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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
12 July 1983

MINUTES OF MEETING

Held in the Centre William Rappard on 12 July 1983

Chairman: Mr. H.V. Ewerlöf (Sweden)

Subject discussed: Notification, Consultation, Dispute Settlement 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 adopted a proposal (BISD 27S/20) which provided for reviews of developments in the trading system to be conducted by the Council at sessions specially held for that purpose. The Council had held special meetings to review this matter in November 1980, May 1981, November 1981, and June 1982. He noted that while this was the fifth in the series of special meetings, it had been suggested in the airgram (GATT/AIR/1922) that this review and future reviews should take account of the commitment embodied in paragraph 7(i) of the 1982 Ministerial Declaration (L/5424).

The Director-General referred to the factual note (C/W/420), prepared by the secretariat on its own responsibility, and said that for the previous special meetings of the Council the corresponding documents had set out all developments in trade policy of which the secretariat had official knowledge since the previous review. He believed that the earlier documentation had been deficient in one important respect, namely the absence of information on trade measures which had not been notified officially. This had made it difficult to fulfil one of the main purposes of the special Council meetings, which was to consider how far the obligation to notify trade measures under the Understanding had been respected. He had therefore decided that the documentation for this meeting should be as comprehensive as possible; and accordingly, for the first time, the documentation listed a number of trade measures or agreements which had not been notified to the secretariat but information on which had been obtained from press reports, official bulletins or unofficially from delegations. He was aware that this was not a complete list of the existing trade measures which had not been notified to GATT. Other measures could possibly have been taken without coming to GATT's attention, and perhaps some of those listed had already

been eliminated or modified. Since this was the first time that non-notified measures were listed, the list was not restricted to those measures taken since the most recent special meeting of the Council - unlike the lists of measures elsewhere in the document. However, the documentation for future special meetings could be limited to new measures if that were thought desirable. He stressed that the inclusion of the non-notified measures in document C/W/420 implied no judgement as to their legality or illegality under GATT.

He then pointed out that some of the notifications listed elsewhere in the document related to measures of liberalization, and expressed the hope that such measures would be systematically covered in future and that there would be more of them.

He added that in compiling this document two problems had arisen which related to the quality of the information available to the secretariat. In listing non-notified measures, the secretariat had been obliged to rely largely on unofficial sources, and was forced to recognize that its capacity for monitoring developments in trade policy was very inadequate. He was therefore taking steps to remedy this defect. He also mentioned the problem of dealing with measures notified under a wide variety of procedures. He did not now recommend that notification requirements be rationalized; but this might well require attention in the fairly near future. He therefore intended to take steps to rationalize the secretariat's capacity to handle the information notified.

He then drew the attention of the Council to a suggestion made by the Consultative Group of Eighteen at its meeting in May 1983. The Group had considered whether the undertakings contained in paragraph 7(i) of the 1982 Ministerial Declaration should be systematically monitored, and if so, how this should be done. He recalled that this paragraph contained an unqualified commitment to refrain from taking or maintaining any measures inconsistent with GATT. It also contained commitments to make determined efforts to avoid measures which would limit or distort trade and to ensure that trade policies and measures were consistent with GATT principles and rules. He said the Group had agreed that these undertakings must be taken seriously and that their implementation should be systematically monitored. There had been some discussion of whether an entirely new mechanism or forum should be established to carry out this function; but the Group's general conclusion had been that this was not necessary, since existing GATT bodies had the power to act upon trade measures coming before them. There was a need for overall consideration, at a more political level, of the extent to which commitments under paragraph 7(i) were being respected; and the suggestion had been made that this could best be done by the Council, meeting in special session. While the Council was in no way bound by suggestions of the Consultative Group, he agreed with the view that the implementation of paragraph 7(i), which was the heart of the political agreement reached in November 1982, should be subjet to surveillance and that the Council was the most logical forum in which this could be done.

