

DOCUMENT OF INTERNATIONAL MONETARY FUND AND NOT FOR PUBLIC USE

MASTER FILES
ROOM C-130

0401

SM/88/57

March 9, 1988

To: Members of the Executive Board
From: The Acting 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 the meeting of the GATT council of representatives, held in Geneva on February 2, 1988.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Meeting of the GATT Council of Representatives

Report by the Fund Observer

March 8, 1988

Introduction and Summary

The GATT Council of Representatives met on February 2, 1988 under the chairmanship of Ambassador A. Jamal of Tanzania. 1/ The Council briefly discussed the report of a working party on the accession of Tunisia. The Council adopted two dispute settlement panel reports, one concerning restrictions maintained by Japan on imports of 12 agricultural products and the other, the United States' customs user fee. Also in the area of dispute settlement, the Council: discussed a panel report on restrictions maintained by Canada on exports of unprocessed salmon; decided to circulate to the CONTRACTING PARTIES a panel report concerning the practices of Canadian Provincial Liquor Boards; and requested Japan and the United States to provide information on their compliance with the recommendations of two recently adopted panel reports. The Council adopted several reports of the Committee on Balance-of-Payments Restrictions and heard a statement by Chile about its suspension from the United States' Generalized System of Preferences scheme. Among other matters, the Council took note of the Third Biennial Report by Australia and New Zealand on the operation of the South Pacific Regional Trade and Economic Agreement; it adopted a report by the Working Party on the Sixth Consultation on Trade with Romania; it heard brief statements by the representatives of Canada and the United States on the recent signature of the Canada-United States Free Trade Agreement; and it took note of an oral report of the Director-General on his consultations regarding the composition of the GATT's Consultative Group of Eighteen (CG18) for 1988. The Fund observers at the meeting were Eduardo Wiesner and Roger P. Kronenberg.

I. Accession of Tunisia

The Council had before it the report of the Working Party on the Accession of Tunisia. 2/ In introducing the report, the Working Party's chairman explained that the group had carried out an

1/ The agenda is contained in GATT document C/W/537.

2/ The report is contained in GATT document L/6277. Tunisia's accession was last discussed at the November 1987 meeting of the Council (SM/87/296; December 21, 1987).

examination of Tunisia's foreign trade regime and its compatibility with the GATT. The Working Party had reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Tunisia should be invited to accede to the General Agreement under the provisions of Article XXXIII. For this purpose, it had prepared a draft Decision and Protocol of Accession, which were annexed to the report. The representative of Tunisia informed the Council that tariff negotiations would resume shortly. These statements were welcomed and supported by the representatives of Canada, the European Community, and Morocco. The Council took note of the statements and agreed to revert to the matter at a later stage.

II. Dispute Settlement

1. Japan--Agricultural import restrictions

In October 1986 the Council had agreed, at the request of the United States, to establish a dispute settlement panel to examine import restrictions maintained by Japan on 12 agricultural products. In a report issued in late 1987, 1/ the Panel had concluded that the restrictions under review were inconsistent with GATT rules on quantitative restrictions. The matter had been taken up by the CONTRACTING PARTIES at their December 1987 session. 2/ At that time, the representative of Japan had stated that while his authorities could not accept the Panel's findings in respect of two of the products (dairy products and starches) they would not oppose adoption of the report in respect of the other 10 items. Several delegations had opposed partial adoption of the report on the grounds that such an adoption would be unprecedented and unacceptable, and the CONTRACTING PARTIES had agreed to place the matter on the agenda for the next meeting of the Council.

At the Council meeting, the representative of Japan said that his authorities remained convinced that the Panel had reached a number of extremely inequitable conclusions. In particular, they believed the Panel's findings in respect of dairy products and starches were seriously flawed due, inter alia, to its interpretation of the concept of "perishability." 3/ In Japan's view, milk powders were in an early

1/ GATT document L/6253.

2/ SM/88/6 (January 5, 1988).

