

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

SCM/M/2
8 May 1980

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Committee on Subsidies and Countervailing Measures

MINUTES OF THE MEETING HELD ON 28 MARCH 1980

Chairman: Mr. P.R. Barthel Rosa

1. The Committee on Subsidies and Countervailing Measures met on 28 March 1980 to discuss the following subjects:

1. Procedures for the participation of observers.
2. Commitments under Article 14:5 of the Agreement.

Procedures for participation of observers

2. The Chairman drew the Committee's attention to a text, based on the CONTRACTING PARTIES' Decision of 28 November 1979 (L/4905) providing for the participation of observers.

3. The Committee adopted the text on the participation of observers, reproduced in Annex I.

4. The Chairman informed the Committee that the Director-General had received requests to follow the proceedings of this Committee from three non-contracting parties to the GATT, namely Bulgaria, Ecuador and Mexico. He added that the Director-General had sent him a copy of a letter from UNCTAD requesting observer status in all the MTN committee's, and therefore in this Committee. A similar request had been addressed by the Director of the International Monetary Fund to him as Chairman. Since the Committee had not had an opportunity to examine these requests in the light of the procedures just adopted, he proposed that the Committee take up individual requests at its May meeting and only then would a decision be taken on each request.

Procedure for commitments under Article 14:5

5. The Chairman drew the attention of the Committee to the fact that two commitments in accordance with the provisions of Article 14:5 had been undertaken before the entry into force of the Agreement on 1 January 1980 and were consequently in force. The Committee took note that these commitments - by Brazil and Uruguay - were reproduced in documents L/4922 and L/4924. He made the

following proposal for procedures concerning commitments to be undertaken under Article 14:5 after the entry into force of the Agreement on 1 January 1980.

In accordance with footnote 32 to Article 14:5, countries intending to enter into a commitment under Article 14:5 should notify the Committee in good time. For this purpose, they are invited to notify the Chairman of the Committee of the proposed commitment at least forty-five days before the matter is taken up by the Committee.

6. The observer for Singapore expressed very strong concern at the Committee's acceptance of a procedure which concerned commitments to be undertaken by developing countries without first having consulted them and heard the views of non-signatory contracting parties.

7. The observer for India stressed the fact that in his view, while the act of decision was naturally to be taken by the signatories, observers had a right to participate in the decision making process. He insisted that the views of observers should be duly taken into account before the Committee adopted any decision.

8. The observer for India said that before making specific comments on the procedures for commitments he would like to raise some points of a general nature. These general observations were formulated with the objective of accommodating the concerns, not only of the Indian delegation but of a large number of developing countries. Most developing countries were in the process of examining the provisions of various MTN Codes with a view to deciding upon eventual accession. While developing countries would wish to participate in some of the MTN Codes, they had to consider whether they were, at least at this stage, in a position to take on the obligations and responsibilities contained in the Codes keeping in view their trade, financial and other development needs. Developing countries had consistently stressed that to enable their maximum possible participation the necessary conditions should be created to facilitate their accession. Unfortunately, cases had already come to light, even before the process of implementation of the codes had begun, where restrictive interpretations of certain key special and differential provisions were being attempted. Most developing countries felt that unless checked at the very beginning these trends of erosion of existing special and differential provisions were likely to have a severe dampening effect on future developing country participation in the MTN Codes and would take the goal of maximum participation further away. This would, apart from causing possible setbacks to international goodwill also defeat the objective which the major developed contracting parties were themselves working towards. With respect to footnote 32 to Article 14:5 of the Agreement, he said that the interpretation of his delegation was that the

footnote had been inserted for the purpose of ensuring that the Committee of Signatories would be notified of proposed commitments under Article 14:5 in good time before the developing country or countries concerned actually commenced the process of implementing the commitments proposed. He also wished to stress that commitments taken under Article 14:5 were to be purely voluntary and autonomous actions not subject to negotiations and not in any way linked with the question of the accession to the Agreement itself either directly or indirectly. They might be undertaken by developing countries which considered that they were able to do so. The observer for India suggested to the Committee that since Article 14:5 talked about developing countries signatories and since the number of signatories at this stage in the Committee was not very large, and since in his delegation's mind there was no particular hurry in arriving at precise modalities with respect to this aspect of the Code, the modalities and procedures to be arrived at by the Committee in respect of 14:5 should be deferred to a later time when there would be a larger number of developing countries who were signatories and when, hopefully, the Committee would be in a position to take a more meaningful and acceptable consensus decision.

