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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
27 May 1981

MINUTES OF MEETING

Held in the Centre William Rappard on 27 May 1981

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

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1. Membership of the Council

The Chairman said that the Government of the Dominican Republic had requested membership in the Council.

On behalf of the Council, the Chairman welcomed the Government of the Dominican Republic as a new member.

2. Notification and Surveillance

The Chairman recalled that at their thirty-fifth session the CONTRACTING PARTIES had adopted the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26 S/210) drawn up in the Multilateral Trade Negotiations. Subsequently, in March 1980 the Council had adopted the Proposal (C/111) relating to the implementation of the paragraphs of the Understanding dealing with Notification (paragraphs 2 and 3) and with Surveillance (paragraph 24). In April 1980 contracting parties had been invited to submit the relevant notifications. In November 1980 the Council had a first discussion of this matter.

He said that the Council was meeting in special session for further discussion of this matter and to conduct the review provided for in sub-paragraphs 6(b) and (c) of the agreed procedures contained in document C/111. He drew attention to a comprehensive factual note (C/W/361) prepared by the secretariat drawing on notifications made and other relevant information in the period from 1 January 1980 to 31 March 1981, as a basis for the discussion and review.

He recalled that in the GATT Work Programme adopted in November 1979 (BISD 26 S/219), the agreement relating to the conduct of the regular and systematic review of developments in the trading system had been referred to the Council. He suggested that in carrying out this review, it should be borne in mind that in

reaching the Understanding referred to above, governments had reaffirmed their commitment to existing GATT obligations regarding publication and notification. They had agreed to notify, to the maximum amount possible, the adoption of trade measures affecting the operation of the General Agreement, endeavouring to do so in advance of the implementation of such measures.

He said in respect of Surveillance that the CONTRACTING PARTIES had agreed that particular attention would be paid to developments affecting rights and obligations under the General Agreement, to matters affecting the interests of developing contracting parties, to trade measures notified in accordance with the Understanding, and to measures subject to consultation, conciliation or dispute settlement procedures.

He asked delegations to consider how the Council should proceed further, since the present arrangements were still experimental and subject to review and modification in the light of experience.

The representative of India said that this special session was important because the Council was initiating a process which was of an experimental nature but which should achieve concrete results. While in the early stages this might seem to duplicate some of the work going on in other GATT bodies, it was to be expected that the duplication would be minimized as the work progressed. The two aspects of this exercise, Notification and Surveillance, were closely related and could therefore not be separated from each other.

In respect of Notification, he said that the note by the secretariat (C/W/361) was very comprehensive. He expressed the view that the Council should use the information contained therein, adding to it as appropriate and suggesting areas that were not covered. Citing a specific example in connexion with the requirements of Article XXXVII:2(a), he said that it would be for the Council to decide whether notifications were needed and whether the obligations under Article XXXVII:1 had been met. He added that there might be need for a more detailed review of the implementation of Part IV.

In respect of Surveillance, he said that paragraph 24 of the Understanding was entirely supportive of the decision taken by the CONTRACTING PARTIES on 28 November 1979 (BISD 26 S/201) by which they had affirmed their intention to ensure the unity and consistency of the GATT system, and to this end, oversee the operation of the General Agreement as a whole and take action as appropriate. He suggested that the note by the secretariat might be more elaborate, particularly in respect of factual reporting about the functioning of, and the work being done in, various committees. He believed that the participation of the developing countries in the MTN Committees was of great importance. Discussion should therefore

focus on any reasons preventing the developing countries from participating more fully in this work, and ensuring that there was a balance in it. In addition, the present elements of GATT should be made more effective, so that contracting parties would solve their problems here.

He felt that in the post-MTN period, the Generalized System of Preferences, though voluntary and unilateral, should be seen in the context of the relevant decisions taken in November 1979 by the CONTRACTING PARTIES. The expectation was that these decisions would provide additional certainty and predictability to these schemes and further enhance their benefits for developing countries by establishing a well-defined consultative mechanism prior to the modification or withdrawal of benefits. Though improvements had undoubtedly occurred, the hopes for major reforms had remained, by and large, unfulfilled. He referred in this context to certain recent developments affecting the generalized and non-discriminatory character of the schemes.