3/ GATT Article XI:2(c) specifies the conditions under which agricultural and fisheries products may be exempted from the general prohibition on quantitative restrictions contained in Article XI:1. Ad Article XI further specifies that, in order to qualify as an agricultural or fisheries product in the sense of Article XI:2(c), those products must be in an early stage of processing and still perishable.

stage of processing, reversible to fresh milk, and hence perishable. Japan further considered that the Panel's findings contradicted those of an earlier dispute settlement panel, which had concluded that canned tomato juice concentrates were a perishable product.

Having expressed these views on the merits of the case, the Japanese representative said that his authorities recognized the importance of maintaining the integrity of GATT dispute settlement procedures and, therefore, would not oppose the Council's adoption of the report. The Government of Japan would endeavor to implement appropriate measures based on the Panel's recommendations for the agricultural products other than starches and dairy products, despite its reservations about the report's reasoning and strong domestic opposition to its findings. The implementation of these measures, however, would require time.

The representative of the United States welcomed the decision by the Japanese authorities to support adoption of the report. In the view of the United States, the only justification for maintaining restrictions on 10 of the 12 items ended 25 years ago, when Japan disinvoked GATT Article XII (on import restrictions for balance of payments purposes). As regards the other two items, the Panel concluded that they did not meet the criteria of GATT Article XI:2(c), which was intended to protect primary producers of agricultural products but not value added in processing. The representative of the United States concluded by expressing the expectation that Japan would expeditiously implement measures consistent with the Panel's recommendations.

Japan's decision to support adoption of the report was also welcomed by the delegations of Argentina, the ASEAN countries, Australia, the European Community, and New Zealand. However, the representatives of Argentina, the ASEAN countries, and Australia asked Japan to explain the implications of its reservations regarding dairy products and starches. The representatives of the ASEAN countries and Australia stressed that measures to resolve the dispute should be implemented on a nondiscriminatory basis.

The representative of Japan said that he had taken note of these statements and would report them fully to his authorities. The Council then adopted the Panel's report.

Following the Council's adoption of the report, a few other delegations took the floor. The representatives of Canada and the Nordic countries believed that the Panel took an overly narrow

interpretation of the term "like products." While not opposing adoption of the report, they (along with Austria and Switzerland) reserved their countries' rights with respect to the interpretation of the GATT Articles and the work of the Uruguay Round.

2. United States' customs user fees--Panel report

The Council had before it the report 1/ of a dispute settlement panel established in March 1987 at the request of Canada and the European Community to examine whether the United States' customs user fee exceeded the cost of customs services and constituted taxation for fiscal purposes, contrary to the rules of the GATT. 2/ The report concluded that the U.S. fee exceeded the cost of services rendered and suggested that the CONTRACTING PARTIES recommend that the United States bring the fee into conformity with its GATT obligations.

In introducing the report, the Panel's chairman stated that its findings were based on a number of rather complex issues and should not detract from the intent of the U.S. authorities to conform to GATT rules (Paragraphs 54 and 99 of the report). The representatives of Canada and the European Community commended the report and supported its prompt adoption by the Council.

The representative of the United States said he was pleased that the Panel upheld the right of contracting parties to recover customs costs through user fees. His authorities continued to believe that an ad valorem fee provided a reasonable means of achieving this, and in this context he drew the Council's attention to a statement in the report that the ad valorem structure was the least distortive means of levying such a tax (Paragraph 83). He also noted that several other contracting parties maintained ad valorem user fees, in many cases at rates higher than those in the United States.

Having expressed his delegation's views on the technical merits of the case, the representative of the United States reaffirmed the importance which his authorities attached to the GATT dispute settlement process, and he supported adoption of the report. He pledged that the U.S. Administration would move quickly to propose legislation consistent with the Panel's recommendations, which hopefully could be adopted before the end of the current fiscal year. The U.S. representative noted that implementation of the Panel's recommendations would result in increased fees for shipments of low

1/ GATT document L/6264.

