

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SR.38/1

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CONTRACTING PARTIES
Thirty-Eighth Session

SUMMARY RECORD OF THE FIRST MEETING

Held in the Geneva International Conference Centre,
on Monday, 22 November 1982, at 3 p.m.

Chairman: Mr. DONALD S. McPHAIL (Canada)

- Subjects discussed:
1. Adoption of the agenda
 2. Order of business
 3. Presentation of reports
 4. Report of the Council
 5. Other activities of GATT

Opening address by the Chairman

The CHAIRMAN, in opening the thirty-eighth session, said that all the contracting parties would be engaged during this session in the very important work of maintaining the credibility of the GATT system which had served them over the past three and a half decades. In shifting their focus from this long period to the events which had been taking place during the past few months, namely, preparing for the Ministers the text of a Declaration to which they would subscribe at this session, he said that no one could doubt the significance of what the contracting parties were trying to achieve. As a result of a massive amount of hard work on the part of all concerned, the Ministers would meet for several days later in the week to consider the text of such a Declaration. The fact that this text was not already finalized was mainly a reflection of the near impossibility of the task which had faced delegations twelve months earlier. To bring this text to final completion was what the Ministers would be doing while in Geneva.

He said that before reaching that point the CONTRACTING PARTIES would have to deal with a large amount of business, which included consideration of the report of the Council as well as the report of the Committee on Trade and Development and of the other bodies which reported directly to the CONTRACTING PARTIES.

1. Adoption of agenda

The CHAIRMAN said that the Provisional Agenda was contained in document L/5375.

The Agenda was adopted (L/5422).

2. Order of business

The CHAIRMAN drew attention to the Proposed Order of Business circulated in document W.38/1. He said that introductory statements would be made by the Chairman of the Council and by the Chairman of the Committee on Trade and Development, in presenting the respective reports to the CONTRACTING PARTIES.

He also drew attention to the reports of the Committees charged with the implementation of the MTN Agreements.

The CONTRACTING PARTIES approved the Order of Business as proposed in document W.38/1.

3. Presentation of Reports

Mr. DAS (India) introduced the report of the Council (L/5414 and Add.1 and the corrigenda thereto). He said that the Council had been extremely busy over the past twelve months. Dealing first with what he described as the "normal" work of the Council, as compared to the special activity related to the preparations for the Ministerial Meeting, he said that certain rather complicated matters had been brought before the Council. Some of these had presented new types of issues and had given rise to extensive debates. Some of these problems had not been easy to solve; and it could be seen from the report that the efforts of delegations and of the Council had not been totally successful. However, he felt that the fact that governments brought their trade disputes to the Council was an indication of their confidence in the GATT as an institution and in the General Agreement as a set of rules which could provide positive benefits on a wide, multilateral basis when properly applied. For that compliance to be sustained, however, it was also necessary that the rules were seen to be applied for the benefit of all and that there was a readiness on the part of individual contracting parties to be guided by the multilateral process of discussion and consultation that had taken place with respect to their commitments under the rules. He said that it was better for governments to bring their problems to the Council than to attempt to settle them outside the GATT framework.

Turning to the other phase of the Council's work during the past year, which was the major preoccupation of the governments and of the delegations, he said that the preparations for the Ministerial meeting had taken many months of hard work and endeavour. Twelve months earlier the Council had been entrusted by the CONTRACTING PARTIES with the overall responsibility for the preparations of the Ministerial Meeting. To that effect in December 1981, the Council had established a Preparatory Committee to assist it in this task. He said that the Preparatory Committee had held many meetings in an effort to grapple with the manifold problems inherent in such a gathering. Working on the basis of the text proposed by the Preparatory Committee, the Council thereafter proceeded with this work and had prepared a text which it agreed to forward to the CONTRACTING PARTIES for further consideration,

together with a record of the views expressed in its discussion of 16 November 1982 (L/5414/Add.1). He also drew attention to communications which he had recently received from the delegations of the European Communities and Australia containing suggestions for amendments to the text (C/W/404 and C/W/405). He also mentioned two communications addressed to the Director-General (W.38/2 and Add.1) which set out the position of the Economic Ministers of ASEAN. He said that on 16 November 1982, when the Council had examined the text of the proposed Ministerial Declaration, specific mention had been made of discussions that were continuing on one point in paragraph 7 of the Declaration and on a number of items, viz., Dispute Settlement Procedures, Subsidies, Fisheries, Services, Trade-Related Performance Requirements and Trade in High Technology. Consultations on these items had continued in the interval and he reported that a measure of agreement had been reached on two items: Fisheries and High Technology. The texts on these two items, which he put before the CONTRACTING PARTIES on his own responsibility, were contained in document L/5414/Add.2.

