

GENERAL AGREEMENT ON  
TARIFFS AND TRADE

RESTRICTED

C/M/87  
13 June 1973  
Limited Distribution

COUNCIL  
29 May 1973

MINUTES OF MEETING

Held in the Palais des Nations, Geneva,  
on 29 May 1973

Chairman: Mr. H. Kitahara (Japan)

	<u>Page</u>
<u>Subjects discussed:</u> 1. Turkey - Stamp Duty	1
2. United States Tax Legislation (DISC)	3
- Recourse to Article XXIII:2 by the European Communities	3
3. Income Tax Practices	6
(a) maintained by France	6
(b) maintained by Belgium	6
(c) maintained by the Netherlands	6
- Recourse to Article XXIII:2 by the United States	6
4. Anglo-Irish Free Trade Area	7
5. New Zealand-Australia Free Trade Area	7
6. Free Trade Agreement between the European Communities and Norway	9
7. Consultation with Poland	10
- Establishment of Working Party	10
8. New Zealand Import Restrictions	12
- Disinvocation of Article XII	12

1. Turkey - Stamp Duty (BOP/R/65)

The Chairman recalled that in the context of paragraph 12(b) Article XVIII consultations with Turkey the Committee on Balance-of-Payments Restrictions had also examined the question of the Turkish Stamp Duty.

Mr. Dunkel, Chairman of the Committee, in presenting the report of the Committee on Balance-of-Payments Restrictions, recalled that on 25 October 1972, the Council examined a request for a temporary extension of the Turkish Stamp Duty Waiver and on 30 January 1973 the Stamp Duty Waiver was extended until 31 May 1973. In that Decision the CONTRACTING PARTIES expressed the desirability of having the request for a further extension examined by the Committee on Balance of Payments in the context of the 1973 consultation with Turkey. This took place on 1 and 2 May 1973.

Mr. Dunkel pointed out that the Committee had welcomed the continuous improvement over the past three years in the Turkish balance-of-payments situation, the strength of the basic balance, the comfortable level of reserves at the end of 1972, and the generally good prospects for the future. With regard to the Stamp Duty, the Committee had noted that its purpose was primarily to raise revenue destined to finance the Development Plan. While it was not considered necessary to protect the Turkish balance-of-payments situation or its level of reserves, the Committee was sympathetic to explanations that time was needed to undertake the necessary fiscal reforms which would lead to the elimination of the Stamp Duty. He drew the Council's attention in particular to the Committee's recommendation to the CONTRACTING PARTIES to grant a waiver until 30 June 1975 for the application of the Stamp Duty by Turkey.

The representative of Pakistan commended the fact that the Turkish authorities had reduced tariffs and granted exemptions under its law. The representative of Turkey had made a strong case for the continuation of the Stamp Duty since the primary purpose of the Stamp Duty was to raise revenue for financing the Third Five Year Development Plan. The total revenue yield from Stamp Duty during the Third Plan was estimated at LT 12,000 million. If the Turkish authorities were to give up this revenue, they would have to resort to deficit financing because there were no other resources in Turkey that could be taxed to raise the required revenue. According to the representative of Turkey, the Stamp Duty had no restrictive effect on Turkish imports. He pointed out that the Committee had recommended a waiver up to 30 June 1975 whereas the Turkish authorities had requested a waiver until the end of the Third Five Year Plan i.e. till 31 December 1977. To enable the Turkish authorities to carry through their development efforts as planned, contracting parties should not have denied them a sure basis of financing for the Plan period. His delegation would, therefore, have wished that the waiver be granted until 31 December 1977, as requested by Turkey, and not till 30 June 1975 as recommended by the Committee.

The representative of Romania supported the statement made by Pakistan.

The representatives of the United States and Japan endorsed the Committee's recommendations.

The Council approved the text of the draft decision proposed by the Committee and recommended its adoption by the CONTRACTING PARTIES.

