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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
6 November 1981

MINUTES OF MEETING

Held in the Centre William Rappard on 6 November 1981

Chairman: Mr. D.S. McPhail (Canada)

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1. Notification and Surveillance

The Chairman recalled that at their thirty-fifth session in November 1979 the CONTRACTING PARTIES had adopted the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance drawn up in the Multilateral Trade Negotiations (BISD 26S/210). In March 1980 the Council had taken a decision relating to the implementation of the paragraphs of the Understanding dealing with Notification (paragraphs 2 and 3) and with Surveillance (paragraph 24).[1] In April 1980 contracting parties were invited to submit the relevant notifications. The Council had a first special meeting to review this matter in November 1980 and a second special meeting in May 1981. At the latter meeting it was agreed, inter alia, that delegations should reflect on the arrangements that would be appropriate for the next review, in the light of experience gained, and authorized the Chairman to set the date and make arrangements for the next review, after consultations with delegations. Following such consultations the present meeting was arranged for further discussion of this matter and to carry out the review provided for in the Council decision. In the meantime, the secretariat had updated the comprehensive factual note to serve as the basis for examination and discussion (C/W/373).

[1] Proposal by the Director-General (C/111), adopted on 26 March 1980 (BISD 27S/20)

The Chairman also recalled that when the Council had adopted the Director-General's Proposal in March 1980, it had done so on the understanding that any arrangements made would necessarily be experimental. This suggested that the arrangements were to be kept as simple as possible and were to be reviewed and, if necessary, modified in the light of experience (BISD 27S/20, paragraph 5).

In respect of the substantive issues involved, he said that there were several important questions which, in his view, could be grouped into three separate categories, viz., notifications, dispute settlement and MTN Committees. He raised the following questions with respect to notifications: Were the notification requirements under the various Articles of GATT being met? To what extent were contracting parties notifying actions in terms of obligations imposed on them under GATT Articles? Were the notifications timely? Did they contain sufficient information by way of providing a picture of developments or policy measures taken in the areas to which they related? Did they contain relevant/superfluous information? Were some contracting parties failing to send in notifications? Should a notification which satisfied certain MTN-Code requirements as well as GATT requirements be submitted as a single notification? Were there any other issues relating to the functioning of the GATT notifications and reporting procedures to which any delegations would wish to draw attention on the basis of the information compiled by the secretariat?

He raised the following questions with respect to dispute settlement: Were the dispute settlement procedures operating satisfactorily? Was there adequate follow-up on Panel reports? Was the selection of Panel members satisfactory? Have delegations been furnishing the names of persons available to serve on panels?

Finally, with respect to MTN Committees, he raised the question whether the activities of those Committees were being reported to the CONTRACTING PARTIES in accordance with their decision in this matter.

The representative of Canada said that notifications were the basis for ensuring transparency and that GATT reporting requirements should be met to the fullest extent possible. As regards surveillance, Canada's aim was an efficient and effective operation of the GATT dispute settlement procedures. In general terms, his delegation believed that this review mechanism should provide a regular "systems check", so as to allow periodic reflection on how well systems were working and to provide an outlet for specific complaints or suggestions as regards the operation of GATT mechanisms. He stressed

that at this stage the focus should be on the operation of the system and not on changing it. Another new consideration was the positive rôle such a process of examination could play within the context of preparations for a 1982 GATT ministerial meeting. He asked how substance could be given to the special Council review sessions and wondered whether a productive approach at this stage could be to develop a series of questions, perhaps in a systematic and detailed way, to guide further considerations. In his view, this approach would facilitate the process of working towards common perceptions of issues and problems, and would also provide a forum for questions and complaints about the operation of the system.

The representative of India said that the present meeting should provide a useful opportunity for an examination of the functioning of the GATT trading system, an examination of major trends and developments, and an assessment of whether contracting parties were fulfilling their obligations in the specific areas in which joint action was required. These interrelated subjects should be examined regularly. His delegation believed that the notification requirements were not excessive, and that they were necessary to achieve the objective of greater transparency.Turning to Surveillance, he said that paragraph 24 of the Understanding was entirely supportive of the Decision by the CONTRACTING PARTIES in November 1979 regarding the unity and consistency of the GATT system (BISD 26S/201). With this objective, certain questions emerged, such as whether the GATT notification requirements were being met, whether these notifications provided an adequate scenario of developments or policy measures taken by respective governments and whether adequate information was available regarding joint or multilateral action taken by contracting parties in terms of Articles XII, XVIII, XIX, XXIII, XXV, XXXVII and XXXVIII. He recalled that his delegation had repeatedly urged that a more elaborate discussion should be undertaken on Part IV, with a view to examining whether enough had been done in respect of notifications pertaining to commitments of developed contracting parties under the provisions of Article XXXVII:1. In respect of dispute settlement, he said that the GATT was entering a new phase and that the Council had to ensure that the dispute settlement mechanism was being strengthened and made more effective. The efficacy of GATT for weaker trading partners, not having adequate retaliatory power, was based on the effectiveness of this mechanism.