He expressed concern about the trend of events since the Ministerial Meeting, which in many ways seemed to run counter to the intention of Ministers to stop the proliferation of restrictive measures. He therefore thought that it was particularly important that the Council should agree on a means of comparing what was actually happening in trade policy with the commitments accepted by contracting parties in November 1982. Here again it was important that governments notify the actions they had taken and, to the extent that gaps in notifications persisted, that these be filled by the secretariat. He added that if the Council accepted the suggestion made by the Consultative Group, the question would arise whether one meeting a year would be enough to monitor effectively the sometimes rapid changes in trade policy. It might be necessary to hold two meetings; and he suggested that the Council should give some thought to this possibility and to how the Council monitoring of paragraph 7(i) could be made fully effective.

The Chairman agreed with the statement by the Director-General. He noted that the documentation for the review of the trading system had been prepared by the secretariat on its own responsibility. He also drew attention to the need for monitoring effectively the commitments related to paragraph 7(i) of the Ministerial Declaration.

The representative of the European Communities said that his delegation shared the Director-General's approach to the problem. The Council was the place where trade policies should be discussed in order to ensure that the multilateral trading system remained viable. He expressed his delegation's appreciation for the factual note prepared by the secretariat (C/W/420), but cautioned against the dangers of misuse of such a document if it were to fall into the hands of anyone outside the GATT. In referring to the section of the document related to Article XXII Consultations (pages 8-9), he said that there still existed important divergencies of views as to the legal obligation to notify. As to the information not based on notifications (pages 20-22), he expressed concern that the current exercise on safeguards might be hindered if the document were to be made available to the press. There existed, in his opinion, a "grey-area" outside the General Agreement in which a number of contracting parties felt safe; and he was concerned that this exercise could lead to a series of accusations. As concerned the sub-heading Other Matters (page 24), the references to certain dispute settlement cases which did not involve all the members of the Council should not be interpreted to mean that some contracting parties had given up certain principles which they had so far supported, including the principle that it was the signatories of the NTM Codes who were responsible for the settlement of disputes arising under the Codes.

He recalled that the Community had interpreted the undertaking in paragraph 7(i) of the Ministerial Declaration to mean that its best efforts would be deployed to avoid taking or maintaining such measures (SR.38/9, page 4). He felt that the Community had implemented this paragraph according to the commitments undertaken. There had been many instances of the Community refusing requests for protection and safeguards, which was a form of preventing protectionism.

He also mentioned the Common Agricultural Policy, pointing out that since 1979 the prices of agricultural products had increased in real value much less rapidly than the increase of the cost of production and the rate of inflation in the Community. The Community had therefore tried to reverse the trend; and he expressed regret that the Community was still being criticized on the basis of false premises. He cited figures for recent years which indicated the increase in Community imports from industrialized countries, developing countries and State-trading countries.

As concerned the member States, he mentioned that the United Kingdom trade balance for manufactured goods was negative for the first time since the Industrial Revolution, and said that France had chosen a policy of austerity. In his view, these cases reflected those governments' efforts to resist protectionism. Japan, on the other hand, forecast for 1983 an increase in exports and a decrease in imports; and the United States appeared to have forgotten the commitments undertaken at the 1982 Ministerial Meeting and more recently at UNCTAD VI in Belgrade in the light of its regrettable action on specialty steel. This could result in a chain reaction with negative effects on the future of the multilateral trading system. In conclusion, he referred to a statement by the Bank for International Settlements to the effect that the much desired recovery of the world economy could meet a serious obstacle in the form of high interest rates in the United States.

The representative of Jamaica said that document C/W/420 would be more complete if it showed the volume and value of trade affected to any significant extent by "grey area" measures. He noted that informal consultations with major trading partners were taking place covering certain trade restrictions which had not been brought before the Council. He was therefore uneasy about a Council examination which was very important from a legal point of view but which, from an economic point of view, did not present the full picture.

The representative of Colombia said that the measures taken by his country (document C/W/420, page 20) would be notified shortly and were to be terminated in the near future.