Mr. JARAMILLO (Colombia), Chairman of the Committee on Trade and Development, presented the report of the Committee (L/5401).

He said that the Committee's activities during the year had covered three main areas of work: first, the Programme of Consultations on Trade Liberalization held in March 1982 and the follow-up to those consultations; secondly, the Committee's contributions to the preparations for the Ministerial part of this session of the CONTRACTING PARTIES; and lastly, the Committee's other responsibilities under its mandate and the 1979 GATT work programme (BISD, 26S/219).

In accordance with the Committee's decision at its November 1981 meeting, an intensive series of plurilateral consultations on trade liberalization in areas of tropical products and quantitative restrictions, organized mainly on a product group basis, had been held during most of March. At its meeting in April, the Committee had reviewed the progress made in these consultations and had considered how work in these areas could be carried forward. It had agreed that the Ministerial session of the CONTRACTING PARTIES presented an opportunity for the consideration of specific measures of trade liberalization and of appropriate modalities for carrying forward the unfinished process of liberalization. At its meeting in July, the Committee had continued its preparatory work in this connexion with a view to facilitating decisions by Ministers, having before it specific proposals by developing countries for action on tropical products and quantitative restrictions, and also on tariff escalation. This work had been subsequently carried forward in the context of the preparations for the Ministerial part of this session. The document which was being presented to the Ministers envisaged a process of consultation and appropriate negotiations on the basis of the work programme pursued in the Committee on Trade and Development.

He said that in regard to the Committee's contribution to the preparations for the Ministerial meeting on other matters of concern to it, at its April meeting there had been a first exchange of views on the

question of the strengthening of the GATT framework for trade co-operation between developed and developing countries and also on such matters as the secretariat's technical assistance and training activities. At its meeting in July, the Committee had considered specific proposals by some developing countries in relation to Part IV of the General Agreement, the Enabling Clause¹ and the Generalized System of Preferences. The Committee also had considered the work of the Sub-Committee on Trade of Least-Developed Countries, which had met in June, including the suggestions for decisions by the CONTRACTING PARTIES in regard to the trade of the least-developed countries. The reviews by the Committee of actions by governments in terms of Part IV and the Enabling Clause had contributed to the formulation of proposals relating to examination of ways and means for securing more effective implementation of provisions in this regard and now awaited consideration and adoption by the CONTRACTING PARTIES. In connexion with the implementation of Part IV, he also mentioned the work of the Sub-Committee on Protective Measures, which had met in September to carry forward its task of examining protective measures affecting the trade of developing countries. There had been a general view in the Committee on Trade and Development at its October meeting that more detailed attention should be given to improving the operation of the Sub-Committee and that further consultations should be held for this purpose.

In connexion with the expansion of trade among developing countries, the Committee had taken note of the ninth Annual Report of the Committee of Participating Countries on the operation of the Protocol Relating to Trade Negotiations Among Developing Countries (L/S367 and Adds 1-4).

He said that in the course of its discussions, the Committee had kept under review developments in international trade affecting the trade and payments position of developing countries on the basis of notes prepared by the secretariat, which had helped the Committee to focus its attention, against the background of a general global stagnation, on the particularly severe deterioration in the trade and economic situation of many developing countries and on the importance of an improved trading environment for their trade and development prospects.

The CHAIRMAN then drew attention to the following reports relating to the Agreements and Arrangements resulting from the Multilateral Trade Negotiations:

Committee on Technical Barriers to Trade	(L/5407)
Committee on Government Procurement	(L/5388)
Committee on Subsidies and Countervailing Measures	(L/5402)
International Meat Council	(L/5397)
International Dairy Products Council	(L/5408)

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

Committee on Customs Valuation	(L/5412)
Committee on Import Licensing	(L/5411)
Committee on Trade in Civil Aircraft	(L/5376)
Committee on Anti-Dumping Practices	(L/5405)

He said that these reports summarized the extensive and intensive work conducted by the Committees and Councils established under the MTN Agreements and Arrangements. A more complete account of their activities was contained in the Minutes of their meetings and in the documentation cited in these reports and in the Minutes. He stated that these documents, including Minutes of the meetings, had been circulated to observers as well as to members of these Committees and were available to any interested contracting party. He said that the reports, as amplified by the Minutes of the meetings and related documentations, were intended to give a reasonably clear picture of the activities of all of these groups.