2/ SM/87/83 (April 6, 1987).

value. He also stated that, in due course, the United States would be looking into the progress of other countries in bringing their systems of customs user fees into conformity with the principles of the Panel's findings.

A number of delegations (Australia, India, Mexico, the Nordic countries, and Switzerland) spoke in support of the report's adoption. The representative of Mexico informed the Council that his country had recently withdrawn its 2.5 percent customs fee as part of a package of trade policy reforms. 1/ The representative of Switzerland emphasized that the report's findings concerned the proportionality of the user fee (or lack thereof) with the value of services rendered, and not merely with the existence of an ad valorem fee. The representative of Hong Kong noted that the Panel's terms of reference were limited to an examination of the U.S. customs user fee and its consistency with GATT obligations. The representative of Jamaica said that, while he did not oppose the Council's adoption of the report, his delegation did not subscribe to all of the Panel's conclusions.

The Council took note of the statements and adopted the Panel's report.

3. Canadian Provincial Liquor Board practices

The representative of the European Community recalled that a panel had been established in March 1985 at the request of the European Community to examine certain practices of the Canadian Provincial Liquor Boards. The Panel had completed its work in October 1987, but Canada had requested the Council to delay consideration of the report pending further bilateral consultations. Consultations had been held but, regrettably, the two sides had remained very far apart. The Community, therefore, looked forward to the speedy circulation of the report and to its adoption at the next meeting of the Council.

The representative of Canada said that his authorities were preparing comments on the report. However, since the report had not yet been circulated, he considered that it would be premature to discuss its substance. The representative of the United States said that, as an interested third party, his delegation was pleased that the report would be circulated without further delay.

The Council took note of the statements and decided to circulate the report. 2/

1/ GATT document L/6010.

2/ GATT document L/6304.

4. Canada--Unprocessed salmon exports

The Council had before it the report of a dispute settlement panel which had been established in March 1987, at the request of the United States, to examine restrictions maintained by Canada on the exportation of unprocessed salmon and herring. ^{1/} The report concluded that these export restrictions were inconsistent with GATT rules on quantitative restrictions and not justified by GATT rules on exceptions.

The representative of the United States strongly urged the Council to adopt the report which, in his view, was well reasoned and reached sound conclusions. The representative of Canada emphasized that the export restrictions were maintained for a variety of reasons, including conservation and the maintenance of standards, as well as the protection of local employment. While Canada did not reject the Panel's findings on the issue of standards and grading (GATT Article XI:2(b)), it was still deliberating on the findings concerning conservation (GATT Article XX(g)). As regards the latter issue, the Canadian representative said that the Panel had taken a very narrow interpretation of the GATT Articles in concluding that the measure in question must be primarily aimed at conservation. He said that this interpretation did not reflect the wording of the Article, and he doubted that it was the Article's intent. Canada wished to reflect further on the report and revert to it at a later meeting.

The representative of the United States said that the Panel, in reaching its conclusions, had already considered the arguments just made by the Canadian representative. The United States believed that the Panel's findings were clear, and it urged the Council to adopt the report at this time. The representative of the ASEAN countries saw a need for further reflection of the Panel's findings as regards measures taken for conservation.

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

5. United States--Taxes on certain imported petroleum products ^{2/}

The representatives of the European Community and Mexico said that more than seven months had elapsed since the Council had adopted the report of a dispute settlement panel which had concluded that the tax differentials maintained by the United States on certain imported

^{1/} SM/87/83 (April 6, 1987) and GATT document L/6268.

^{2/} SM/87/183 (July 28, 1987).

petroleum products were inconsistent with the provisions of GATT Article III (on national treatment). 1/ To the best of their knowledge, the United States had taken no concrete steps to implement the report's recommendation that the United States bring petroleum taxes into conformity with its GATT obligations. In their view, this situation was entirely unsatisfactory and undermined the credibility of GATT's dispute settlement process. They, along with the representative of Canada, asked the United States for specific indications of the steps it intended to take. The representatives of Kuwait, Malaysia, and Nigeria associated their delegations with the thrust of these comments and questions.