The representative of Singapore said that in his delegation's view the single most important achievement of the 1982 Ministerial Meeting had been the individual and collective commitment by all contracting parties to resist protectionism and to refrain from taking and maintaining any measures inconsistent with the spirit and principles of GATT. His delegation strongly supported the proposal to subject to surveillance the implementation of the commitments undertaken in paragraph 7(i) of the Ministerial Declaration. Such an important function should be carried out by the Council.

The representative of Finland, speaking on behalf of the Nordic countries, said that paragraph 7(i) of the Ministerial Declaration must be regarded as a reminder of the GATT obligations of contracting parties and as a renewed assurance that these obligations would be observed. A good part of the normal, continuous GATT activities, and above all consultations and dispute settlement, would constitute a form of follow-up. The Nordic delegations nevertheless attached great importance to a more specific form of follow-up to monitor developments under paragraph 7(i), which should be done at the special Council sessions. This could be reviewed again in the light of experience. For such discussions it was important to have a document summarizing all relevant measures taken in the period since the last review, as well as measures terminated. The information should be as comprehensive as possible: contracting parties should be urged to meet the relevant notification requirements strictly; and reverse notifications should also be invited. The secretariat should be encouraged to continue to utilize other information, since it was important to have as accurate a view as possible of trade policy measures taken. Paragraph 7(i) could not, however, be understood to mean that contracting parties could not have recourse to measures authorized by the General Agreement. In respect of notifications generally, the Nordic delegations believed that the situation was far from satisfactory. They doubted that the Council would be the right body for detailed discussions on this matter, and therefore proposed that a working party be established to look into the need for notifications, priorities, periodicity and possibly better use of notifications.

The representative of the United States considered that document C/W/420 was useful for the Council's discussion, and that the information not based on notifications permitted a closer assessment of what actually had happened. His delegation considered that the Council was the appropriate place to discuss this matter and that it should meet in special session every six months. Overall, he believed that this exercise was good from the point of view of the United States.

The representative of India said that the follow-up on paragraph 7(i) of the Ministerial Declaration was necessary and important. His delegation therefore agreed with the suggestion that the Council should periodically undertake this task in special session, preferably twice a year. His delegation was, however, flexible in respect of the periodicity. Turning to document C/W/420, page 12, he noted that there were no notifications in respect of Article XXXVII:2(a). While it might be presumed from the absence of notifications that the contracting parties had fulfilled the provisions of Article XXXVII:1, it was well known that this was not so in many cases. He hoped that the contracting parties would bring back into full use the provisions of Article XXXVII:1 and 2, both in respect of actions taken under some legal provisions and also actions which circumvented legal provisions or were against them.

The representative of Poland said that one of the striking features of the Understanding was a disparity in the relative size and the degree of detail between the sections dealing with notification and consultations and those passages relating to the other two elements of the process. The emphasis seemed to be on how to treat the disease rather than how to prevent it. He said that there seemed to be a growing tendency for disputes involving trade matters to develop into full-scale conflicts. Worse yet, factors external to trade and economics were increasingly entering into the picture in the form of politically motivated actions alien to the letter and certainly to the spirit of the GATT system. The ramifications of such actions typically extended far beyond the immediate area of application of the respective measures, and usually had an adverse impact on the commercial interests of a larger number of contracting parties.

For example, he referred to the suspension of Poland's most-favoured-nation tariff treatment by the United States, which he said was inconsistent with the provisions of the Understanding and with the relevant articles of the General Agreement. Poland, as the affected contracting party, had had no opportunity to conduct consultations as provided by Article XXII of the General Agreement and by paragraphs 4 and 6 of the Understanding. He also pointed out, with reference to paragraph 3 of the Understanding, that the other contracting parties had become aware of the US action only after it was already being implemented, and had the first opportunity to reflect collectively on the situation only after this sanction had become effective. He said that while the technical considerations related to notification and consultations might appear to be of secondary importance, they formed an integral part of a situation which had its origins in the insufficiency of what he called "preventive medicine" in the GATT system. More attention to such "preventive medicine" was certainly needed to make the system healthier and stronger.