The draft decision was submitted to a vote by postal ballot. The Chairman invited representatives having authority to vote on behalf of their governments to do so. Ballot papers would be sent by mail to those contracting parties not represented at the meeting.

The Council adopted the Report.

2. United States Tax Legislation (DISC)

- Recourse to Article XXIII:2 by the European Communities (L/3851)

The Chairman referred to the communication from the European Communities contained in document L/3851 of 1 May 1973 regarding United States Tax Legislation for Domestic International Sales Corporations. This matter was presented to the Council in accordance with paragraph 2 of Article XXIII.

The representative of the European Communities stated that the American legislation in question was introduced in spite of a number of representations made by other countries. The legislation consisted, in the view of the European Communities, of an exemption of direct taxes in favour of export products granting a substantial financial advantage to the exports of American companies. These measures reduced the prices of export goods without affecting profits. It appeared that already 3,000 corporations of this kind had been set up. The European Communities were, therefore, of the opinion that this legislation resulted in a distortion of international competition. This was inconsistent with the General Agreement and in particular with Article XVI and the declaration of November 1960 giving effect to Article XVI, which had been signed by the Government of the United States.

He pointed out that the Communities had entered into consultations with the United States Government in February 1972 on the basis of paragraph 1 of Article XXIII. These consultations had not led to any results. The Communities, therefore, asked the Council to set up a panel of experts to examine this matter.

The representative of Canada said that his Government had been concerned from the beginning about the implications of these measures and had repeatedly urged that they be not implemented. The measures were in his delegation's view, inconsistent with the United States obligations under GATT. He was in favour of the setting up of a panel, which task should be limited to this issue. He expressed the desire to appear before any such panel in order to make a detailed representation about the case.

The representative of the United States said that in his statement he would also touch upon the substance of the questions referred to under the next item of the agenda.

He pointed out that in July 1972 the United States, in accordance with Article XXIII:1, consulted with the European Communities regarding the Domestic International Sales Corporation provisions which were enacted into law in December 1971. At the same time consultations took place with the Governments of Belgium, France and the Netherlands regarding their tax practices as related to exports. All four consultations failed to result in a satisfactory adjustment of the matter.

The United States was not opposed to dealing with these matters in the GATT in an appropriate manner. As Article XXIII:2 provided a useful mechanism for the consideration of disputes which arose between contracting parties to the General Agreement, his delegation was receptive to the invocation of Article XXIII:2, or comparable procedures. If the matter were referred to a panel of experts, however, he felt that the panel could not ignore the broader problems involved. It was reasonable to expect a panel to establish principles on which the United States could act - principles which would likewise apply to the tax practices of other nations. It would, for instance, not be sufficient if a panel were to find a particular tax practice in conflict with GATT obligations without an explanation or without a statement of the principles involved because, then, minor revisions in the statute in question would raise a whole new issue and require a whole new procedure.

A panel which considered such principles had to relate the DISC to practices of other countries. This was one of the reasons why the United States had specifically raised the issue of the tax practices of Belgium, France and the Netherlands. These practices, as well as those of many other nations, which had tax practices closely related to the DISC, would be relevant to the consideration of the matter. This was, in particular, relevant because of the importance for the interpretation of a treaty of subsequent practice. This principle had been expressed inter alia in Article 31 of the Vienna Convention on the Law of Treaties, which provided that "There shall be taken into account .... any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."

The United States felt, however, that as basic principles pertaining to the relationship of tax systems to export promotion were involved, the problems of these complaints would be better discussed in a rule-making context, such as a working party, in order to consider the general rules which should apply in these circumstances. The working party would be charged with the duty of recommending the type of international rules which contracting parties could adopt to govern their income tax practices with respect to export sales. This would give an opportunity to all interested contracting parties to express their views and participate in the formation of such rules, an opportunity that was not adequate in Article XXIII:2 proceedings among only four or five parties.