The representative of Austria stated that Austria had always tried to fulfil its GATT obligations in general and under the Understanding. While providing information was important for the system as a whole, he was of the view that duplication of notifications should be avoided whenever possible.

The representative of Spain said that Spain had followed this exercise with great interest. His authorities were in the process of assessing the instruments used both in respect of the notification mechanism and of the dispute settlement system, and would be transmitting an official note on this matter in the near future.

The representative of Chile said that the GATT and MTN notification systems were of utmost importance, and expressed the view that the questions raised by the Chairman in his introductory remarks were significant. He pointed out that many of the notifications were being made on the basis of questionnaires, and he asked the Council to consider whether these questionnaires were appropriate and comprehensive enough. He said that his question was motivated by the fact that in certain areas very few contracting parties complied with their obligation to notify. He said that it was necessary to monitor regularly the operation of the dispute settlement mechanism, since many contracting parties' expectations, particularly those of developing countries, were based on it.

The representative of the United Kingdom, speaking on behalf of Hong Kong, stressed the importance of the notification system for developing countries like Hong Kong. He said that it was only after measures had been identified that it was possible to overcome related problems, either within GATT or at a bilateral level. Referring to document C/W/373, he considered the situation in respect of quantitative restrictions as particularly unsatisfactory.

The representative of Argentina recalled that the MTN Agreements had resulted in many new commitments falling outside the normal work of the CONTRACTING PARTIES, which were difficult to integrate into the overall GATT context. He said that the present review showed that the notification system did not work as it should, and that while the dispute settlement system had been operated on traditional standards, the MTN Codes were being operated at a distance, as it were, from the General Agreement and the CONTRACTING PARTIES. He stressed that the basic objective of the exercise was to conduct a global overview of the system. According to him, the present procedure did not correspond to this function; and in his view, the Council had to take stock of this situation prior to a session of the CONTRACTING PARTIES at ministerial level.

The representative of Australia said that the questions raised by the Chairman and by certain representatives should be pursued further. His delegation supported the views expressed by Brazil and India at the meeting of the Council in May 1981 as to the importance of Notifiction in the process of Surveillance. His delegation also supported the statements made by the European Communities and Canada at that meeting that there was no need for new notification requirements. In his view, the present specific notification obligations, such as those in respect of subsidies, State trading and Article XIX, were basically adequate. He noted that there were

also the more general notification obligations encompassed in paragraph 3 of the Understanding, related to information on new measures not covered by specific notification obligations. He expressed the opinion, however, that there was room for improvement as to the quantity and quality of information provided under certain existing notification obligations, notably under Article XVI:1.

The representative of the United States stated that his delegation attached importance to the Notification and Surveillance functions in GATT and considered the Council review to be a good idea. What seemed to be missing, however, was some method of approach for conducting the required examination. The United States supported the proposal made by the representative of Canada, that the Council might draw up, in a fairly detailed and systematic way, a series of questions relating to the Notification and Surveillance process. In his view, the questions which the Chairman had raised could be complemented by additional questions from delegations. He agreed that the Council should concentrate at this stage on the objective of carrying out an assessment of the present system rather than seeking proposals for change.

The representative of the European Communities stressed that notifictions were not made for their own sake and that the existing system of Notification and Surveillance should first be tested before new questionnaires were introduced and new improvements sought.

The representative of New Zealand agreed that if there were to be a ministerial meeting of GATT at the end of 1982 and the preparations were to move ahead on the best possible footing, the Council had to come to an agreement on how best to refine the "methodology" of the Notification and Surveillance process. He shared the suggestions made by the representative of Canada for possible improvements in the system.

The Director-General referred to the Understanding and to the Council's decision of March 1980 as the two basic sources for the responsibilities given to the Council at these special meetings. He noted the different types of notifications involved. Under paragraph 2 of the Understanding the Council had to see how far the existing notification obligations under the General Agreement were complied with and respected. In paragraph 3, contracting parties had undertaken to the maximum extent possible, to notify the CONTRACTING PARTIES of their adoption of trade measures affecting the operation of the General Agreement. In his view, this meant a different kind of notifiction which went beyond paragraph 2 and could be related to paragraph 24 of the Understanding, under which contracting parties had to pay particular attention to developments which affected GATT rights and obligations.