The representative of the United States did not dispute the Panel's findings, but he stressed that legislative action was required to implement them. His authorities had already written to key legislators, explaining the need for such action, and they expected that Congress would understand the importance of this matter to other contracting parties.

The representative of the European Community noted that the United States had made no offers of compensation. If no action was forthcoming, the Community would request approval for a withdrawal of equivalent concessions.

The Council took note of the statements and agreed to revert to the matter.

6. Japan--Practices concerning imported alcoholic beverages

The representative of the European Community asked Japan to provide information on its compliance with the recommendations of a dispute settlement panel, which had concluded that several categories of alcoholic beverages imported into Japan were subject to discriminatory or protective taxes, contrary to the provisions of GATT Article III:2 (on national treatment). 2/ The representative of the United States associated his delegation with the EC's concerns.

The representative of Japan informed the Council that his authorities were making best efforts to implement the recommendations of the Panel, in the context of their comprehensive fiscal reform.

1/ The tax differentials for imported products amounted to 8.2 U.S. cents per barrel for crude oil received at a U.S. refinery and 11.7 U.S. cents per barrel for petroleum products entered into the United States for consumption, use, or warehousing.

2/ SM/87/296 (December 21, 1987) and GATT document L/6216.

Toward this end on January 12, 1988, the Cabinet approved the outlines of a five-point program to reform the system of liquor taxation. The Government was now in the process of drafting specific proposals which would be brought expeditiously before the Diet. As this was a legislative matter, the Government was not in a position to offer a precise timetable for the adoption of the measures.

The representative of the European Community said that the statement by the Japanese delegation contained no new information and did nothing to lessen his delegation's concerns. He asked that the issue remain on the Council's agenda, in the expectation that more precise information on a timetable would be forthcoming.

The Council took note of the statements.

III. Committee on Balance-of-Payments Restrictions

The Council had before it a report of the meeting of the Committee on Balance-of-Payments Restrictions held on January 19, 1988, and a schedule of consultations for 1988. ^{1/} The Chairman drew the Council's attention to the report's second and third paragraphs which: expressed concern about the further postponement of the Committee's consultation with Egypt which had resulted from a delay in IMF consultations with that country; stressed that such postponements raised serious questions concerning the relationship between the consultation procedures of the IMF and those of the Committee; and requested the IMF to consider how best it could take account of the needs of the Committee in the scheduling of Fund consultations.

The representative of the European Community said the report summarized what had been a difficult meeting. The Community had serious concerns about the way cooperation between the GATT and the Fund had been working in respect of balance of payments consultations. The successive postponements of some consultations had begun to interfere with GATT's legitimate needs. In the view of the Community, this was a serious matter which warranted careful reflection.

The observer representing the International Monetary Fund said that he was aware of the problems raised in the report and was concerned by them. He recognized that the work of the Balance-of-Payments Committee was linked to the scheduling of Fund consultations and that there was a need to reconcile the respective calendars. The Fund made

^{1/} GATT documents BOP/R/174 and C/W/535.

best efforts to produce its reports and statements on a timely basis. However, the matter of timing was not entirely in the Fund's hands, and occasionally consultations had to be delayed. Without such consultations, it would be difficult to provide the Committee with timely statistical information; more importantly, the Fund would have insufficient basis on which to offer an assessment of the country's policies and prospects. The IMF observer acknowledged that problems had become evident in two recent cases, 1/ but he believed the delays had been due mainly to exceptional circumstances. However, even if these problems were not routine, the Fund was looking for solutions and was interested in exploring alternatives with interested parties.

