GENERAL AGREEMENT ON TARIFFS AND TRADE

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COUNCIL
9 October 1980

MINUTES OF MEETING

Held in the Centre William Rappard on 9 October 1980

Chairman: Mr. G.O. MARTINEZ (Argentina)

			Page
Subjects discussed:	1.	United States - Agricultural Adjustment Act	2
	2.	Safeguards	4
	3.	EEC - Refunds on exports of sugar - Recourse by Australia	5
	4.	Norway - Restrictions on imports of textiles from Hong Kong	8
	5.	EEC - Imports of poultry from the United States	8
	6.	Agreement between the EEC and Yugoslavia	9
	7.	Customs unions and free-trade areas; regional agreements	9
		(a) Agreement between Finland and Czechoslovakia	10
		(b) ACP-EEC Convention of Lomé	10
		(c) Agreements between the EEC and Egypt, Jordan, Lebanon and Syria	10
		(d) Agreements between the EEC and Algeria, Morocco and Tunisia	10
	8.	Sub-Committee on Protective Measures	10
	9.	Spain - Tariff treatment of unroasted coffee - Recourse by Brazil	10
	10.	EEC - Imports of beef from Canada - Recourse by Canada	11
	11.	Committee on Balance-of-Payments Restrictions	11
	12.	United States - Imposition of countervailing duty without injury criterion/Industrial fasteners imported from India	11
	13.	Japan - Measures on edible fats containing milk fat	12

At the beginning of the Council meeting the Chairman welcomed, in the name of the Council, Mr. Arthur Dunkel as the new Director-General of the GATT. He recalled that the Council itself had proposed Mr. Dunkel for appointment by the CONTRACTING PARTIES, and expressed assurance that Mr. Dunkel's many years of participation in the deliberations of the Council made him well acquainted with its work and procedures.

1. United States - Agricultural Adjustment Act (L/4999)

The Chairman recalled that in March 1980 the Council had established a working party to examine the twenty-second annual report submitted by the United States (L/4925) under the Decision of 5 March 1955 (BISD 3S/32). The Working Party had carried out its examination and had submitted its Report in document L/4999.

Ambassador Ewerlöf (Sweden), speaking on behalf of Mr. Lemmel, Chairman of the Working Party, introduced the Report. He said that the discussion had concentrated on the reasons advanced by the United States for maintaining the waiver granted by the CONTRACTING PARTIES in 1955, the measures taken by the United States to meet the conditions it had accepted when the waiver was granted, and the possibility of using alternative measures to cope with the problem of agricultural surpluses in the United States.

He pointed out that the Working Party had devoted special attention to the section dealing with dairy products. Several members of the Working Party had felt that the information contained in the annual report was not complete and that, in its present form, it could no longer provide any basis for a full examination as envisaged under the waiver. He said that a request had been made for a revision of the report and that the representative of the United States had agreed to provide such further information as was requested by members of the Working Party in the next annual report which would be submitted in time for the next meeting of the CONTRACTING PARTIES in November 1980.

The representative of the United States expressed the opinion that the Report of the Working Party contained a fair and balanced presentation of the views expressed in the Working Party.

The representative of New Zealand appreciated that the United States was one of the very few major agricultural economies which was prepared to put its trade practices and policies on the table in GATT for consideration. He noted that the Report contained further evidence which should be conveyed to both the United States administration and their internal dairy interests, that there was continuing concern about the on-going dairy price support policies. He expressed the hope that such views would be taken account of in a review of these activities, particularly since the legislation concerned would expire early next year.

The representative of Hungary said that his delegation had raised the question of Hungary's non-inclusion into the cheese quota applied by the United States under the provisions of the waiver. His delegation had taken

