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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
21 November 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 21 November 1986

Chairman: Mr. K. Chiba (Japan)[1]

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[1]Mr. Chiba, Chairman of the CONTRACTING PARTIES, presided in place of the Chairman of the Council, Mr. K. Park (Korea).

1. CARIBCAN

The Chairman recalled that at its most recent meeting on 5-6 November, the Council had been informed that it was hoped that the Working Party on CARIBCAN would conclude its examination of this matter in time to send its report directly to the CONTRACTING PARTIES at their Forty-Second Session.

Ambassador Nottage (New Zealand), Chairman of the Working Party, said that it had made substantial progress in fulfilling its mandate and that the work was almost completed. The Working Party was scheduled to meet on 24 November to consider the draft text of its report, which would contain, in an annex, the text of a draft waiver. He hoped to submit the report to the CONTRACTING PARTIES at their Forty-Second Session.

The Council took note of this information.

2. Japan - Restrictions on imports of herring, pollock and surimi - Recourse to Article XXIII:2 by the United States (L/6070)

The Chairman recalled that at its meeting on 5-6 November, the Council had considered the US request for a panel (L/6070) and had agreed to revert to this item at the present meeting.

The representative of the United States noted that this was the second time this matter had been before the Council, and said there was no reason why a panel should not be established at the present meeting. The United States and Japan had consulted twice in recent months on this matter; the most recent of those consultations had been held under Article XXIII:1. Japan had suggested further consultations; however, it was well-established GATT practice that establishment of a panel did not preclude further consultations or prevent a mutually satisfactory solution. Therefore, the United States asked the Council to establish a panel at the present meeting on the understanding that the parties would not consult on the composition of the panel until further consultations, if any, had been held on the dispute itself.

The representative of Japan recalled that only two weeks earlier, at the 5-6 November Council meeting, his delegation had explained why it was premature to resort to Article XXIII:2 on this matter. He repeated the main points: (1) Japan and the United States had had consultations during which the United States had explained the background and general thrust of its request for the consultations; Japan had reserved its right to respond and to present its comprehensive views on this matter, including views on legal aspects, in the subsequent consultations. (2) Proposals for resolving this matter were being considered. Since the most recent Council meeting, there had not been time to have a further consultation, but his Government was doing its utmost to work out proposals for a mutually acceptable solution.

The representative of the European Communities said that this type of discussion had been heard a number of times in the Council, and that it was the Council's customary practice to decide, at a certain point, to establish a panel. The Community fully shared the US view that establishment of a panel did not preclude or inhibit the continuation of consultations. There had already been cases in which a panel had been established, but where a solution had been found even before the panel's first meeting. He said that the pressure of the multilateral dispute settlement procedure tended to speed up a solution at the bilateral level. Therefore, the Community was in favour of the Council establishing a panel at the present meeting.

The representative of Norway, speaking for Iceland, Norway and Sweden, said that those countries had a strong interest in seeing a satisfactory solution to this problem. If bilateral consultations failed to yield results, those delegations would support the US request for a panel, which was in line with normal practice when consultations failed to yield results. This did not preclude a satisfactory solution being found later. He stressed that irrespective of the procedures used for the possible elimination of or increase in Japan's import quotas for, among other things, herring, this had to be based on non-discriminatory treatment of all interested contracting parties.

The representative of Korea supported the US request for a panel and said his delegation would participate in the panel should it be set up.

The representative of the United States noted the statement by the Community on the possibility of establishing a panel in principle. He recalled that at the 5-6 November meeting, the Council had established a working party for which the procedural aspects would not be worked out until the working party was ready to begin its work; that was all that his delegation was asking in respect of a panel in this case.

The representative of Japan stressed that his delegation intended to make maximum efforts in forthcoming consultations so that by the time of the first Council meeting in 1987, a review of this matter under Article XXIII:2 would no longer be needed. Article XXIII:2 provided that reasonable time should be given for satisfactory agreement among parties concerned; it had not been possible to have a consultation following the most recent Council meeting, and for that reason, Japan could not accept establishment of a panel before the possibility of a satisfactory solution had been fully explored.

The representative of Canada recalled that at the 5-6 November Council meeting, his delegation had supported the US request for a panel and had reserved its right to make a submission to such a body. Canada continued to reserve that right. His delegation felt that the US proposal was reasonable, and was prepared to support it should there be a consensus at the present meeting.

