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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
10 March 1981

MINUTES OF MEETING

Held in the Centre William Rappard on 10 March 1981

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

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1. Ecuador - Request for observer status

The Chairman stated that a letter had been received from the Permanent Representative of Ecuador seeking to obtain for his Government the status of observer to the Council. The Chairman noted that Ecuador was already invited to be represented by an observer at the sessions of the CONTRACTING PARTIES. The objective of the present request was to enable the delegation of Ecuador to attend meetings of the Council and the regular GATT committees and working parties, as observer.

The Council agreed that the Director-General should respond favourably to the request by the Government of Ecuador.

2. Second ACP/EEC Convention of Lomé (L/5098)

The Chairman recalled that on 16 November 1979 the representative of the European Communities had informed the Council of the signature of the new Lomé Convention. At its meeting on 26 March 1980 the Council had been informed by the representative of the European Communities that the Convention had not come into force on 1 March 1980, as anticipated, making it necessary to extend the commercial provisions of the former Lomé Convention until the end of 1980. In December 1980 the Council had been informed by the representative of the European Communities that the Convention would enter into force on 1 January 1981. The text of the Convention had now been circulated with document L/5098.

The representative of the United States suggested that the Convention be examined in a working party with the customary terms of reference.

The representative of Canada believed that the Convention was worthy of examination by the CONTRACTING PARTIES, especially in the light of the changes that had been made in its provisions.

The representative of Japan noted that certain changes had been effected in the second Lomé Convention as compared with the earlier Convention, such as the increase in initial import quotas from ACP countries of products subject to EEC quantitative restrictions, and an improvement of conditions applicable to, and an enlargement of, the scope of STABEX. He felt that these factors and their possible effects on trade of third countries needed to be examined in the light of the GATT provisions. His delegation therefore supported the proposal for the setting up of a working party.

The Council agreed to establish a working party with the following terms of reference and membership.

Terms of Reference

"To examine, in the light of the relevant provisions of the General Agreement, the second ACP/EEC Convention signed at Lomé on 31 October 1979, and to report to the Council."

Membership

Membership should be open to all contracting parties indicating their wish to serve on the Working Party. ACP States not contracting parties could be represented by observers.

Chairman

The Chairman of the Council was authorized to nominate the Chairman of the Working Party in consultation with delegations.

The Council agreed furthermore that contracting parties wishing to submit questions in writing to the parties to the Convention should be invited to send such questions to the secretariat not later than 21 April 1981, and that the parties to the Convention should be requested to submit their replies to the consolidated questions within six weeks after receipt thereof.

3. South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) (L/5100)

The Chairman drew attention to a communication received from the delegations of Australia and New Zealand which had been circulated to the contracting parties in document L/5100, concerning the establishment of the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA).

The representative of New Zealand said that the Agreement was a development of considerable importance for trade relations in the South Pacific, and that its basic objective was to give further impetus to the development of exports from the developing countries of that region. He explained that most of these countries were small islands disadvantaged by their geographical isolation, their general lack of natural resources and their extremely small size. New Zealand and Australia, as the two developed countries of the region, provided major markets for the exports from these small states, and had agreed through the instrument of SPARTECA to provide unrestricted entry for virtually the total range of exports from these states on a non-reciprocal basis. He stated that New Zealand offered free access for all but a handful of island products, and expected that during the next few years these exceptions would also be eliminated. While SPARTECA provided an opportunity for these states to improve their trade, this concessional entry did not guarantee preferential shares of the market and did not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on an m.f.n. basis.

He said that New Zealand and Australia requested that SPARTECA be considered and accepted by the CONTRACTING PARTIES in the light of the special relationships and commitments of New Zealand and Australia in the South

Pacific region. The Agreement contained broad provisions for co-operation in economic development and was consistent with the objectives of Part IV of the General Agreement and with the 1979 Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203). He added that New Zealand was prepared to consult with contracting parties on SPARTECA and would respond to any questions which they might have.

The representative of Australia supported the statement made by the representative of New Zealand. He said that the Agreement was a preferential, non-reciprocal, trade and economic co-operation agreement between member countries of the South Pacific Forum, whose basic objective was to achieve progressively the duty free and unrestricted access to the markets of Australia and New Zealand for as wide a range of Forum island products as possible. The Agreement provided a framework for Australia and New Zealand to give such duty free or preferential access to imports of specific products from the Forum island countries. He mentioned that Australia had entered into the Agreement in recognition of its special relationship and commitment to the island developing member countries of the Forum, realizing that trade played a crucial and vital rôle in their economic development. Prior to the entry into force of the Agreement, approximately 97 per cent of Australia's imports from the Forum island countries, other than Papua New Guinea, had already entered free of duty. He said that the Agreement would not affect trade and commercial relations between Australia and New Zealand. Similarly, although both Papua New Guinea and Australia had signed the Agreement, an exchange of letters between the two Governments provided for trade and commercial relations to continue to be covered by the Papua New Guinea/ Australia Trade and Commercial Relations Agreement. He explained that the present Agreement was notified to the CONTRACTING PARTIES for joint action pursuant to footnote 2 of paragraph 2 of the 1979 Decision referred to above. He added that his delegation was prepared to co-operate with the contracting parties in respect of any questions which might be raised.

The representatives of the United States and Canada said that their authorities had not had sufficient time to examine the Agreement, and asked that this item be considered at the next meeting of the Council.

The Council took note of the statements and agreed to revert to this item at its next meeting.