9. The observer for Pakistan associated himself with the views expressed by India. His Government considered that the accession to the Agreement was an autonomous matter to be taken keeping in view national interests and obligations under the GATT. Introduction of any restrictive interpretation of the conditions for accession would be of great concern to his Government. He proposed that the decision on proposed procedures be postponed until more developing countries could consider the matter and obtain instructions from their governments.

10. The observer for Malaysia said that he had come to the meeting also as a contracting party to GATT and to that extent he was of the view that his delegation should have been allowed to participate in the drawing up of the procedures for the participation of observers. He supported the statement made by the observer from India. He expressed the view that more time would be required for consultations amongst developing countries for a satisfactory decision to be made on the subject. The observer for Singapore stressed that it resulted clearly from Article 14:5 that a commitment would be a strictly voluntary and autonomous option of a country entering into it. There should be no pre-condition to join the Agreement. He also wondered whether the wording "forty-five days before the matter is taken up by the Committee" was not in contradiction with Article 14:5. There was nothing in the Agreement that said such a commitment should be discussed by the Committee or negotiated as such.

11. The Chairman said that although it was for the Committee to interpret the proposed procedures, he considered that nothing in these procedures stated that a country had to enter into a commitment at any given point of time and that these procedures did not go beyond interpreting the expression "in good time" as meaning "forty-five days".

12. The observer for Jamaica noted that some of the previous speakers had referred to a Committee of Signatories. He would like the record to show very clearly that they mispoke because, in his view, there was no such thing as a Committee of Signatories. In the informal understandings, as he remembered them, it was understood that there were only Committees on various codes and that they would be open to all members of the GATT; there would be signatories and there would be observers, but there was never such a thing called a Committee of Signatories. He also said that when matters were being discussed, it was customary for all the members of the Committee to have, not only a prior notification of the agenda (which was set out in Airgram 1614 of 14 March), but also information on substantive matters on which the discussion was going to take place, so that delegations would come prepared to make contributions. He observed that the first part of the meeting which was exclusive to those members who had signed the Agreement seemed to his delegation to contravene the understandings, because there was nothing of a confidential nature in the meeting in the first part of the agenda and it was only when confidential matters were being discussed that a Committee could meet in special restricted session. So, the first part of this meeting that met in closed session was, to his delegation, a breach of the understandings. He also said that when the Chairman resumed the meeting he went straight to agenda item 2. He did not discuss procedures for the participation of interested non-signatories in an observer capacity which would have allowed the Committee, in the presence of observers, to take a decision. Although observers could not themselves have a say on the decision itself, they could have a say on the substance of the matter under consideration. He hoped that when the Committee reported to the Council, as was requested at the last session of the Council by the Jamaican delegation, these points would be fully reflected. He felt that it was in the interest of the entire GATT framework to bring some transparency into its work. With reference to item 2 of the agenda he said that in informal consultation on this matter with his colleagues from India, Colombia and Malaysia, it appeared to his delegation that there might be matters of substance in these procedures which could entail obligations over and above those obligations which were currently in the Agreement. However a decision had been taken by the contracting parties that none of the rights of the contracting parties would be affected by the implementation of MTN Codes. His delegation could not, because of the lack of appropriate expertise and information make a judgement as to whether these procedures entailed new obligations. This was why he hoped that the procedure relating to the footnote 32 of Article 14:5 could be deferred along with the other points that had been discussed, to give interested delegations, mainly the developing countries, a chance to have some consultations among themselves to understand the implications. He regretted if this would not happen and

hoped that the Chairman would not consider any procedures adopted to be the final decision of the Committee until interested countries had a chance of consulting to see whether the text did in fact entail new obligations. Even if not, it would in effect lead to a discrimination between those countries which had adopted the Agreement prior to its entry into force and those countries who would subsequently be interested in acceding to the Agreement.

