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MINUTES OF THE MEETING OF THE INFORMAL GROUP OF DEVELOPING COUNTRIES HELD ON 17 MARCH 1971

Prepared by the Secretariat

1. A meeting of the Informal Group of Developing Countries in GATT was held on 17 March 1971 under the Chairmanship of H.E. Mr. C.H. Archibald, Ambassador of Trinidad and Tobago. The meeting was attended by representatives of Argentina, Brazil, Ceylon, Chile, Cuba, Greece, India, Indonesia, Israel, Ivory Coast, Jamaica, Malaysia, Pakistan, Spain, Trinidad and Tobago, Turkey, the United Arab Republic, Uruguay and Yugoslavia.

2. The Chairman recalled that the meeting had been convened to provide an opportunity for the Group to meet the representative of the donor countries for clarification and information regarding the text of a waiver on the generalized system of preferences prepared by them.

3. Members expressed their appreciation of the efforts which were being made by the donor countries to facilitate early implementation of the generalized system of preferences. They would make every effort to collaborate in completing this task. On the invitation of the Chairman, questions seeking clarification on the draft waiver were put to the representative of the donor countries by members of the Group. The questions raised are summarized hereunder.

(a) Why do certain donor countries require a GATT Decision on the GSP before the necessary legislative processes for the introduction of the schemes can be initiated?

(b) Why did the donor countries prefer the waiver approach to that of a "Declaration" as suggested in the secretariat note of March 1970?

(c) Why is it not possible to include a specific reference to Part IV of GATT in the preambular part of the draft decision?

(d) Will the consultations between contracting parties referred to in operative paragraph (d) of the draft waiver mean consultations between donor countries and developing countries, or will they include consultations between donor countries as well?

(e) In the fourth preambular paragraph, why have the drafters used the term "mutually acceptable arrangements" instead of "mutually agreed arrangements"?

(f) Given the need to avoid duplication with UNCTAD, how do the drafters envisage the reviews referred to in operative paragraph (b) and the consultations provided for in (d)?

(g) Operative paragraph (a) states that preferential tariff treatment will be accorded to products originating in developing countries generally. Is this intended to cover all developing countries? If this is not the case, should not the text clearly say so?

(h) Does the use of the phrase "impaired unduly" in paragraph (d) mean that only such impairment as is not a natural consequence of the arrangements authorized by the waiver would be the subject of consultation, or should the phrase be seen in relation to rights and obligations under the General Agreement as a whole?

(i) Was the concept of "substantial damage" not considered as a more suitable one when considering the concept underlying the phrase "impaired unduly"?

(j) Do the terms of the draft waiver in any way imply that the donor countries intend to use it as an additional safeguard to protect their interests beyond what is provided for in the UNCTAD Arrangements?

(k) What kind of information is envisaged under (c) and may not the requirement to provide such information and to participate in review procedures in GATT provided for under (b), in addition to similar action being undertaken in UNCTAD, discourage prospective donors from taking part in the GSP?

(l) (a)(ii) implies a possible instability in the benefits which the preferential system would confer. Given the efforts which developing countries might make to invest in particular sectors in the expectation that improved competitive conditions under the scheme would be available, have the donors considered if preferential treatment is withdrawn in such cases whether consultation should not be offered by them? Alternatively, why was not some kind of guarantee to maintain margins of preference provided for in the text of the waiver?

(m) Since (a)(ii) makes it clear that the margins of preferences granted under the scheme could be reduced, why was it considered necessary to include the fifth preambular paragraph noting that the preferential arrangements would not be binding commitments and would be temporary in nature?

(n) It appears that the draft waiver has already been negotiated between the donor countries. Does this mean that this is a final draft, or could the form of the legal cover and the text still be changed at this stage?

4. In reply to the questions raised, Mr. M. Reed (Norway), the representative for the donor countries, hoped that the explanations and information he provided would assist members from developing countries in seeking instructions from their governments on the draft waiver. Mr. Reed recalled that the consultations on the GSP had been successfully concluded with the parties concerned and that in this process the participating donor countries had undertaken to seek the necessary domestic and international legal sanctions to permit the implementation of the

scheme. On the conclusion of the discussions in UNCTAD and following an initiative taken by the Director-General of the GATT, consultations immediately took place among the donor countries, and the draft waiver which was now before the Group was the outcome of these consultations.

5. The arrangements agreed in the UNCTAD had specified that the preferential system should be implemented as early as possible in 1971. It was, therefore, necessary to arrive at a speedy agreement on the action that would be taken in GATT. An agreement in GATT would facilitate the task of certain countries by enabling them to indicate to their Parliaments that international legal sanctions were already provided for the preferential system. For at least one country prior GATT action was a sine qua non for the initiation of necessary legislation. GATT action would also be an event of considerable political importance by demonstrating that there was a forward movement in preparations for the implementation of the system. Mr. Reed hoped that it would be possible for discussions to take place between developed and developing countries with a view to reaching agreement on the details of a text within the coming four to six weeks prior to the introduction of the draft waiver in the Council so that the action in that body would need to be purely formal.