4. European Communities - Accession of Greece
- Request by Australia for a panel in respect of the relevance of variable levies to Article XXIV (L/5117, L/5124)

The Chairman drew attention to a communication by the delegation of Australia, circulated in document L/5117, and to a communication by the delegation of the European Communities, circulated in document L/5124.

The representative of Australia said that his Government's request for the establishment of a panel to examine and report on the GATT conformity of certain aspects of the EEC's Common Agricultural Policy (L/5117) had been made in order to break a deadlock which had occurred on these questions in the Working Party on the Accession of Greece to the European Communities. The EEC had issued a response (L/5124) to this request which contained, in his view, a new and encouraging statement of its position as well as some statements which he considered misleading, and to which he felt he must respond.

First, he said that the Australian statement (paragraph 2 of L/5117) that the EEC had maintained that the Working Party had no mandate to examine the effects of its Common Agricultural Policy on trade with third countries was - contrary to the view of the EEC expressed in document L/5124 - fully supported by the records of the Working Party. He quoted statements made by the representative of the European Communities to that effect when the Working Party had tried to focus on an examination of the general incidence of duties and other regulations of commerce (Spec(80)20/Rev.1 and Spec(80)27/Rev.1).

Second, he noted that the EEC response in L/5124 suggested that there had been no difference of view in the Working Party on the question of whether or not variable levies constituted "duties or other regulations of commerce". He quoted an EEC statement (Spec(80)20/Rev.1) that its point of view "had not changed since the 1972-73 Working Party" which had examined the enlargement of the EEC, namely that "the levy was neither a 'duty' nor 'other regulation of commerce'," (Spec(72)126) and that the rôle of variable levies cannot be "compared to those of a duty or to those of other regulations of commerce within the meaning of Article XXIV:5(a) of the General Agreement". (Spec(72)127).

Third, he contrasted the EEC response (L/5124) that "the Community is ready, as it had always stated, to supply the basic information on the rates of variable levy applicable for any period of time that the Working Party may require", with the EEC statement to the Working Party that, in its view, it was not necessary for the Working Party to have details of variable levies before it could reach a judgment under Article XXIV:5(a). He also recalled that the EEC had advised the earlier 1972-73 Working Party that the documentation it would provide "would not include any quantified data on variable levies". He stated that he had made these points of rebuttal for the record in order to avoid any impression that the contents of the document circulated at the request of his delegation (L/5117) were not factual, and to ensure that the EEC response (L/5124) would not be interpreted as challenging the credibility of Australia's notification to the Council.

He welcomed the EEC acceptance that the Working Party did have a mandate within the terms of Article XXIV:5 to examine the effects of its Common Agricultural Policy, its agreement that the EEC variable levies were covered by the phrase "duties and other regulations of commerce" and thus were relevant to any examination under Article XXIV:5(a), and its readiness to supply the basic information on the rates of the variable levies applicable for any product and for any period of time the Working Party would require. He also welcomed the EEC's acknowledgement of the need for the Working Party to examine particular products and product sectors in the context of the Article XXIV:5(a) examination.

As to the method to be used for the assessment of the general incidence of duties and other regulations of commerce, he raised two fundamental issues: how to measure the general incidence of variable levies, and whether, in measuring the general incidence of the EEC Common External Tariff, this applied only to bound - as opposed to applied - rates of duty. His delegation would comment on these two points at the appropriate time, and took note of the EEC suggestion to look at trade flows both before and after the Accession of Greece. With regard to the latter point, however, he noted that the difficulty with such an approach was that the results of an examination of trade flows would be available too late to be of benefit to the Working Party. He suggested that it would be of little practical value if an examination of trade flows showed, some years later, that a contracting party had lost its trade as a result of the formation of a customs union.

He said that the EEC had not addressed itself to a number of questions raised in document L/5117, which might need to be referred to a panel. However, the new position stated by the EEC provided, in his view, a basis for progress on the question of the GATT conformity of the Rome Treaty and of the subsequent EEC enlargements. His delegation would therefore defer its request for the establishment of a panel for the time being and would attempt to make progress on this matter in the Working Party. He added that it would be appropriate for the Working Party to examine measures adopted under the EEC's Common Agricultural Policy which had not been satisfactorily dealt with by the earlier Working Parties which had examined the Rome Treaty and the 1972/73 EEC enlargement because of the then stated position of the EEC.

The representative of the European Communities expressed surprise that the Australian request for the establishment of a panel had been made without prior bilateral consultations, which would have made it possible to clarify the points which had been raised in document L/5117 and to avoid misunderstandings. He said that the earlier statement by the representative of Australia did not correctly interpret the position of the EEC, and in this context he drew attention to document Spec(81)1/Rev.1 and to Part A of

document L/5124. He felt that the only relevant issue was the matter of substance which should be examined on a continuing basis by the Working Party.

He raised the question whether a detailed examination, as suggested by Australia, should be launched, or whether a simplified examination should be followed. While the simplified approach could, in his view also reach global conclusions, it would not put the EEC in a more favourable position than the more detailed procedure but would arrive at speedier conclusions. His delegation was, however, also fully prepared to take part in a detailed examination. He said that this implied a new attempt to assess and compare the effects of measures such as variable levies. Such a comparison had to be made between the periods before and after the accession of Greece to the European Communities.