The representative of the European Communities said that the United States had been very reasonable in asking for establishment of a panel in principle -- a flexible solution. In the meantime, consultations could and should continue. The Community had always favoured amicable solutions and conciliation among contracting parties rather than the more stringent approach to dispute settlement through an arbitral or judicial procedure. He expressed astonishment at the silence of the usual champions of strengthened dispute settlement procedures and GATT disciplines, which was troubling for the future. The Community would participate in the Uruguay Round body examining the rules for dispute settlement, but contracting parties should not rely on his delegation's support if they remained silent on this particular occasion.

The representative of Nicaragua said that while many delegations had remained silent on this matter, they nevertheless had not objected to establishment of a panel, and thus were supporting the general principles of the dispute settlement mechanism. In her view, the basic issue at stake was whether a country applying a particular measure could prevent a decision from being taken on that matter; this issue would have to be examined in the context of the Uruguay Round.

The Council took note of the statements and noted that this item would be considered by the CONTRACTING PARTIES at their Forty-Second Session during consideration of the Council's report.

3. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
- Recourse to Article XXIII:2 by the European Economic Community (L/6078)

The Chairman recalled that the Council had considered this matter at its meeting on 5-6 November.

The representative of the European Communities recalled that at the Council meeting on 5-6 November, a number of delegations had supported his delegation's request for a panel (L/6078). The Community had not pressed the matter at that time, given that the request had been raised under "Other Business". However, this issue was urgent, and since his delegation wanted to avoid overloading the debate at the Forty-Second Session, it had called for the request to be considered again at the present meeting of the Council, which was the most appropriate body for setting up panels. As for the substance of the Community's case, he drew attention to the points made in L/6078 and to the arguments presented by his delegation at the Council meeting on 5-6 November. The Community wanted to emphasize that it would be for a panel, rather than for the Council, to examine that substance. As for procedure, in November 1985 his authorities had asked Japan for consultations on the Community's request that Japan change its legislation covering imports of wines and

alcoholic beverages. At Japan's request there had then been two rounds of discussions in Tokyo, in March and July 1986, by experts from both parties, on possible ways of adjusting the complex Japanese legislation in such a way as to satisfy the Community. Those discussions had not been successful, and the Community had consequently moved the matter formally into GATT by asking for Article XXII:1 consultations, the first round of which had taken place on 4 August and had proved fruitless. The Community had then asked for another Article XXII:1 consultation and, to make things easier for the Japanese authorities, had agreed to hold the meeting in Tokyo on 29 September. The Community had sent a high-level team, including specialists in the relevant fields, to that consultation. The Community's views had been shared by a number of other delegations which had participated in that consultation. The Community had not been satisfied with Japan's offer resulting from the consultation, but had nevertheless waited for more positive results throughout October 1986. This matter had then gone to the Council of the European Communities, which had finally lost patience over the lack of progress. His delegation was under stringent instructions to repeat its request for the immediate establishment of a panel before the new Japanese legislation was finalized. This would apply pressure on Japan, through the GATT, to modify its laws in such a way as to remove the protective and discriminatory measures against which the Community was complaining. His delegation would accept the traditional terms of reference for such a panel, and asked for the procedures concerning accelerated work of panels, set out in paragraph 20 of the 1979 Understanding[1], to be followed. He emphasized that the Understanding had been adopted by the CONTRACTING PARTIES, and the Community hoped that Japan would abide by its commitments in that Understanding.

The representative of Japan reiterated the points made by his delegation at the Council meeting on 5-6 November, notably that Japan considered that its measures concerning alcoholic beverages were fully consistent with the relevant provisions of the General Agreement; that Japan's system of taxing such beverages gave equal and non-discriminatory treatment to both domestic and imported products in accordance with uniform and transparent criteria; that the measures were thus consistent with Articles III, I and II; that the level of customs duties did not pose any problem in terms of the General Agreement since they resulted from previous tariff negotiations and that, in any case, the rates actually applied were below the bound rates. He emphasized that Japan had been doing its best to find a practical solution to this dispute. For example, his Government had taken steps to examine ways in which the liquor tax could be reformed as part of overall tax reform which was now under consideration; the results of this examination would