note that under the current legislation, the United States dairy import quotas could not be extended, and that the legislation could only be changed through procedures under Section 22 of the Agricultural Adjustment Act. It was irrelevant in his view whether the exclusion of Hungary from the cheese quota was in conformity with the relevant United States legislation. What was important was whether the legislation in question was in conformity with the GATT rules. He said that the waiver referred to the provisions of Articles II and XI of the GATT, but not to those of Article XIII. The obligation set out in Article XIII:2 was to aim at the distribution of trade approaching as closely as possible the shares which various contracting parties could be expected to obtain in the absence of the restriction. He felt that in the light of this GATT rule, the United States should have either sought agreement with Hungary with respect to the allocation of a share in the cheese quota, or in case of the allocation of country quotas, the United States should have assured Hungary a share, taking into account any special factors which had affected or were affecting trade in cheese between Hungary and the United States. He pointed out that two special factors existed, namely, that there was no previous representative period for Hungarian cheese exports to the United States, due to the existence of the quota over twenty-five years, and that there had been no m.f.n. treatment between the two countries until 1978. In view of these facts, and without prejudice to Hungary's rights under the GATT, Hungary requested the United States authorities to consider this matter once again, with a view to assuring Hungary an equitable share in the United States imports of cheese.

The representative of Australia said that his delegation could support the Report of the Working Party. He expressed concern about the lack of adjustment in the United States dairy industry, particularly as reflected in the recent increase in the level of assistance available to domestic producers under the government price support scheme, the increasing surplus of fluid milk, and indications that pressure was being exerted by the United States industry to extend Section 22 restrictions to casein. He said that a number of questions in connexion with the next annual review should be considered for discussion at the thirty-sixth session of the CONTRACTING PARTIES.

The representative of Jamaica said that Jamaica and other Latin American and Caribbean sugar producers had benefited in the past from the United States sugar programme. The United States had imposed import fees in recent years, which had affected Jamaica's sugar interests. He pointed out that these import fees had increased from 0.625 cents/pound in September 1976 to 2.813 cents/pound in November 1977 and to 3.36 cents/pound in July 1979. The attention of the United States authorities had been drawn to the effects of these import fees upon the sugar exports of sugar-producing developing countries. He noted that while sugar was dealt with as one of the commodities in

the Report of the Working Party it had not received the same attention as dairy products. He hoped, therefore, that the updating of the annual report would deal with the question of fees on sugar imports. He also felt that it could be useful, as part of the technical assistance programme of the GATT, if the secretariat could arrange some sort of informal consultations when annual reports containing issues of relevance to developing countries had been circulated.

The representative of Argentina said that his delegation had participated in the work of the Working Party. He shared the concern expressed by other delegations and felt that this subject matter provided an excellent opportunity to further the commendable efforts made by the United States in the MTN to achieve a better fulfilment of GATT objectives and obligations.

The representative of Brazil associated himself with the remarks made by previous speakers.

The representative of the United States said that he had taken note of the comments made. The question raised by Hungary was subject to bilateral discussions but had so far not been resolved.

The Council took note of the statements made and adopted the report.

2. Safeguards (L/4998)

The Chairman recalled that the CONTRACTING PARTIES had established the Committee on Safeguards by their Decision of 28 November 1979, (BISD 26S/202), to continue discussions and negotiations, taking into account the work already done, with the aim of elaborating supplementary rules and procedures regarding the application of Article XIX of the GATT, in order to provide greater uniformity and certainty in the implementation of its provisions. The Committee's Report, dated 30 June 1980, was circulated in document L/4998.

In introducing the Report the Director-General stated that at its first meeting held on 6 June 1980 members of the Committee affirmed their determination to work towards agreement on an improved safeguard system. The Committee noted that intensive, informal consultations were under way and felt that it was premature to draw any conclusions at that stage. It believed that the process of consultations should be continued, intensified, enlarged and accelerated. He said that consultations among delegations were proceeding. The Committee remained on call for further meetings and was expected to meet in October and to submit another report to the CONTRACTING PARTIES at the thirty-sixth session in November 1980.

The representative of Colombia said that the developing countries had expressed their disappointment that no agreement had been reached in the field of safeguards during the Multilateral Trade Negotiations. He stressed the need to find a solution as rapidly as possible in the field of safeguards.

The representative of Yugoslavia said that finding a solution in the field of safeguards was very important to Yugoslavia. If no solution could be found in this matter, he felt that this would result in serious consequences for the GATT. Informal consultations were being pursued; but it appeared to him to be premature to draw any conclusions on their outcome. It was also not clear when results could be expected in this field. His delegation therefore felt that formal negotiations should be started in order to assess the stage reached regarding safeguard measures and to get every contracting party to participate in finding a suitable solution. At the same time informal consultations could be pursued further.