In his view, the relationship between existing GATT notification obligations and those provided for in paragraph 3 of the Understanding, deserved further reflection in the future. He agreed that notifications should not be made for their own sake. He observed, however, that delegations often seized the opportunity of a Council meeting to draw the attention of the Council to trade measures taken by other contracting parties or to ask for consultations. This "grey area" of trade measures, which did not automatically fall under the normal notification process, deserved further attention.

Apart from the obligatory notifications under paragraph 2 of the Understanding and the "grey area" of paragraph 3, there was the CONTRACTING PARTIES' obligation "to conduct a regular and systematic review of developments in the trading system", as provided for in paragraph 24. This could be considered as a third task of the Council in the field of Notification and Surveillance. Here, it remained to be clarified if such a review was meant to be based on the kind of reports which the Research Division was carrying out on the basic trends of world trade, or if it were a review of the trading system itself and of how the rights and obligations had been met.

He said that in addition to these three types of reviews which could be done by the Council in special meetings, there remained the problem of the proper operation of the dispute settlement system, which was part of the Understanding and could also be an interesting subject for discussion, if delegations so wished. Such a discussion could be confined to the "mechanics" of the dispute settlement system, as, for example, the adequacy of the number of panelists, of the time-tables and of follow-up procedures, although, at a later stage it might also be useful to have a more general discussion on the operation of the GATT dispute settlement system.

The representative of the European Communities agreed with the Director-General and affirmed that his delegation was in favour of transparency, notifications and surveillance, provided that there was a purpose and that it improved existing GATT operations. He wondered, however, whether the "routine obligations" under paragraph 2 of the Understanding had been complied with by all contracting parties. As for those notification obligations which the Director-General had referred to as "new" and on which the contracting parties had particularly to reflect, he was concerned about developing new types of questionnaires. The European Communities also wanted to avoid notification requirements which might create disparities among contracting parties in respect of their obligations. With regard to the regular and systematic review of developments in the trading system provided for in paragraph 24 of the Understanding, he pointed out that this should not be considered in isolation, as other GATT organs were also carrying out such reviews.

The Chairman said that representatives still seemed to have more questions than answers and that governments obviously were still formulating their views on this matter.

He noted that a suggestion had been put forward about a possible list of questions by the secretariat. He had understood that proposal, and the support by other delegations for it, as referring not to any modification of the system, but rather a "systems check" to see where it was working and where it was not. Such a "check-list" might enable delegations not only to ask questions, but also to offer their own answers to those standardized questions, and could prove to be a useful technique for checking on the working of the notification, surveillance and dispute settlement system, as well as on the integration of the MTN Codes into the larger GATT system, to which the representative of Argentina had referred.

He agreed that the review process was not an exercise in itself, but was intended to provide for a look at the overall operation of the international trade system and of the GATT at large. This would become an important point if the CONTRACTING PARTIES decided to convene a ministerial meeting in 1982.

The Council agreed that the review on Notification and Surveillance had been conducted, as provided in the Council's decision of March 1980.

The Chairman suggested that it would be helpful if delegations reflected on the Director-General's comments and on the questions raised at the meeting so that they could comment on the issues related to Notification and Surveillance. He suggested further that another meeting might take place late in the Spring of 1982, but that no decision would yet be taken as to the precise date for that meeting. The Chairman of the Council would raise the matter again at a future Council meeting.

The Council so agreed.

2. Tax legislation

(a) Income tax practices maintained by France (C/114, L/4423)

(b) Income tax practices maintained by Belgium (C/115 and Corr.1, L/4424)

(c) Income tax practices maintained by the Netherlands (C/116, L/4425)

(d) United States tax legislation (DISC) (L/4422)

The Chairman recalled that at the previous Council meeting on 3 November 1981, it had been agreed that the principally-concerned delegations should meet informally with those other delegations which sought additional information or clarification on these matters, and that the Council would revert to them at the present meeting. He said that the informal meeting had been held as announced, and asked if the Council was prepared to consider these matters further.

The representative of Australia pointed to the usefulness of the informal meeting but said that his delegation still sought some clarification with respect to the relationship between the proposed understanding and the four Panel Reports.

The representatives of Argentina, Brazil and Chile said that their delegations were also continuing to study the implications of the proposed understanding and would prefer to revert to these matters at a future meeting.

The Council agreed that the principally-concerned delegations should again meet informally with those other delegations which still sought additional information or clarification, and that if it then appeared to the Chairman that a consensus had emerged as to how to proceed, the Council would meet again, at short notice if necessary, to take action on these matters.