13. The Chairman said that all statements made in the Committee would certainly be recorded. He also replied to the observer for Jamaica by pointing out that the procedures in question were strictly based on footnote 32 to Article 14:5 and that nothing in these procedures created new obligations either to contracting parties non-signatories to the Agreement or to countries acceding to the Agreement.

14. The observer for Colombia said that his Government was considering the implications of the Agreement for the trade and development needs of Colombia in case it decided to join. He stressed that the existing rights of contracting parties should not be affected or diminished by any provision of the Agreement. The provisions of Article 14:5 should be considered as a unilateral obligation that might be taken by a developing country wishing to benefit from the provisions of Article 14:6. Such an action would result from a desire of a government to change its policy with respect to subsidies, when such a change would be compatible with its competitive and development needs. In no case should Article 14:5 be considered as a condition to accede to the Agreement.

15. The representative of Chile expressed his full agreement with the interpretation of the proposed procedures given by the Chairman. These procedures did not go beyond the footnote 32 to Article 14:5 and they neither affected the rights of contracting parties under the General Agreement, nor created new obligations. He said that if it could be proved that the effective application of these procedures affected the rights of contracting parties under the General Agreement, then the procedures should be considered as void. If any concrete case of such a prejudice arose it should be brought to the attention of the Committee and examined by it.

16. The representative of the European Economic Community shared the view that commitments under Article 14:5 were autonomous and did not constitute a pre-condition for accession to the Agreement. However, if such commitments were entered into, a procedure should be created to allow other signatories to obtain clarification and explanation, because those commitments could affect the balance of rights and obligations of signatories. Furthermore, Article 14 also contained other provisions, some of which foresaw tasks for the Committee in relation to those commitments. Referring to the question of procedures for observers raised by the observer for Jamaica, he said that this question had already been the subject of discussion and a decision had been taken in that respect which had been observed in practice. As to the question of the composition of the Committee of Signatories, he recalled that Article 16:1 of the Agreement stated: "There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement."

17. The representative of the United States commented on the proposal to defer action on the procedures under Article 14:5 and did not believe that it was necessary and in the best interest of the signatories and of developing countries wishing to join the Agreement. He pointed out that it was unclear how many developing countries would join the Agreement but some of them had expressed their interest in doing so and it would be necessary to have some operative procedures dealing with proposed export subsidy commitments under the Agreement. Therefore the best course for the time being for signatories would be to go ahead and operate with these procedures. He associated himself with the Chairman in that these procedures did not entail obligations that went beyond what was already in the Agreement. They should be regarded as a facilitating measure, rather than a mandatory procedure, to handle particular situations arising under the Agreement. If, in the light of further discussion between signatories and non-signatories, it was decided that perhaps it would be in the best interest of all to modify these procedures it could be done at that time. The United States delegation stood ready to consult on these procedures with any interested delegations; however, for the time being the Committee should go ahead and adopt the procedures as proposed by the Chairman.

18. The observer for Jamaica said that as the procedures would apply only to developing countries who would be acceding to the Agreement and entering into a commitment and since there were none for the moment, there was no hurry to take a decision. Such a decision would, in any case, remain inoperative for some time. He also wondered if there were other understandings concerning the operation of other articles of the Agreement and if so, whether they should not be adopted at this meeting, so that the work of the Committee could be facilitated.

19. The Chairman said that he was going to present to the Committee his understanding as to how these procedures should operate. These procedures would come into effect not only for developing countries which would be acceding to the Agreement but also for any developing country already a signatory that might wish to undertake a commitment.