The representative of Hungary said that his delegation had followed actively the work of the Working Party because the accession of Greece affected Hungary's trade interests in both the Greek and EEC markets. His delegation intended to support the Australian proposals in document L/5117, and was of the opinion that document L/5124, as presented by the EEC, was a new development. His delegation attached considerable importance to having full information on the levies applied on products imported by Greece which fell under the Common Agricultural Policy of the EEC, without which it would be impossible to judge the effects of the accession and to conclude the examination under Article XXIV:6. As regards the offer by the EEC to conduct either a very detailed examination or to follow a simplified approach, he believed that the Working Party itself could carry out such an examination, and he supported the proposal not to set up a panel at the present meeting of the Council. He added that Hungary reserved its GATT rights concerning the specific effects of the accession of Greece which, in his view, violated the rights and obligations existing between Hungary, Greece and the EEC as a consequence of the introduction by Greece of quantitative restrictions not consistent with Article XXIII in respect of Hungarian products.

The Council took note of the statements and agreed to defer this item to a future meeting if that proved necessary.

5. Tax legislation

(a) Income tax practices maintained by France (C/114)
(b) Income tax practices maintained by Belgium (C/115 and Corr.1)
(c) Income tax practices maintained by the Netherlands (C/116)

The Chairman recalled that these matters had been discussed at several meetings of the Council during 1977 and 1978, and most recently in December 1980, at which time it had been agreed to defer them to its next meeting, if possible.

The representative of France recalled that at the most recent meeting of the Council the delegations of France, Belgium and the Netherlands had suggested that the questions raised in the three Panel Reports (L/4423, L/4424 and L/4425) should be settled in a mutually satisfactory manner, which could consist of the adoption of the Reports, together with a qualification making it clear that the economic activities should not be subject to taxation beyond the export point. As some contracting parties had sought sufficient time to reflect on this proposal, he enquired about the results of this reflection.

The representative of the United States recalled that his delegation had specifically requested further time for reflection in December 1980, but said that the change of administration in his country had not permitted the officials now responsible for this matter to give adequate consideration to the issues involved. Accordingly, he was obliged to request that the Council again defer action on this item, with the understanding that the United States, as one of the parties to the dispute, would also consult further with the other interested parties.

The representative of Belgium said that his delegation took note of the statement made by the representative of the United States, while expressing the hope that it would be possible to arrive at a settlement in this matter at the next meeting of the Council. He recalled the statements made at the Council meeting in December 1980 to the effect that the income tax practices at issue were compatible with the General Agreement and that the legal clarifications were made during the negotiations of the Subsidies and Countervailing Duties Code. He said that these income tax practices did not cover export activities in the GATT sense of the term. Furthermore, income tax practices aiming at avoiding double taxation could not be considered to be export subsidies. He stressed that the main purpose of the Belgian tax practices was the avoidance of double taxation. He then asked the Council to adopt the Reports and to state (a) that economic activities involving exported products but taking place outside the territory of the country of origin need not necessarily be taxed by that country and cannot be regarded as an export activity under the terms of the General Agreement; and (b) that measures for the avoidance of double taxation are not to be assimilated to export subsidies.

The representative of the Netherlands associated himself with the statements made by the representatives of France and Belgium. He recalled that this matter concerned a number of contracting parties and expressed the hope that other contracting parties would also state their views on this subject. His delegation was ready to discuss with any interested party the terms on which the Council could conclude this case.

The representative of Australia said that his delegation was ready to join a consensus on the basis of the proposals contained in the documents submitted by France, Belgium and the Netherlands and the statements by those representatives, but was willing to agree to a deferral of the matter.

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

6. United States - Agricultural Adjustment Act (L/5084)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32) the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the Government of the United States. The twenty-third annual report by the United States had been circulated in document L/5084.

The representative of the United States said that the report reviewed the operation of the restrictions maintained under Section 22 of the Agricultural Adjustment Act, and contained additional information requested by the Council during its discussion of the previous report. In this context, he said that the regular annual import quota on peanuts had been supplemented by a special additional quota to continue through June 1981, and that the import fees for sugar for the first quarter of 1981 had remained at 0 cents for raw sugar and at 0.52 cents for refined sugar, with no changes expected for the second quarter. He stressed that the United States had fully complied with the terms of the waiver and that the quotas applied under Section 22 were continually being reviewed by his authorities.

The representative of New Zealand said that his country was a small agriculturally dependent exporter with products that were, as the result of considerable effort and investment, competitive. However, this was not sufficient to guarantee market access, or even ability to compete, and it was his view that even in GATT, agricultural exporters were finding themselves repeatedly disadvantaged. He was of the opinion that one of the symbols of this disadvantage was this waiver which had exempted, for more than a quarter of a century, one of the world's largest agricultural traders from the provisions of Articles II and XI. He recalled that in 1980 a Working Party had reviewed the twenty-second annual report and that the members of the Working Party had addressed a number of questions to the United States, whose representative had expressed the willingness of his authorities to provide the information requested. In this light he expressed disappointment with the thirty-third annual report (L/5084), since he had expected that it would contain a discussion in depth of the issues and questions that had been raised, and had expected furthermore an up-to-date report on some

fundamental changes in the dairy policy of the United States and various initiatives under consideration. He expressed regret that the questions raised by the Working Party had been treated summarily and that the report continued to evade the cause underlying the continuing difficulties in the dairy products sector, namely the price support programme.

He also took issue with the conclusion that the surpluses of dairy products in the world, which sought outlets wherever possible, would in the absence of import controls replace United States domestic production. This implied that New Zealand's access prospects, based on a comparative advantage in dairy products production, were threatened by the system of support prices of other dairying countries. He felt that the United States could safeguard its own domestic producers by means of countervailing and anti-dumping provisions against heavily subsidized competition, so that the waiver could be terminated.