He then referred to the direction that the special sessions of the Council could take in the future. While more detailed examinations could be held within the various committees, a broad stock-taking should take place in the Council, which had to address itself to the question of how corrective measures could be taken. His delegation would participate fully in this work and would bring to the notice of the Council individual issues and problems having a bearing on the broader aspects of the trading system.

The representative of Brazil said that he agreed with practically all of the remarks made by the representative of India. In his view, the GATT was a delicate mechanism which, following the Tokyo Round, had evolved into an even more complex GATT-MTN system. As a result, new perspectives and new working methods were needed to evaluate whether it was functioning properly. In this respect Notification was an integral part of Surveillance; and the rôle of the Council in this matter would have to differ from its routine work or from the sessions of the CONTRACTING PARTIES. The work should have a formal, if not a formalistic, nature and should be addressed to the whole mechanism of the GATT rather than to the particulars of specific cases. This would require initially a broad stock-taking to identify certain trends in both the international trade system and in the GATT system as such, and why certain developments were or were not taking place.

He recalled the discussions leading up to the drafting of paragraph 24 of the Understanding. In his view, the intention had not been to provide for an examination of substantive problems, but rather of how the GATT system was helping or hindering the development of world trade.

In respect of Notification, he said that it should be determined in which areas the notifications were or were not satisfactory, and whether the requirements related to paragraph 3 of the Understanding were up to date.

In respect of Surveillance, the question to be asked was how the rights and obligations of contracting parties were being affected, especially of developing contracting parties, and how well the dispute settlement mechanism was functioning. In his view, this constituted the test for the efficiency of the GATT; and new trends could be detected in its operation. Panel reports had become clearer and more straightforward, which he considered worthy of encouragement by the Council. What should be examined, however, was whether the time spent by panels was too long, and what might be done to expedite this work. Furthermore, it should be explored whether the panel reports were adopted by the Council in a satisfactory manner and within a reasonable time-period. Questions could also be raised whether sufficient notifications were made to the Council on the follow-up measures taken as a consequence of the adoption of the panel reports. He said that the overall objective of this exercise was to keep the GATT machinery working as smoothly as possible.

Turning to the note by the secretariat in document C/W/361, he felt it could be improved by including the dates of the documents mentioned as well as some additional information on the follow-up action in the case of panel reports.

In respect of the time-period covered by the secretariat note, he considered that some leeway should be allowed where cases, such as certain very old waivers, dated back many years. He also raised the question whether in future a report could be presented by the Director-General on the whole of the GATT, including suggestions of how the GATT machinery could be improved.

The representative of Yugoslavia said that the Understanding had made possible a systematic and periodic analysis of questions concerning international trade. Thus, from a legal and organizational point of view, the GATT was now well-equipped to carry out its task. He said that since this work was still at an experimental stage, the Council's work in this field should be improved as much as possible.

In respect of Notification, document C/W/361 provided a good base even though it was purely factual. It showed that notifications were not systematic, and in some cases were not submitted on time. He felt that the document could be improved by having the secretariat add its own comments and possibly suggestions with respect to the notifications. For instance, it might be indicated whether the absence of notifications meant that there were no activities whatsoever in the sector concerned or whether governments had not notified their activities.

Turning to Surveillance, he noted that during the period in question there had been fourteen cases which had been the subject of dispute settlement procedures. As this activity had clearly become of increasing importance in GATT, an analysis of all cases falling under paragraph 24 of the Understanding would be welcomed by his delegation.

The representative of Canada said that the relatively short time which had elapsed since the results of the MTN had entered into force, as well as the experimental nature of the exercise at the present stage, might create a certain hesitancy on the part of delegations to start drawing conclusions. His delegation, nevertheless, could basically agree with practically all the comments made by previous speakers.

