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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
12 March 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 12 March 1986

Chairman: Mr. K. Park (Korea)

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The Council observed a minute of silence in memory of the late Olof Palme, Prime Minister of Sweden.

1. Cooperation Council for the Arab States of the Gulf (GCC) - Request for observer status (L/5954)

The Chairman recalled that at its most recent meeting on 12 February, the Council had agreed to revert to this item at the present meeting.

The representative of the European Communities recalled that at the Council meeting in February, his delegation had indicated that it viewed favourably the request for observer status by the Cooperation Council for the Arab States of the Gulf (GCC). As for observer status in GATT generally, the Community and its member States could not consider any further requests for observer status until the current work[1] aimed at achieving some order in this matter had achieved a solution.

The Council agreed to grant the Cooperation Council for the Arab States of the Gulf (GCC) observer status for Council meetings and sessions of the CONTRACTING PARTIES.

The representative of Kuwait, speaking as a contracting party observer and on behalf of the GCC, said that the GCC was a regional organization whose main task was to coordinate and defend the economic interests of its member states. In doing so, it supported GATT's activities and efforts to liberalize and promote world trade. Since its creation, the GCC had been increasingly involved in activities to promote economic cooperation, coordination and integration among its members and to promote trade between developing and developed countries.

The representative of Iran, speaking as an observer, said that his delegation believed that in order to meet the requirements for observer status in GATT, an organization had to be of a trading, financial or economic character. The GCC did not seem to meet those criteria, since six months after its creation, a number of military agreements had been concluded among its members. He gave examples of military issues considered within the GCC which seemed to overshadow its declared activities in other fields.

The Council took note of the statements.

2. Trade in Textiles
   - Report of the Textiles Committee (COM.TEX/43, COM.TEX/SB/1116 and Add.1)

The Director-General, Chairman of the Textiles Committee, recalled that Article 10:4 of the MFA[2] required the Textiles Committee to review the operation of the Arrangement once a year and to report to the Council. The Committee had conducted its most recent annual review of the Arrangement in December 1985, and its report was before the Council in COM.TEX/43. In conducting this review, the Committee had considered the following: the report of the Textiles Surveillance Body (COM.TEX/SB/1116 and Add.1); a report by the Secretariat on recent developments in demand, production and trade in textiles and clothing

[1] See Item 7.

[2] Arrangement regarding International Trade in Textiles (BISD 21S/3) as extended by the 1981 Protocol (BISD 28S/3).

(COM.TEX/W/173); certain statistics on textiles and clothing (COM.TEX/W/174); and a verbal report by the Chairman of the Sub-Committee on Adjustment, together with submissions from a number of participants and country-specific summaries of the available information. In December 1985 the Committee had considered other subjects, such as the membership of the Textiles Surveillance Body for 1986. It had also further discussed whether the MFA should be extended, modified or discontinued upon its expiry at the end of July 1986. He recalled that these discussions were required under Article 10:5 of the MFA. The Committee was scheduled to meet again in early April to continue its consideration of the future of the MFA. At its April meeting the Committee would also have before it a report from the Sub-Committee on Adjustment. He noted that there were two other fora in GATT discussing matters relating to textiles and clothing. The Working Party on Textiles and Clothing would continue its discussions on modalities of further trade liberalization in this sector, and the Preparatory Committee had discussed whether and how textiles and clothing should be included in a new round of multilateral trade negotiations. While the decision on the future of the MFA would have to be taken in the Textiles Committee in the coming months, the discussions in the other bodies would also be relevant to future treatment of the textiles and clothing sector.

The representative of the United Kingdom, on behalf of Hong Kong, said that the present circumstances in regard to textiles were somewhat different from those prevailing at the time of the December 1985 meeting of the Textiles Committee which was the subject of the report in COM.TEX/43. The US President had vetoed the textiles bill which had then just been passed by the Congress; such resistance by the US Administration would continue to be essential to the successful outcome of the negotiations now proceeding in the Textiles Committee, and to the successful launching of the new round of multilateral trade negotiations, which the United States actively promoted. Other developments had included a further round of informal consultations in February, progress towards finalizing the negotiating mandates of the major participants, and the recent successful meeting of the developing country exporters of textiles and clothing in Beijing, where an understanding had been reached on the main elements for negotiation in the process taking place in Geneva between now and the end of July. Those countries had resolved to continue to participate in that process on a unified basis. The process in Geneva was not only in the Textiles Committee but also in the parallel exercise of the Preparatory Committee. To ensure a successful outcome in both, it would be necessary, at the very least, that a process of effective and progressive liberalization of trade in textiles be initiated in the context of the MFA renewal before the end of July. The scene seemed to be set, as envisaged in paragraph 42 of COM.TEX/43, for discussion in the Textiles Committee to move from generalities to a more substantive phase of negotiation on the detailed elements of a new arrangement to succeed the current MFA.