An appropriate context, for instance, for a more general examination was Working Group 1 of the Committee on Trade in Industrial Products, which had on its agenda the effect of certain income tax practices on exports. If this procedure was not considered adequate for this specialized task, other similar procedures might be considered: the appointment of a separate working party, or the establishment of the authority for a panel and, at the same time, appointment of a working party to recommend the type of international rules which contracting parties could adopt to govern their income tax practices with respect to export sales. While the working party was operating, the panel procedure, he suggested, should be suspended. This suspension had to be for a predetermined period of, perhaps, six months. After that period, a panel would be convened to consider the various complaints. This procedure had the advantage of giving others with similar practices which were not parties to the dispute on the agenda an opportunity to participate in discussions and to make their views known.

Turning to the DISC itself, the United States Government did not see how the DISC could be found inconsistent with obligations under the General Agreement as that agreement had been interpreted by a working party on subsidies in 1960 and had been applied in practice. To show that the DISC was inconsistent it would have to be shown that it constituted a subsidy on the export of non-primary products resulting in lower prices for export than for the domestic market. The DISC was only a limited deferral of tax on a portion of sales income on exports of a separate corporate entity. It was not an "exemption" from income taxes as that term was used in the 1960 working party report. Further, it had to be shown that the use of DISC resulted in export prices lower than those for the domestic market. The DISC was not designed to result in lower export prices and there had not been any evidence to demonstrate that the DISC had resulted in lower export prices. It also had to be shown under Article XXIII that the DISC impaired a benefit accruing under the General Agreement.

He pointed out that the French, Belgian and Dutch tax systems granted exemption from income taxes on a portion of sales income on exports while DISC granted only a deferral. The DISC provisions merely extended to United States exporters a type of tax treatment comparable to that which was available to exporters in Belgium, France and the Netherlands, and in many other countries. United States tax practices, including inter-company pricing rules, placed United States exporters at a competitive disadvantage as against some of their foreign competitors. DISC was designed to deal with these problems. A company exporting from the United States through a foreign branch would be fully and currently subject to United States income taxation. Likewise a United States exporter selling abroad through a sales subsidiary located in a low tax country was subject to current United States taxation. Dividends from such corporations were fully subject to tax when paid. The United States Government also strictly enforced its inter-company pricing rules, particularly as they applied to allocations of income between related entities, established in different countries, which had transactions with one another.

France, Belgium and the Netherlands, on the other hand, did not tax the profits of foreign subsidiaries, even those of sales subsidiaries located in low tax countries. The impact of failure to tax was greater in the case of France, Belgium and the Netherlands whose dividend distribution rules effectively eliminated from tax the repatriated profits of those subsidiaries. France generally did not tax profits of a branch, and the effect of the laws of Belgium and the Netherlands was to exempt all or a substantial portion of branch profits.

The measurement of deferral or exemption in any tax system depended greatly on the inter-company pricing rules which were applied. According to the DISC rule, 75 per cent of the profits on an export transaction were still subject to current tax by the United States. The remaining 25 per cent were to be taxed later. This rate was significantly higher than the rates of tax imposed on export income by most of the European Community countries.

Because of the wide impact of these practices, he repeated that these issues should be considered in a forum other than a limited panel procedure. The most appropriate course of action for the Council to take was therefore the establishment of a working party to examine and formulate recommendations on general rules pertaining to these tax practices.

The representative of Japan said that measures which were inconsistent with the provisions of the Declaration giving effect to Article XVI:4 among those nations having accepted it, should be abolished immediately. He felt that the DISC system was such a measure. Therefore, a detailed examination of this matter should take place, and his delegation was open minded as to whether it should be done by a panel of experts or a working party.

The representative of Switzerland pointed out that the United States suggestions contained several new elements on which his delegation could not take a position at the present meeting.

The representative of the Communities confirmed that the Communities preferred a procedure whereby a body of neutral experts be set up to examine the question.

The Chairman suggested that, because of the far-reaching implications of the United States proposals and the complexity of the matter, the item should be deferred to the next Council meeting in order to gain time for reflexion and further consideration.