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[1]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

become clear in December 1986. Under these circumstances, Japan considered that setting up a panel under Article XXIII:2 would definitely not help to resolve this problem; on the contrary, there was considerable risk that such a move would be counterproductive. Consequently, Japan could not accept the Community's request for a panel. As for the GATT relevancy and legality of the Community's case, his delegation refuted the Community's claim that Japan's liquor tax and labelling system violated Article III:1 and 2 and Article IX:6, respectively. Some of the Community's claims in its resort to Article XXIII:2 did not have any GATT relevancy, and therefore there was no ground for recourse to that Article. For example, since the customs duties had resulted from previous trade negotiations, it was inappropriate to take up this matter under Article XXIII. As for labelling, Article IX:6 aimed at "...preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation." Japan considered that the consultations under Article XXII:1 had not been exhausted. During those consultations, neither side had discussed the questions of GATT relevancy or legality because they had focussed on trying to find a practical solution. However, if such questions were to be taken up under Article XXIII, reasonable time should be allowed for reaching agreement and all relevant factors should be taken into account before a panel could be established under Article XXIII:2. There had been no violation of the General Agreement in this matter, nor had any of the Community's benefits been nullified or impaired. During the Article XXII:1 consultations, Japan had received no explanation from the Community concerning nullification or impairment of benefits. It would thus be inappropriate to have recourse to Article XXIII:2. Further consultations were therefore necessary to discuss the questions of GATT relevancy and legality and, if the Community so wanted, Japan would give sympathetic consideration to a proposal for such consultations under Article XXIII:1. His delegation did not understand what aspects of the Community's request fulfilled the conditions for invoking the accelerated procedures in paragraph 20 of the 1979 Understanding; consequently, Japan could not agree to such procedures being invoked in this case. It appeared that the Community's insistence on the urgency of this matter resulted from the Community's internal procedures; therefore, Japan could not accept such a proposal, since to do so would set a bad precedent. The Japanese authorities had reached a critical point in their current consideration of the overall tax reform, which might lead to reform of the liquor tax; his delegation could not understand why the Community was unable to wait another month before asking the Council to set up a panel. This matter should be considered again, if necessary, following the outcome of the tax reform examination in December 1986. He concluded by saying that his Government intended to present a kind of Christmas present to the Community, and that this was not a traditional Japanese custom.

The representatives of Austria, Argentina, Australia, United States and New Zealand expressed their countries' trade interests in this matter, supported the Community's request for early establishment of a panel and reserved their delegations' rights to participate in its work.

The representative of Austria said that although his authorities had not yet finished studying to what extent his country's interests might be affected by the Japanese measures, there was enough evidence available to support the Community's request for establishment of a panel.

The representative of Argentina said that if, as Japan maintained, it was so clearcut that the Japanese measures were not discriminatory, this could quickly be shown in a panel. Referring again to Japan's statement, he commented that in GATT even Christmas presents had to be given on an m.f.n. basis.

The representative of Australia said that the process of consultations was not meant to substitute for the consideration of issues by panels themselves. Australia was also interested in benefiting from any presents given by Japan.

The representative of the European Communities said he was astonished to hear the representative of Japan say that, since he considered there was no violation of the General Agreement in this matter, there was therefore no problem. Proof that such a problem existed might be deemed from the fact that Japan was seeking to reform its tax system, thus implicitly recognizing the difficulties faced by countries exporting wines and other alcoholic drinks to Japan. Further proof lay in the fact that other contracting parties had encountered the same difficulties which the Community had found in exporting such products to Japan, and had consequently stated their interest in participating in the work of the panel requested by his delegation. The element of discrimination was evidenced by the small number of shops in Japan where imported wines and liquors were sold, and the substantial price difference between domestic and foreign products. However, the Community wanted to emphasize that the substance of this matter should be examined by a panel. The Community was surprised that the party against which this complaint had been lodged was arguing that there was no need to set up a panel. The Community accepted that if a panel decided that Japan's arguments were justified, then the Community would have lost its case. The correct procedure was for a panel to be established and for it to hear arguments from all interested parties. His delegation was astonished also at Japan's assertion that the Community had not listed the specific Articles which it considered had been violated in this matter. The Community had given such details explicitly in the Article XXII:1 consultations on 4 August, and considered that those consultations were concluded. His delegation was, furthermore, surprised to hear the Japanese delegation say that no recourse to Article XXIII:1 had been made. Paragraph 9 of the 1960 Procedures stipulated that "... a country whose interests are affected may resort to paragraph 2 of

