now in a position where a different interpretation was given of the provisions of the Arrangement. The question discussed might affect the market situation of other dairy products covered by the Arrangement. If a satisfactory solution to the question discussed could not be reached in the Committee, a meeting of the Council should be called.

19. The representative of Hungary said that his delegation wished to make preliminary comments on the question discussed. Firstly, it seemed that the EEC intended to sell butter at prices lower than the minimum prices currently in force, that is to say, intended to violate one of the most important provisions of the Arrangement. Secondly, as noted by certain delegations, the relatively small reduction of the EEC stocks as a result of these sales would have a disastrous impact on prices. The third aspect i.e. the legal one was the most important for Hungary which was a small country with limited bargaining power. He emphasized that for smaller countries which had limited bargaining power the respect of contractual obligations was of utmost importance. His delegation would hardly be in a position to give its blessing to a violation of the provisions of the Arrangement.

20. On 24 October 1984, the representative of the EEC stated that he had reported the previous day's statements to his authorities who had asked him to inform the Committee that the Commission could not reconsider the decisions taken and that the regulations in question would take effect as from 5 November 1984. Recalling the quantities and characteristics of the product, the conditions in which it could be sold and the formal provisions of the Arrangement, the Commission recognized nevertheless that such a transaction was not within the framework of the Arrangement. The EEC authorities understood the concern expressed by some delegations and shared the view that the Arrangement must be preserved. The right existed for a participant to request a derogation if formal legal cover had to be found. Accordingly, his delegation was entitled to invoke that right and request a derogation under Article 7 of the Protocol Regarding Milk Fat. His delegation was prepared to discuss the conditions that could be attached to the grant of such a derogation. Under the Arrangement, each Committee was to reach its decisions by consensus, and a Committee was deemed to have decided on a matter submitted for its consideration if none of its members formally objected to the acceptance of a proposal.

21. The representative of New Zealand noted that the EEC had stated that it would not reconsider its decisions and that the EEC had requested a derogation. The only conclusion which could be drawn from those two remarks was that the EEC was asking for this Committee to give its blessing to what it intended to do in any case. The only opening which was offered to the Committee was a willingness to discuss on some conditions which might apply. Such conditions were already contained in the regulations and the EEC had stated that it was not prepared to reconsider its decision. In the view of his delegation, there was a fundamental incompatibility between those two positions. It was difficult for his delegation to consider the derogation request so long as the EEC regulations were not withdrawn or suspended. His delegation believed that in such circumstances, the Committee would have to reach the clear conclusion that the Community was in breach of the International Dairy Arrangement.

22. The representative of the United States said that it was now clear that a difference of views existed between the EEC and the other members of this Committee. In the view of his delegation, it did not seem possible for this Committee to resolve those differences. Because of the importance of this matter for the Arrangement and for the implications on the market situation of other dairy products covered by the Arrangement, it seemed to his delegation that the best possible approach was to report to the Council the results of these deliberations. He suggested that the Council should meet forthwith to receive the report from the Committee and allow a certain amount of time for reflection. It was certain that all participants wished to save the Arrangement, but clearly the Arrangement was in extreme difficulty.

23. The representative of Australia said that the answer given by the delegation of the EEC to the question of a possible reconsideration of the EEC regulations and the details contained in these regulations led his delegation to the inevitable conclusion that the derogation that the representative of the EEC foreshadowed would simply be a licence for the Community to violate the minimum price provisions of the Arrangement. Under these circumstances, his delegation was not prepared to consider the request for derogation presented by the EEC.

24. The representative of the EEC recalled that the Committee had before it a request for a derogation under Article 7 of the Protocol. Under that Article, the Committee must pronounce on the request within three months from the date of it. The Council could meet thereafter. Under Article VII:1(b) of the Arrangement, however, the Chairman could call a special meeting of the Council. If delegations considered that no solution had been reached in terms of Article VI:6 of the Arrangement, they could ask the Chairman of the Council to convene such a special meeting. Nevertheless the Council could not take the place of the Committee, and the latter had to pronounce on the request for a derogation.

25. The representative of the EEC referred to the New Zealand proposal that the Committee should find that the EEC was in breach of its obligations under the Arrangement. His delegation had so recognized and

had tried to explain the situation which had led the Committee to take certain decisions, and the safeguards surrounding the operation. The Community was not the only exporter of butter nor was the USSR the only importer. Such a finding by the Committee could serve as a pretext for other sales below the minimum price, inter alia to markets other than the USSR. His delegation was disappointed at the New Zealand proposal (which Australia had supported) for it ran counter to the objectives of the Arrangement.

26. The representative of Switzerland noted that the Committee could grant a derogation under Article 7 of the Protocol. In the view of his delegation it would seem preferable to try to examine the derogation request in the Committee before referring the matter to the Council.

27. The representatives of the United States, Uruguay, New Zealand and Australia stated that the matter should be brought before the Council in pursuance of Article IV:6 of the Arrangement.

28. The representative of Argentina said that the matter should be brought before the Council because such action would in no way prejudice the possibility of further discussion of the derogation request in the Committee. Delegations needed time for reflection. Taking into account the discussions in the Committee and the derogation request just presented, his delegation had no instructions for further discussion of the matter.

29. The representative of Japan said that after having received the EEC regulations his delegation also needed to seek instructions from his authorities. The International Dairy Arrangement was now facing a crisis. He emphasized that his delegation's concern was to keep order in international trade of dairy products and hoped that the parties would act in a flexible manner in order to resolve this problem.

30. The spokesman for the Nordic countries pointed out that the request for a derogation made by the EEC created a new situation. The delegations of the Nordic countries needed time to reflect on this matter and enter into informal consultations. Taking into account that the Committee was competent to grant a derogation under Article 7 of the Protocol, he suggested to postpone the meeting and then to continue the discussion within the Committee. If it appeared then that a satisfactory solution could not be reached within the Committee, the question could be taken up in the Council.

31. The representative of New Zealand said that the issue was of such significance that a discussion in the Council at an early date was appropriate and indeed essential. He emphasized that by this proposal, his delegation was neither seeking to jeopardize the pursuit of the solution to the problem nor to pre-empt further consideration in the Committee at some future time. In the view of his delegation, the international dairy market was now facing the most critical crisis it had ever faced. That was a matter for the Council and it could not be regarded as only a matter for this Committee.

32. The Committee agreed to request a meeting of the Council at which the following oral report would be presented:

"The Committee of the Protocol Regarding Milk Fat held a special meeting on 23 and 24 October 1984 in order to examine a communication from the Permanent Delegation of the Commission of the European Communities which had been circulated as DPC/F/W/15. By that communication, the Commission notified its intention to make the necessary arrangements to export certain quantities of butter from Community public stocks at a price which, because of the age of the product, would have to be lower than the minimum price currently in force. At the meeting, the EEC furnished detailed information on those sales and the destinations thereof. The Committee took note that two regulations (Regulations (EEC) No. 2955/84 and No. 2956/84, dated 18 October 1984) had been published in the Official Journal of the Communities on 23 October. Those regulations regarding special sales of butter were to enter into force on 5 November. The Committee found that some of the sales envisaged under those regulations were not consistent with the provisions of Article 3 of the Protocol. The Committee considered what action would be necessary to meet the situation. It had before it a request for a derogation made by the EEC under Article 7 of the Protocol. Some members of the Committee having refused the possibility of considering the derogation request so long as the EEC regulations remained in force, the Committee found itself in the situation described in Article IV:6 of the Arrangement where a satisfactory solution could not be reached. Accordingly, the Council was requested to meet immediately."