The representative of Israel expressed support for the proposal made by the Director-General, following the deliberations of the Consultative Group of Eighteen, that the Council should review at special sessions, possibly twice a year, the implementation of paragraph 7(i) of the Ministerial Declaration. He said that Israel continued to be the object of a number of trade measures, taken by various countries, which were inconsistent with GATT, and that in spite of the undertakings contained in paragraph 7(i), he could not find in document C/W/420 any change from the situation which had existed before the Ministerial Declaration. His Government reserved its GATT rights to raise this matter at the appropriate time, not only under the specific provisions of the General Agreement but also in relation to the undertakings contained in paragraph 7(i). He welcomed the inclusion in the factual note by the secretariat of information not based on notifications; this practice should be not only maintained but improved. After having taken cognizance of such information at its special meetings, the Council might authorize the Director-General to ask the contracting parties concerned for further information on such measures.

The representative of Chile welcomed the Director-General's intention to improve the secretariat's capacity for monitoring developments in trade policy. He agreed that it was necessary to break up the routine of the special sessions of the Council and to start from a new basis so as to renew the discussion process. He recalled a statement by his delegation at an earlier special Council meeting that some contracting parties had never complied with the notification obligations, and that many such obligations were based on questionnaires which did not necessarily tally with present requirements. Also, very often there was no follow-up. At that time, Chile had suggested setting-up a working party to analyse the notification system with a view to improving its substance, format and operation. He welcomed the proposal by the Nordic countries, and expressed full support for it. He suggested that the secretariat be asked to prepare a report on the system of notifications before a working party was convened, and in any case before the next session of the CONTRACTING PARTIES.

He also agreed that special meetings of the Council should be called to exercise surveillance and to monitor the commitments contained in paragraph 7(i) of the Ministerial Declaration. He recalled that only a few weeks after the 1982 Ministerial Meeting, the European Community and Japan had agreed on Japanese export restraints concerning a number of electronic items. The May 1983 Summit Conference at Williamsburg and the June 1983 UNCTAD VI conference at Belgrade had also been followed by various trade restrictions which ran counter to the expressed intentions and declarations made at those conferences. He also referred to proposed US legislation which would limit copper imports into the United States. Issue No. 17 of the GATT "Survey of Developments in Commercial Policy" was very illustrative and recorded various trade restrictions for the first quarter of 1983 which went against the commitments in the Ministerial Declaration. He welcomed the inclusion in the factual note (C/W/420) of information not based on notifications, and suggested that this should become a regular feature of the documentation. He pointed out that the section on Notifications relating to paragraph 3 of the Understanding (pages 19-20) should also refer to a recent notification by Chile (L/5499 and Add.1).

The representative of Japan said that his Government considered paragraph 7 to constitute the core of political commitments of the Ministerial Declaration. It was a cause of great concern to his Government that if various trade restricting measures, including so-called outside-GATT measures, were left unchecked, it would lead to weakening the open and multilateral trading system. This pointed to the necessity of examining how those measures would be subject to appropriate disciplines in GATT and what actions would be needed to secure phasing them out. While utmost efforts should be made to reach a comprehensive understanding on safeguards, it was especially important to examine ways to secure transparency of those measures and to place them under surveillance. Of course this should not be misinterpreted as

legitimizing so-called outside-GATT measures. He said the Japanese Government fully supported the special Council meetings and strongly hoped the Council would proceed with this work. At the same time, economic problems posed to both importing and exporting countries' policies should not be used as an excuse for taking outside-GATT measures. Responding to the comment by the representative of the European Communities, he said that it was true that Japan's exports had increased and its imports decreased. This was not, however, caused by protectionist measures on the part of Japan but by economic factors. Japan had taken a series of measures for further opening its market, including advanced implementation of MTN concessions and improvements in its standards and certification systems.