The Council took note of the statements made and adopted the Report.

The Council agreed to revert to this item at a future meeting.

3. EEC - Refunds on exports of sugar

- Recourse by Australia (C/M/139, C/W/341, L/5031, L/5032)

The Chairman recalled that at its meeting of 6 November 1979 the Council had adopted the report of the Panel (L/4833) which had examined the complaint by Australia concerning refunds on exports of sugar by the EEC. The Council had agreed to revert to this matter at one of its future meetings. The Council had considered this item again at its meetings on 29 January and 26 March 1980, and at the latter meeting had before it the text of a draft decision (C/W/341) proposed by the delegation of Australia. After having heard statements by a number of representatives on this matter, the Council had considered that delegations needed more time for reflexion and had agreed to defer further consideration to its next meeting. Further bilateral consultations on the Panel's Article XVI:1 findings had been held between Australia and the European Communities. A report by Australia on these consultations had been circulated in document L/5031. A separate report by the European Communities had been distributed in document L/5032.

The representative of Australia recapitulated the chronology of events in regard to this item. He then recalled that the Panel had concluded, inter alia, that the EEC system had caused serious prejudice and constituted a threat of prejudice in that it did not comprise any pre-established effective limitations in respect of either production, price or the amounts of export refunds. The Report had been adopted by the Council without dissent. It had been discussed at the January 1980 meeting of the Council; and Australia had subsequently circulated for adoption at the March 1980 meeting a draft decision (C/W/341) which was supported by thirteen delegations. At the request of the Council, discussions on the Panel's Article XVI:1 findings had taken place in Brussels in June 1980, the results of which were circulated in documents L/5031 and L/5032. His delegation requested the Council to adopt the draft decision by consensus at this meeting. He considered its text to be cast in mild terms, in that it was a request for information together with a review of progress.

The representative of the European Communities confirmed that the consultations had been held in an attempt to clarify the differences in respect of the interpretation of the conclusions of the Panel. He said that the Australian delegation had drawn the conclusions (g) and (h) out of the overall context of the conclusions as a whole. There were elements mentioned in page 3 of the Report which were of interest to all countries participating in the sugar trade. He believed that the Australian delegation had been given all the elements in connexion with Article XVI:1, and said that if Australia was not satisfied with the explanations given, other GATT procedures existed for arriving at a conclusion. As for Article XVI:1, any further action following the consultations with Australia was exhausted. As for Article XVI:3, the conclusions were clear and left no room for any doubts. He pointed out in connexion with the separate reports presented by Australia and the European Communities on the consultations, that there were elements in the Australian report which were not taken up in his delegation's report, in particular with regard to the giving-up by Australia of any rights it would have had under Article XVI:3. It was difficult to understand why a contracting party would want to accept only one part and reject all the other elements of the conclusions. He felt that the EEC, having consulted with Australia, had done everything that could be done under the circumstances and that the consultations were now completed. As for the draft decision, he said that the EEC had problems of both substance and procedure in respect of that document in the sense that it was inconsistent with the GATT rules.

The representative of New Zealand recalled that his delegation had been in favour of the draft decision. It seemed to him that the proposal was in keeping with the rights of any contracting party under the GATT, following the findings of a panel report which had been adopted. Every contracting party had a stake in the world trading system; and the GATT dispute settlement system provided vital support to this system. His delegation fully endorsed the draft decision proposed by Australia.

The draft decision, as proposed by Australia, was also supported by the delegations of Canada, Brazil, the United States, Hungary, the Republic of Korea, India, the Philippines, Argentina, Cuba, Poland, Peru, Chile, Colombia, Malaysia, United Kingdom on behalf of Hong Kong, Uruguay and Pakistan.

Citing recent price developments in the market prices of white sugar, the representative of the European Communities stressed that the situation in the last four months had rendered the proposed decision irrelevant. He said that this problem had been discussed with high-ranking Australian officials in Brussels a fortnight earlier. As the EEC had faithfully followed the provisions of Article XVI:1, there was no reason for adopting a decision which would force the EEC, in fact, to put in question its own policies, for which it had not been concretely demonstrated that prejudice was being caused to any contracting party. His delegation felt that the decision, as proposed by Australia, was not in conformity with GATT procedures. Under these circumstances, his delegation could not accept the decision.

