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# GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
29 May 1985

## MINUTES OF MEETING

Held in the Centre William Rappard
on 29 May 1985

Chairman: Mr. K. Chiba (Japan)


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### Adoption of Agenda

The Chairman noted that the items proposed for the Agenda (C/W/472) were the same as those listed in the airgram (GATT/AIR/2154) which had been circulated on 10 May 1985, following consultations with delegations.

The representative of Nicaragua said that she wanted to note for the record that on 6 May 1985 her authorities had sent a communication asking for a special Council meeting to examine the US trade measures affecting Nicaragua (L/5802 and Corr.1). Bearing in mind that the next regular Council meeting would be held on 5-6 June (GATT/AIR/2161), her delegation understood that the present meeting was being held in response to Nicaragua's request and should thus focus exclusively on the US measures affecting Nicaragua. Her delegation agreed that any contracting party had the right to propose inclusion of items that it considered appropriate for any Council meeting, but wondered whether it was absolutely essential to include other items on the Agenda of the present meeting since they could be discussed at the meeting already scheduled for the following week.

The Council took note of the statement and adopted the Agenda as proposed in C/W/472.

1. United States - Trade measures affecting Nicaragua (L/5802 and Corr.1, L/5803)

The Chairman drew attention to documents L/5802 and L/5803, containing communications from Nicaragua and the United States concerning this matter.

The representative of Nicaragua asked the Council to condemn the trade embargo and the other restrictive measures taken by the United States against Nicaragua, and to request the United States to revoke the measures immediately. Nicaragua considered that the measures, which had taken effect on 7 May 1985, violated both the general principles and certain specific provisions of the General Agreement. The measures had been taken as a form of coercion for political reasons, and formed part of a US policy of political, financial, trade and military aggression against Nicaragua. US attacks against Nicaragua's economy had begun with the mining of his country's ports, which was seriously impairing free navigation and its international trade, and had continued with a campaign to prevent the harvesting of coffee and other products; the agression was now continuing with the imposition of a total trade embargo as an instrument of economic strangulation, in flagrant violation of all the rules on which international co-existence was based. Nicaragua's repeated proposals for peace had met with US refusal to enter into dialogue and negotiation, and with a hardening of the US policy of force, serious threats of increased military aggression and disregard of international legal provisions and of the bodies and tribunals responsible for ensuring their observance. The US measures had abruptly broken off a trade relationship which Nicaragua had maintained with the United States and which embraced the right of the people in both countries to benefit mutually through trade. The embargo had obliged his country to re-direct its exports and imports, thus increasing commercial and transport costs and forcing changes in Nicaragua's buying and selling systems, as well as causing serious injury to its production. Following the 90 per cent cut in Nicaragua's sugar quota for the US market, which a GATT panel had in 1984 ruled to be inconsistent with GATT rules (L/5607), approximately 13 per cent of Nicaragua's total exports had been directed towards the United States. About 20 per cent of Nicaragua's imports originated in the United States, comprising a broad range of products, all of them needed for his country's subsistence, and including consumer goods as well as intermediate goods needed for agricultural and industrial production. As 60 per cent of Nicaragua's agricultural and industrial production was privately owned, the main impact of the US embargo fell on the private sector, and therefore damaged the mixed economy system which was essential to his country's program for development.

He said that in trying to isolate Nicaragua, the United States was also trying to destroy the Central American Common Market (CACM) and was offering trade advantages to some countries in the region while imposing a trade embargo on Nicaragua. The embargo was increasing tensions in Central America, was generating restrictions on intra-regional trade by diminishing Nicaragua's exportable output and impairing its payment capacity, and was tending to politicize its trade relations with the rest of the CACM. It was therefore not surpising that in its Declaration No. 222 of 14 May 1985, the Council of the Latin American Economic System (SELA) had condemned the embargo, and that the Contadora Group countries had expressed their disapproval of the US measures which had been taken just after those countries had appealed for reduced tensions in the area in order to help the negotiation process.

Because the economic weakness of developing countries limited their capacity to retaliate, they had to rely on international institutions for the fulfilment of international commitments. Nicaragua wondered how developing countries could hope to participate in the international trading system, or in a new round of multilateral trade negotiations, when basic principles and rules were being repeatedly disregarded by a large developed country to the detriment of a small under-developed country such as his own.

Nicaragua considered that the attitude of the United States contrasted with that of other developed countries, for example the European Economic Community, which in its economic relations with Central America maintained the principle of multilateralism and non-discrimination with every country in the isthmus. He said that nearly all developed countries had expressed their readiness to continue to expand their trade with Nicaragua and to increase their credits, which would to some extent offset the damage caused by the embargo. He added that the US Administration was on the one hand reviving the Monroe Doctrine and on the other trying to transform a regional conflict into an East-West problem so as to justify its actions. Nicaragua, as a non-aligned country, was asking for the support of all contracting parties, for ultimately it was they that guaranteed the operation of the international trading system.