The representative of Australia shared the concerns voiced by the Director-General in his introductory remarks regarding the level of observance of notification obligations and the need to monitor the fulfillment of these obligations. His delegation had noted from document C/W/420 that only one third of the contracting parties had submitted new, full notifications under Article XVI:1 since 1981 as they were required to do. The response to the State-trading notification was even more disappointing with only ten notifications received. The factual note by the secretariat also reflected the nature and extent of unnotified measures. The section on Information not based on Notifications (pages 20-22) indicated that VER/OMA measures were of growing significance and that various undefined import restrictions were being imposed without regard to GATT. These developments were of concern to Australia as they reflected a growing attitude that an increasing number of trade-distorting measures could be taken outside the GATT, often without the discipline of surveillance and notification. Clearly, the increased use of these measures permitted continued growth of what was already a significant volume of world trade outside the legal foundation of the multilateral trading system. This constituted an important destabilizing force in world trade by promoting increased uncertainty and unpredictability in conditions of trade and simultaneously was eroding the credibility of the General Agreement.

He said the commitment entered into by the contracting parties at the 1982 Ministerial Meeting had been reinforced by the recognition of the major trading nations at Williamsburg in May 1983 of measures that had been taken in recent years outside Article XIX, and of the need for their elimination once economic recovery got under way. Australia agreed that the first step needed was greater transparency, which could be achieved by having all measures notified, as provided under paragraph 3 of the Understanding, and by having the list on pages 20-22 kept as an on-going record with the opportunity given to contracting parties to add to it, and to have it made available to the relevant GATT working parties and committees. He agreed that the Council was the most logical forum to carry out this surveillance and to ensure that

notifications were made. His government also agreed that the Council should meet in special session every six months or so to carry out this surveillance exercise. Referring to dispute settlement, he stated that many of the disputes itemized on pages 22-24 of document C/W/420 remained either unresolved or had been the subject of protracted delays. In his view, the GATT was increasingly failing to resolve disputes. Their resolution required both a clear finding as to whether a breach of the General Agreement existed, and a recommendation that pointed to rectification.

The representative of Hungary shared the preceding speakers' view of the necessity of monitoring regularly and effectively the implementation of paragraph 7(i) of the Ministerial Declaration. He welcomed and supported the introductory statement by the Director-General, and he repeated that the understanding of the Chairman of the Ministerial Meeting concerning paragraph 7(i) of the Ministerial Declaration had no legal status.

The representative of Egypt expressed support for the Director-General's proposal relating to special Council meetings. He requested that the reference on page 16 of document C/W/420 be corrected to read "Arab Republic of Egypt".

The representative of Switzerland shared the concerns expressed by the Director-General over the deterioriation in international trade relations since November 1982 in spite of the commitments undertaken at the Ministerial Meeting and at other high-level meetings. The majority of the trade meaures applied had not been notified. This carried the risk of manoeuvering the GATT into the marginal situation of a body limiting its action to declaratory proposals while the trading system was subjected to uncontrollable segmentation. He welcomed document C/W/420, and in particular the inclusion of information not based on notifications, as an important intitiative which enabled the contracting parties to review the commitments undertaken in paragraph 7(i) of the Ministerial Declaration. The "grey-area" was thus becoming an object of Council deliberations without being thereby legalized. He said that this was only the beginning of a process, the modalities of which remained to be defined. The establishment of a working party under the authority of the Council could be of some use; but other procedures were also conceivable. Irrespective of the procedures chosen, the final objective had to be the gradual elimination of the trade measures in question.

The representative of Canada agreed with the thrust of the Director-General's introductory comments and with his conclusions. He supported the suggestion from the Consultative Group of Eighteen that the Council should systematically monitor the proper implementation of the commitments under paragraph 7(i) of the Ministerial Declaration.