The Council took note of the Committee's schedule of meetings for 1988 and of the statements made. It also adopted without discussion the Committee's reports on full consultations with Korea, Brazil, and Peru. 2/

IV. Generalized System of Preferences--Removal of Chile from the United States GSP Scheme

The representative of Chile reported that on December 24, 1987, the President of the United States had suspended Chile from the U.S. Generalized System of Preferences (GSP) scheme, on the grounds that Chile had allegedly failed to comply with internationally recognized labor standards. The suspension would go into effect 60 days hence. In Chile's view, the U.S. action caused serious injury and set a very dangerous precedent by violating various provisions of the GATT, including the provisions of Part IV of the GATT Articles (on special and more favorable treatment for developing countries) and the standstill provisions of the Uruguay Round. It also violated the two decisions of the CONTRACTING PARTIES which authorized establishment of the GSP within a precisely defined, nondiscriminatory framework. 3/ The Chilean representative said that there were no legal grounds for the United States to withdraw GSP benefits on the basis of workers' rights, an element alien to the GATT. Quite apart from this legal issue, Chile had, in fact, complied with all of its international labor conventions; the situation was all the more absurd since Chile had ratified many more labor conventions than the United States.

1/ Peru and Egypt.

2/ Reports by the Fund representative are contained in SM/87/294 (December 16, 1987) and SM/88/18 (January 15, 1988).

3/ GATT documents L/3545 (June 25, 1971) and L/4903 (December 28, 1979).

The Chilean representative noted that the United States had agreed to hold bilateral consultations on the matter. Chile supported this course of action.

The representative of the United States said that the United States remained committed to its GSP program, the implementation of which was fully consistent with GATT rules. In this context, he recalled that GSP schemes were unilateral and autonomous. The suspension of Chile was based on the conclusion that Chile did not meet one of the program's criteria. As these criteria apply to all beneficiaries, the action was nondiscriminatory. The U.S. representative stated that although the action had been taken after more than two years of bilateral discussions, the United States remained ready to continue consultations.

The representative of Chile replied that the International Labor Office (ILO) was the only body with the competence to take decisions on compliance with internationally recognized labor standards; the U.S. action was discriminatory in that it was based on criteria outside GATT's competence. The representatives of Brazil, Colombia, India, Peru, and Uruguay expressed concern over the U.S. action. They (along with Argentina and Jamaica) emphasized that the GSP was based on the principles of universality and nonreciprocity, and must not be used for political purposes. They encouraged the parties to continue their consultations and expressed the hope that they would yield positive results.

The Council took note of the statements and expressed the hope that consultations would yield mutually satisfactory results.

V. Other Matters

The Council had before it the Third Biennial Report by Australia and New Zealand on the operation of the South Pacific Regional Trade and Economic Agreement (SPARTECA). ^{1/} In a brief introductory statement, the representative of New Zealand reported that the Agreement was working to the satisfaction of its members. The representative of the United States agreed that the Agreement had contributed to the trade of the participating island economies without impairing the benefits of other contracting parties. Nevertheless, his authorities believed that Australia and New Zealand should seek a GATT waiver for the Agreement, much as the United States and Canada had done for their Caribbean

^{1/} GATT document L/6279.

programs. The representative of New Zealand considered it puzzling that the United States should raise this issue at the present time; seven years ago, when the Agreement had first been examined by the Council, the United States had not disagreed with the signatories' view that no waiver was required for the Agreement by virtue of the Enabling Clause. He saw no need for further consultations on the matter. The Council took note of the report and of the statements made in its regard.

The Council had before it a report by the Working Party on the Sixth Consultation on Trade with Romania. ^{1/} Following a brief statement by the representative of Romania, which emphasized the effects of the adverse international economic environment on Romania's trade, the Council adopted the report of the Working Party.

The representatives of Canada and the United States informed the Council that, on January 2, 1988, the Prime Minister of Canada and the President of the United States had signed the Canada-United States Free Trade Agreement. Following ratification of the Agreement by the respective legislatures, the two delegations intended to circulate the document. The representative of Japan expressed the hope that a working party would be established in the near future to examine the Agreement and said his delegation would play an active role in such a group. The representatives of Brazil and Mexico reserved their countries' rights with respect to the possible implications of the Agreement for their countries' trade and, along with the representative of Korea, expressed interest in participating in a working party or other consultations concerning the Agreement. The Council took note of the statements.