6. One of the difficulties faced in the consultations between donor countries was that, owing to internal legal problems in some of these countries, the choice of avenues which could be explored in the GATT to accommodate the GSP was limited. While it had been felt that the GSP was a major departure from the General Agreement and that in the normal course the text of the General Agreement itself should be amended to take account of this important development, it had been considered that this would be extremely difficult to achieve in practice and that the alternative approach of a general declaration which would reflect this important development in international trade policy should be explored. It was found, however, that this approach also posed considerable legal difficulties in some countries and it was concluded that the only practical solution lay in the waiver approach.

7. Mr. Reed regretted that it had not been possible to incorporate in the text of the draft waiver a specific reference to Part IV of the General Agreement. It would not have been possible to obtain agreement from all the donor countries to such a specific reference. On the other hand, the thinking behind Part IV was reflected in the second preambular paragraph of the draft waiver which was taken almost verbatim from Article XXXVI:1(d).

8. On the question of consultation, while theoretically a donor country could fail to obtain satisfaction within the internal OECD discussions and thus feel obliged to invoke paragraph (d) of the waiver decision, the provisions were more likely to be used by developing countries.

9. Referring to paragraph (b) of the text, Mr. Reed said that, since the arrangements on preferences had been drawn up within the UNCTAD, it followed that all the incidental arrangements necessary for consultations on the implementation of the preferential system would be made and carried out within that organization. However, certain obligations would flow from the granting of a waiver in the GATT

which would have to be taken care of specifically within the GATT context. Thus, the waiver decision would have to be kept under review in the GATT and some indication would have to be given before the expiry of the decision, whether it would need to be modified, terminated or renewed in its present form. It was, however, clear that there would need to be further consultations as to the practical implementation in GATT and UNCTAD of the review arrangements.

10. On the problem of beneficiaries, Mr. Reed recalled that no agreement had been reached in the UNCTAD and that the subject was still being discussed between the donor countries and certain potential beneficiary countries. The donor countries had, therefore, decided that, in the circumstances, the draft waiver should not refer to any list or lists of beneficiary countries.

11. Paragraphs (d) and (e) of the draft waiver were intended to cover situations in which complaints on the operation of the system were made. It was the hope of the donor countries that such complaints would, in the first instance, be settled bilaterally. The donor countries were themselves not satisfied with the use of the term "impaired unduly" in paragraph (d) but the phrase was the best that could be devised under the circumstances. The main consideration in this connexion was to make sure that the GATT waiver would not give rise to large numbers of complaints in such a way as to be a barrier to the normal operation of the scheme. However, the CONTRACTING PARTIES had an obligation to ensure that no country operated the scheme contrary to the provisions laid down in the waiver and that, where consultations referred to in (d) led to situations where the parties concerned had not achieved satisfaction, the CONTRACTING PARTIES would have to take decisions designed to facilitate solutions to the problems raised. It was not considered possible a priori to establish at this stage clear criteria as to what could justify a complaint and it was, therefore, for the CONTRACTING PARTIES in the final instance to determine what was meant by "undue impairment".

12. Mr. Reed confirmed that the donor countries had no intention of using the waiver as an additional safeguard to protect their interests beyond what was provided in the UNCTAD arrangements.

13. Mr. Reed did not feel that the requirement to provide information and to submit to the review procedures envisaged in paragraph (b) would discourage prospective donor countries from taking part in the preferential system. As far as the particular question of information was concerned, there would be need to discuss the matter with the secretariat as to the type of documentation which should be provided to facilitate the carrying out of reviews. These discussions could also indicate the kind of information which would be required under paragraph (c) of the draft waiver.

14. With regard to the two provisos specified in paragraph (a), it was considered necessary to indicate firstly that the preferential arrangements should be effected not by raising barriers vis-à-vis other donor countries but by lowering tariffs in favour of beneficiary countries. Secondly, in specifying that the GSP should not be an obstacle to subsequent tariff reductions, paragraph (a)(ii) was intended to reflect the declared policy of several of the donor countries that they would strive for new trade negotiations in the GATT at an appropriate

time which would include the reduction of tariffs on a most-favoured-nation basis. He had, however, taken note of the point regarding a possible redundancy in relation to the fifth preambular paragraph. This would be looked into.

15. With regard to the question of whether the text of the draft waiver was final, Mr. Reed said that the draft represented the result of several months of discussions among the donor countries and it was hoped that the text could be accepted as it stood. However, it was realized that certain countries might wish to ensure that aspects of interest to them were adequately covered. It would be helpful if developing countries would be ready to consult with developed countries within the next fortnight on the basis of instructions from their governments.

16. One member pointed out that certain countries might encounter difficulties in agreeing to a decision which waived the provisions of Article I without knowing more precisely what the developed countries which were being relieved of their obligations under that Article would be permitted to do. In his view, one way of avoiding this difficulty would be to omit the last preambular paragraph and replace the language in the first two lines of paragraph (a), which refers to the waiving of the provisions of Article I, with appropriate language which would indicate that, notwithstanding the provisions of Article I, developed countries would be permitted to accord preferential treatment to products from developing countries.

17. On behalf of the Group, the Chairman thanked the representative of the donor countries for the explanations he had given and requested him to convey to the donor countries the appreciation of the Group for the efforts they were making to expedite the implementation of the preferential system.