He added that the US Administration, in declaring a national emergency to deal with a perceived threat by Nicaragua, seemed to have lost any sense of proportion and was trying to override the principles of international trade. It was absurd to suggest that Nicaragua, a small and underdeveloped country, could pose a threat to the national security of one of the most powerful countries in the world. There was no armed conflict between the United States and Nicaragua, and no relation or porportion between the motives cited by the United States and the nature and extent of the measures which it had imposed. He noted that the UN Security Council, in unanimously adopting Resolution 562 of 10 May 1985, had supported Nicaragua's rights, and that the

United States had vetoed three paragraphs in the draft text presented by Nicaragua. Nevertheless, Nicaragua, as the injured party, had not come to GATT to request any exception from the rules, but rather his Government was requesting compliance with the principles and rules of the General Agreement in order to preserve its own security which was under threat.

He said that the US measures violated the spirit and provisions not only of the General Agreement, but also of the UN Charter, the resolutions of the UN General Assembly and Security Council, the decisions of the International Court of Justice, the Charter of the Organization of American States, and other international instruments, including the Bilateral Treaty of Friendship, Commerce and Navigation, which was still in force. Furthermore, the measures threatened the multilateral trading system, both because of the repercussions already explained, and because of the arguments brought forward in defence of these measures. The United States, in stating to the Security Council that its measures were principally intended to prevent Nicaragua from having the benefit of trading with the United States, had thereby acknowledged that this was not a matter of national security but one of coercion. Nicaragua considered that if principles were to have any merit, they should be permanent; and if rules were to have merit, they should preserve all countries from the temptation of acting in each case according to the interests of the moment, since the international trading system would then cease to operate. Specifically, the US measures contravened Articles I, II, V, XI, XIII, XXXVI, XXXVII and XXXVIII of the General Agreement. He concluded by saying that Nicaragua was putting its case to the GATT Council not to jeopardize the institutions of international trade, but to strengthen them, and to show that his country had confidence in them.

The representative of the United States said the US measures had been taken for national security reasons, and that they fell squarely within the national security exception of the General Agreement as contained in Article XXI, specifically its paragraph (b)(iii). The United States had informed the CONTRACTING PARTIES of its measures by circulating the President's Executive Order in document L/5803. His delegation did not intend to debate the national security reasons for the US action in the Council or in any other GATT body, since GATT was not the appropriate forum for debating political and security issues. He said that there was no protectionist motivation for the measures and that the United States anticipated no effects from them on the GATT rights of third countries. He emphasized that Article XXI left to each contracting party the judgement of any action "which it considers necessary for the protection of its essential security interests ...." As his delegation had noted on previous occasions, when trade actions taken by other countries for security reasons had been raised in GATT, the United States had seen no basis for contracting parties to question, approve or disapprove the judgement of each contracting party as to what

was necessary to protect its essential security interests; and the GATT had never done so. It was not for GATT to approve or disapprove the judgement made by the United States as to what was necessary to protect its national security interests; GATT was a trade organization, and had no competence to judge such matters. The United States continued to believe that GATT's effectiveness in addressing trade issues would only be weakened if it became a forum for debating political and security issues; GATT had traditionally not become involved in political disputes because it was not the appropriate place to resolve them. His delegation believed that the statement by the representative of Nicaragua and the reference to UN Security Council discussions on this issue had further injected political issues into GATT; the United States had consistently made clear its position that such issues did not belong in this organization. The United States hoped that other contracting parties, regardless of how they felt about the particular measures in question, would recognize that GATT was not the appropriate place to discuss them.

The representative of Cuba said that this dispute concerned all contracting parties and that GATT was the proper forum to discuss its implications for the General Agreement, because if the principles underlying common commitments were infringed, any contracting party could fall victim to arbitrary measures. He said that the United States, in order to punish Nicaragua for not serving US interests, had applied economic sanctions and was putting forward various political pretexts, including a reference to Article XXI, for doing so. It was a mockery of the CONTRACTING PARTIES for such a powerful country to cite Article XXI as a basis for imposing economic sanctions on a small, poor country that could not possibly threaten US security. Cuba believed that recourse to Article XXI had to be backed by certain facts, otherwise there would be no effective guarantees for any contracting party against abuse of the General Agreement. He then quoted the three paragraphs vetoed by the United States in the draft resolution submitted by Nicaragua to the UN Security Council at its meeting on 8-10 May 1985, saying it was clear from the veto and from the relationship between Article XXI and the UN Charter, that the US measures violated the basic principles of the General Agreement, such as unconditional most-favoured-nation treatment under Article I, as well as breaching the provisions of Articles II, XI, XIII, Part IV and paragraph 7(iii) of the 1982 Ministerial Declaration. The measures were arbitrary and formed part of a US destabilization policy directed against Nicaragua, as had the cut in Nicaragua's sugar quota, the blocking of its international sources of credit and financing, and the mining of its ports. Furthermore, the measures had been rejected by the majority of the international community, including allies of the United States which had not joined in the embargo. He added that the US measures -- which he labelled unjust, illegal and immoral -- had been condemned not only by the Council of the Latin American Economic System (SELA), but also by the Caribbean Community and by non-aligned countries on various recent

occasions. He concluded by saying that the real question before the Council was whether or not the contracting parties would defend the commitments that they had entered into, and whether they would allow the basic principles of the General Agreement to be abused with impunity.