The representative of the Communities accepted the suggestion.

The Council agreed to defer the matter to its next meeting.

3. Income Tax Practices

- (a) maintained by France
- (b) maintained by Belgium
- (c) maintained by the Netherlands

- Recourse to Article XXIII:2 by the United States (L/3860)

The Chairman referred to a communication received from the United States regarding certain Income Tax Practices maintained by France, Belgium and the Netherlands. The United States referred this matter to the Council in accordance with paragraph 2 of Article XXIII.

The representative of the United States stated that he had already made reference to these items in the discussion on item 2. In view of the outcome of that discussion, he did not want to pursue the matter at this stage and he asked that this item be carried over for consideration at the next Council meeting. If the question developed in such a manner that further discussion would not be necessary his delegation would withdraw the item in due course.

The representative of Belgium stressed that the item should be as presented in the Council's agenda divided into three different items.

The Council agreed to revert to the matters at its next meeting.

4. Anglo-Irish Free Trade Area (L/3849)

The Chairman said that, in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the Anglo-Irish Free Trade Area Agreement had submitted their fifth report on the developments of the Free Trade Area.

The representative of the United Kingdom noted that trade between the two countries had continued to expand as had trade with other countries. Both countries were now members of the European Economic Community. The Free Trade Area agreement was being subsumed by the terms of the Treaty of Accession, but it would continue to play an important part in Anglo-Irish trade until a full customs union with the EEC was reached in 1977.

The Council took note of the report.

5. New Zealand-Australia Free Trade Area (L/3854)

The Chairman recalled that, in accordance with the Calendar of Biennial Reports on developments under regional agreements, the parties to the New Zealand-Australia Free Trade Agreement had submitted their Fourth Report on developments under the Agreement. The Report covered action taken up to the end of 1972.

The representative of New Zealand said that Schedule A trade, together with other duty-free trade between the two countries, amounted to \$231.95 million or some 72 per cent of total trade in 1970/71. A comparable figure for 1971/72 was not yet available. During the period of 1965/66 to 1970/71 total trade had increased by 77 per cent and Schedule A trade by almost 76 per cent. Provisional figures for 1971/72 showed that in absolute terms total trade between the two countries had continued its rapid rate of growth to reach \$389.6 million, an increase of nearly 21 per cent over the figure for 1970/71. Of this total, \$112.2 million represented New Zealand exports to Australia and \$277.4 million Australia's exports to New Zealand. Goods included in the original Schedule A list which had duties in excess of 10 per cent would become free on 1 January 1974 unless, by mutual agreement, duties had already been eliminated by faster phase-out of duty. Additions to Schedule A had been made each year since the Agreement was signed and now totalled some 1,600 items in tariff terms. Both Governments had been keen to speed up nominations and additions to Schedule A in order to expand more quickly the free-trade coverage of the Agreement. Both Governments had recently placed emphasis on the more effective use of area resources and on the encouragement of industries to serve the total area market. It was expected that this approach would facilitate the further expansion of NAFTA trade coverage and the increased flow of two-way trade.

The representative of the United States referred to paragraph (c) of the conclusions of the New Zealand-Australia Free Trade Area report adopted by the CONTRACTING PARTIES on 5 April 1966. In this paragraph the two countries were invited to give serious consideration to the presentation of a sufficiently comprehensive plan and schedule for the transition to a Free Trade Area. His Government found it regrettable that after more than seven years no time-table had been set up to bring the arrangement into conformity with Article XXIV. The statistics showed that no de facto progress had been made as to the growth of the share of bilateral trade included in Schedule A of the Agreement in total trade. The Free Trade Area appeared, therefore, to be a preferential arrangement which undermined the most-favoured-nation clause. This conclusion was borne out by the heavy use made of the Agreement's Article under which the two Governments accorded to each other special preferential treatment which however, fell short of the inclusion of the goods concerned in Schedule A. This included discriminatory application of New Zealand's quantitative restrictions. He asked the two Governments to present at the next Council meeting or at some reasonably distant time in the near future a definite schedule for the transition of the Agreement to a bona fide free-trade area.