Mr. JARAMILLO (Colombia) said that he had taken note that the reports of the Committees and Councils established under the MTN Agreements and Arrangements were submitted for the consideration of the CONTRACTING PARTIES. He repeated his statement made at the thirty-seventh session that he regretted the absence of more complete reports. Referring to the unity of the GATT system, he felt that if these reports were adopted in their present state then the GATT would be following two different roads, one of the General Agreement itself and another of the MTN instruments.

4. Report of the Council (L/5414, and Corr.1; L/5414/Add.1 and Corrs. 1 and 2; L/5414/Add.2)¹

The CHAIRMAN referred to the report of the Council of Representatives on its work since the thirty-seventh session of the CONTRACTING PARTIES.

He invited comments from delegations, which would be reflected in the Summary Record of the meeting. The following statements were made in connection with the items dealt with in the report.

Point 2 - Notification, Consultation, Dispute Settlement and Surveillance

Mr. LUYTEN (European Communities) referred to the obligations arising from the Understanding on Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) and recalled that during the negotiations which had led to that text his delegation had expressed scepticism as to the willingness of all contracting parties to follow such an obligation to a full degree. He said that the EEC had made an effort in this respect. However, he noted that three years after the conclusion of the Tokyo Round more than three fourths of the contracting parties had never provided any information whatsoever. He could not believe that these contracting parties had not taken any measure that should have been notified, and urged them to make an effort in respect of the required notifications.

¹L/5414/Add.1/Corr.2: French and Spanish only.

Point 3 - Consultative Group of Eighteen

The CONTRACTING PARTIES adopted this point in the report of the Council on the understanding that approval of the future composition of the Consultative Group would remain open until later in the session.

Point 9 - France - Import of video tape recorders

Mr. YAYASEKERA (Sri Lanka) expressed concern at the requirement of the French authorities that import documentation and markings as well as packaging and labelling be only in the French language.

Mr. LUYTEN (European Communities) said that this matter had been considered by his authorities on several occasions. As to the linguistic requirement, he proposed that all contracting parties examine their own legislation and obligations before questioning the practices of others.

Point 13 - Trade restrictions affecting Argentina applied for non-economic reasons

The CONTRACTING PARTIES agreed to revert to this point in the report of the Council at their meeting the following day.

Point 15 - Recourse to Articles XXII and XXIII

15(b)(i) - Imports of citrus fruit and products

Mr. HARRAN (Israel) stated that the text on page 32 of document L/5414 should also specify that the CONTRACTING PARTIES had approved the report of the Working Party which had examined the Agreement between Israel and the EEC. This approval had been given without any recommendations by the CONTRACTING PARTIES as provided under Article XXIV. Therefore, in the view of Israel, the Agreement had been accepted, recognized and approved by the CONTRACTING PARTIES, regardless of the fact that certain contracting parties had reserved their rights on the matter. He considered that it was inappropriate to try to re-open the debate on the legality of the Agreement.

Mr. SMITH (United States) stated that his delegation associated itself with the position expressed by Canada, which was reflected on page 32 of document L/5414. The United States considered that the preferential arrangements entered into by the EEC had been neither approved nor disapproved by the CONTRACTING PARTIES. He objected to the opinion that the arrangements had been accepted in toto by the CONTRACTING PARTIES.

Mr. MacNEIL (Canada) noted that his delegation stood by its statement as recorded in L/5414.

Mr. LUYTEN (European Communities) pointed out that the CONTRACTING PARTIES had made no recommendations regarding the agreements in question as provided for under Article XXIV. His delegation drew certain conclusions from this fact, but he did not wish to enter into the details of the matter at the present meeting.

Mr. BLANKART (Switzerland) stated that the first sentence on page 33 of document L/5414 should be amended to read: "The representative of Switzerland wondered whether a panel should look into the treatment given to a specific tariff heading under a liberalization agreement already examined in GATT".

15(d)(iv) - United States - Copyright legislation, manufacturing clause

Mr. LUYTEN (European Communities) disagreed with the statement of the representative of the United States reproduced at page 46 of document L/5414, that "any trade effects resulting from this legislation were slight and temporary". The temporary aspect was questioned by the EEC and could be examined very soon. Nor did the EEC share the view that the trade effects of the legislation were slight.

Point 17 - Working Party - Sugar

Mr. O'HANLON (Australia) referred to points 15(b) and 17 and stated that the report did not make it clear that the Working Party - Sugar had been established by the Council, acting pursuant to the adoption of two panel reports concerning export refunds applied to sugar by the European Communities. He would have preferred the report to have been more detailed on this point. The Community sugar régime was continuing to cause great concern to his authorities. He stressed that recent Article XXIII:1 consultations between the European Economic Community and a number of sugar exporting countries had not as yet yielded satisfying results. As a consequence, the complaining contracting parties had reserved their rights under the General Agreement.