The representative of Argentina said that his delegation deplored the US measures and considered they would not lead to any positive result. Argentina regretted any action by a contracting party which not only undermined the credibility of the General Agreement but also upset efforts to establish stable peace in Latin America. At a time when the Contadora Group needed support from all countries on the American continent and from the world in general, the US measures constituted a serious setback for the efforts of that Group by disturbing the balance of political and trade relations in Central America. Argentina could not accept as valid the application of coercive political measures which were incompatible with the provisions of the UN Charter, the General Agreement, the 1982 Ministerial Declaration, the 1982 Decision of the CONTRACTING PARTIES concerning Article XXI (L/5426), and which also contravened Resolutions by the UN General Assembly and Security Council, the Council of the Latin American Economic System (SELA), UNCTAD and the movement of non-aligned countries. Argentina knew from recent experience how damaging such measures were when applied to a developing country. He recalled the principle of non-interference and self-determination which was an essential part of Latin America's history, and which his country believed to constitute the basis of international coexistence. This was especially important in light of the imbalance resulting from retaliatory power which industrialized countries could exercise. There had to be a guarantee for all countries, particularly developing countries, that international contractual undertakings would be immune to the use of force. His authorities remained determined to explore all possibilities of dialogue to resolve this matter and to bring a spirit of peaceful co-operation to the American continent.

The representative of Peru said that his Government was deeply concerned at the harmful effect of the US measures, which violated the basic principles of international law as reflected in the UN Charter and in many other international legal instruments. The measures were damaging the mediation efforts by the Contadora Group, which Peru strongly supported, and would certainly worsen the fragile situation in Nicaragua and in Central America as a whole. In order to support democracy in that area, it was vital to respect the social and economic problems facing the various countries, as well as to respect the principle of non-intervention and the sovereignty, independence and right to self-determination of all peoples based on peaceful solutions to disputes. Peru could not accept the US justifications for the measures. It was not plausible that a small country with modest resources could constitute an extraordinary threat to the national security of the United States. The measures were disproportionate and

were one more step in an escalating US effort to destabilize Nicaragua. The United States, in taking these measures, had flagrantly violated the spirit and letter of the General Agreement, including its Articles I, II, V, XI, XIII and Part IV, and has also contravened paragraph 7(iii) of the 1982 Ministerial Declaration. Peru urged the United States to remove the measures, believing that this would help bring about a peaceful settlement of the tensions in Central America.

The representative of Colombia quoted a communiqué issued by his Government in which it deplored the US measures as a source of great tension in Central America. His authorities felt that the Nicaraguan Government should establish a dialogue with the democratic opposition so as to bring about national reconciliation. Similarly, Colombia urged the United States and Nicaragua to renew talks immediately so as to resolve their differences. Colombia expressed its firm will to continue with the Contadora efforts to bring peace, freedom and democracy to Central America and to separate that region from East-West tensions. His country was convinced of the need to preserve international order through respect by all countries for the Charters of the United Nations and of the Organization of American States, and for the resolutions of GATT and UNCTAD.

The representative of Brazil noted that his Government had already stated its position on this matter in other fora. He referred in particular to his country's interventions in the UN Security Council and in the Council of the Latin American Economic System (SELA). Brazil strongly supported the need for a peaceful and negotiated solution to the critical situation in Central America, a solution which had to be based on the principles of international law and in accordance with the UN Charter. His Government was convinced that the road towards negotiation, especially the one being pursued through the invaluable efforts of the Contadora Group, was the only one which could lead to a durable solution, inasmuch as it respected the right to self-determination and the strict observance of the principle of non-intervention. Consistent with such a position, Brazil deplored the deterioration of the situation in Central America and in particular the use of unilateral economic measures which in its view were incompatible with the Charters of the United Nations and of the Organization of American States. His authorities firmly held the view that contracting parties -- as foreseen in the 1982 Ministerial Declaration -- should abstain from taking restrictive trade measures for non-economic reasons, not consistent with the General Agreement. Restraint in such matters was specially recommended when the contracting party against which these measures were taken was a developing country, and as such was not in a position to resort to actions under the General Agreement which would give it some degree of countervailing power to redress the balance of rights and obligations in its trade relations with the other party. In his Government's understanding, the right to invoke security reasons under Article XXI should only be exercised in the light of other

international obligations such as those assumed under the UN Charter. In this connexion, he drew attention to UN Security Council Resolution 562, which addressed the situation now under discussion and which in its operative paragraph 3 called on all States to refrain from carrying out, supporting or promoting political, economic or military actions of any kind against any State in the region which might impede the peace objectives of the Contadora Group.

The representative of Poland expressed deep concern at what he described as the multiplication of coercive trade measures motivated by exlusively political objectives, of which the US measures against Nicaragua were the most recent example. Apart from a number of essentially legal objections which his delegation could raise against such measures, his delegation was disturbed that these actions were proliferating when contracting parties were about to embark on a new round of multilateral trade negotiations which were supposed to lead to a safer trading environment. It was unacceptable that smaller contracting parties, handicapped by their inferior economic and trading potential, should come to the negotiating table with an additional disadvantage resulting from discriminatory, unilateral and arbitrary actions. The fact that such actions had been initiated by a major trading partner which was a driving force behind the initiative for a new round, undermined the necessary confidence in the values of the multilateral trading system. The legitimate interests of the smaller contracting parties should not be subordinated to the objectives pursued by the larger ones. While recognizing the specific nature of the GATT system, Poland believed that GATT was a proper forum for discussing all trade-related disputes, whatever their origin; only then could GATT's conciliatory functions and responsibilities have practical meaning. His delegation fully recognized Nicaragua's legitimate right to address itself to the Council on a matter in which its rights under the General Agreement had been nullified and impaired. Poland deplored the discriminatory US measures and expected that Nicaragua's rights would be restored by revocation of those measures.

