GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 19-20 October 1988

Chairman: Mr. A.H. Jamal (Tanzania)

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1. Committee on Balance-of-Payments Restrictions
   (a) Consultation with Turkey (BOP/R/178)
   (b) Consultations with Argentina, Nigeria, the Philippines, Tunisia and Yugoslavia (BOP/R/179)
   (c) Report on the meeting of October 1988 (BOP/R/180)

Mr. Boittin (France), Chairman of the Committee on Balance-of-Payments Restrictions said that on 4 October the Committee had held a full consultation with Turkey (BOP/R/178) and simplified consultations with Argentina, Nigeria, the Philippines, Tunisia and Yugoslavia (BOP/R/179). The Committee had commended Turkey for the extensive trade liberalization undertaken in the past five years and had welcomed Turkey's commitment to continue the process. It had recognized that the measures taken by Turkey to promote domestic economic adjustment and diversification had been an essential accompaniment to the trade liberalization process. Concern had been expressed about the possible effects of inflation on the outlook for Turkey's economic policy; in this connection the Committee had taken note of the objectives mentioned by Turkey in the report. It had been recognized that the level of, and means of financing, the public sector deficit were key elements in the outlook for inflation and growth. The Committee had also noted the importance for Turkey of development and diversification of trade and of earnings from invisibles, and had emphasized the need for stable and growing access to foreign markets. The Committee had welcomed the considerable movement away from physical restrictions on trade in favour of tariffs and other price-based measures since 1983. It had encouraged Turkey to move further towards complete liberalization of measures maintained for balance-of-payments purposes, and to announce to the GATT, whenever practicable, a time schedule for such action. At the same time, it had expressed concern about the growing number and effects of quasi-tariff measures, and the burden that these could represent for particular imports. In this connection, it had looked forward to the phasing out of the stamp duty and the simplification of the tax structure applied to imports.

For Argentina, Nigeria, the Philippines and Tunisia, the Committee had decided to recommend that these countries be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1988. However, for the Philippines, the Committee had noted the possibility of requesting a full consultation under Article XVIII:12(a) in the event of changes in its trade policies. For Argentina, certain members of the Committee had asked, for reasons of transparency, that the next regular consultation be a full consultation. Argentina and several others had felt that this was premature, and the Committee had decided to keep the situation under review and to reconsider at a later date the need for a full consultation with Argentina. For Yugoslavia, the Committee had decided to recommend that, in view of the time elapsed since the most recent full consultation, the

evolution of the balance-of-payments situation and the economic reforms currently being introduced, a full consultation be held with this country in 1990.

Regarding the report on the Committee's meeting of October 1988 (BOP/R/180), he drew attention to paragraph 4 which contained the draft program of consultations for 1989, noting that precise dates would be set in consultation with the countries concerned and with the International Monetary Fund.

(a) Consultation with Turkey (BOP/R/178)

The Council took note of the statement by the Chairman of the Committee and adopted the report.

The representative of the United States said that certain Turkish trade measures discussed in this consultation had been substantially intensified within 24 hours after the Balance-of-Payments Committee meeting. Turkey had increased the rate of its stamp duty, for which a waiver granted in 1963 had been extended to 31 December 1989 (BISD 34S/35). While Turkey had agreed that the level of the duty would not exceed six per cent, on 6 October 1988, the level had been raised to ten per cent. He asked Turkey to explain this apparent violation of the terms of its waiver and why the stamp duty had been increased directly after Turkey had reported to the Committee that it was reducing the incidence of its trade measures taken for balance-of-payments purposes.

The representative of Turkey said that the fiscal measure in question was temporary, and that it had been needed to balance his country's forthcoming budget. It was not intended to restrict trade. The waiver required that Turkey submit a report on developments in the economy within one year of the granting of the waiver extension in 1987. This report would be submitted and would take account of the matter raised by the United States.

The Council took note of the statements.