In conclusion, he stated that the contracting parties were not in a position to carry out their annual review without some further information. He proposed, therefore, that the United States be asked to carry out a thorough revision of the report in the light of the points raised by his and other delegations. This revised document should then serve as a basis for discussion at a future Council meeting.

The representative of Argentina supported the statement made by the representative of New Zealand that the measures in question had been in force for such a long time that the question should be raised whether their maintenance was still justified. His delegation supported the proposal to request further information from the United States and to maintain this item on the Council agenda.

The representative of the United States said that his delegation would report the points raised to his authorities.

The representative of Australia recalled that in 1980 a number of questions had been raised in the course of the Working Party's examination of the twenty-second annual report submitted by the United States, at which time the United States delegation had taken the position that some of those questions could be more appropriately dealt with in the twenty-third annual report. He expressed regret that, in his view, this had not been done, and said that the present report provided no justification for the maintenance of the United States dairy support measures but dealt only with the conditions necessary to maintain the status quo. His delegation also rejected the proposition that the United States post-MTN cheese import régime would permit an expansion of cheese imports, because its effect had been to bring all cheese, other than soft surface ripened varieties, under import quotas. As a result, Australian exports of cheese

to the United States had been limited to their current levels, while previously, under the price-break system, there had existed scope for expanding United States' imports of a wider variety of cheeses.

It was also his delegation's view that the twenty-third annual report failed to address itself to the question whether the CONTRACTING PARTIES should continue to grant to the United States an exemption from Articles II and XI twenty-six years after the granting of a waiver which, in his view, had been intended to meet a short-term situation. For these reasons he supported the New Zealand request for a supplementary report, addressing itself to these questions, to be submitted for examination at a future Council meeting.

The representative of the European Communities said that this item was, in his view, a matter of major importance in the impact of GATT's established rules on the evolution of agricultural policies followed by contracting parties. In this case a major party in agricultural trade enjoyed broad exceptions relating to the agricultural sector within an industrialized country. An examination of the annual report could demonstrate the evolution of United States progress towards meeting the norm, and would give increasing weight to the importance and relevance of the rules agreed on under the General Agreement.

The representative of Canada shared the concerns expressed by other delegations and supported the statement made by the representative of New Zealand.

The representative of Hungary recalled his statement at the October 1980 meeting of the Council relating to the United States cheese quota, and said that Hungary had a substantial interest to supply this product but was excluded from the United States import quota on cheese. Consultations had taken place bilaterally and within the GATT; but no solution had been reached. He recalled Hungary's having requested the United States delegation at that meeting to draw the attention of its authorities to this request in order to insure an equitable access for Hungarian cheese to the United States market.

The Council took note of the statements and requested the United States to provide additional information accordingly.

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

7. EEC - Imports of beef from Canada - Report of the Panel (L/5099)

The Chairman recalled that in June 1980 the Council had agreed to establish a panel to examine the complaint by Canada. The Report of the Panel had been circulated in document L/5099.

Mr. Berger (Norway), Chairman of the Panel, introduced the Report. He said that the Panel had been requested to examine the compatibility with the General Agreement of the EEC regulations pertaining to the implementation of the levy-free tariff quota for 10,000 tons of fresh, chilled or frozen high quality grain-fed beef, and to make such findings as would assist the CONTRACTING PARTIES in making recommendations and rulings as appropriate. The Panel had reached its conclusions unanimously.

The representative of Canada said that his authorities were looking forward to prompt action to implement the Panel's findings with regard to the levy-free tariff quota so that Canada would be able to compete for this concession on an equal basis with other suppliers.

The representative of the European Communities said that his authorities had taken note of the Report and were examining its consequences.

The representative of Hungary said that his country could supply the specified high-quality cuts of bovine meat in question. In view of the Panel's findings and of the statement by the representative of the European Communities, his delegation expected that access to the market of the EEC would now be assured for the Hungarian products specified under the relevant GATT concessions.

The Council adopted the Report of the Panel.

The representative of Argentina stated that with reference to paragraph 4.3 of the Panel's Report, Argentina interpreted the mention of Commission Regulation (EEC) No. 2972/79 and its Annex II as referring exclusively to Article 1, paragraph 1(d) of the Regulation.

The representative of Uruguay supported the statement made by the representative of Argentina. He stressed that the interpretation to be given to paragraph 4.3 of the Report should not in any way prejudge the scope of the concessions contained in Commission Regulation (EEC) No. 2972/79.

The Council took note of the statements.

8. Discussions with the European Communities on refunds on exports of sugar - Report to the Council (L/5113, L/5121)

The Director-General stated that according to the Decision adopted by the Council on 10 November 1980 and the Decision adopted by the CONTRACTING PARTIES on 25 November 1980, he had been invited to organize,

in a working party, discussions between the CONTRACTING PARTIES and the European Communities under Article XVI:1 on the possibility of limiting the EEC subsidization of sugar exports. He said that the Working Party had met three times on 4 and 5 December 1980, on 27 and 28 January 1981 and on 9 February 1981. His Report on these discussions was contained in document L/5113.

He explained that the discussions had offered the opportunity of discussing in detail the policies of a group of contracting parties in a specific sector. He had to note, however, that participants in the Working Party held differing views as to the results of the discussion. Accordingly, the main purpose of his Report was to place on record as concisely as possible the views of delegations, so as to enable the Council to consider whatever further action could be appropriate. He believed that the Report was self-explanatory and did not necessitate any detailed comments on his part.

The Chairman said that the delegation of Australia had sent to the secretariat, for the information of contracting parties, a communication (L/5121) as well as the text of a draft decision (C/W/360).