The representative of Chile said that his country had always rejected the use of economic pressure to achieve political aims. His delegation considered that resort to Article XXI should be qualified by the contracting party invoking it; the Article did not imply that the trade consequences of measures taken under it could not be discussed in GATT. Chile appealed to the United States and Nicaragua to search for a peaceful solution to their dispute within the context of efforts being made by the Contadora Group.

The representative of Uruguay quoted a communiqué issued by his Government saying that it strongly supported a politically negotiated solution to the United States/Nicaragua dispute within the framework set by the Contadora Group. Uruguay was resolutely attached to the principles of international law and to the principle of non-intervention

in particular. His Government deplored the US measures, which eroded the peace efforts of the Contadora Group. Uruguay appealed for dialogue and peaceful negotiation between the two sides which could lead to implementation of the Contadora Group's proposals.

The representative of Hungary expressed his country's deep concern over the US trade embargo against Nicaragua. Ideally, politics and trade should be kept separate, but a total separation was not realistic; this had been recognized by the founding fathers of GATT as evidenced by the provisions in the General Agreement covering cases in which political and commercial considerations were in opposition. He said that extreme caution and moderation should be exercised so as not to abuse these provisions, and that the greatest self-restraint and moderation was expected from the most powerful trading partners. The United States had ignored such considerations in the present case; the US action was damaging GATT's key rôle -- to bring law and order into international economic relations, to reduce the damage and danger of arbitrary exercise of economic power, and to provide protection to the weaker trading partners. Paradoxically, the United States was at the same time promoting a major exercise to revitalize and strengthen the GATT system. Hungary was alarmed by the tendency of certain parties to consider international trade as a vehicle for foreign policy goals; it was unacceptable that traditional, mutually advantageous trade relations should be unilaterally terminated on the sole basis of political considerations. This tendency must be stopped and reversed by collective action before reaching the point of no return.

The representative of Spain said his delegation considered that the US measures ran counter not only to the specific Articles but also to the spirit of the General Agreement; the measures could not be justified under the provisions of Article XXI. Spain had consistently held that it was not acceptable to have recourse to economic measures as an instrument of political pressure. He referred in particular to paragraph 7(iii) of the 1982 Ministerial Declaration. His Government reiterated its active support for the negotiating process initiated by the Contadora Group, which he said was supported by the international community as a whole; the US measures had a negative impact on that process. Spain urged both parties concerned to resolve their dispute immediately and peacefully.

The representative of Austria said his country continued to believe that economic measures were inadequate means to reach political aims, except when such measures were imposed as a result of a UN Security Council decision. His delegation hoped that this particular dispute would be settled as soon as possible in a manner satisfactory to both parties.

The representative of Sweden said that the increased number of politically motivated trade measures in recent years was a matter for concern as they tended to erode GATT rules. Whereas it had to be up to each country to define its essential security interests under Article XXI, contracting parties should be expected to exercise their rights under that Article with utmost prudence. This aspect was of particular importance to smaller countries -- developed and developing alike -- and it was evident that the larger trading nations had the greatest responsibility in this regard. Sweden also found it natural to allow discussion in GATT on the balance between measures taken and their effects on the multilateral trading system. In this particular case, Sweden considered that the United States had not shown the necessary prudence but had chosen to give a too far-reaching interpretation to Article XXI. His Government hoped that efforts would be undertaken elsewhere with the aim of bringing about a mutually acceptable settlement of this dispute.

The representative of Czechoslovakia said his authorities considered that the US measures flagrantly violated Articles I, II, V, XI, XIII and Part IV of the General Agreement; they also ran counter to the provisions of the 1982 Ministerial Declaration. This was not the first time that the United States had adopted against a small country unilateral measures which were unjustified and in contradiction not only with basic GATT rules and principles, but also with the international norms of economic cooperation. If the US interpretation of Article XXI were to be accepted, any contracting party wanting to justify introduction of certain trade measures against any other contracting party could simply refer to Article XXI and declare that its security was threatened. Czechoslovakia considered that this Article dealt with emergency situations and therefore had to be applied according to the specific provisions in paragraphs (b)(i), (ii) or (iii); in this particular case, his authorities found that none of these provisions were relevant. His delegation had concluded that there was no legal basis to justify the US measures and that their motivation was purely political. If such unilateral, arbitrary actions were not opposed, any small contracting party could find itself in the same situation as Nicaragua.

The representative of the Dominican Republic said the US measures pointed to an aggravated situation in Central America that could lead to a generalized conflict in the whole area. His Government reiterated its view that only a negotiated peace in accordance with the principles of international law, especially with those sanctioned by the Inter-American System, could guarantee an effective solution of this conflict. The efforts by the Contadora Group were the best way to achieve peace and social justice and the strengthening of democratic institutions in Central America. The principles of non-interference and self-determination should be respected, and any foreign interference with the internal affairs of any nation in Central America should be eliminated. His Government urged all parties in the Central American conflict to do their utmost to promote a climate favourable to constructive dialogue and negotiation.