The representative of Australia said that the support for the Australian position was the result of careful consideration of the issues by the governments concerned. With regard to the current situation in the world and Community sugar markets, he recognized that, at the present time, subsidies on EEC sugar exports were not being paid. While the current price of sugar might be high, history had shown that it could fall again. Australia was concerned that, when the price next declined, the EEC system of export subsidies would still be in place and would be fully utilized.

The representative of the European Communities said that the draft decision was based on only one element of the conclusions adopted by the Panel, namely "threat of prejudice". He said that when Australia had first asked for consultations under Article XVI:1, the EEC had agreed to this; and the consultations had taken place to discuss the possibility of limiting the subsidization. If, following their consultations, the two parties did not reach Agreement, there existed no other possibility under Article XVI:1. He stressed that, in such a case, only other provisions of the General Agreement could be invoked, such as Article XXIII. Australia had sought recourse to this provision; and the EEC had accepted the results of the examination of this matter. He explained that Australia's main complaint was that the EEC had violated Article XVI:3, i.e., the concept of equitable share. However, for the years 1976 and 1977, in the light of all statistical material available, the Panel had come to the conclusion that the increase of the EEC exports was not unusual. For 1978 the Panel had found that there had been an important increase of EEC sugar exports, requiring a review in depth of the reasons for this. In his view, the Panel had examined this, and had concluded that the EEC had not received more than an equitable share of the world market. He said that the essential complaint by Australia had been settled by this decision of the Panel. He stressed that since this was a test case, any further procedures based on Article XVI:1 would be a distortion. He expressed the view that the Panel had reached the conclusion that there was no violation of Article XVI:3 by the Community. While the Panel had recognized that the system could constitute a certain threat, the EEC had stated from the outset that it could not accept this notion, since it did not correspond to the other conclusions of the Panel.

The Chairman, noting that the draft decision had received widespread support, stressed the need to reach a decision by consensus. He emphasized the importance of this question with respect to the future tasks and credibility of the GATT. Before taking a final decision on this matter, he suggested that discussions take place during the coming weeks with the participation of the Chairman of the Council. He appealed to all delegations to reflect again on the matter, in view of the importance of the questions involved, so that a satisfactory conclusion could be reached at the next meeting of the Council.

The representative of Australia said that he accepted the proposed procedure. While agreeing with the Chairman on the importance of reaching decisions by consensus, he pointed out that only one spokesman had opposed such a consensus, and that the concept of a veto had never been part of the functioning of the GATT. This matter was no longer simply a bilateral issue between Australia and the EEC: it related to the global impact of the EEC system of export subsidies. Moreover, the issue had now become a test case of the effectiveness of the GATT dispute settlement procedures and therefore of the GATT itself. His delegation therefore agreed to postponing the decision to the next meeting of the Council, in order to give contracting parties a pause for final reflection.

The representative of the European Communities also agreed to a postponement to the next meeting.

The Council agreed that the question should be pursued further at the next Council meeting. In the meantime, interested delegations should, with the assistance of the Chairman of the Council, hold informal discussions in order to reach a solution to this problem.

4. Norway - Restrictions on imports of textiles from Hong Kong (C/M/141)

The Chairman said, with the agreement of the parties concerned, that this item had been deferred to the next meeting of the Council.

5. EEC - Imports of poultry from the United States (L/5033, L/5040)

The Chairman drew attention to document L/5033 in which the United States sought recourse to the provisions of Article XXIII:2 against certain practices in the United Kingdom affecting the imports of poultry from the United States. A statement by the European Communities regarding this matter had been circulated in document L/5040.

The representative of the United States said that his delegation requested the Council to authorize the setting up of a panel under Article XXIII:2 to assist the CONTRACTING PARTIES to make recommendations and rulings as appropriate in this matter.