Article XXIII, it being understood that a consultation held under paragraph 1 of Article XXII would be considered by the CONTRACTING PARTIES as fulfilling the conditions of paragraph 1 of Article XXIII" (BISD 9S/18-20). Considering the lengthy consultations held under Article XXII:1 on this case, the Community considered that the conditions of Article XXIII:1 had been satisfied and that the Council could now set up a panel under Article XXIII:2. If the Community's request for urgent establishment of a panel were not to be granted, this would be an admission of GATT's inability to act, and the parties concerned would draw the appropriate conclusions. Contracting parties were used to Japan's giving small concessions to its trading partners each time there was a complaint. In this case, if the matter were not pursued in GATT, the Community could expect nothing more from Japan than minimal reform. His delegation was therefore insisting on rapid establishment of a panel; such a move was indispensable to influence the internal procedures undertaken by Japan aimed at modifying its legislation. For the same reason, the accelerated procedures in paragraph 20 of the 1979 Understanding should be followed. He concluded by saying that the Community was looking for something more substantial than last-minute Christmas presents from Japan.

The representative of Hong Kong said that his delegation had consistently been among those in favour of strengthening and upholding the dispute settlement mechanism. Hong Kong would be concerned if it became a regular practice for panels to be requested and then delayed solely by the resistance of the party against which a complaint was lodged; this comment applied equally to the issue considered under item 2. He then drew attention to the practical difficulties experienced by existing panels and bodies under the current work program. It was difficult to find dates for meetings and, when dates were chosen, delegations later found that other meetings had been scheduled for the same times. It seemed unlikely, if the Council established a panel at the present meeting, that such a body could complete or even significantly start its work before the Christmas holiday. Thus there was a question of principle on the one hand, and of practical considerations on the other.

The representative of Canada recalled that at the Council meeting on 5-6 November his delegation had reserved its rights to make a presentation to a panel should the Council agree to set up such a body. As in the case of the dispute considered under item 2, and indeed in any other case, Canada hoped that it would be possible for the parties to resolve their problems bilaterally, and his delegation encouraged efforts in that direction. However, Canada was guided by the 1979 Understanding in all dispute settlement questions.

The representative of Sweden said that since Japan had referred to its intention to give Christmas presents, his delegation considered that the beneficiaries would be the Japanese consumers, since it would improve their access to, for example, high quality Swedish and Finnish liquors.

The representative of Japan reiterated that his country's measures on imports of wine and liquors were consistent with the General Agreement. Japan had not been given the opportunity to present its views on the questions of relevancy and legality raised by the Community during the consultations in early August, or rather, Japan had understood that instead of dwelling on such questions, it would suit the Community better to concentrate on trying to find a practical and satisfactory solution. Consequently, his Government had decided to undertake an examination of an overall tax reform and other practical measures, not because it saw any problem concerning those measures in terms of the General Agreement, but because it was trying to accommodate the interests expressed by the Community and some other countries. He added that any Christmas presents would be given on an m.f.n basis. He referred again to the delicate political process of examining an overall tax reform and to the Community's belief that setting up a panel was necessary to exert pressure on that process. Such an approach was completely wrong; there was a considerable and perhaps definite risk that it would be counterproductive to the process of tax reform, particularly for modifying the liquor tax. This was why Japan had been appealing to the Community to wait until December. His delegation was aware of the 1960 Procedures, but considered that the discussion among interested parties on the relevancy and legality of this matter had not been exhausted; it was therefore premature and not in the interest of the Community or other countries to proceed to Article XXIII:2 at this stage. He noted that after the 1960 Procedures had been approved, there had been a precedent for parties to a dispute to move from Article XXII:1 to XXIII:2, for example in the dispute between the United States and Canada over the Foreign Investment Review Act (FIRA) (BISD 30S/140). However, in that case both the United States and Canada had agreed that the requirement in Article XXIII:1 had been fulfilled whereas, in the case at hand, Japan did not agree that the requirement had been met. Japan had no intention of blocking the dispute settlement procedures, but for the reasons given in this and previous statements on the matter, his delegation could not accept establishment of a panel.

The representatives of Uruguay, Mexico and Brazil, referring to items 2 and 3 as well as to the application of the dispute settlement mechanism in general, shared Nicaragua's concerns (expressed under item 2) that the mechanism should be allowed to work effectively and without delay. They expressed concern that any contracting party could establish itself both as judge and defendant in a dispute, thus inhibiting the efforts of plaintiff contracting parties to seek rapid and satisfactory solutions to their problems through GATT. They felt that if a contracting party considered that its interests and rights had been adversely affected, no other party should block speedy and effective recourse to the dispute settlement procedures.