The Council took note of the statements and adopted the report of the Textiles Committee (COM.TEX/43).

3. United States - Manufacturing Clause
- Follow-up on the Panel report (L/5609, L/5968)

The Chairman recalled that in May 1984, the Council had adopted the Panel report (L/5609). This item had been put on the agenda of the present meeting at the request of the European Communities. He drew attention to a communication from the European Communities in L/5968.

The representative of the European Communities noted that it had been nearly two years since the Panel report had been adopted. He described the effects of the US Manufacturing Clause and recalled that the Panel had found that it was inconsistent with Article XI, that its extension beyond 1 July 1982 could not be justified under the Protocol of Provisional Application, that the US action was therefore inconsistent with its GATT obligations, and that the extension of the Clause beyond 1 July 1982 had to be considered as a prima facie nullification or impairment of benefits accruing to the Community (paragraph 42, L/5609). The Panel had therefore suggested, and the CONTRACTING PARTIES had agreed to recommend, that the United States bring this measure into line with its GATT obligations. The United States had concurred with the Council's adoption of the report and had agreed to make every effort to bring its practice into conformity with GATT provisions. The Community now understood, thanks to the transparency of the US system, that pending US legislation would extend the measure beyond 30 June 1986 and possibly enlarge its scope to cover imports of all printed literary material. Regardless of the current status of the Manufacturing Clause, such an extension would be contrary to US international obligations and would perpetuate a measure which was highly damaging to trade, inconsistent with US obligations under GATT and included an element of discrimination. Consequently, the Community had no choice but to ask the Council to endorse a program of compensatory measures in preparation for the measure's possible extension. The Community did not, at this stage, have a specific proposal as to measures it would want to withdraw, but was examining what measures would be appropriate. In the Community's view, this matter raised a major question of principle; the Council should at least consider, and the Community hoped, agree, that circumstances would be sufficiently serious, should the US measure be extended, to justify the suspension of concessions to the United States as provided in Article XXIII:2. This matter should be treated as a question of principle, irrespective of the volume of trade involved, because a contracting party would not only be failing to remove a measure found to be inconsistent with GATT but would be extending and enlarging the scope of the measure.

The representative of the United States said that his country was fully aware of its GATT obligations in regard to the Manufacturing Clause of the US copyright law. The Panel's report had been adopted by the Council with the concurrence of the United States. His delegation believed that the effectiveness of GATT dispute settlement depended upon

the willingness of contracting parties to accept panel decisions, including those in favour of the other party to a dispute, and to carry out panel recommendations. However, as the Community was well aware, there was considerable support in Congress for extending the Manufacturing Clause because of the jobs in the United States which some claimed would be jeopardized by its expiration on 30 June 1986. The US Administration had a good record of success in opposing legislation that would violate US obligations under GATT, and was making every effort to oppose any extension of the Manufacturing Clause. In Senate hearings in January 1986, the Administration had vigorously opposed the two pending bills on this matter and would continue to point out to Congress the serious consequences of extension. His delegation would promptly report the present Council discussion to the US authorities. However, the United States believed it was inappropriate for the Council to consider the Community's present request for authorization to retaliate, and recommended postponing further consideration of this matter until after 30 June.

The representative of Sweden, on behalf of the Nordic countries, said they were concerned over the tendency not to follow the conclusions and recommendations in panel reports which had been adopted. This would inevitably and regrettably lead to a gradual erosion of respect for the dispute settlement mechanism. While the present US legislation was due to expire on 30 June 1986, the Nordic countries had noted with concern that a new bill introduced in Congress would not merely maintain but expand the present Manufacturing Clause legislation. They had also taken due note of the US statement.