(b) Consultations with Argentina, Nigeria, the Philippines, Tunisia and Yugoslavia (BOP/R/179)

The Council agreed that Argentina, Nigeria, the Philippines and Tunisia be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1988, took note that it would be desirable to schedule a full consultation with Yugoslavia at an appropriate time during 1990, the exact date to be determined under the normal consultation procedures, and adopted the report in BOP/R/179.

(c) Report on the meeting of October 1988 (BOP/R/180)

The Council took note of the report.

2. Accession of Portugal and Spain to the European Communities - Working Party report (L/6405)

In February 1986, the Council had established a working party to examine the accession of Portugal and Spain to the European Communities.

Mr. Jaramillo (Colombia), Chairman of the Working Party, introduced its report in L/6405. He said that the Working Party had held eight meetings during which it had conducted a detailed examination of the terms of accession of Portugal and Spain to the European Communities. The parties to the Treaty of Accession had taken the view that it was fully consistent with the General Agreement and in particular with Article XXIV:5(a). Other participants, however, had considered that the European Communities had failed to demonstrate that they had met their obligations under Article XXIV with respect to duties and other regulations of commerce. The Working Party had been unable to reach agreed conclusions as to the consistency of the Treaty with the General Agreement; the report therefore summarized the views expressed during the discussion. The Working Party had noted that many of its members had reserved their rights under the General Agreement, and that these rights would not be prejudiced by submission of the report. It had recommended that consistent with normal GATT practice, the CONTRACTING PARTIES invite the parties to the Treaty of Accession to furnish reports on the progress towards the completion of the customs union, including the trade effects on third parties, every two years until such time as the provisions of the Treaty had been fully implemented. The Working Party had also noted that these reports would be put on the Council's agenda, thus providing an opportunity for any delegation to raise points relating to the consistency of the Treaty with the GATT, and to have these examined.

The representative of Canada said that his delegation could accept the conclusions and recommendations of this Working Party, in which Canada had participated actively. However, as it was still engaged in Article XXIV:6 consultations with the Community, Canada reserved its full rights under the General Agreement and considered that these rights were in no way compromised by the Council's adoption of this report.

The representative of the United States said that his Government had supported the approval of this report in the Working Party since it accurately reflected the views of the United States. Unfortunately, the United States was very disappointed with the report's conclusions. In the many times that the Community had invoked Article XXIV to justify its spreading preferential trade agreements, there had never been a consensus that these agreements were consistent with the provisions of that Article. In the present case, the inconsistency of the terms of the Community's latest enlargement with the obligations of Article XXIV:5 had been clearly and convincingly demonstrated. Virtually every member of the Working Party had agreed with the United States. The Community, however, had not agreed, even in the face of the overwhelming quantitative evidence, based on its own documentation, that the trade restrictions, both tariff and non-tariff, imposed at the time of enlargement were on the whole higher and more restrictive than the general incidence of such barriers prior to Spain's and Portugal's accession to the European Communities. While the Community

had said that the US-EEC temporary bilateral settlement under Article XXIV:6 should have settled all the United States' problems with the Treaty, the United States had consistently been very careful not to link the Article XXIV:6 requirements concerning compensation for broken bindings with the broader, global requirements of Article XXIV:5. His delegation suspected that the CONTRACTING PARTIES would be forced to return to the Article XXIV:6 implications of this enlargement once the temporary bilateral solution had ended. The United States was encouraged by a recent Secretariat note produced for the Uruguay Round Negotiating Group on GATT Articles (MTN.GNG/NG7/W/13/Add.1), which supported many of the points made in the Working Party. For example, the note stated that contracting parties had no right to withdraw unilaterally or to modify concessions in the context of customs union formation or expansion prior to the completion of Article XXIV negotiations or the obtaining of a waiver. The note was also quite clear that no contracting party could be required to grant reverse compensation under Article XXIV:6 regarding the impairment of bindings that occurred in the course of establishing or enlarging a customs union. The note had also examined the efforts made by contracting parties over almost 20 years to get a clear explanation from the Community of its obligations under Article XXIV. These issues remained unresolved. With great reluctance and disappointment, his Government approved the report in L/6405.