20. The observer for Portugal said that he did not resent not being present at the beginning of the meeting which, he understood, dealt with the formal adoption of procedures for the participation of observers. The Chairman confirmed that the only item discussed in the absence of observers was the formal decision on procedures for their participation.

21. The representative of Canada said that according to the understanding reached at the session of the CONTRACTING PARTIES, the Committee was requested to meet in order to adopt procedures for the participation of observers and this had been done at the beginning of the meeting. Therefore he could not accept Ambassador Hill's suggestion that anything that had been

done was inappropriate and if such a point was reflected in the record it should be balanced by the comments of those who believed that whatever had been done was consistent with the understanding. He stressed that the Agreement did not impose any new obligation on non-signatories. Similarly any country who signed the Agreement would undertake the obligations and acquire the rights which were incorporated in the Agreement. There was no compulsion in Article 14:5 to enter into a commitment on signature of the Agreement. These commitments were autonomous. Article 14 provided for certain benefits and certain rights as a result of autonomous commitments. Because of that, there would be a need for the Committee to look at those commitments and therefore it would be necessary to provide some mechanism to carry out such an examination. His delegation supported the adoption of these procedures with the full understanding that it would in no way inhibit, change, reduce or augment the rights and obligations of any country which would subsequently adhere to the Agreement.

22. The observer for Jamaica thanked the representative of Canada for his explanation but had some doubts as to whether his previous statement had been properly understood. He pointed out that he took it that those countries which had signed the Agreement before it entered into force would not be affected by the procedures. This was why he had asked the question whether the adoption of the procedures would entail obligations or discrimination between developing countries who had signed prior to the entry into force and those who would accede to the Agreement afterwards.

23. The observer for Korea said that the proposed procedures made him doubt whether his Government would join the Agreement in the near future. The procedures should be subject to further consultations and, at any rate, the last part of the proposed text should be deleted.

24. The representative of Uruguay stressed some important principles mentioned by earlier speakers with which he concurred fully, namely: (a) commitments were unilateral; (b) commitments were not a precondition for accession of a developing country; (c) the procedures must not imply any discrimination between signatories based on the date of accession or on any other criterion; (d) the procedures must not imply obligations additional to those existing. Having listened to the previous speakers he could not identify in which way the proposed procedures were in contradiction with the enumerated principles. If there were such contradictions they should be spelled out with greater precision. He also said that it was of great interest that the largest possible number of developing countries joined the Agreement. If the adoption of the procedures was postponed it would entail postponement of consideration of commitments and this would not serve the interests of the Agreement.

25. The observer for India said that what had been discussed was not a matter of procedure at all, but a matter of substance which could have a very serious effect on future participation by developing countries in the Agreement. He reiterated his suggestion that a fuller opportunity for discussion among signatories and non-signatories should be created in order to explore the implications of these procedures, and therefore the matter should be deferred. Referring to the statement made by the representative of Canada he did not think that the commitments were at all examinable by the Committee. The Committee could only take note of a commitment made as a voluntary action. As to another point raised by the representative of the Communities and then confirmed by the representative of Canada, namely the balance of rights and obligations and in particular the provisions of paragraphs 6 and 8, it was his delegation's understanding that in the negotiations relating to the Agreement these paragraphs had always been linked with paragraph 5 of Article 14. This meant, therefore, that paragraphs 6 and 8 had been considered as incentives provided in the Code to encourage developing countries to enter into commitments of an autonomous nature and to reduce or eliminate export subsidies. Hence, developing countries - certainly India - would consider that when commitments under Article 14:5 were undertaken and were notified to the Committee, the advantages which would accrue from Articles 14:6 and 14:8 would automatically be available to the developing country concerned. Paragraph 8 of Article 14 provided that the Committee should, upon request by an interested signatory, undertake a review of a specific subsidy practice of a developing country signatory to examine the extent to which the practice was in conformity with the objectives of the Agreement. Obviously there would be no automaticity of review. There would have to be a request, and naturally it would follow from these provisions that a signatory requesting the Committee for a review under Article 14:8 would be required to produce concrete evidence to demonstrate that a specific export subsidy practice was causing serious prejudice to its trade and production, and that the use of the export subsidy on the products in question would no longer be justified by the development needs of the developing country concerned. These were some points where there seemed to be a common understanding, but there were also some areas which were not clear. He therefore considered it fair and reasonable, that before the Committee rushed into procedures, which would not be of any help to the Agreement itself and which would certainly defeat the objectives outlined by the developed contracting parties themselves in terms of their wanting to ensure maximum possible participation, there should be an open and frank discussion and all procedures to be arrived at should be, by genuine consensus, acceptable to all, and that was why he had sought a deferral.