The representative of Canada noted that the Council's adoption of the Panel's report constituted a formal decision of the CONTRACTING PARTIES, by which they had recommended that the United States bring the Manufacturing Clause into line with its GATT obligations. In light of the legislation proposed in the US Congress, Canada considered it appropriate for the Community to bring this matter to the Council's attention. As the Community had noted, it was requesting authority to suspend the application of concessions to the United States without at this stage specifying what it considered to be the extent of the economic damage. In Canada's view, the Community should, in due course, present to the Council documentation on the value of the economic damage caused and a proposal for specific concessions to be suspended towards the United States. Once this information had been provided and the two parties had had a chance to consult on it, and once the bill's fate in Congress was known, the CONTRACTING PARTIES would presumably be in a better position to decide whether to grant the requested authorization. His delegation had listened carefully to the US statement and looked forward with interest to the developments mentioned.

The representative of Switzerland supported Sweden's statement and stressed his authorities' concern with the intention of the US Congress to maintain, and even extend, legislation which was incompatible with the General Agreement. Switzerland appreciated the US Administration's efforts to resist this trend and encouraged it to continue those efforts.

The Council took note of the statements, of the serious concern expressed by a number of delegations, and of the views expressed that the United States should implement the CONTRACTING PARTIES' recommendation as contained in the final paragraph of the Panel report (L/5609), and agreed to revert to this matter at a future meeting.

4. State trading
- Communication from Chile (L/5955)

The Chairman recalled that on 12 February, the Council had agreed to revert to this item at the present meeting. He noted that the Preparatory Committee was due to address this matter at its meeting the following week.

The representative of Chile stressed that his delegation's proposal in L/5955 was not the same proposal it had made in the Preparatory Committee. The subject before the Council involved a technical matter stemming from the same Article which had been discussed in the Senior Officials Group, and involved his authorities' inability to answer the questionnaire on state trading due to a lack of understanding of the meaning and coverage of the term "State enterprise" referred to in Article XVII:1(a). The few notifications made by contracting parties indicated a disparity in the criteria regarding the coverage of this obligation. Consultations and questions to the Secretariat had not clarified this issue. Chile felt that an analysis of state trading could include an examination of the notifications which had been submitted, and that a summary analysis of those notifications could reveal any gaps which should be filled in order to strengthen the text of the Article. There was also the problem of the absence of a regular process of analyzing the notifications in order to establish greater transparency and to motivate countries to notify. If the Council was not in a position at present to resolve these questions, it might set up a working party with terms of reference as follows: (1) to examine the establishment of a periodic review procedure which would allow notifications under Article XVII:4(a) to be evaluated and uniform criteria to be defined as to what had to be notified; (2) to hold consultations to clarify the meaning and coverage of Article XVII:1(a), in regard to which state enterprises were included in this Article; and (3) to report to the Council, making such recommendations as it considered appropriate.

The representative of Canada said that his authorities had read with interest Chile's communication in L/5955, which rightly identified problems related to the coverage of Article XVII as well as to the widely varying state practices in notification. His delegation shared Chile's view that previous consultations had not produced positive results. Given the continuing debate over the effectiveness of Article XVII in dealing with state-trading enterprises, as well as their rôle in different economic systems, Canada believed it essential to deal

substantively with the problems identified by Chile. While the new round of trade negotiations would provide an excellent opportunity to examine those questions in detail, his delegation remained open to the type of mechanism contracting parties might want to set up to deal with this important issue.

The representative of Japan said that the problems identified by Chile in interpreting Article XVII due to its lack of clarity were well-founded; however, more time was needed to clarify interpretation of this Article and to examine ways of improving its implementation. Existing problems should be clarified and a determination made regarding the need for, and merits and demerits of, negotiation on this issue, and how to deal with it. Since this problem was connected with those of notification, consultation and surveillance, his delegation felt it might be appropriate to take this up in the preparatory process for the new round of negotiations.

The Council took note of the statements and agreed to revert to this matter at a future meeting.

5. United States - Trade measures affecting Nicaragua - Panel established under Article XXIII:2

The Chairman recalled that the Council, at its meeting in October 1985, had established a panel to examine the complaint by Nicaragua. At that meeting, the Council had agreed that it was understood that the Panel could not examine or judge the validity of, or motivation for, the invocation of Article XXI:(b)(3) by the United States in this matter. The Council had also agreed that the terms of reference, reflecting that understanding, would be determined by the Council Chairman in consultation with interested parties and, according to GATT practice, with the agreement of the parties to the dispute, and had authorized the Council Chairman to designate, in consultation with the parties concerned, the Panel's members.