Mr. LUYTEN (European Communities) said that the Community had taken unilaterally significant steps to help to remedy the difficult situation in the world sugar market, e.g. Community sugar plantings had been reduced by 8 per cent in 1982/83, and a further reduction of 10 per cent was expected for 1983/84. He hoped that this orientating would provide inspiration for similar action by others.

Mr. MACIEL (Brazil) shared the concerns expressed by Australia and drew attention to the fact that the report of the Council dealt with three cases concerning sugar. He mentioned that consultations under Article XXII:1 between Brazil and the United States had not yet produced a satisfactory result (item 15(d)(v)).

Point 19(b) - Pakistan - Renegotiation of Schedule

The CHAIRMAN drew attention to the recommendation of the Council that the draft decision reproduced in Annex I of the Report of the Council be adopted by the CONTRACTING PARTIES by a vote.

Mr. BAJWA (Pakistan) recalled that Pakistan's Schedule of Concessions had been negotiated in 1955. In 1977 Pakistan had to deviate from rates of bound duties in respect of several items; and the CONTRACTING PARTIES had suspended the application of the provisions of Article II of the General Agreement to the extent necessary to enable

the Government of Pakistan to maintain in force the rates of duties provided in its revised custom tariffs, subject to the condition that negotiations or consultations would be conducted in conformity with Article XXVIII:1-3. Pakistan had been engaged in preliminary consultations, and following the extension at the thirty-seventh session, consultations had taken place on the basis of proposals forwarded to interested contracting parties. Since these consultations could not be completed, it would be necessary to extend the time limit up to 31 December 1983. He expressed the hope of his government to pursue the consultations more vigorously.

The decision (L/5419) was adopted by seventy-one votes in favour and none against.

Point 19(c) - Uruguay - Import surcharges

The CHAIRMAN drew attention to the recommendation of the Council that the draft decision reproduced in Annex II of the report of the Council be adopted by the CONTRACTING PARTIES by a vote.

The decision (L/5420) was adopted by seventy-three votes in favour and none against.

Point 21(a) - Accession of Thailand

On behalf of the CONTRACTING PARTIES, the CHAIRMAN welcomed the Government of Thailand on the occasion of its accession to the General Agreement, which had become effective on 20 November 1982.

Point 21(b) - Provisional Accession of Tunisia

The CHAIRMAN drew attention to the recommendation of the Council that the draft decision in Annex III of the report be adopted by the CONTRACTING PARTIES.

The CONTRACTING PARTIES adopted the Decision (L/5421).

Point 22 - Switzerland - Review under paragraph 4 of the Protocol of Accession

Mr. BLANKART (Switzerland) referred to the words "negotiated exemption" in the last line of paragraph 4 at page 66 of the English text of document L/5414. This was correct; but the French translation for these words "dérogation négociée" was incorrect, and should be changed to "exemption négociée" in order to bring it into line with the English text.

Point 23 - Poland - Suspension of most-favoured-nation treatment by the United States

The CHAIRMAN said that this matter had been raised by Poland at the meeting of the Council on 2 November 1982, at which time Poland had submitted a draft decision contained in document C/W/401 for consideration by the Council. He said that at the request of the

delegation of Hungary, the last three sentences of the final paragraph on page 69 should read: "... under the General Agreement. He expressed serious concerns about the impact of the U.S. action on the GATT system, taking into account that it had touched upon the fundamental principle of the GATT, the most-favoured-nation treatment. He warned that politically motivated trade actions which recently had become frequent, could simply destroy the multilateral GATT system. His delegation supported the draft decision submitted by Poland in document C/W/401".