The representative of Australia said that the Working Party's examination of the Treaty had been a lengthy and, at times, difficult process, reflecting the importance of the Treaty's current and potential trade impact on third countries. While the Working Party had been unable to reach agreed conclusions on the Treaty's GATT consistency, it was appropriate to point out that there were essentially two bodies of opinion on that issue. The Community had asserted that the Treaty was consistent with GATT obligations, while the other active members of the Working Party had held quite a contrary view. The differences of opinion had extended to all of the issues before the Working Party, from the method for assessing the incidence of tariffs to whether new and GATT-illegal measures had been adopted by Spain and Portugal on accession to the Community. In Australia's view, these matters warranted more than a cursory glance by contracting parties. His delegation considered that the Council should adopt the Working Party's report, which had the important recommendation that there be biennial reports on the implementation of the Treaty, including the trade effects on third countries. The report should be studied carefully because of the issues it raised regarding the impact of the Community's enlargement on world trade, and the implications of the Working Party's difficulties in reaching a common assessment on the enforcement of the disciplines in Article XXIV.

The representative of Japan said that his delegation did not oppose the report's adoption but was disappointed that the Working Party had been unable to reach conclusions as to the GATT consistency of the Treaty, although many members of the Working Party, including Japan, had maintained that the Communities had not met their obligations under Article XXIV with respect to duties and other regulations of commerce. He wanted to make it clear that Japan's agreement to adopt the report did not affect its legal position, and Japan reserved all its rights under the General Agreement on

this issue. As Japan's views on this matter in the light of Article XXIV had been reflected in the report, especially in its paragraph 38, he drew attention to only a few basic points: (1) It was natural that the disciplines of Article XXIV should be strictly applied to a customs union since this was an exceptional deviation from the m.f.n. principle. The conditions stipulated in Article XXIV could not be presumed to have been fulfilled simply because the customs union had caused some improvement in market access. (2) Japan was particularly concerned that Spain and Portugal had acceded to the Communities while maintaining and introducing a number of quantitative restrictions which contravened the provisions of the General Agreement, inter alia, Articles XI, XIII and XXIV:4. Discriminatory quantitative restrictions which were clearly inconsistent with GATT should be eliminated immediately without any condition. Therefore, they were not relevant to the assessment of the incidence stipulated in Article XXIV:5(a). (3) Japan's views on the interpretation of Article XXIV:6 differed substantially from the Community's. In particular, Japan rejected the view that a customs union might claim "counter-compensation". This was without foundation in the General Agreement.

The representative of Finland, speaking on behalf of the Nordic countries, said that the accession of Portugal and Spain to the European Communities was a significant step towards European economic integration. It had already resulted in an opening of Portugal's and Spain's markets, and would result in further opening in the future. The Nordic countries welcomed this; in their view, the national trade régimes of the two countries would become both more transparent and more liberal after the accession. The positive effects of liberalization on the national level in Portugal and Spain were likely to have beneficial spill-over effects on trading partners outside the Communities, and thus would be beneficial for the multilateral trading system as a whole and in line with the free-trade objective of the GATT.

The representative of Hungary said that his delegation had addressed in detail in the Working Party the conditions of the accession of Spain and Portugal to the European Communities in the light of the relevant GATT provisions. Hungary's views had been set out in the Working Party's report. As this accession had resulted in Spain's introduction of quantitative restrictions not consistent with Article XIII of the General Agreement and affecting 25 per cent of Hungary's exports, his delegation had concluded that the Treaty did not meet the criteria of Article XXIV, especially its Paragraphs 4 and 5(a). Hungary reserved its GATT rights, but did not oppose the Council's adoption of the report.