In his view, the Notification part of the exercise presented the opportunity to make observations as to whether the relevant requirements were being met. He urged all contracting parties to fulfil their obligations in this respect. The main thrust of this exercise was, however, Surveillance. He said that while the Council should not dwell on substance, it might have to examine substantive issues if the need arose, for instance in the course of examining the operation of the dispute settlement mechanism. He believed that the responsiveness of the dispute settlement system to the needs of contracting parties should be examined over time. The documentation could also be improved by adding more detailed information to it. As for the inclusion of summaries of the Panel decisions, these might become very lengthy if they were to reflect adequately all the parties' points of view. He suggested further reflection and consultation before attempting to do this. In conclusion, he agreed that the final objective of the whole exercise was to ensure that the GATT machinery was working as smoothly as possible.

The representative of the European Communities said that the issues being discussed constituted an important test as to whether the GATT was functioning properly. At the present experimental stage of the exercise, it was up to the Council to consider broad policy issues rather than to seek answers from the secretariat. In any event, the CONTRACTING PARTIES would have to define their objectives before turning to the secretariat in this respect.

He said that in the area of Notification and Surveillance, the GATT had traditionally functioned in a pragmatic way, based on the concept that each contracting party would exercise a certain amount of self-discipline. The adequacy of this approach had been criticized to some extent in the Tokyo Round, which had led to the Understanding. He recalled that during the negotiations some doubts and disagreement had been expressed as to whether the GATT had functioned adequately and whether, in practice, it would even be possible to attain substantial improvements. There had not been unanimity on this issue; and the EEC had agreed to follow the majority, albeit with certain reserves. The views of his delegation on this matter were a matter of record, namely, that it might be unrealistic and impractical to attempt more, either because the CONTRACTING PARTIES would be flooded with unnecessary information or because individual contracting parties could interpret the escape clause in the Understanding in such a way so as not to comply.

In commenting on document C/W/361, he raised the following points for reflection: (1) In the view of his delegation, the GATT was not a system to gather information for its own sake, but only if it was of value and interest for the CONTRACTING PARTIES. The requirements for notification and transparency would, therefore, vary according to the circumstances. For instance, a substantial amount of notification was required in the field of textiles, because of the special regulations which governed this sector. However, this practice was not necessary throughout the whole range of GATT activity. Moreover, the requirements of the CONTRACTING PARTIES could change over time, as in the case of border taxes. (2) Some of the information currently supplied on a regular basis covered matters which the CONTRACTING PARTIES were not systematically pursuing. He mentioned in this connexion State trading, regional agreements, particularly those among developing countries, with some exceptions the information required under waivers, and progress reports on free-trade areas and customs unions. He felt, therefore, that there was no clear need to expand the requirements in such areas. (3) It was clear that the existing requirements were not observed by the majority of the contracting parties. This called for caution, and raised questions as to whether the contracting parties, in practice, would be able to take on additional requirements. He mentioned in this connexion the requirements under Article XVI:1 and XVII of the General Agreement and under paragraph 3 of the Understanding. (4) In some areas there was a general notification requirement, but the consequential interest for contracting parties was of a specific and bilateral nature. Before considering additional multilateral requirements, it should be clear whether this was really desired by the individual contracting parties. He cited as examples notifications in relation to Article XXVIII, as well as to Articles XIX and XXII, where the basic rights were of a bilateral nature.

The preliminary conclusions of his delegation in the area of Notification were, first, that the CONTRACTING PARTIES should seek to avoid "slogan calls" for more notifications and transparency. Instead, it should be asked whether the additional information would help the GATT and the secretariat to function better. Second, there was a need to avoid duplication of work in other GATT bodies, for instance the Sub-Committee on Protective Measures. Third, contracting parties should be encouraged to comply with existing notification procedures before jumping to the conclusion that the system was at fault.

In respect of Surveillance, he had noted carefully the views expressed by previous speakers. While there was clearly an argument for more systematic review of action taken after adoption of a panel report, the preliminary position of his delegation was that it was for the affected party to raise the matter if it remained dissatisfied, and that this was not a matter for collective action. In his view, the opinions expressed earlier by the representative of Brazil on more general macro-economic issues, such as the rôle that the Notification and Surveillance system could play in ensuring that GATT was adapted to the current problems in international trade, would, if pursued, require further reflection.