The representative of New Zealand said that New Zealand had Article XXIV in mind when it concluded in 1965 the Free Trade Agreement. While it was correct that Schedule A trade had grown to the same extent as total trade, in absolute terms Schedule A trade had grown by no less than 10 per cent each year. Real progress had been made in terms of the inclusion of further tariff lines. He pointed out that many of the products included in Schedule A, had still to show their full potential. If this were to happen the proportion of Schedule A trade in total trade would increase. There was now a Government inspired process for the addition of items to Schedule A. New Zealand and Australia supported whole-heartedly the objective that free-trade areas should not be ad hoc preferential arrangements which operated to the detriment of contracting parties. The New Zealand-Australia Free Trade Agreement held up well in line with this thought.

The representative of Australia associated himself with the remarks of the representative of New Zealand. There was a large area of trade, such as motor vehicles and components, which was not yet covered by Schedule A, which the two Governments had already declared to be a basic sector in the overall development of NAFTA. This trade had reached in 1971/72 the amount of \$27 million. There was, in addition, a further 20 per cent of free trade on items where the entry was free into either Australia or New Zealand. He finally emphasized that the Agreement had been accepted by the CONTRACTING PARTIES and that the figures had shown that the members of the Agreement had been living up to their obligations. He did not see any need for the CONTRACTING PARTIES to modify the approval they had given.

The representative of Canada proposed that the suggestion made by the United States and the comments by the parties concerned be considered again at a later Council meeting.

The Council took note of the report.

The Council decided that the item should be put on the agenda for the next Council meeting if any of the parties concerned so requested.

6. Free Trade Agreement between the European Communities and Norway

The Chairman recalled that at the last meeting the representative of Norway had informed the Council about the conclusion of a free-trade area agreement between the European Communities and Norway.

The representative of the European Communities stated that the Agreement, which was signed on 14 May 1973, was drawn up on the same basis as the other five Agreements with members of the European Free Trade Area. The Community was ready to co-operate in any type of procedure for examination which the Council would set up. Because of the great similarity of this examination to that of the other Association Agreements, he suggested that the examination of the Agreement with Norway should follow the same procedures which had been applied before. The formal notification of the Agreement would take place as soon as copies of the official text were available. Regarding the time-limit of the procedure, he tentatively proposed 15 July 1973 for the deposit of questions and 15 September 1973 for the answers to the questions.

The representative of Norway associated himself with the statement made by the representative of the Community. He mentioned that the Association Agreement signed on 14 May 1973 was unanimously approved by Parliament and that the dates of 15 July for the questions and 15 September for the replies were acceptable to his delegation.

The Council agreed to establish a working party to examine the agreements with Norway with the following terms of reference and membership:

Terms of Reference:

To examine, in the light of the relevant provisions of the General Agreement on Tariffs and Trade, the provisions of the agreements between, on the one hand, the European Economic Community, the member States of the European Coal and Steel Community, and the European Coal and Steel Community and, on the other hand, the Government of Norway, signed on 14 May 1973, and to report to the Council.

Membership:

Argentina	Greece	Portugal
Australia	Iceland	Romania
Austria	Israel	Spain
Brazil	Ivory Coast	Sweden
Canada	Japan	Switzerland
Egypt	Malta	Turkey
European Communities and their member States	Norway	United States
Finland	Poland	Yugoslavia

Chairman: Mr. Tomic (Yugoslavia)

The Chairman pointed out that, as for the other working parties, the membership would be open to all contracting parties which indicated their wish to participate.

The Council agreed to initiate the usual procedure under which contracting parties wishing to submit questions in writing relating to the provisions of the particular agreement would be invited to do so. The Council also agreed that the time-limit for the submission of questions to the secretariat be determined at 15 July 1973 and that the Communities and Norway would be requested to submit their replies to the questions by 15 September 1973.