The representative of Australia, while stating his delegation's appreciation for the Director-General's Report, expressed regret that the complaint had remained unresolved. In his opinion, the EEC's comments in the Working Party had added nothing of substance to the advice given to Australia during the bilateral discussions of June 1980. Thus, the same conclusions had been reached by the Working Party as those reached by Australia after the bilateral consultations, namely that the EEC had not "provided sufficient assurances that the prejudice and/or threat of prejudice, which had been found by the Panels to exist would be eliminated", and that "the EEC régime for both production and subsidies available would continue as an open-ended one and consequently would remain a source of uncertainty in world sugar markets and continue to constitute a threat of prejudice in terms of Article XVI:1" (L/5113, paragraph 42)[1].

He said that the EEC's position, as summarized in the Report, had not received support in the Working Party, and that the Working Party had been critical of the EEC's assertion that it had given "a sufficiently large response to the request put to the EEC within the terms of Article XVI:1" (L/5113, paragraph 41). He said that this assertion had been repeatedly rejected by all speakers in the discussions.

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[1] Cf. Panels' conclusions, sub-paragraphs (g) and (h) in document L/4833, and sub-paragraphs (f) and (g) in document L/5011

He also expressed concern that the EEC had not answered the specific questions put to it by several members of the Working Party, but had confined itself to a general statement of its position. His delegation had presented to the Working Party a detailed assessment of the EEC's response, which had been circulated in document L/5121. He recalled further that Australia and Brazil had sought the intervention of the CONTRACTING PARTIES in this matter over two years ago and that this dispute had been discussed over a period of fifteen months bilaterally, in meetings of the Council (C/M/135, 138, 139, 143 and 144) during which Australia had proposed a draft decision (C/W/341), in consultations using the good offices of the Director-General, and finally in the Working Party. He was, therefore, of the opinion that all means of satisfying Australia's concerns by conciliation had been exhausted and that the CONTRACTING PARTIES must discharge their collective responsibility to the GATT and take a formal decision on the Reports of the two Panels and of the Working Party.

He stressed that it would be unacceptable to Australia if the CONTRACTING PARTIES declined to act in a situation where the EEC had not seen fit to put forward any proposals to change its system so that it would never again be shown to be causing prejudice to world sugar trade. Such a course would amount to an admission that the GATT was unwilling to use its influence to have particular contracting parties change their trading systems so as to bring them into conformity with their obligations under the General Agreement. He therefore proposed that the Council adopt the draft decision contained in document C/W/360.

The representative of the European Communities expressed the opinion that the bilateral talks, prior to the work of the two Panels, had served as a first step towards defining the problem and that the multilateral discussions within the Working Party had made it possible to go into the matter in detail. Finally, the Report by the Director-General succeeded in presenting with precision the main elements of the problem, as expressed by both sides of the dispute. He regretted, however, that at the end of the work some delegations had stated that the EEC had not introduced effective limitations in respect of export refunds on sugar. In his view, the EEC had engaged actively in this exercise and had complied with the commitment and obligation to enter into discussion with other contracting parties to consider the possibility of limiting the subsidization.

He said that the EEC had taken a number of measures during the past three years on quotas, and particularly Quota B, covering sugar that could be exported with refunds. There had been no refunds during one year because of the world price situation. He also pointed out that in April 1980 the EEC had accepted the principle whereby the cost of exporting sugar produced

over and above domestic consumption would have to be paid by the sugar producers themselves. Sugar exports would thus no longer enjoy net subsidization from the EEC budget. He felt that the EEC had thus responded positively to the request put to it under the provisions of Article XVI:1.

He said that all that could be accomplished under this exercise had been done and that, therefore, the EEC had complied with the provisions of Article XVI:1 and had thus fulfilled its obligations under the General Agreement.

He drew attention to paragraphs 10 and 11 of the Report of the Working Party. In order to avoid a misunderstanding in respect of document L/627 and the earlier case cited therein, he pointed out that the recourse by Denmark against the United Kingdom concerning subsidized egg exports had not been based on Article XVI:1, but was rather a complaint as to the equitable share of world trade. He said that in that case, the United Kingdom had never recognized a formal obligation to limit the subsidies. He also considered that the reference to the Havana Charter could only serve as historical background, and that the provisions subsequently carried into the General Agreement were the only ones to be taken into account.

The representative of Brazil expressed his appreciation for the Director-General's Report in document L/5113, but disagreed with the wording of paragraphs 20 and 27 and pointed out that the only international obligation the EEC had in respect of ACP sugar was to buy a certain quantity of such sugar at a certain price. It had no international obligation to re-export ACP sugar and even less to re-export this sugar with subsidies.

He then recalled that the EEC system of export refunds had been found by the two Panels to have caused serious prejudice to the interests of other sugar exporting countries, including Brazil, and that this system constituted a threat of serious prejudice in terms of Article XVI:1 in that it did not comprise any pre-established effective limitations in respect of production, price or the amounts of the export refunds. While considering it as a positive development that the EEC had recognized the existence of possibilities to limit subsidization of sugar exports, he said that the EEC had failed to convince other members of the Working Party that certain measures taken by it in the field of prices and quotas constituted an effective means of limiting the subsidization. It had also refused to engage in a constructive discussion of other measures to limit subsidization, including some suggestions made by the representative of Brazil. Furthermore, the co-responsibility principle presented by the EEC as a new fundamental element had not been considered by other members of the Working Party as a means of effectively limiting the subsidization, since it did not contain any built-in mechanism to limit the quantity of sugar to be exported or the amount of the export subsidy itself. This had led most members of the Working Party to conclude that the EEC régime for both production and subsidies remained an open-ended one and thus continued to be a source of uncertainty in world sugar markets. The threat of prejudice resulting from this system of subsidization, as found by the two Panels, therefore continued to exist.