The representative of Switzerland said that Notification, which contributed to greater transparency in trade policy, and Surveillance, which dealt with the question of compatibility with multilateral trade rules, were elements of fundamental importance to the GATT. Document C/W/361 showed that there was no lack of procedures. This indicated that any improvement of the system should not be sought in creating new requirements, but rather by a greater respect for the existing obligations on the part of all contracting parties, and also by some streamlining of the procedures.

He said that it appeared that notifications were always submitted by the same contracting parties, while others never showed on the lists. It was therefore necessary to agree (1) that the existence of the MTN Codes did not dispense any contracting party of its obligations under the General Agreement, and (2) that all contracting parties should respect carefully their commitments on notification and consultation, as provided by the General Agreement.

He said that the CONTRACTING PARTIES should therefore reflect on how and whether signatories to the Codes could meet their GATT obligations by respecting their notification obligations under the Code, particularly, if such notifications were made to the Council. In this way, the Council could carry out its Surveillance activity with full knowledge of the facts. In the view of his delegation, this would also lead to greater administrative simplicity for the individual contracting party, the Council and the secretariat.

The representative of the United States said that the statements made by earlier speakers would bear reflection. It was clear to his delegation that the current system needed some improvement both in terms of the quantity and quality of information reported, from both developed and developing countries. He said that the system would not work unless all contracting parties made an effort to utilize it more fully.

In his view, the work done by the secretariat in compiling reporting requirements was useful, and would need updating. He also said that GATT committees should be encouraged to take a more active rôle in ensuring that notifications under their purview were in fact submitted and adequately reviewed. In the meantime, all contracting parties should make more use of the provisions of paragraph 3 of the Understanding, both in reporting measures and in seeking more information bilaterally on measures of concern to individual contracting parties.

The representative of Spain said that his delegation shared the views expressed that further work was needed in respect of this matter, in order to ensure the adequacy of the existing instruments. His delegation would make its contribution to this work in due course.

The Director-General said that the present discussion was useful since every statement made reflected to a certain extent thoughts which the secretariat had entertained about the problems of Notification and Surveillance. He considered, therefore, that this discussion would lead the Council gradually out of the so-called experimental phase. He then made the following specific comments.

First, while it would be highly desirable to avoid notifying for the sake of notifying - the concept of transparency should not be carried to an extreme - it was the duty of the secretariat to insist that where a real obligation to notify existed this must be respected carefully by all contracting parties, since otherwise there would be a risk of weakening the GATT system. He also considered that it was very important, in carrying out an examination of the international trading system, to have a reliable basis for the work, and this entailed a clear idea of what was taking place not only under the GATT but also outside it.

Second, he referred to the question of why there should be notifications and why there should be periodic reviews in the Council. In his view, notifications were an essential prerequisite for the carrying out of the Surveillance aspect of GATT's work. Surveillance could be performed on two levels: first, on the basis of reports made by the secretariat's Economic Research and Analysis Unit, and secondly by an examination of the functioning of the GATT machinery, the latter being more closely connected with the specific problems under discussion at the present meeting of the Council.

As regards duplication of work, he said that a distinction should be made between an examination of specific notifications made in particular GATT bodies, and reviews carried out in the special meetings of the Council, whose purpose under paragraph 24 of the Understanding was not yet fully determined, but which should presumably be global and of a more general nature.

Third, he considered it essential that Surveillance should not be a theoretical exercise, but rather one which would enable the Council, and thereby the CONTRACTING PARTIES, to act more effectively in concert.

The Council agreed that the review on Notification and Surveillance had been conducted, as provided in the Proposal adopted in March 1980 (C/111).

The Council also agreed that delegations should reflect on the arrangements that would be appropriate for the next review, in the light of experience gained, and authorized the Chairman to set the date and make arrangements for the next review, after consultations with delegations.