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To : Members of the Executive Board
From : The Secretary
Subject: Meeting of the GATT Council of Representatives

Attached, for the information of the Executive Directors, is a report by the Fund Observer on a meeting of the GATT Council of Representatives, held in Geneva on May 26, 1983.

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Department Heads

INTERNATIONAL MONETARY FUND

Meeting of the GATT Council of Representatives

Report by the Fund Observer 1/

June 24, 1983

The GATT Council of Representatives met on May 26, 1983 under the chairmanship of Ambassador Hans V. Ewerlöf of Sweden. 2/ The Council agreed to invite Guatemala to attend the meeting as an observer. The principal items on the agenda were a report by the Director-General on the status of consultations with the International Monetary Fund on exchange rate fluctuations and their effect on trade, consideration of the forthcoming reduction in the United States' quota on imports of sugar from Nicaragua, consideration of the progress of two dispute panels, consideration of the work programs on aspects of trade in high technology goods, safeguards, and trade in counterfeit goods, and consideration of the report of the Joint Advisory Group on the activities of the International Trade Centre. 3/ The Fund observer at the meeting was Mr. Jack Barnouin; this report summarizes the main points of the meeting.

1. Report on the status of consultations
with the International Monetary Fund

The Director-General of GATT reported that, as requested in the Ministerial Declaration of November 1982, he had consulted the Managing Director of the International Monetary Fund on the possibility of conducting a study of the effects of erratic fluctuations in exchange rates on international trade. As a result of those consultations, the Fund had undertaken to have its contribution to the study ready for submission to its Executive Directors in November 1983, and he hoped that the study would be available to the CONTRACTING PARTIES by the end of the year. He noted that the GATT secretariat would have an opportunity to comment on the Fund's contribution before its submission to the Fund's Board of Executive Directors.

The representative of the European Communities noted that financial and monetary factors were assuming increased importance in international economic relations, and said that the Communities were looking forward to seeing the study. The representative of Jamaica asked whether the study would deal with the effects of movements in exchange rates in offsetting tariff cuts, because, in his view, some of the Tokyo Round tariff cuts

1/ Documents referred to in this report will be on file in the Secretary's Department.

2/ GATT/AIR/1941.

3/ GATT document C/W/419.

had been neutralized by changes in exchange rates. The Director-General of GATT noted that the intention was to produce as comprehensive and detailed a study as possible.

2. United States' imports of sugar from Nicaragua ^{1/}

The representative of Nicaragua said that the announcement by the United States of a forthcoming reduction in Nicaragua's quota of sugar exports to the U.S. market from 58,800 short tons to 6,000 short tons for the financial year 1983/84 had serious consequences for Nicaragua's sugar sector and for the general development of its economy. He noted that sugar represented between 8 and 10 per cent of Nicaragua's exports, and that, from 1979 to 1983, the United States had taken between 75 and 100 per cent of total sugar exports. He said that the annual foreign exchange loss that would result from this reduction had been estimated at about US\$13.5 million on the basis of 1980/83 trade figures. He added that more than 65 per cent of cane production in Nicaragua was in private hands, and that this measure would most likely bankrupt the industry.

The reasons given by the United States for this reduction in quota, he noted, concerned Nicaragua's role in the current political situation in Central America. He said that his Government could not accept these reasons, since they were not based on economic justification. Furthermore, he said, his Government considered that the U.S. measure was unilateral, discriminatory, and violated the principles of the General Agreement, particularly Articles II and XIII, and in addition were against the spirit and letter of Part IV of the General Agreement. He added that Nicaragua had requested bilateral consultations with the United States under Article XXIII:1, and he was pleased to inform the Council that the United States had agreed to start these consultations as soon as possible.

The representative of the United States noted that any reduction of Nicaragua's allocation of sugar imports to the United States would be redistributed to Honduras, Costa Rica, and El Salvador. He confirmed that his delegation would soon be holding Article XXIII:1 consultations on this matter with Nicaragua, and he stated that his delegation did not intend at this time to go into the substance of this matter publicly or to respond to the view of the Nicaraguan delegation.

The representatives of Argentina, Cuba, and Poland stated that they felt it especially regrettable that recently there had been a number of restrictive trade measures imposed with unmistakably political origins. In their view, they said that the U.S. measure against Nicaragua was a violation of the spirit and letter of the General Agreement, particularly Part IV, and they recalled the formal undertaking in the 1982 Ministerial Declaration to abstain from taking restrictive trade measures for reasons of a noneconomic character not consistent with the General Agreement.

^{1/} GATT document L/5492.

These representatives, as well as the representatives of Brazil, Chile, Colombia, Czechoslovakia, Guatemala, India, Jamaica, Romania, Spain, Sweden, Switzerland, Uruguay, and Yugoslavia, stated that they hoped that the Article XXIII:1 consultations would lead to a satisfactory solution and regretted the use of trade measures for noneconomic purposes. The representative of the European Communities said that his delegation did not intend to support either party in this dispute, but that it was glad that GATT mechanisms were going to be used and hoped that a satisfactory solution could be found.