For this purpose the Council could meet in special session twice a year, or more often if necessary. Contracting parties would have to make greater efforts to notify all "grey-area" measures. He pointed out that any future factual note should also mention the Canadian emergency action under Article XIX in respect of yellow onions, which had been notified in document L/5392 and Addenda.

The representative of New Zealand also welcomed the inclusion in document C/W/420 of information not based on notifications. His Government attached great importance to paragraph 7(i) of the Ministerial Declaration, and agreed that the Council should exercise a surveillance function along the lines suggested by the Director-General. He recalled that paragraph 7(i) also contained a commitment "to avoid measures which would ... distort international trade". This was of particular importance in agricultural trade where, in addition to the question of legality, measures needed to be looked at equally carefully in terms of potential distortion of trade.

The representative of Uruguay agreed with the suggestion that the Council should monitor the implementation of paragraph 7(i) of the Ministerial Declaration and thereby contribute to the clarification of "grey-area" measures in international trade. Referring to the section Other Matters on page 24 of document C/W/420, he pointed out that Uruguay's supplementary surcharge on imports had been repealed. As to notifications under Article XVI:1, Uruguay had announced that it did not grant export subsidies.

The representative of Nigeria said that his government welcomed the monitoring of the implementation of paragraph 7(i) of the Ministerial Declaration. He expressed the hope that future factual notes by the secretariat would continue to include information not based on notifications. With regard to the information relating to Nigeria (page 22 of document C/W/420), he pointed out that a similar notification for 1982 had simply not been updated for 1983. These trade measures were interlinked, inter alia, with Nigeria's balance-of-payments needs. Accordingly, information in this regard had been made available to the Balance-of-Payments Committee.

The Director-General, referring to the statement by the representative of the European Communities, pointed out that the "procedures under Article XXII on questions affecting the interests of a number of contracting parties", adopted on 10 November 1958 (BISD 7S/24) provided that "any contracting party seeking a consultation under Article XXII shall, at the same time, so inform the Executive Secretary for the information of all contracting parties" (paragraph 1). He considered it important that, even in the absence of an express obligation, such information should be notified. He acknowledged that document C/W/420 could be improved, including its presentation. He invited all contracting parties to inform the secretariat of any other elements of the document which, in their view, might need additional precision.

Responding to a question, he recalled that the notes by the secretariat for the special Council sessions had, so far, never included statistics on the trade covered by various notified measures. The secretariat had made such an effort only once in a note for the Committee on Safeguards (Spec(82)18 and revisions) in which there had been an attempt to evaluate the volume of trade covered by different safeguard measures. He drew attention to the problem that such trade figures, notwithstanding their value for illustrating the preoccupations of the GATT secretariat, had sometimes been interpreted in an excessive manner. It was sometimes difficult to introduce the necessary nuances so that trade estimates could not be misinterpreted or abused.

The Chairman stated that the discussion had been useful and active, reflecting the great importance which governments attached to effectively monitoring developments in the trading system and to their commitments as GATT contracting parties. He summarized briefly the discussion, after which the Council agreed as follows:

1. The special meetings of the Council to review developments in the trading system would serve to monitor paragraph 7(i) of the Ministerial Declaration, as suggested by the Consultative Group of Eighteen.

2. Such special meetings would preferably be held twice each year.

3. The secretariat should continue its efforts to improve transparency, inter alia, through information not based on notifications.

4. In respect of notification requirements, the secretariat should endeavour to streamline the information process.

5. Delegations would co-operate with the secretariat in these efforts.

6. The Council would consider the proposal by the Nordic countries for the establishment of a working party to examine the need for notifications, priorities, periodicity and possibly the best use of notifications.

The Chairman said it would be his intention to reconvene the Council in special session for its next review of developments in the trading system before the thirty-ninth session of the CONTRACTING PARTIES in November 1983, the date to be fixed after informal consultations with delegations.

The Council agreed that the review on Notification, Consultation, Dispute Settlement and Surveillance had been conducted.