He then raised a number of points which, in his view, would require detailed consideration in the future. The EEC had indicated that the co-responsibility principle had been adopted by the EC Council of Ministers, but that the mechanisms to implement it were still under consideration and that some of the features of the future sugar policies would still have to be determined. Furthermore, the EEC had expressed the hope that its price policy on sugar would remain prudent in the future; and it was therefore to be seen how this would fit into the EC Commission's proposal for the intervention prices for sugar for 1981-82 which had recently been submitted to the EC Council of Ministers. Finally, it remained to be seen what would happen to the proposed levels of production levies, which could act as a disincentive to production in times of higher international prices, within the co-responsibility scheme. He said that the Council would have to consider these points, and he supported the Australian draft decision contained in document C/W/360.

The delegations of the Dominican Republic, Cuba, Peru, the Philippines speaking on behalf of the ASEAN countries, Colombia, Argentina, Ecuador, the United States, the United Kingdom speaking on behalf of Hong Kong, Uruguay and Chile generally shared the views expressed by the delegations of Australia and Brazil. The delegations which had participated in the Working Party felt that the Report presented by the Director-General constituted a concise and fair reflection of the discussions within the Working Party. Some delegations felt that the case involving Brazil appeared to be an even more serious case involving not only Article XVI:1 but also Part IV (referring to paragraph 38 of the Report) and special and differential treatment for developing countries as well. Disappointment was also expressed by some delegations that the EEC had been unable to introduce limits into the system or to give assurances that it would introduce such limits to the subsidy practices. The Australian draft decision contained in document C/W/360 was supported by the delegations mentioned above.

The representative of New Zealand said that this issue constituted the most important agricultural trade problem to come before the GATT since the conclusion of the Multilateral Trade Negotiations, and that the Report of the Working Party recorded a disappointing lack of success of the dispute settlement system. Failure to solve this dispute would confirm, in New Zealand's view, that the rules of the General Agreement were, by design, interpretation or lack of application, slanted against agricultural trade. The need to correct this fundamental distortion as between agricultural trade and trade in other sectors remained therefore a major task for the CONTRACTING PARTIES in the post-MTN period, which would vigorously be pursued by his delegation. His delegation supported the Australian draft decision contained in document C/W/360.

The representative of the European Communities said, in reply to some of the remarks made in respect of measures aiming directly at limitation of the quantity of sugar exported, that these would have to be assessed in the light of the rules of the GATT. In his view, there could be no obligations other than those arising out of Article XVI:3 to limit the quantities of subsidized exports. This paragraph of the General Agreement was the essential basis of the two Panels' work; and the conclusions reached by the Panels on this basis were clear and accepted. On that point, the two Panels had found the EEC policy consistent with obligations deriving from the General Agreement. Limiting exports in connexion with the International Sugar Agreement was a different matter, which was not directly linked to the proper implementation of the General Agreement.

He furthermore pointed out that the measures presented by the EEC were indeed meaningful. The discussions within the EEC in respect of a new system to regulate the sugar market would meet two basic criteria: respect of Article 43 of the Rome Treaty and of provisions which refer to the harmonious development of trade with other countries. He said that this covered the possible limitation of quantities of sugar eligible for payments, while the burden placed on sugar producers for the self-financing of this policy gave relief to the EEC budget. The third pillar of this system was prices. The very existence of Article XVI and of provisions relating to agricultural commodities were, in his opinion, proof that any subsidy system could not, in principle, be declared incompatible with the provisions of the General Agreement. What could, however, be questioned was the way in which a system was operated, and to this question paragraphs 1 and 3 of Article XVI were relevant.

He then turned to the Australian draft decision that the system was a source of uncertainty and therefore constituted a threat of prejudice in terms of Article XVI:1. As the examination was based on the years 1976-1979, with relatively depressed world markets, he wondered how this could be claimed for the present situation and the future. He pointed out that since the years examined, the world market was characterized by a relative shortage of sugar and by high prices. Nevertheless, the EEC had taken a number of decisions to adapt the system in order to cope with a possible situation of over supply of world markets in the future. The quantities eligible for refunds had been frozen at a given level for a number of years, while at the same time an effective limitation of subsidies arose out of the price differential. Furthermore, the system was being applied in such a way that there would be no net subsidy paid out of the budget of the EEC. As to the present, world sugar prices were higher than the EEC prices; and no export refunds were granted. Finally, there was quasi-certainty that the guaranteed quantities and the quantities eligible for export refunds would be kept at a slightly lower level than in 1978. This was taking place at a time when the traded

quantities in the world market tended to increase. He therefore stressed that it was unwarranted to maintain that prejudice and the threat of prejudice would continue as if nothing had happened. He said that the EEC could not accept the draft decision submitted by Australia which, in his view, went beyond the requirements of Article XVI:1.

In conclusion, he suggested that the Council take note of or adopt the Report presented by the Director-General on the work of the Working Party, thereby concluding the proceedings based on Article XVI:1. Furthermore, the Council should take note of the fact that the EEC would communicate the future legislation on sugar, which was about to be adopted by the EC Council of Ministers. The Council should also take note of the fact that the EEC had declared its willingness to give to contracting parties all necessary clarifications regarding this legislation.