The Chairman announced that agreement had been reached on the following terms of reference for the Panel:

> "To examine, in the light of the relevant GATT provisions, of the understanding reached at the Council on 10 October 1985 that the Panel cannot examine or judge the validity of or motivation for the invocation of Article XXI:(b)(3) by the United States, of the relevant provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/211-218), and of the agreed Dispute Settlement Procedures contained in the 1982 Ministerial Declaration (BISD 29S/13-16), the measures taken by the United States on 7 May 1985 and their trade effects in order to establish to what extent benefits accruing to Nicaragua under the General Agreement have been nullified or impaired, and to make such findings as will assist the CONTRACTING PARTIES in further action in this matter."

The representative of the United States said that the above terms of reference had been crafted specifically for this case, and would govern the Panel in this particular dispute. However, this should not imply that panels in other cases would not have to determine whether nullification or impairment existed. Only in this case did the United States not dispute the effects of a two-way trade embargo. Furthermore, the above terms of reference should not be interpreted to mean that any further action by the CONTRACTING PARTIES in this matter was necessary or appropriate.

The representative of Nicaragua noted that it had taken five months of difficult work to reach agreement on the terms of reference for this Panel, which her delegation hoped would start its work as soon as possible. As for the statement by the United States, Nicaragua considered that this Panel was not an exception; its functions would be those described in the 1979 Understanding (BISD 26S/211-218). Consequently, the CONTRACTING PARTIES would have to take appropriate action on the Panel's report.

The representatives of Colombia, Argentina, Uruguay, Brazil, Cuba, Peru and Chile, and of Venezuela, speaking as an observer, expressed satisfaction that agreement had been reached on the Panel's terms of reference. They stated their delegations' interest in following the Panel's work, which they hoped would begin and be completed as soon as possible. They expressed confidence that GATT's dispute settlement mechanism would be strengthened by the agreement which had been reached on the terms of reference, and hoped that the dispute between Nicaragua and the United States would be satisfactorily resolved.

The Chairman informed the Council that consultations on the Panel's composition were likely to be concluded in the near future. Contracting parties would be informed of the results.

The representative of Nicaragua said her delegation understood that the Panel could start its work as soon as its composition had been agreed, i.e., that the Council would not have to be informed of the composition before the Panel could begin its work.

The Chairman confirmed that Nicaragua's understanding was correct.

The Council took note of the statements.

6. India - Auxiliary duty of customs (L/5959)

By their Decision of 15 November 1973, the CONTRACTING PARTIES had waived application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply an auxiliary duty of customs on certain items included in its Schedule XII. The waiver, which had been extended a number of times, was due to expire on 31 March 1986.

The Chairman recalled that on 12 February the Council had agreed to revert to this item at the present meeting.

The representative of India said that his Government, facing continuing financial difficulties, an adverse balance of payments, and large budget deficits, had nevertheless progressively reduced the coverage of the auxiliary customs duty on GATT-bound items, so that for the past few years only four such items had been subject to that duty. His Government had now decided to exempt those items from the auxiliary duty, and India would therefore not request a further extension of the waiver. His delegation thanked the CONTRACTING PARTIES for having granted annual extensions of the waiver. He said that India's decision to stop applying the auxiliary customs duty on GATT-bound items should be seen as a confidence-building measure and as a contribution to strengthening the GATT trading system.

The representative of the United States welcomed India's announcement that it would not ask for a further extension of the waiver. He commended the Indian Government's decision, which he described as a positive step both for India and for GATT.

The Chairman, on behalf of the Council, commended the Indian Government for its decision.

The representative of India expressed appreciation for the statements made.

The Council took note of the statements.

7. Observer status in GATT
- Progress report by the Chairman on informal consultations

The Chairman recalled that on 12 February the Council had agreed that he, as Chairman, should continue consultations on the issue of observer status. He informed the Council that he had carried forward the consultations, which covered observer status both for governments and for international organizations. He would continue the consultations and keep the Council informed of progress.

The representative of the European Communities, referring to his delegation's statement under Item 1, noted that the growing number of requests for observer status suggested that GATT was becoming increasingly attractive to non-contracting parties. However, such requests had been handled in such a pragmatic manner that it had led to confusion. Some order had to be introduced to guide the Council's handling of future requests, so as to reinforce GATT's effectiveness. For example, there had to be a balance between treatment of contracting parties, which had rights and obligations, and of observers, which sometimes wanted not only to observe but also to intervene in discussions, whether legitimately or less so, to try to influence

Council decisions. It was in the interests of the observers themselves, and of the CONTRACTING PARTIES, to settle this question as soon as possible. In the interests of future candidates, further requests should be discouraged until agreement had been reached on the wider issue.