The representative of India said that his delegation was deeply concerned by the US measures. Article XXI(b)(iii) had been specifically referred to by the delegation of the United States. Under this Article, only actions taken in time of war or other emergency in international relations could be given the benefit of this exception. Clearly, the two contracting parties in this case could not be said to be in a state of belligerency. The scope of the term "other emergency in international relations", was very wide. In his delegation's view, a contracting party having recourse to Article XXI(b)(iii) should be able to demonstrate a genuine nexus between its security interests and the trade action taken; the security exception should not be used to impose economic sanctions for non-economic purposes. India considered that such a nexus had not been established by the United States in this case, and that the action taken was, therefore, not in conformity with the General Agreement. India fully supported the Nicaraguan request that the measures be revoked.

The representative of Finland said GATT's strength lay greatly in the fact that it had remained a forum for discussing and negotiating trade matters; it was of utmost importance to maintain the pragmatic nature of this body for international co-operation. Finland believed that contracting parties should exercise utmost prudence when invoking Article XXI, so as not to jeopardize the effectiveness of the international trade system. His delegation also stressed the need to abstain from taking restrictive trade measures for reasons of a non-economic character, not consistent with the General Agreement. With respect to this particular case, Finland doubted whether a balance had been observed between prudence, the measures taken, and their effects on the multilateral trading system. His country hoped that efforts would be undertaken elsewhere to bring about a mutually acceptable solution of this problem.

The representative of Switzerland regretted that GATT was once again, for the fourth time in as many years, being faced with an autonomous measure designed to restrict international trade in a bilateral manner, independently of the legal basis invoked, and likely to contribute to weakening the multilateral open trade system. He reiterated that, subject to the provisions of Article XXI, Switzerland was opposed to the application of trade measures for political purposes, as it was opposed to the use of political means for trade purposes. Switzerland recognized that Article XXI gave overriding weight to the judgement of the contracting parties invoking the Article. However, his delegation also considered that in light of the particular character of Article XXI, any contracting party intending to have recourse to it should take particular care to avoid any harmful erosion of the General Agreement and any deterioration of the climate of international economic co-operation.

The representative of Trinidad and Tobago expressed her delegation's concern over the imposition of the US measures; they would damage any attempt at mediation and were likely to jeopardize the efforts of the Contadora Group, which her Government fully supported. She stressed the importance of an early return to constructive dialogue between the United States and Nicaragua leading towards the normalization of relations and better prospects for peace and stability in the region.

The representative of Romania reiterated his delegation's position that the principles of the General Agreement should be respected, without any recourse to trade restrictive measures that were incompatible with the objectives and principles of GATT and of the 1982 Ministerial Declaration. Romania supported Nicaragua's position and urged both parties to engage in the dialogue necessary to find a solution to this problem.

The representative of Egypt reiterated his delegation's view that the provisions of Article XXI should be invoked in a limited manner and with great prudence, especially when invoked by a developed country. Moreover, due regard should be given to the essential interests of developing countries in the spirit of Part IV; particular attention should be drawn to Article XXXVII:3(c). Egypt hoped that this dispute would be settled satisfactorily as soon as possible.

The representative of Yugoslavia reiterated his delegation's view that contracting parties should abstain from taking restrictive measures for reasons of a non-economic character, not consistent with the General Agreement, as stated in the 1982 Ministerial Declaration. Yugoslavia regretted that the US measures, contrary to the spirit of Part IV, had been taken against the trade interests of a developing country. His authorities hoped that the two parties would arrive at a mutually acceptable solution in accordance with their obligations under the UN Charter and in the framework of efforts by the Contadora Group.

The representative of Canada said that the United States had the right to invoke what it considered to be the relevant GATT provisions in conjunction with the trade measures it had imposed. At the same time, Nicaragua retained its rights under the General Agreement. Canada considered that this was fundamentally not a trade issue, but one which could only be resolved in a context broader than GATT; his delegation urged the two parties to seek a solution in that other context.

The representative of Australia said that his Government's position on this issue had been outlined in the UN Security Council, which Australia considered to be the appropriate forum for discussion of such issues. In that forum, Australia had made it clear that it regretted the imposition of trade sanctions against Nicaragua. However, the United States was permitted under Article XXI of the General Agreement

to take action of this kind with no requirement to justify such action. Nevertheless, Australia believed that contracting parties should avoid any action which could threaten GATT's credibility and undermine attachment to the principles of an open multilateral system. He said that in principle, Nicaragua retained its GATT rights, including the right to take retaliatory action; in practical terms, however, the US action had rendered this right inoperative. Therefore, Australia hoped that all parties would urgently embrace a process of dialogue and negotiation in the conduct of their relations and that this would lead to the removal of the US measures through the resolution of the underlying issues.