Mr. SOSNOWSKI (Poland) said that Poland regarded the case of the U.S. suspension of MFN treatment to Poland as an issue of universal character since it concerned the violation of the fundamental laws on which GATT was established. He pointed out that the US action had been taken in response to a legislative decision of the Polish Parliament taken with regard to a domestic matter, which in no way affected the commercial, economic, political or security interests of any country. The U.S. action was purely political, and no appearances of GATT legality hastily elaborated by the United States could conceal this fact. Poland rejected the attempt to justify the action by making reference to Poland's obligations under Schedule LXV. The problem of Poland's import commitment was a complex issue. Poland had repeatedly expressed its interest in solving this problem by undertaking, since 1978 many efforts to clarify it, together with other contracting parties, in the light of Poland's economic situation and in full conformity with the provisions of the General Agreement. These efforts had met with understanding; none of Poland's trading partners, including the United States, had reverted in this context to paragraph 7 of Poland's Protocol of Accession to GATT. Moreover, Poland could not accept the claim by the United States that bilateral consultations had taken place before the U.S. action. No such consultations in the meaning of the General Agreement had taken place, though Poland had expressed readiness, in accordance with the GATT rules, for such bilateral contacts. He said that Poland regarded the U.S. action as an unprecedented violation of the fundamental rules of the General Agreement, and drew attention to its dangerous implications as it affected the credibility of the GATT system and jeopardized the legal basis of the GATT. He believed that the use of such measures of political pressure constituted a danger to the whole system of international trade and might one day affect the interests of any member of the trading community. Poland would follow the Council's decision to revert to this matter at the next regular meeting of the Council. He expressed the hope that this problem would be solved in accordance with GATT laws and appropriate procedures.

Mr. SMITH (United States) said that his delegation's views were adequately reflected in the Council's report to the CONTRACTING PARTIES, and that he would therefore not repeat them. However, he wished to emphasize that the United States had not violated any obligation, but had taken action according to its rights under paragraph 7 of the Protocol of Accession of Poland. Poland's commitment was not complex, and since 1978 Poland had unquestionably failed to meet the obligations in its GATT Schedule. There was also no question as to the United States legal rights in these circumstances under the provisions of the Protocol of Accession. The United States was prepared, if others so wished, to revert to this matter in Council.

The CHAIRMAN said that this matter would be considered further by the Council.

Point 24(a) - Consultations on trade - Hungary

The CHAIRMAN said that the delegation of Hungary had requested that at page 72 of document L/5414, the last line of the second paragraph be amended to read as follows: "... measures by the EEC. He enquired about the legal basis of these actions".

Point 26 - Liquidation of strategic stocks

Mrs. ARCINIEGA (Peru) said that on 6 January 1982 the delegations of Peru and the United States had begun consultations within the framework of Article XXII for programmes for liquidating strategic stocks of United States silver. Since the U.S. Government had suspended the above mentioned sales the two delegations had decided to recess their consultations until such time when the U.S. Government had decided on a policy to be followed in this regard. Similarly, both delegations had agreed to begin their consultations again in the event the United States recommenced the liquidation of its stocks of silver.

Point 32 - Administrative and financial questions - Committee on Budget, Finance and Administration

The CONTRACTING PARTIES adopted the report of the Committee on Budget, Finance and Administration (L/5380), including the recommendations contained therein and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1983 and the ways and means to meet that expenditure.

The CONTRACTING PARTIES adopted the report of the Council in document L/5414 and Corr.1, with the exception of sub-point 1(a) and point 13, and took note of the statements.

5. Other Activities of GATT

The CHAIRMAN said that under this item of the Agenda, contracting parties would have the opportunity to consider any other reports presented to them directly and to take action on any matters not dealt with under other agenda items. The basic documents were the reports of the Committee on Trade and Development (L/5401) and the reports relating to the Agreements and Arrangements resulting from the Multilateral Trade Negotiations.

¹ Committee on Technical Barriers to Trade (L/5407), Committee on Government Procurement (L/5388), Committee on Subsidies and Countervailing Measures (L/5402), International Meat Council (L/5397), International Dairy Products Council (L/5408), Committee on Customs Valuation (L/5412), Committee on Import Licensing (L/5411), Committee on Trade in Civil Aircraft (L/5376), and Committee on Anti-Dumping Practices (L/5405).

Mr. JAYASEKERA (Sri Lanka) recalled that at the last two sessions of the CONTRACTING PARTIES his delegation had raised a point in respect of the Decision of November 1979 by which the CONTRACTING PARTIES had placed the Tokyo Round results into the GATT system when it was decided to "oversee the operation of the system as a whole" (BISD 26S/201). This meant that existing GATT rights and benefits of contracting parties not parties to the MTN Agreements, including those derived from Article I, were not affected by these Agreements. However, in practice the non-signatory contracting parties, which excluded the bulk of the developing countries, had been excluded from this post-MTN system. He said that a number of developing countries felt that they did not derive benefits commensurate with the obligations and responsibilities of membership of the various Agreements. The question remained unanswered as to the exact rights of these non-signatory contracting parties. His delegation did not want to see a two-tier GATT membership, and called for consistency and coherence of the GATT system in this respect.

The meeting adjourned at 5.30 p.m.