The representative of the United States said that the informal consultations had been useful in clarifying views and the issues involved. The ideas expressed should now be worked into new rules and procedures. In addition to strengthening criteria for granting observer status to countries, the issue of the observer rôle played by institutions and regional organizations had to be addressed. The United States favoured continuation of the consultations and would not support further requests for observer status until those consultations had been completed.

The Chairman proposed that the Council take note of the statements and agree to revert to this matter at a future meeting. It would remain open for the Council to consider whether a working party would be needed.

The Council so agreed.

8. Training activities

The representative of Switzerland, speaking under "Other Business", noted that informal consultations had been held to examine ways of strengthening the GATT commercial policy training courses. As a contribution to this effort, Switzerland had decided to finance a seminar on negotiating techniques which would take place in April as part of the present training course. This initiative had been inspired by repeated comments from former trainees on the need to put more emphasis on the techniques of negotiation, especially on the eve of a new round of multilateral trade negotiations. His delegation would evaluate the results of the seminar and might make further proposals for future seminars. Switzerland was convinced that the training courses were an excellent investment for GATT in the long term and that they served to reinforce the multilateral trading system.

The representative of Argentina thanked Switzerland for its contribution to the present Spanish-speaking course.

The Council took note of the statements.

9. European Economic Community - Restrictions on certain imports from New Zealand (L/5970)

The representative of New Zealand, speaking under "Other Business", informed the Council that his Government had requested consultations with the European Economic Community under Article XXII:1 concerning

France's ban on selected imports from New Zealand (L/5970). The purpose of the consultations was to discuss the apparent conflict between France's import ban on lamb brains from New Zealand and the Community's obligations under the General Agreement. His authorities were also seeking further information on why France had taken action against some other imports from New Zealand. New Zealand hoped that through this action under Article XXII:1 a solution to the problems it was facing over its exports to France would be secured speedily. New Zealand reserved its GATT rights in this matter.

The representative of the European Communities said he would report New Zealand's statement to his authorities, who would reply at a later date.

The Chairman said that representations had been made to him that some other contracting parties shared New Zealand's concerns on this matter.

The representative of the European Communities said he was surprised that other contracting parties had made known their concerns on this matter. New Zealand had so far asked only for information and consultations; it did not seem right for other contracting parties to express concern about a problem with which they were not familiar and on which the party concerned was still seeking information and consultations.

The Council took note of the statements.

10. European Economic Community - Discriminatory restrictions maintained by Portugal and Spain on imports from Japan

The representative of Japan, speaking under "Other Business", recalled that at the Council meeting on 12 February his delegation had expressed its concern -- in conjunction with establishment of the Working Party to examine the enlargement of the European Economic Community -- over discriminatory import restrictions to be introduced by Portugal and Spain in violation of the General Agreement. Since that meeting, Japan had received no response from either Portugal or Spain, or from the Community. The discriminatory measures had, however, taken effect on 1 March 1986. Furthermore, Spain had introduced some new discriminatory measures against Japan, in addition to those existing before Spain's accession to the Community. His Government was deeply concerned that such developments had taken place despite its repeated protests to the parties concerned, and called on the Community, Portugal and Spain to take immediate action to abolish the discriminatory measures. While reserving its GATT rights, Japan would present its position in the Working Party set up to examine the Community's enlargement.

The representative of Hungary expressed his delegation's support for Japan's statement.

The representative of the European Communities said that this matter should be addressed in the Working Party.

The Council took note of the statements.

11. Director-General
- Renewal of appointment

The representative of Egypt, speaking under "Other Business", noted that the Director-General's appointment was due to expire in October 1986. With a view to transparency, Egypt requested the Secretariat to draft a note on the rules, procedures and practices followed in the past on this matter, to be considered by delegations.

The representative of Brazil said that his delegation attached great importance to transparency and to the availability of information on this question, so that a decision could be prepared in good time.

The Director-General said he was very much in favour of transparency, and that Egypt's request had been pre-empted in the sense that the Chairman of the CONTRACTING PARTIES had already asked the Secretariat to prepare such a note, which would be distributed.

The Council took note of the statements.