The representative of the European Communities said that the position of his delegation in respect of measures affecting trade, taken on several occasions in the past in order to protect what a contracting party considered to be its essential security interests, was well known. Since silence might be misconstrued, he considered it necessary to say that the Community's concern was to protect the GATT multilateral system from being damaged by any ill-considered development of a situation that could neither be dealt with nor settled in the GATT framework. The Community noted that these US trade measures were only part of a much broader overall situation on which each of the Community's member States had already expressed its views in other bodies. Given this fact, it was not for the Community to make any appreciation in GATT -- whether directly or indirectly -- on the substance of this issue; GATT was not the appropriate forum for that. The Community's position remained that GATT had never had the rôle of settling disputes essentially linked to security. Such disputes had only rarely, and for good reason, been examined in the context of the General Agreement, which had neither the authority nor the competence to settle matters of this type, or political disputes. In their wisdom, the authors of the General Agreement had provided for security exceptions under Article XXI. The General Agreement left to each contracting party the task of judging what was necessary to protect its essential security interests. The Community understood that this discretion -- left to each contracting party, developed or developing, for in this matter there was no question of a North/South problem -- would be exercised in a spirit of responsibility, discernment, moderation, ensuring above all that discretion did not mean arbitrary application. The Community hoped that the tensions between the United States and Nicaragua would be settled as rapidly as possible, if only to prevent the GATT multilateral system from being damaged.

The representative of Norway said a basic feature of GATT was that it had to a large extent remained a forum for discussions and negotiations on trade matters; the efficiency of the system depended on maintaining that approach. Article XXI stipulated certain conditions under which trade measures could be taken for non-economic purposes. Norway stressed the need for the utmost prudence in exercising the rights inherent in that Article; this aspect was particularly important

for smaller countries, not least the developing contracting parties. With respect to the specific case before the Council, Norway doubted whether such prudence had been exercised. He endorsed the view of the representative of the European Communities that contracting parties should show responsibility, discernment and moderation when resorting to Article XXI, and that discretion did not mean arbitrary application. Norway hoped that efforts would be undertaken elsewhere to bring about a mutually acceptable solution of this dispute.

The representative of Iceland joined those speakers who had stressed the fundamental feature of the GATT system as a forum for discussing and negotiating trade matters. Iceland did not question the sovereign right of every contracting party to decide whether or when the provisions of Article XXI should be invoked. However, his Government underlined the absolute necessity for the normal functioning of the GATT system that utmost prudence be shown in applying this Article, not least against the smaller and less developed contracting parties. Iceland hoped that efforts undertaken elsewhere would lead to a comprehensive solution of this and other underlying problems, satisfactory to the parties concerned.

The representative of Jamaica regretted the events that had led to convening the present meeting. Jamaica had subscribed to several decisions on this issue taken in other fora, to which reference had been made by previous speakers. It was her delegation's view that contracting parties should refrain from taking restrictive economic measures for political reasons, with the important exception of cases in which a decision by the UN Security Council called for such action.

The representative of Japan said his delegation was encouraged by the fact that several representatives had stressed the need to preserve GATT's pragmatic rôle of concentrating on trade issues. His Government firmly believed that in order to maintain the effective functioning of the GATT system, it was essential to separate trade issues from political factors. He recognized that a complete separation of political from economic aspects was an ideal, but it was true to say that the trade expansion which had contributed to the development of many countries had been brought about through GATT's prudence in this regard. While the issue now before the Council obviously had a trade aspect, that aspect stemmed from deep roots and it had to be admitted that GATT was not competent to grapple with those roots. He hoped that the two parties to this dispute would share his delegation's perception and make every effort to reach a reasonable and just solution.

The representative of Portugal said his delegation opposed the use of restrictive economic measures for political ends and considered action of this nature to be contrary to the spirit of GATT and to the 1982 Ministerial Declaration. Nevertheless, while Portugal was concerned over the trade measures affecting Nicaragua, Article XXI did

provide for exceptions based on reasons of national security, and it was up to the contracting party invoking Article XXI to determine what was necessary in this regard. Great caution should be exercised in taking such decisions, however, and his delegation hoped that negotiations between the two parties in the appropriate fora would result in a mutually satisfactory settlement of this issue.

The representative of Mexico, speaking as an observer, said that his country was convinced that dialogue and negotiation were the sole and ideal road to the settlement of the disputes currently facing the Central American isthmus. There was an urgent need to provide a Latin-American solution to what was essentially a Latin-American problem. His Government considered that the US measures against Nicaragua inhibited the efforts of the Contadora Group. Mexico joined those supporting the decision of the Council of the Latin American Economic System (SELA) urging the United States to revoke its measures against Nicaragua, which increased tension in the region, violated the norms of international law and thwarted efforts to reach a peaceful settlement. The Contadora Group would continue to oppose economic, political and military pressure in the conviction that respect for law and diplomatic negotiation alone were capable of bringing an atmosphere of security and co-operation to the region.

The representative of China, speaking as an observer, said that his country had always held that disputes between States should be solved through peaceful negotiations on an equal footing according to the basic norms of international relations. China opposed the US practice of exerting pressure on Nicaragua through a trade and transport embargo and by other means, as this violated GATT principles and provisions and jeopardized the healthy development of international economic and trade relations. His delegation hoped that the United States and other parties concerned would respond to the efforts of the Contadora Group to relax tension in Central America.