The representative of the European Communities said that this matter had been the subject of a request by the United States for consultations under Article XXIII:1. These consultations had taken place; and the EEC was of the opinion that United States exports were not suffering. He explained that the United States firms were now applying standards in their trade which had already been applied for some time in the EEC. The American firms had been given enough time so that they could adjust their practices to those applicable in the EEC. He felt that the problems involved were in the process of being settled. He said that discussions between the two parties would soon be conducted at a high level at the request of the United States

and he expressed surprise at the request of the United States to set up a panel. He therefore asked the Council to postpone for a while its decision on this request.

The representative of Brazil said that according to GATT rules if the establishment of a panel was requested by a contracting party, this panel had to be set up as soon as possible. He stated that his delegation had a substantial interest in this question.

The representatives of Canada and New Zealand supported the setting up of a panel.

The representative of the European Communities said that consultations were in progress; therefore a decision should not be taken as long as consultations were going on. If no agreement was reached, the EEC had no objection to the setting up of a panel.

The representative of the United States said that the consultations mentioned by the representative of the European Communities referred to another aspect of this problem. His delegation had requested the setting up of the panel in connexion with discrimination and not in connexion with the other aspect of the matter.

The Council agreed to establish a panel and authorized the Chairman to decide on its composition and on appropriate terms of reference in consultation with the parties concerned.

6. Agreement between the EEC and Yugoslavia (L/5007 and Add.1)

The Chairman recalled that the Council had been informed by the European Communities in March 1980 that a Co-operation Agreement had been initialled between the EEC and Yugoslavia on 25 February 1980. Copies of the Agreement had been circulated to contracting parties with document L/5007/Add.1.

The representatives of the United States and Canada said that their authorities had not yet examined the text of the Agreement and asked that this item be referred to the next meeting of the Council.

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

7. Customs unions and free-trade areas; regional agreements

The Chairman drew attention to documents L/4988, L/4992, L/5029 and L/5030 containing information submitted, under the procedure established by

the Council for the distribution of biennial reports, by the parties to the following regional agreements:

(a) Agreement between Finland and Czechoslovakia

The Council took note of the Report.

(b) ACP-EEC Convention of Lomé

The Council took note of the Report.

(c) Agreements between the EEC and Egypt, Jordan, Lebanon and Syria

The Council took note of the Report.

(d) Agreements between the EEC and Algeria, Morocco and Tunisia

The Council took note of the Report.

8. Sub-Committee on Protective Measures - Report (COM.TD/SCPM/1)

The Chairman recalled that in March 1980 the Committee on Trade and Development had established a Sub-Committee on Protective Measures (COM.TD/104) in accordance with the Decision of the CONTRACTING PARTIES of 28 November 1979 on the Examination of Protective Measures affecting Imports from Developing Countries (BISD 26S/219). That Decision provided that the Sub-Committee would report on its work to the Committee on Trade and Development and through it to the Council. At its July 1980 meeting the Committee on Trade and Development took note of the Report of the Sub-Committee and forwarded it to the Council for adoption (COM.TD/105).

The Council adopted the Report contained in document COM.TD/SCPM/1.

9. Spain - Tariff treatment of unroasted coffee

- Recourse by Brazil

The Chairman recalled that at its meeting in June 1980 the Council had agreed to establish a panel to examine the complaint by Brazil, and had authorized the Chairman of the Council to nominate the chairman and members of the Panel in consultation with the two parties concerned.

He informed the Council that the Panel would have the following composition:

Chairman: Ambassador Ewerlöf (Sweden)

Members: Mr. Daniel (Poland)
Mr. Herrmann (Switzerland).

The Council took note of the composition of the Panel.

10. EEC - Imports of beef from Canada

- Recourse by Canada

The Chairman recalled that at its meeting in June 1980 the Council had agreed to establish a panel to examine the complaint by Canada, and had authorized the Chairman of the Council to nominate the chairman and members of the Panel in consultation with the two parties concerned.

He informed the Council that the Panel would have the following composition:

Chairman: Mr. Berger (Norway)

Members: Mr. Santos-Neves (Brazil)
Mr. Contestabile (Switzerland).

The Council took note of the composition of the Panel.

11. Committee on Balance-of-Payments Restrictions

- Appointment of a new Chairman

The Chairman informed the Council that Mr. Jagmetti (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, had departed from Geneva.