The representative of Canada, in presenting suggestions for a solution of this matter, said that in view of the Reports of the two Panels and the Working Party there was no doubt that the EEC system of subsidization of sugar exports had constituted and continued to constitute a source of uncertainty in world sugar markets and a potential for prejudice in terms of Article XVI:1. This matter should therefore be kept under review. His delegation would join any consensus to that end, including the adoption of the Australian draft decision contained in document C/W/360. It appeared to him that there was a consensus to adopt the Report of the Working Party and to keep the matter under review, whereas there did not seem to be consensus on the wording of the draft decision. If this were the case, he suggested first that the weight of opinion expressed in the Council be registered. Furthermore, this item should be kept on the agenda of the Council. Finally, the interested parties should be requested to meet and prepare a draft decision which could be adopted by consensus at the next meeting of the Council.

The representative of Australia replied to some of the points raised by the representative of the European Communities and stressed that the CONTRACTING PARTIES should now exercise their collective responsibility in this matter. He could not agree with the Canadian proposal, since it would lead to new bilateral consultations. He stressed that a "sense of the house" should be found to exist in this case, thereby permitting the adoption of the draft decision submitted by Australia.

The representative of Brazil said that the Australian draft decision was fully acceptable to him. While he could agree with the Canadian proposal, he had to stress that it was important to his delegation to arrive at a decision at the present meeting of the Council.

The representative of Sweden, speaking on behalf of the Nordic countries, expressed support for the proposal presented by the representative of Canada. He said that the interested parties should get together without delay to seek agreement on a possible text for a draft decision.

The representative of Cuba expressed her delegation's appreciation for the clarifications about the system of subsidies given by the representative of the European Communities. She then enquired about the process of adjustment of the system between two periods of rising prices.

In reply to the questions asked by the representative of Cuba, the representative of the European Communities referred to the Annex of the Report contained in document L/5113, which stated in figures how the EEC system had worked in the past. He said that the EEC had drawn its lessons from the two periods of rising prices, and he referred to the methods for adjusting the system and the ways in which it had been applied.

He then quoted from Article XVI:1, stating that this was the obligation of the European Communities under the General Agreement, which it had effectively accepted. He also pointed out that he had not yet received an answer on the question as to how the two Panels' finding of prejudice could still be maintained, even though the underlying situation had changed radically.

The representative of Switzerland said that the task of a panel was to make a factual finding on a legal matter, and that the task of the Council was to review the results of the panel's work and to provide the follow-up to the matter. After the Council had adopted the two Panels' Reports on this matter it had invited the Director-General to proceed, within a working party, with the examination of the possibility for the EEC to limit the subsidization. This examination had not resulted in an agreed conclusion. The question of follow-up by the Council was therefore open to differences of opinion. He said that his delegation had reviewed this question from the point of view of the proper functioning of the dispute settlement system, which he considered to be the cornerstone for the proper functioning of the GATT and which set precedents for the future. It should therefore be rigorously implemented. While proper sanctions were in keeping with Article XXIII, his delegation could not accept a procedure whereby a decision could be sought whose legal basis was uncertain and which would put in question the sovereignty of a contracting party. His delegation therefore followed the views expressed by the Canadian and Nordic delegations that the delegations directly concerned should be invited to seek jointly a mutually acceptable follow-up to the conclusions arrived at by the two Panels and the suggestions made in the Working Party.

The representative of Australia said that since the matter under debate was no longer a case of Australia bringing an action against the European Communities, it was pointless to ask the two parties to meet again to discuss the case. The time for bilateral consultations had long since passed, as the case had been placed in the hands of the CONTRACTING PARTIES, which had invited the European Communities to have discussions under the provisions of Article XVI:1 in the Working Party set up for that purpose. The exercise had therefore been carried out by the CONTRACTING PARTIES; and this matter was now the responsibility of the CONTRACTING PARTIES, who were now asked to adopt the draft decision contained in document C/W/360.

The Chairman, in concluding the discussion, noted that most interventions had been directed to paragraphs 41 and 42 of the Report of the Working Party which set forth the differing views of participants. He said that in matters of this kind the Council normally proceeded on the basis of consensus. In his view, consensus was understood in GATT to mean that no delegation maintained its objections to a text or attempted to prevent its adoption. He felt that such a consensus did not presently exist in the Council on this matter: he noted that the ten contracting parties in the European Communities were not in agreement with the draft decision as presented by Australia. At the same time, however, he was also very conscious of the weight of opinion expressed by the delegations which had supported either the Australian text as such or its general sense; and he concluded that there was a general desire to arrive at a decision at the present meeting of the Council.

The Chairman therefore proposed a short recess; and following consultations between the parties concerned, the Council adopted the following text:

> "With regard to the report by the Director-General on the Working Party established by a decision of the Council on 10 November 1980 and by a decision of the CONTRACTING PARTIES at their thirty-sixth session on 25 November 1980 to discuss with the European Economic Community the possibility of limiting subsidization of sugar exports, the Council:

Hereby adopts the Report:

Notes that the complaints are maintained;

Takes note of the intention of the European Economic Community to notify to GATT as soon as it is adopted the new sugar regulations as well as the 1981/82 sugar intervention price;

Decides that as soon as these notifications are received the Council will promptly review the situation;

Decides to maintain this item on its agenda."