The representative of Costa Rica, speaking as an observer, quoted from his Government's official communiqué of 9 May 1985 which expressed deep concern at the deterioration of the situation in Central America. The US economic measures were a sign of the increase in tension in this region. Costa Rica supported the purpose of the US measures to apply pressure for an internal dialogue within Nicaragua. It was, however, legally impossible for Costa Rica to participate in these measures or to take measures of a similar kind, as this would violate its various regional treaty obligations and would nullify its policy of neutrality. In addition, any such participation would be an obstacle to the initiative of the Contadora Group, which his Government supported.

The representative of Nicaragua summarized the statements made by representatives and said it seemed that the majority supported his delegation's position and concurred with its views, which included, among others, the need to separate commercial and political matters, and

that GATT had been established to deal with economic and commercial matters. Regarding Article XXI, this was not to be applied in an arbitrary fashion; there must be some correspondance between the measures adopted and the situation giving rise to their adoption. He quoted from Article XXXVII:3(c) to which it was clear no consideration had been given when the US measures were imposed. He said reference had also been made to the negative impact of such measures on the GATT trading system and on the atmosphere in which a new round of trade negotiations was being contemplated. It was necessary for GATT to turn to the concrete and practical aspects of this issue, so that a specific solution might be reached; this was particularly important for small and poor countries such as Nicaragua. He then read a draft decision[1] which he said reflected the main ideas expressed at the present meeting, and asked that this be circulated to contracting parties at the meeting for their consideration.

The representative of the United States said there could be various interpretations of the statements made. It was clear that most had recognized that it was up to each contracting party to determine what was necessary to protect its own essential security interests. As the representative of Japan had stated, the root of the present problem was well outside GATT's scope, and this should be recognized. The United States could not accept any decision along the lines proposed by Nicaragua and saw no utility in recourse to the dispute settlement process when the problem clearly lay well outside GATT's field of competence. He pointed out that the United States had not tried to prevent Nicaragua from bringing this issue before the Council; but this was not a matter for consultation in the GATT. His delegation would report fully to its authorities the statements made, but the only balanced way to proceed was to fully reflect those statements in the record. To pursue the matter further would simply be fruitless.

The representative of Nicaragua said that since this matter involved commercial and trade measures, the GATT, as the institution responsible for the conduct of international trade, should express a view on this issue. It seemed that no delegation had separated the provisions of Article XXI from the provisions of the UN Charter, and none had denied that Nicaragua retained its full rights under Article XXIII. Moreover, it had also been said at the present meeting that the embargo on exports as well as imports had removed Nicaragua's right to react to the US measures. Under these circumstances, she asked what Nicaragua could do except turn to the CONTRACTING PARTIES for a solution to this problem.

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[1] Subsequently circulated as document C/W/475.

The representative of Cuba said that since no decision had been adopted, his delegation considered it the CONTRACTING PARTIES' duty to pronounce on this issue by means of a resolution, as it affected all, especially developing, contracting parties and could not be left outstanding. Should this matter be left pending, there would be no guarantee for any contracting party that its interests would be safeguarded in a new round of trade negotiations.

After a recess, and following consultations among delegations, the representative of the European Communities said that his delegation's position on the draft decision presented by Nicaragua derived from the essential points made in his earlier statement. In the Community's opinion, the draft decision would not only be ineffective but would set a dangerous precedent regarding the disapproval of measures taken by a contracting party and the application of dispute settlement procedures to a question which was outside the competence of the General Agreement. Furthermore, the language and tenor of the draft decision were of a nature rarely before seen in GATT. The Community believed that such a draft decision would neither reduce tensions between the two parties concerned nor protect the multilateral trading system from the damaging repercussions to which it might be subject, notably, politicization.

The representative of Nicaragua said that the draft decision aimed at avoiding harm to GATT; the language used was of the same type as that found in the General Agreement itself. The proposed decision, like any draft, was negotiable, but Nicaragua did not feel that it contained any element likely to cause real concern to any contracting party. It merely said that the US measures were inopportune and untimely, and urged the governments of both parties to have recourse to the GATT dispute settlement system.

The Council took note of the views expressed in the debate, the proposal made by Nicaragua (C/W/475) and the statements made in connexion with the proposal.

The Council noted that the Chairman of the Council would consult with delegations to determine how this matter could be dealt with at a future Council meeting.

2. European Economic Community - Production aids granted on canned peaches, canned pears, canned fruit cocktail and dried grapes

- Panel report (L/5778)

The Chairman recalled that on 30 April 1985 the Council had agreed to revert to this item at its next meeting.

The representative of the United States recalled that at the April Council meeting, his delegation had expressed disappointment with the Panel's conclusions on dried grapes, but believed that the report should be adopted. He asked the Community again if it could accept adoption of the report.

The representative of the European Communities said that the Community's position on the Panel report, and in particular, its doubts on various aspects of the Panel's conclusions, had been explained at the April Council meeting. At his delegation's request, a short paper[1] setting forth this position was circulated by the Community at the present meeting. The Community was still reflecting on how to approach the request for adoption of the report and suggested that the Council revert to this item at its next meeting.

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

3. Problems of Trade in Certain Natural Resource Products

- Communications from Canada (C/W/467 and Add.1)

The Chairman drew attention to document C/W/467 containing a communication from Canada concerning this matter.