The representative of Mexico said that he had been impressed by Japan's arguments on this matter but could not understand how Japan could have any objection to putting the same arguments before a panel, especially as the Community had declared itself ready to accept such a panel's conclusions.

The representative of the European Communities said that Japan could not declare itself the judge in this matter and decide that all its measures were consistent with the General Agreement. It was for the CONTRACTING PARTIES to make a ruling on the dispute with the help of a report from a panel. If the Japanese measures were fully consistent with the General Agreement, then Japan had nothing to fear from a panel. He could not understand why Japan was preventing the application of the dispute settlement procedures. If such blocking persisted, this would bode ill for the whole GATT system. He asked if the Secretariat could give an opinion on Japan's statement that the two parties to a dispute should agree that the conditions of Article XXIII:1 had been fulfilled before moving to application of Article XXIII:2.

Mr. Lindén, Legal Adviser to the Director-General, said that in his view it was not necessary that both parties so agree before moving to set up a panel under Article XXIII:2; such a condition would mean that one party could indefinitely block the procedures simply by saying that bilateral consultations had not yet been terminated.

The representative of Japan reiterated some of the main points made in his earlier statements. He repeated that his delegation's essential message was that the process of tax reform in his country had reached a crucial stage and that Japan could not understand why the Community felt unable to wait one more month for the outcome of that process. As for his earlier reference to the FIRA case, in which the United States and Canada had agreed that consultations under Article XXII would satisfy the requirement of Article XXIII:1, his delegation was not arguing that a party in a dispute could never go from Article XXII:1 to Article XXIII:2. However, he repeated that reasonable time had not been given for reaching a satisfactory solution between the parties in this case. He suggested that the Council wait another month to hear the outcome of the tax reform process in Japan.

The representative of Brazil said that the Council should not delay in setting up a panel to examine this dispute. The Council would be better able to consider the problem once it had received a report from such a panel.

The Chairman, summing up the discussion, said he had heard many delegations support the Community's request for a panel. On the other hand, he had noted that the Japanese delegation, although saying that it did not want to prolong unduly the dispute settlement process, was not in a position to agree to set up a panel at the present meeting. He had

also heard the legal arguments and the concern expressed by many delegations about the effectiveness of the dispute settlement system. One delegation had pointed out that there were certain practical considerations to be taken into account quite apart from the legalities and the substance of this dispute. Looking at past Council practice, it was evident that this body was not a court of law. According to the Rules of Procedure the contracting parties could vote, but they had never done so on such an issue, and in the present case he would not like to depart from the practice which was called consensus. He would not define consensus, but he believed that if there was a strenuous objection to a proposal, that meant there was no consensus. He had heard a strenuous objection from the Japanese delegation, and had also heard Japan say that it did not want to prolong unduly the dispute settlement process.

Accordingly, he proposed that the Council take note of the statements and note that this item would be considered by the CONTRACTING PARTIES at their Forty-Second Session during consideration of the Council's report.

The Council so agreed.

The representative of the European Communities expressed his delegation's deep disappointment at this confession of impotence by the Council. The Chairman had proposed deferring further consideration of this matter until the Forty-Second Session the following week. A good number of contracting parties had spoken of the need to ensure the effectiveness of the dispute settlement mechanism, and he was surprised that the Chairman had made such a proposal. Only one delegation, Japan, had obstructed the functioning of that mechanism; such action was far removed from the commitments undertaken by Japan at Ministerial level in Punta del Este.

The representative of Japan said his delegation had no objection to the conclusions drawn by the Chairman. However, he cautioned that -- for reasons which he had already given -- Japan's position would not have changed on this matter by the time of the Forty-Second Session. He repeated that his delegation had no intention of blocking the dispute settlement process. Japan continued to insist that the Community's timing was bad and that the possibility of reaching a satisfactory solution between the parties should be further explored.

The representative of the European Communities said that Japan had blocked a decision at the present meeting and was now saying that it would also block any decision to set up a panel at the Forty-Second Session. If this turned out to be true, the Community's authorities would draw the appropriate conclusions at the highest level. It was inadmissible that GATT's operation could be blocked in this manner. The Press would no doubt also be informed of the lack of results from this meeting.

The representative of Japan said he was surprised at the Community's statement. Japan was trying to find a solution to this matter and the Community was saying that Japan had been obstructive and that this would be publicized before the Press. This was not the way to solve the problem and would only worsen the situation.