The representative of Australia said that his delegation did not oppose the adoption of this text since it was procedural and, from his point of view, unexceptionable. He recalled again that his delegation had sought the adoption of a draft decision in March and in October 1980, and of a further draft decision at the present meeting. He said that these decisions could not be adopted by the Council because of the opposition by the European Communities. He repeated that the EEC sugar régime had been found in two Panel Reports and in a Working Party Report to be the cause of serious prejudice to world sugar trade. He believed that the EEC had told the GATT that it was not prepared to change its sugar régime in order to bring it into conformity with its GATT obligations. He emphasized a point he had made in an earlier intervention, namely that if the GATT were to do nothing, other contracting parties, including Australia, would be left with, at best, a diminished sense of obligation and commitment within the GATT framework of rules, which must not be allowed to happen.

The representative of the European Communities said that his delegation considered that it had fulfilled its obligations under Article XVI:1: to discuss with the other contracting parties concerned the possibility of limiting the subsidization. The text adopted by the Council could not impose obligations which went beyond those contained in the General Agreement.

The representative of Brazil considered that the fact that the resolution was based on common sense and was of a procedural nature did not make it less positive. He said that he understood the last statement by the representative of the European Communities in the light of the resolution that had just been unanimously adopted and which retained the item under review. Australia had not withdrawn its draft decision, which his delegation continued to support.

The Council took note of these statements.

9. Balance-of-payments restrictions
- Arrangements for consultations in 1981 (C/W/357)

The Chairman drew attention to document C/W/357 containing a note by the secretariat on the consultations to be carried out in 1981.

Mr. Martin (Canada), Chairman of the Committee on Balance-of-Payments Restrictions, said that in 1981 full consultations would be held by the Committee with Brazil, Greece, Israel and Portugal, and that simplified consultations would be held with Egypt, Korea, Peru, Sri Lanka, Tunisia, Turkey and Yugoslavia.

He said that the Philippines had asked to participate in the work of the Committee on Balance-of-Payments Restrictions and had become a regular Committee member.

The Council took note of document C/W/357 and of the statement.

10. India - Auxiliary duty of customs
- Request for extension of waiver (L/5123, C/W/359)

The representative of India, speaking under Other Business, referred to the waiver granted the previous year to enable the Government of India to continue to apply the auxiliary duty of customs on items in Schedule XII to 31 March 1981. He said that, as in the past, this duty had been introduced and continued as a temporary measure for the mobilization of resources for meeting compelling development and social welfare needs. He pointed out that the special circumstances which had obliged the Government of India to maintain the auxiliary duty of customs continued to exist. Despite various measures that had been proposed to raise additional revenue, the resource situation continued to be increasingly difficult. Even after additional taxation, the overall budgetary deficit was estimated to be Rs 15,390 million; and his Government was anxious to keep the deficit as low as possible in order to avoid creating inflationary conditions. This underlined the necessity for mobilizing additional resources to the maximum extent possible for essential developmental activities and to accommodate increasing costs of essential imports.

He said that in applying for another extension of the waiver, his delegation wished to confirm that the conditions of levy of the auxiliary duty and the exemptions granted earlier remained unchanged. The Government of India had maintained earlier exemptions, and for 1981-82, had also exempted three items from the levy of auxiliary duties: sulphur (crude), interchangeable tools for metal workings and handtools, and voltmeters designed

for mounting on switchboards of over 250 volts. He expressed the hope that the contracting parties would take due account of this measure as bearing testimony to the continued trend of liberalization in India's trade régime. These exemptions should also be seen as an effort by the Government of India to continue the progressive phasing down of auxiliary duties on GATT-bound items despite severe financial and resource constraints, in the spirit of the original waiver granted by the contracting parties.

He stressed that these duties would not have an adverse effect on imports into India within the framework of India's GATT obligations, and that the auxiliary duty was not intended to be a measure of protection designed to restrict imports. India stood ready to consult with any contracting party which considered that serious damange to its interest was caused or imminently threatened by the application of the auxiliary duties.

The Council approved the text of the draft decision (C/W/359) and recommended that the decision be adopted by the CONTRACTING PARTIES by postal ballot.

11. Spain - Denial of import licences for fish and fish products from Canada

The representative of Canada, speaking under Other Business, expressed concern about reports that the Government of Spain had taken a decision to deny import licences for imports of fish and fish products from Canada. Should the reports be confirmed, his authorities would consider such import restrictions to be inconsistent with Spain's obligations under the General Agreement and would reserve their GATT rights, including those under Article XXIII. Depending upon the clarification obtained from the Spanish authorities, the delegation of Canada might request that this matter be placed on the agenda of the next Council meeting.

The representative of Spain took note of the statement by the representative of Canada, which he would transmit to his authorities. He regretted that his delegation had only heard about this matter when the delegation of Canada had asked to raise it under Other Business, and that for this reason he was unable to respond to the Canadian statement.

The Council took note of the statements.

12. Agreements between the EEC and Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland

The representative of Switzerland, speaking under Other Business, on behalf of the parties to the Free-Trade Agreements between the European Economic Community and the EFTA countries, said that since Greece had acceded to the European Communities, the Free-Trade Agreements would also apply to relations

with Greece. However, to permit a smooth transition, it had been agreed between the parties to provide for a gradual introduction of some of the provisions of the Agreements. These transitional arrangements were limited to trade between the EFTA countries and Greece for a period of five years, and had been included in Additional Protocols already concluded between six of the EFTA countries and the EEC. The negotiations on the Additional Protocol for a seventh EFTA country were expected to be concluded in the near future. He said that full information as to the nature and scope of all these Protocols would be given in the biennial reports on the functioning of the Free-Trade Agreements to be presented later in 1981.

The Council took note of the statement.

13. Notification and Surveillance

The Chairman announced that a special meeting of the Council on Notification and Surveillance would be held shortly.