The representative of Canada made an introductory statement[2] explaining why his delegation had asked the Council to discuss this matter. He added that Canada was asking the Council, in C/W/467, to instruct the Secretariat to prepare a background document on paper and paper products for consideration by the Working Party on Trade in Certain Natural Resource Products at the earliest possible opportunity. His delegation did not see why paper products should be excluded from the forestry products documentation, which was intended to assist the Working Party in its discussions. In line with the Ministerial decision on natural resource products (BISD 29S/20), Canada had suggested that the problems affecting forestry products, including in their semi-processed and processed forms, be examined. The Working Party had already considered certain processed products, such as pre-fabricated wood housing, insulated electric wire and cable, and canned processed fish products, all of which required considerable amounts of processing and none of which was any closer to the appearance of the resource on which it was based than was paper to trees. Consequently, when informal meetings had been convened in early 1983 to discuss follow-up to the Ministerial decision, Canada had been surprised to see the question of the coverage of the forestry products study arise. His delegation regretted that subsequent consultations had not yet succeeded in resolving this matter. As it had to date been impossible to reach an understanding within the Working Party itself, Canada considered it had no option but to bring this matter to the Council. The Working Party's

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[1] Subsequently circulated as C/W/476.

[2] Subsequently issued as C/W/467/Add.1.

activity on forestry products had progressed to the point where it was necessary to deal with paper products. In urging the Council to adopt the decision proposed in C/W/467, Canada was trying to resolve a matter which was acquiring considerable importance for the interpretation of the 1982 Ministerial Work Program and which raised concerns about the decision-making process within GATT.

The representative of Sweden, on behalf of the Nordic countries, recalled that there was no explicit definition in the Ministerial Declaration as to what the work on forestry products would cover. The Nordic countries considered that natural resource products did not include products of more advanced stages of industrialization. From the time this question had first been raised in March 1983, these countries had maintained that it would be inappropriate to study paper, as this was an industrialized product. He said that no explicit agreement had ever been reached regarding the scope of work in GATT on natural resource products, and that references to other organizations' decisions on this issue were irrelevant. The question of the scope of the forest products study had been discussed in informal consultations, but no clear agreement had been reached. As the Working Party's work in all areas had progressed well, it should be accepted that there was a difference of opinion on this matter, and the Working Party should continue with its work in order to fulfil its mandate.

The representative of the European Communities said that his delegation shared the Nordic countries' view. He said that the statement by Canada (C/W/467/Add.1) represented an interpretation of the history of this subject which was not necessarily shared by any other contracting party. The Community's position on this matter, which was well-known from previous discussions in the Council, remained unchanged.

The representative of Chile supported Canada's statement, especially with regard to the historical background it provided, and shared Canada's interpretation of this issue. She said that in 1982 when Ministers had decided to examine the relevance of the General Agreement to trade in forestry products, including in their processed and semi-processed forms, no delegation had made any reservation as to the scope of the coverage of forestry products. In Chile's view, there was now blockage in a sector of the Work Program where things had been progressing well; this could have dire consequences for the rest of the Program. Chile requested the Secretariat to complete the study so that an important forestry product such as paper was not left out.

The representative of New Zealand supported the statement by Canada, and said his delegation would join Canada at the next Council meeting in calling on the Council to instruct the Secretariat to prepare, at the earliest opportunity, a background document on paper and paper products.

The representative of Colombia said that at the time of the Ministerial decision, his delegation had never supposed that any product would later be excluded from the study. The Ministerial decision had to be applied intact. Canned fish was included in the fisheries sector, and paper should be included in forestry products. Colombia supported Canada's request in C/W/467.

The representative of Brazil shared the concern expressed by Canada, Chile, New Zealand and Colombia regarding this matter. Brazil considered that the inclusion of paper and paper products in the documentation provided for the Working Party would enable it to fulfil its mandate in a more comprehensive manner.

The representative of Indonesia said that her delegation joined those who felt that a study including paper and paper products could be very beneficial.

The representative of Peru supported Canada's statement and request. Peru believed that the interpretation of the Ministerial decision was clear; it included natural resources, in their semi-processed and processed forms, and thus included paper, which came from a natural forestry resource.

The representative of Austria said that before a decision was taken on Canada's request, the definition of processed and semi-processed products should be clear. If paper was considered to be a natural product simply because it was made from wood, even highly processed products such as methanol could be so considered. Austria agreed with the statements by the Nordic countries and the European Communities, and could not support Canada's request in C/W/467.

The representative of Malaysia supported the Canadian proposal in C/W/467 and said this matter should be resolved as soon as possible.

The representative of Australia supported Canada's proposal and interpretation of the Ministerial decision. The reference to semi-processed and processed products logically included paper and paper products, and this interpretation paralleled those made under other sectors covered by the decision.

The representative of Canada reserved for the next Council meeting any further points his delegation might make. Canada looked forward to hearing in greater detail the reason why some delegations had been reluctant to discuss paper and paper products in the Working Party.

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

4. Customs unions and free-trade areas: regional agreements

- Calendar of biennial reports (C/W/469)

The Council agreed to revert to this item at its next meeting.

5. Consultation on trade with Hungary

- Establishment of a working party

The Council agreed to revert to this item at its next meeting.