The Council took note of the statements.

4. Tariff Matters - Harmonized System
- Communication from Argentina, Brazil, Cuba, Egypt, Nicaragua, Uruguay and Yugoslavia

The representative of Argentina, speaking under "Other Business", drew particular attention to some of the points in the communication in C/W/509. The decision to implement the Harmonized System had resulted in difficulties for certain contracting parties, particularly developing countries, regarding the 90-day deadline set out for Article XXVIII negotiations. Due to the special nature and complexity of the documentation and negotiations to which the Harmonized System's introduction gave rise, Argentina had submitted the draft text of a decision (annexed to C/W/509) aimed at providing flexibility in dealing with these cases. He said that the proposal to extend the deadline for negotiations under Article XXVIII would provide a pragmatic solution to the problems so far encountered, and added that every possible effort should be made to respect the deadline of 1 January 1988 for implementation of the Harmonized System. In the light of the urgent and special nature of this situation, he asked the Council to approve the draft decision at the present meeting.

The representatives of Romania, Egypt, Pakistan, Peru, Philippines, Trinidad and Tobago, Malaysia, Chile, Brazil, Indonesia, Turkey and Singapore supported the proposal and the arguments in C/W/509. Their delegations had experienced the difficulties described in that document, and they asked that understanding and flexibility be shown in this matter.

The representative of Romania said that due to the amount and complexity of the work involved, Romania had been unable to identify and notify its interests in the context of the Article XXVIII negotiations. Given the pragmatic nature of GATT, specific solutions should be found to specific problems such as the present one.

The representative of Egypt said that Article XXVIII had not been intended to deal with the present situation. While every effort should be made to observe the deadline of 1 January 1988, some flexibility was necessary.

The representative of Pakistan said that an unforeseen situation had undoubtedly arisen, and he drew particular attention to the difficulties faced by developing contracting parties in the current tariff negotiations. Many developing countries, including Pakistan, were seriously handicapped in that process, in spite of the very useful technical assistance provided by the Secretariat. His delegation hoped that a reasonably long period would be allowed in which to complete these negotiations to the full satisfaction of the parties concerned.

The representative of the European Communities said that his delegation fully understood the concerns expressed by the sponsors of C/W/509. He recalled that the Community had been aware, from the outset, of the problems cited in that document, and understood those concerns. These problems had been resolved, however, by tacit agreement in the Committee on Tariff Concessions, that rights could be reserved by the submission of a letter of general reservation regarding the modification of contracting parties' tariff nomenclature. The Community was flexible and open and had not rigidly applied, nor did it intend to do so in the future, the 90-day rule, recognizing the difficulties this time-limit posed for some developing countries. He reiterated the Community's willingness to provide information and technical assistance to countries having difficulty with the Community's tariff transpositions, and to consult with them. Nevertheless, the deadline of 1 January 1988 had to be respected, and the Community could not accept that the entry into force of the Harmonized System be endangered by the proposal in C/W/509. While the Community had no difficulty in changing the 90-day limit, everything should be completed by February or March 1987 in order to meet the 1988 deadline.

The representative of the Philippines said that his delegation joined those requesting the submission of balance sheets which would facilitate the consideration of documentation, and thanked the contracting parties which had made such data available. He asked the delegations with which his country had filed claims of interest to indicate when those negotiations would begin.

The representative of Sweden, on behalf of the Nordic countries, said that his delegation had just received C/W/509 and wanted to study it in more detail. In any case, the 1 January 1988 deadline should be observed.

The representative of the United States said that while his delegation sympathized with the concerns expressed by developing countries in having to examine voluminous Harmonized System documents, it did not believe that the proposed decision in C/W/509 was necessary. The need for additional time had been foreseen during earlier discussions in the Committee on Tariff Concessions, which had tacitly accepted a US proposal (TAR/W/61) in May 1986 under which it would be sufficient, for purposes of the 90-day limit, to submit a letter reserving rights on any

particular conversion, with specific claims to follow as soon as possible thereafter. This was what most countries, developed and developing alike, had done; as a result, the 90-day limit had already been extended on a de facto basis. Problems in individual cases had been, and should be, addressed bilaterally. In the US view, there was already enough flexibility to handle the need for additional time, and a formal decision of the Council would needlessly delay progress on an already tight timetable for the conclusion of negotiations and implementation of the Harmonized System by 1 January 1988.