3. Dispute panels

The Chairman announced that appropriate terms of reference had finally been agreed upon for the Panel to examine the complaint of the United States against the European Community over imports of citrus fruits and products. ^{1/} The Chairman added that agreement on the terms of reference had been reached on the basis of understandings between the two parties concerned and other interested contracting parties over the product coverage and the inclusion in the Panel's examination of the reports of the working parties relating to the agreements entered into by the European Community with certain Mediterranean countries.

The representative of the United States said that his delegation had reluctantly accepted these understandings in order that the Panel might finally be established. The representative of the European Communities stated that his delegation would have preferred to have seen the issue discussed by a working party and had agreed reluctantly to a panel being set up. He said that, since a large share of world trade was carried out on the basis of agreements deriving from Article XXIV of the General Agreement, which concerns customs unions and free trade areas, his delegation hoped that the Panel would show skill, pragmatism, and impartiality in examining this dispute.

The representative of Spain recalled that his delegation also would have preferred a working party to examine this issue and was not entirely enthusiastic over the establishment of a panel. He said that Spain and other Mediterranean countries had vital export interests in this matter and they wanted to be sure that their interests would be fully taken into account.

With regard to the report of the Panel established to examine the complaint by Canada over imports of certain automotive spring assemblies by the United States, ^{2/} the Chairman noted that, as a result of consultations since the last Council meeting, he proposed that the Council adopt the report of the Panel on the understanding that this would not foreclose future examination of the use of Section 337 of the United States Tariff Act of 1930 to deal with patent infringement cases from the point of view of consistency with Articles III and XX of the General Agreement.

^{1/} GATT document L/5337.

^{2/} GATT documents C/W/396, C/W/400, and L/5333.

The representative of Brazil said that his delegation would not either oppose or join a consensus on this proposal and that Brazil reserved its position on the substance of this matter and also on the procedures that the Council had adopted in dealing with the Panel report. He said that, in his view, the Council had failed to take up its responsibilities under Article XXIII of the General Agreement and also under the Tokyo Round Understanding on dispute settlement and the 1982 Ministerial Decision on dispute settlement. 1/ He stated that Brazil had considered that the Council should simply take note of the Panel's report. The representative of Jamaica supported the statement by the representative of Brazil and said that, if two parties to a dispute had settled their dispute bilaterally, his delegation considered that the Council should take note of a panel report but not adopt it.

The representative of Canada stated that his delegation would have preferred not to adopt the Panel's report, and was concerned in particular that certain aspects of the report created possible risks with respect to future application and interpretation of Article XX of the General Agreement. However, he added, in the light of the various statements made and of the understanding that had been reached, Canada believed that those risks had been minimized and was thus able to agree with the Chairman's proposal.

The representative of the United States said that the Panel report and the understanding that had been reached stood on their own merits, and that no interpretations that the United States or any other member of the Council might ascribe to the report or the understanding were binding on the Council as a whole. He recalled that his delegation had never claimed that adoption of the report would constitute a blanket approval for the use of Section 337 for patent infringement cases, or that the United States would thereby be immunized from future GATT examination in the dispute settlement process.

The representative of the European Communities said that his delegation considered that the understanding represented a reasonable compromise which preserved the rights of contracting parties to challenge the use of Section 337.

The Council agreed to the Chairman's proposal.

4. Work programs on aspects of trade in high technology goods, safeguards, and trade in counterfeit goods

The Chairman recalled that, at the 1982 Ministerial meeting, it had been agreed to refer the question of trade in high technology goods to the Council for further consideration, and he drew attention to the latest proposal on this matter by the United States. 2/

1/ GATT documents BISD 265/210 and L/5424.

2/ GATT documents SR.38/9 and C/W/409/Rev.2.

The representative of the United States said his delegation considered that its latest proposal went a long way toward meeting the concerns expressed by other delegations in the Council meeting on April 20, 1983. He noted that the current proposal was in two distinct parts: first, it called for a study by the Secretariat on trade barriers in high technology goods, and second it called on the Council to examine the study and make appropriate recommendations consistent with the General Agreement. He added that his delegation continued to believe that trade in high technology goods was increasingly important and that the GATT should at least study the possible barriers to expanding trade in this area. Since the U.S. proposal had, in one form or another, been discussed at several Council meetings, he believed that it was now time for the Council to take action and for the Secretariat to begin work on the study.

The representatives of Brazil and Israel stated that their delegations could accept the revised proposal with minor amendments. The representatives of Argentina, the European Communities, Japan, and Switzerland stated that, while they generally supported the proposal to study trade in high technology goods, they wished for more time to reflect and finalize their positions and recommended that a decision on this matter be taken at the next Council meeting. The Council therefore agreed to revert to this item at its next meeting.