7. Consultation with Poland

- Establishment of Working Party

The Chairman recalled that under the Protocol for the Accession of Poland, the Polish Government was required to consult annually with the CONTRACTING PARTIES with a view to reaching agreement on Polish targets for imports from the territories of the contracting parties as a whole, in the following year. The CONTRACTING PARTIES shall also review the measures taken by contracting parties for the progressive relaxation during the transitional period of restrictions maintained

against imports of Polish origin. Furthermore, the CONTRACTING PARTIES were required, in accordance with paragraph 3(c) of the Protocol, to consider the establishment of a date for the termination of the transitional period. This question had been examined during the third, fourth and fifth annual consultations and it was to be re-examined at the next consultation. He suggested that the Council should make arrangements for the conduct of the sixth annual consultation and that a working party be established for this purpose.

The Council established a working party with the following terms of reference and membership:

Terms of Reference:

To conduct on behalf of the CONTRACTING PARTIES, the sixth annual consultation with the Government of Poland provided for in the Protocol of Accession; to re-examine the question of the establishment of a date for the termination of the transitional period referred to in paragraph 3(a) of the Protocol; and to report to the Council.

Membership:

Argentina	European Communities	Nigeria
Australia	and their member States	Poland
Austria	Egypt	Romania
Brazil	Finland	Sweden
Canada	India	Switzerland
Cuba	Japan	United States
Czechoslovakia		

Chairman: Mr. Chadha (India)

The representative of Poland said that Poland had been a full member of the GATT for six years. During this period Poland had been fulfilling all obligations undertaken in the Protocol of Accession. It had fully implemented and even exceeded the commitment to increase imports from GATT countries. However, some countries still continued to apply discriminatory restrictions against imports from Poland. The time elapsed since Poland's accession was sufficient to enable countries maintaining such restrictions to find appropriate solutions for this problem in accordance with the General Agreement. However, three consecutive attempts had failed to determine the date for the termination of the transitional period and he strongly appealed to all contracting parties that such a date be fixed this year at the meeting of the Working Party.

One of the other main tasks of the Working Party would be, according to the Protocol, the examination and assessment of progress in the liberalization of imports from Poland. As experience of the previous reviews confirmed, it was indispensable that the Working Party had at its disposal proper documentation. To that end all countries concerned should follow the decision by the Council on 28 April 1970 in regard to the form of the notification. Especially in view of the enlargement of the EEC, he considered it of the utmost importance that this decision be observed so that the Working Party could work on the basis of clear and comparable documentation.

The representatives of Canada, Japan, Romania, Czechoslovakia, Australia, India and Yugoslavia supported the appeal made by the representative of Poland.

8. New Zealand Import Restrictions (L/3857)

- Disinvoation of Article XII

The representative of the United States referred to the disinvoation of Article XII notified in document L/3857. This disinvoation meant that New Zealand quantitative restrictions and its licensing system were now without a legal basis under the GATT. He noted that New Zealand has a strong balance-of-payments position combined with domestic inflation and the necessity for price surveillance. It therefore appeared an appropriate time for further substantial liberalizations of imports. He enquired what steps would be taken by the Government of New Zealand to eliminate the remaining quantitative restrictions and asked whether New Zealand would be prepared to submit a schedule for the elimination of those restrictions.

The representative of New Zealand stated that his Government fully accepted that in the light of the country's balance-of-payments situation and reserve position it was no longer appropriate to have recourse to Article XII. His Government was presently engaged in a fundamental reappraisal of New Zealand's economic strategy as a whole and of its import régime in particular. In this examination his Government would take full account of New Zealand's international obligations, including particularly its obligations under the GATT. The CONTRACTING PARTIES would be kept informed of the progress of this study. He requested that his Government be allowed sufficient time to proceed with this reappraisal of its economic strategy and the development of its new policies.

The Council took note of this statement.