The representative of Indonesia said that his country was still expecting other contracting parties to provide a bilateral balance sheet regarding tariff transpositions, and welcomed the Community's offer of technical assistance.

The representative of Canada said his delegation appreciated the proposal made by Argentina and supported by a large number of countries. He assured contracting parties that Canada would make every possible effort to assist countries needing help in identifying items of interest to them. Given the fact that a de facto extension of the time-limit had been provided for in the letters of general reservation, Canada felt that a Council decision on this matter was unnecessary.

The Council took note of the statements.

5. Japan - Quantitative restrictions on certain agricultural products - Panel terms of reference and composition

The representative of the United States, speaking under "Other Business", said that the Panel established by the Council on 27 October 1986 to examine Japan's import restrictions on certain agricultural products, still had not been composed, due to Japan's unwillingness to accept standard terms of reference. In the US view, the terms of reference should not attempt to place the Panel's work in the context mentioned by Japan at the 27 October Council meeting, as that delegation had proposed. The United States hoped that this matter could be resolved by the following week, when the 30-day period for the composition of the Panel would expire, so that his delegation would not have to raise this question again.

The representative of Japan said that his delegation had already presented draft terms of reference for this Panel and that consultations were being held with the United States. Japan hoped that a mutually satisfactory text would be agreed upon shortly.

The representative of Australia said that his delegation's support for the US approach to this matter was well known. It was particularly important that this Panel be set up and that standard terms of reference

be used. Every difficult trade matter involving strong domestic interests was sensitive, and Australia asked Japan to address this matter in a way that reflected the commitment to trade liberalization required under the General Agreement.

The Council took note of the statements.

6. State trading
- Japan - Livestock Industry Promotion Corporation (LIPC) (L/5937/Add.2/Suppl.1)

The representative of Australia, speaking under "Other Business", drew attention to a notification from Japan (L/5937/Add.2/Suppl.1) pursuant to Article XVII:4(a) regarding the rôle of Japan's Livestock Industry Promotion Corporation (LIPC) in that country's beef trade. There had been frequent requests for such information from Japan, and the present notification was a welcome contribution to transparency. He noted, however, that while the LIPC's activities in milk production had been notified in March 1986, there had been no indication, until the present notification, of its activities in beef trade, which raised the question of whether the LIPC was engaged in other areas of agricultural trade. His delegation asked Japan to notify this, should it be the case. He noted that in accordance with the terms of the 1979 Understanding[1], such notification in itself was without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement. Australia wanted to know if Japan was prepared to provide the CONTRACTING PARTIES with the information on import mark-up required by Article XVII:4(b). He also noted that where import quotas were applied, Japan was bound by the provisions of the Import Licensing Code[2]. Japan's notification in L/5168 of 28 July 1981 did not include a reference to its Livestock Products Price Stabilization Law under which the beef quotas were administered, and he asked Japan whether that would be corrected. Australia wondered if there was any significance in the timing of the present notification and whether Japan would object to examination of the notification in the context of the Punta del Este Declaration regarding standstill and rollback. Australia reserved its rights to take up this matter at an appropriate time and in the appropriate body.

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[1]Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

[2]Agreement on Import Licensing Procedures (BISD 26S/154).

The representative of Japan said that his country's beef import régime would remain the same after the notification referred to by Australia. The LIPC was a statutory body authorized to perform a centralized function in importing beef since 1975. Since some beef imports had been conducted by private traders, his Government had originally not considered it necessary to notify under Article XVII, but having heard during the past few years the views of some countries, including Australia, Japan had decided to notify the LIPC as a state-trading enterprise under Article XVII. As for the Import Licensing Code, his delegation was not in a position to answer Australia's questions, but would do so in due course. He said that since the beef import régime would remain the same, the timing of the present notification had nothing to do with the Punta del Este Declaration.

The Council took note of the statements.

7. United States - Trade measures affecting Nicaragua - Panel report (C/W/506, L/6053)

The Chairman, speaking under "Other Business", said that as agreed at the Council meeting on 5-6 November, he had held informal discussions with the parties to the dispute and with other delegations that had taken an active part in the Council's deliberations on 5-6 November. Unfortunately, those discussions had not yet led to a positive result, and he would so inform the CONTRACTING PARTIES when this item of the Council's report was taken up at the forthcoming Session.

The representative of Nicaragua said that her delegation could agree to the procedure just described, and would raise this matter at the Session.

The Council took note of the statements.