The Council agreed to appoint Mr. Martin (Canada) as the new Chairman of the Committee.

12. United States - Imposition of countervailing duty without injury criterion/Industrial fasteners imported from India (L/5028)

The representative of India, speaking under Other Business, referred to a communication by India (L/5028) containing a request for consultations with the United States under Article XXIII:1 concerning the denial to India of the injury criterion in respect of dutiable products while extending the benefit to other contracting parties. His Government considered that benefits accruing to India under Articles I and VI of the General Agreement were being impaired.

He recalled that one of the major objectives of the Multilateral Trade Negotiations had been the securing of additional benefits for the trade of developing countries so as to achieve a substantial increase in their foreign-exchange earnings, the diversification of their exports, and the acceleration of the rate of growth of their trade, taking into account their development needs. It was in the context of this objective that the MTN had envisaged special and differential treatment for developing countries in key areas, whether they were related to non-tariff measures or tariff concessions. He said that against this background, the nature and content of the United States action was a source of deep uncertainty and concern for India. The immediate task before the GATT in the post-MTN period was the implementation of the MTN

Agreements, in letter and in spirit. Moreover, there was a general feeling of the need to go beyond this by the creation of an environment of flexibility and goodwill so as to facilitate maximum possible participation. His delegation felt that the United States action was severly inhibitive of these goals.

He recalled that at the session in November 1979, while noting the results of the Multilateral Trade Negotiations, the CONTRACTING PARTIES had also noted that existing GATT rights and benefits, including those derived from Article I, were not affected by the agreements arising from the MTN. His delegation had accordingly sought formal consultations with the United States authorities under Article XXIII:1.

The representative of the United States proposed that the consultations requested by India take place on 21 October 1980.

The representative of Hungary, stating that his delegation would follow this matter with the utmost care, said that it involved an important issue in respect of the observance of Article I, namely unconditional most-favoured-nation treatment.

The representative of Colombia said that a large number of delegations from developing countries shared the concern expressed by India. Noting that a number of developing countries had signed the MTN agreements, he said that they would be following with interest the progress of the consultations.

The representative of Argentina agreed that this matter was related to one of the pillars of the General Agreement, namely most-favoured-nation treatment, and said that it also affected the implementation of the agreements resulting from the MTN.

The Council took note of the statements.

13. Japan - Measures on edible fats containing milk fat

The representative of New Zealand, speaking under Other Business, referred to a reported decision of the Japanese Government to impose quotas on prepared edible fats containing milk fat. He said that it was the understanding of his authorities, based on public reports, that such quotas were proposed to take effect before the end of this year.

He explained that prepared edible fats were one of the few dairy products which thus far had not been subject to Japanese quotas. New Zealand was the principal supplier of prepared edible fats to Japan, with trade amounting to about 10,000 tonnes of the product per year. It was the understanding of his authorities that Japan was considering the reclassification of prepared edible fats under the CCCN Nomenclature to bring them under the heading 21.07, for which quotas were imposed by Japan.

It was his view that, in taking such a decision, Japan would ignore the results of discussions under way within the Nomenclature Committee of the Customs Cooperation Council in Brussels. He said that the Committee had decided that prepared edible fats might contain milk fat or butter without being classified under Item 21.07. The Customs Cooperation Council Secretariat had subsequently studied the issue further and had confirmed their earlier decision, recommending that the common nomenclature be appropriately clarified to reflect the point that prepared edible fats might contain milk fat or butter but should not be classified as dairy products.

He said that the issue of unilateral reclassification in the customs tariff by any contracting party was an important one. He stated that in New Zealand's view the proposed Japanese action to impose quotas on the reclassified prepared edible fats, would be inconsistent with Japan's obligations under the GATT in that it imposed quantitative restrictions on a product not previously subject to quotas. He believed that this measure would not encourage end-users to employ Japanese surpluses of butter in the bakery trade in preference to present imports, but that it would force them to turn instead to vegetable oils and/or margarine as alternatives. He said that New Zealand would seek consultations under the appropriate article of the General Agreement.

The representative of Japan, having been informed of the intention of New Zealand to intervene on this matter only on the previous day, said that his delegation would respond at a later date, as necessary, in an appropriate manner.

The Council took note of the statements.