26. The Chairman said that he would like to make it clear again that the procedures in no way related to the participation or accession of countries to the Agreement but related to countries intending to undertake commitments under Article 14:5.

27. The observer for Singapore repeated his earlier statement that commitments should not be examined by the Committee because they were not negotiable nor examinable. Any signatory could withdraw from the Agreement under Article 19:8 if it was not happy with its operation. He also said that if the proposed procedures were adopted it would mean that all commitments would then be negotiable and they would be examined by the Committee. Such a situation would expose those offering commitments to further requests for enlarging such commitments.

28. The Chairman repeated that the procedures did not in any way seek to interpret the operation of any provision of the Agreement. In particular they did not interpret the provisions of Article 14, paragraphs 5, 6 and 8. It would always be up to the Committee, on the basis of concrete experience, to proceed with the interpretation of any provision of the Agreement as it deemed necessary. The procedures before the Committee were not in themselves interpreting or prejudging any situation that might arise under any provision of the Agreement.

29. The observer for Argentina said that his Government was studying with great interest and goodwill the possibility of acceding to the Agreement, but the proposed procedures would not necessarily encourage it to do so. He fully associated himself with the declaration by the delegation of India. The observer for Israel said that his Government was seriously considering the possibility of joining the Agreement as it emerged from the Multilateral Trade Negotiations but as new procedures had been proposed there was a dispute as to their interpretation, his Government would need time to study these procedures and to form an opinion on its position.

30. The representative of Austria was on the one hand encouraged by the discussion which showed that many non-signatories were deeply interested in the implementation of the Agreement, but on the other hand he was discouraged because it seemed so difficult for them to overcome a barrier which apparently existed between observers and signatories. The procedures were of a purely procedural nature and only specified that "in good time" meant forty-five days. The discussion showed that there were many points of substance which needed interpretation. As it was up to the Committee to interpret provisions of the Agreement, it would be highly desirable that those non-signatories who had much to say and had a genuine interest in the implementation of the Agreement joined it and participated fully in its interpretation and implementation.

31. The Chairman said that the views which had been expressed were of great importance to the deliberations of the Committee. There had been proposals to postpone the decision on the procedures, however all signatories who had spoken were for their adoption straight away. Of course any decision taken by the Committee would always be open for further consultations with interested non-signatories. As it seemed to be the general will of signatories to take the decision at the meeting, the procedures were adopted.

32. The observer for Malaysia said that his delegation, as a contracting party to the GATT, had nothing to do with the decision just taken. His delegation would pursue, not only in GATT but also in some other fora, the discussion of the way in which the understandings which were the basis for the examination of the Agreement in the Council and in the CONTRACTING PARTIES had been misinterpreted. He said that as his delegation contributed towards the budget of GATT, he would demand that the money be properly expended and his delegation expected to receive all documentation that had been circulated in this and in other committees. He expressed the hope that developed country signatories would bear in mind the so-called universality principle which they had been advocating. He also said that the signatories, in not being prepared to take into account the views expressed by the observers in arriving at the decision, had been counter-productive to the efforts to obtain more signatories to the Code; and he equated the happening at the meeting to the missions of some signatories to developing countries. He stated that his delegation would continue to keep its interest in the Committee and thought that more developing countries should be present in future meetings.