On the question of safeguards, the Chairman reported on the status of informal discussions, recalling the Decision taken by the Ministers in November 1982 on the need for a more efficient safeguard system. He said that, following informal consultations in recent months, it had been concluded that a useful point of departure would be to examine recent cases of voluntary export restraints and orderly marketing arrangements, as well as other import measures of a safeguarding nature, taken outside Article XIX. He said that the purpose of the discussions in this first phase was to arrive at a fuller picture of the precise nature of these measures, the reasons for which they had been implemented, their possible effects, including those on the trade of third countries, the reasons why Article XIX action had not been taken, and what could be said about the establishment of multi-lateral disciplines. He said that he intended to present a report to the Council at its next meeting containing reflections resulting from these discussions.

The Director-General introduced his report on his consultations with the World Intellectual Property Organization (WIPO). ^{1/} He stated that his report was self-explanatory and added that, in his view, any difficulties in dealing with problems in this area did not arise at the level of the respective secretariats. He said that it was now up to governments to decide how they wanted to proceed in the matter.

^{1/} GATT document C/W/418.

The representative of the United States noted that it was evident that firm measures against trade in counterfeit goods were strong objectives of WIPO members, but that it was clear from the Director-General's report that the current rules of the Paris Convention for the Protection of Industrial Property fell short of providing formal obligations to deal with counterfeit trade. He added that, since there was little possibility that these rules would be revised or that a new convention would be taken up within WIPO for quite some time, the next step for the Director-General would be to organize informal consultations among interested delegations concerning the implementation of the Ministerial Declaration on this matter, so that the Council could determine a course of action at its next meeting. The representative of the European Communities supported the views of the United States' representative, and added that care should be taken lest measures to prevent trade in counterfeit goods be used for protectionist purposes. He urged governments to attend to problems in their own countries before acting multilaterally.

The representatives of Argentina and Brazil noted that their Governments would study the report in depth and would react at a later stage. The Council agreed to revert to this item at its next meeting.

5. Report of the Joint Advisory Group
on the International Trade Centre (ITC) 1/

The Chairman of the Joint Advisory Group introduced the report. He said that the Group considered that priority should be given by the ITC to the identification of export potential in developing countries and to the encouragement of the development of export products. The Group had reiterated that close attention should be paid to the trade problems of the least developed countries, and had endorsed the ITC's intention to develop a strategy for the African continent. He added that, in order to bring about further expansion of trade between certain centrally planned economies and developing countries, the Group had recommended that more attention be given to technical cooperation among these countries. Finally, he said the Group had decided to recommend that the ITC seek, through its parent bodies, executing agency status with the United Nations Development Programme (UNDP). The representatives of Canada, Cuba, the European Communities, Finland on behalf of the Nordic countries, India, Jamaica, Pakistan, Peru, Turkey, and Uruguay supported a substantial increase in the resources placed at the disposal of the ITC and supported the recommendation in the Group's report to grant the ITC executing agency status with the UNDP. The representative of Israel noted that, while the ITC was trying to promote trade between centrally planned economies and developing countries, none of the centrally planned economies figured in the report's list of trust fund donors.

1/ ITC document AG(XVI)/88.

The Director-General stated that he was convinced of the important role played by the ITC, and he fully associated himself with the appeals for new resources to be offered to the Centre. The Chairman summed up by noting that the next step for GATT would be for the Director-General to transmit the recommendation in the report that the ITC should be granted executing agency status, after consulting with the Secretary-General of UNCTAD, to the Administrator of the UNDP for appropriate action.

6. Other items

This section briefly summarizes other items that were discussed at the Council meeting.

The representative of Japan informed the Council that his Prime Minister had announced on May 1, 1983 his intention to consider revising Japan's scheme under the Generalized System of Preferences in the financial year 1984 to bring about an increase in the total ceiling quota for industrial products by approximately 50 per cent over those of the current fiscal year.

The representative of the United States reported that the U.S. Administration, in consultation with Congressional staff and private sector representatives, had been refining the details of the general proposal to replace the DISC tax legislation through a substantial modification of existing U.S. tax law. He added that his delegation would report to the Council as soon as possible on Congressional action to amend the DISC legislation. The representative of the European Communities noted that his delegation was concerned by press reports that the U.S. Congress was considering the repayment of taxes on the profits of companies covered by the DISC since 1972, which he noted would be a huge subsidy to firms that had already benefited from tax postponements. He said that if the Congress were to take such a decision, the Communities might have to bring this issue before the Council, and he said that the Communities reserved their rights on this issue.

The Council approved a draft decision extending the waiver of the application of the provisions of Article II of the General Agreement to the extent necessary to allow the Government of Uruguay to maintain certain import surcharges in excess of bound duties through December 31, 1983. ^{1/} The Council also approved a proposed calendar fixing date by which contracting parties that were members of a regional trade agreement would be invited to submit a biennial report on developments under the agreement concerned.

^{1/} GATT documents C/W/416 and L/5489.