The GATT Director-General, Mr. A. Dunkel, reported that, despite his consultations with a large number of delegations, he was not yet in a position to make a proposal to the Council concerning the composition of GATT's Consultative Group of Eighteen (CG18) for 1988. He expressed the hope that he would be in a position to make a proposal to the Council at its next meeting. The representatives of Hong Kong and Mexico recalled their delegations' interest in participating in the work of the CG18. The representative of Yugoslavia proposed that the Chairman of the Committee on Trade and Development be granted observer status in the CG18, as was already the case for the Chairmen of the Council and the CONTRACTING PARTIES. The Council took note of the statements.

^{1/} GATT document L/6282.

Several issues were raised under the agenda item of "Other Business" by the delegations of Canada, Hong Kong, Korea, Singapore, and the United States.

The representative of the United States said that, despite the two successive extensions granted to India for the application of the Code on Customs Valuation, India had failed to implement the Code. The United States had, therefore, notified India of its intention to withdraw its application of the Code in respect of India. The representative of India replied that legislation to implement the Code had been introduced at the last session of Parliament and was expected to be considered at the current session. Moreover, although the Code was not yet incorporated in law, his Government was already honoring its undertakings with respect to the Code. The Council took note of the statements.

The representative of the United States said that Lesotho's accession to the GATT under Article XXVI:5(c) would seem to imply that Lesotho's rights and obligations in the GATT were the same as those of the United Kingdom (the previous metropolitan authority) in 1966. ^{1/} Given the very different situations of the two countries, the United States did not understand the implications of Lesotho's accession on these terms, and it was considering whether to request the establishment of a working party to examine Lesotho's rights and obligations. More generally, the United States believed that it was essential to have a clear understanding of the GATT rights and obligations of all contracting parties; the issue had an important bearing on discussions underway in the Uruguay Round Negotiating Group on GATT Articles. The representative of Japan supported establishment of a working party to examine the matter raised by the United States. The Council took note of the statements.

The representative of the United States stated that, in the view of his authorities, quantitative restrictions maintained by Sweden in respect of apple imports had damaged U.S. exporters and were inconsistent with Sweden's obligations under the GATT. Consultations had already been initiated with a view to resolving the dispute, and the

^{1/} GATT Article XXVI:5(c) reads as follows: "If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such a territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party."

United States looked forward to the early elimination of these restrictions. In the absence of such action by Sweden, the United States would consider requesting the establishment of a dispute settlement panel at the next meeting of the Council. The representative of Sweden stated that his delegation had offered concrete proposals in consultations to resolve the dispute and was concerned by the rigid attitude adopted by the United States. Sweden was prepared to continue holding consultations on the matter. The representative of Australia stated that any agreement that might be reached in the course of consultations should be based on the principle of nondiscrimination. The Council took note of the statements.

The representatives of Hong Kong, Korea, and Singapore stated that their Governments had been informed that the United States intended to withdraw their status as beneficiaries of the U.S. GSP program, effective January 2, 1989. The three countries expressed regret and disappointment over the U.S. decision, and they reserved their GATT rights in the matter. The representative of the United States replied that the recent decision to graduate certain countries from the U.S. GSP program was based on a number of indicators of economic growth and competitiveness and was in keeping with the temporary nature of the GSP. The action was not intended to express displeasure with the policies of the countries concerned. The Council took note of the statements.

Finally, the representative of Canada noted that Spain's safeguard action under Article XIX (the escape clause) concerning import restrictions on certain steel products had expired at the end of 1987. Canada had intended to ask for information on the current status of these restrictions at the present Council meeting. However, earlier in the day, a communication was received from the European Community notifying the CONTRACTING PARTIES of an extension of this safeguard action throughout 1988. ^{1/} Canada was pleased that a formal notification had now been received but reminded the Council that normal procedures would have made allowance for prior consultations on the matter. The Council took note of the statement.

^{1/} GATT document L/6179/Add.4.