33. The observer for India wished to place on record that he was not capable of understanding why the Chairman of the Committee had to be informed of the proposed commitments forty-five days in advance of the date when the matter was to be taken up by the Committee. His interpretation of footnote 32 to Article 14:5 was that "in good time" meant that the developing country who proposed to make a commitment was a voluntary act under Article 14:5 should notify the Committee in good time before implementing the commitment so that the signatories would be aware that a particular developing country was taking a particular measure with respect to its export subsidies. He was also unable to understand what the words "before the matter is taken up by the Committee" meant. If they meant an examination his delegation's position was clear that commitments were unexaminable. He therefore wondered what the Committee would do, except for taking note and welcoming the commitment. Otherwise these words would constitute an enlargement of the scope of the provisions of the Agreement implying the imposition of additional obligations on developing countries. Nothing in the Agreement provided for such procedures in the Committee.

34. The representative of Austria explained why he was for the delay of forty-five days in the procedures just adopted. He said that if a government had not sufficient time to study a proposed commitment, the most probable reaction would be to invoke the non-application clause and that was exactly what he wanted to avoid. As to the words "taken up by the Committee" he considered that there had never been any doubt that the Committee could take up any matter relating to the operation of the Agreement.

35. The observer for Colombia noted that the decision could be reviewed if deemed necessary. He requested that additional consultations should take place in order to arrive at an agreement satisfactory to all.

36. The Chairman said that he would certainly be available for consultations with any interested parties on any matter relating to the operation of the Agreement. As to the procedures that had been adopted it was his understanding that:

- (a) the Chairman will seek to consult informally with signatories and the country proposing to undertake the commitment before formally putting the commitment before the Committee;
- (b) when the matter comes before the Committee, signatories of the Agreement may request the Committee;
 - (i) to seek further clarification and information on the proposed commitment;
 - (ii) to examine, in the light of the provisions of Article 14:5, the applicability of the provisions of Articles 14:6 and 14:8 to the proposed commitment;
- (c) the Committee then takes note of the commitment.

He said he would proceed under this understanding and he would be available for further consultations both with signatories and non-signatories. He believed that the views expressed in the Committee were of great use to the further operation of the Agreement and specifically to the way delegations viewed the provisions of Article 14.

37. The observer for India wished to place on record the fact that, as outlined by the Chairman, the Committee was to play a much larger rôle than merely taking note of a commitment. He considered that the application of the provisions of Articles 14:6 and 14:8 should be automatic, following a commitment under Article 14:5. Thus, there was no need to have special procedures and if a need arose for further clarification and information regarding a commitment, then certainly the Committee could seek them, while taking note of a commitment.

38. The Chairman said that the Committee had taken note of all statements regarding the application of paragraphs 6 and 8 of Article 14. In his understanding Article 16 of the Agreement clearly stated that the Committee should afford signatories the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives. Under this provision any matter arising in the Committee and relating to the operation of the Agreement might be raised by signatories and if there were any divergence of views on the interpretation of any provision or any action taken, the Agreement contained specific dispute settlement procedures. Consequently under these provisions it was open to signatories to raise any matter in the Committee and the procedures just adopted did not go beyond that.

ANNEX I

Participation of Observers

Taking into account the decision arrived at by the CONTRACTING PARTIES at their thirty-fifth session on 28 November 1979, (document L/4905) the Committee agreed on the following procedures for the participation of observers:

1. Representatives of contracting parties which are not signatories may follow the proceedings of the Committee in an observer capacity.
2. Representatives of non-signatory countries not contracting parties, which participated in the multilateral trade negotiations and which are interested in following the proceedings of the Committee in an observer capacity, should communicate a request to the Director-General of the GATT indicating their desire to do so. The Committee shall decide on each request.
3. Observers may participate in the discussions but decisions shall be taken only by Signatories.
4. The Committee may deliberate on confidential matters in special restricted sessions.
5. The Committee may invite, as appropriate, international organizations to follow particular issues of the Committee in an observer capacity. In addition, requests from international organizations to follow particular issues within the Committee in an observer capacity shall be considered on a case-by-case basis by the Committee.