The representative of Austria said that Australia's statement that there were only two bodies of opinion in the Working Party was too simplistic. His delegation had followed the Working Party's work carefully and had studied the relevant documents; in its opinion, the Treaty in question was in conformity with the relevant GATT Articles. Austria agreed with Finland's statement and supported adoption of the report.

The representative of New Zealand said that throughout the Working Party's deliberations, his delegation had expressed serious concerns over the lack of consistency of the enlargement with the General Agreement,

particularly Article XXIV, and also over the trade impact on other contracting parties. New Zealand had been disappointed with the Working Party's inability to reach any agreed conclusions. His delegation would not oppose adoption of the report but would pay particular attention to its paragraph 50 concerning the biennial report on progress towards completion of the customs union. New Zealand reserved all its GATT rights regarding this matter.

The representative of Poland said that his delegation had repeatedly expressed its concern in the Working Party over the trade provisions of the Treaty. For Spain, the implementation of the above-mentioned provisions had resulted in the introduction of new quantitative restrictions on Polish goods, which were of a discriminatory nature and inconsistent with the General Agreement. His delegation wanted to confirm its view that the introduction of such measures contravened Article XXIV:4 as well as other provisions, in particular Article XIII. It was also in contradiction with the relevant provisions of Poland's Protocol of Accession to GATT (BISD 15S/46). While his delegation would not oppose adoption of the report, that adoption would be without prejudice to Poland's GATT rights.

The representative of Turkey said that his delegation had followed with interest the discussions in the Working Party and had examined the documentation regarding the incidence of tariff changes and other regulations of commerce applied by both countries as a result of their accession to the European Communities. In Turkey's view, their tariffs and other restrictions on trade had become more liberal; the trade figures indicating a large increase in their imports confirmed this. The concerns expressed by some delegations could be examined in the Council when the Communities submitted reports on the implementation of the Treaty. Therefore, Turkey supported adoption of the report.

The representative of Uruguay said that his delegation's opinion on the entire procedure relating to the submission of this report could be summed up in its paragraph 47; those comments indicated the way Uruguay interpreted the trends in the discussion of this matter. He expressed regret over the Working Party's inability to reach any conclusion regarding the compatibility of the Treaty with the General Agreement; the report was simply a summary of the viewpoints expressed in the Working Party. Uruguay had noted that, as stated in paragraph 49 of the report, many members of the Working Party had reserved their rights under the General Agreement and that those rights would not be prejudiced by the submission of the report.

The representative of Romania said that his country was not opposed to the adoption of the report but wanted to express concern that new quantitative restrictions which were discriminatory and incompatible with the provisions of Article XIII had been introduced; the latter largely affected Romanian exports.

The representative of the European Communities said that this was an ultra-sensitive matter and should be considered with respect. He had noted that a large number of representatives had prudently remained silent. He said that if one followed the reasoning expressed by the United States, Hungary, Australia and others, the report should not be adopted, and a

major crisis would ensue. That would mean renegotiating the entire matter. He said that there was a yawning gap between the political levels which enabled a large number of governments, politicians and statesmen to protest the processes involved in regional integration, in particular, European integration. On several sides, at technical, routine, mechanical and bureaucratic levels, people without vision, political sense or soul had been scrutinizing the various provisions of the General Agreement. The Community was not at all pleased with this, and fully endorsed the positions taken by its representative in the Working Party. This uncustomary scrutiny was unprecedented and would have considerable consequences. These uselessly drawn conclusions stemming from rigid and, in fact, hostile positions were without political sense and even showed ill-will. He wondered whether this severe and unfair judging of the Community's enlargement was due to blindness or a lack of objectivity; the Working Party had not even acknowledged the significant downward revisions and new bindings in Spain's and Portugal's tariffs, which should lead to significant improvement in their markets and thus in the Community market for contracting parties, including security of access. Another element that had been passed over was the integration of developing countries in the world market; here the Community was setting an example by assuming its share of the burden. Spain and Portugal were also making the necessary sacrifices in the hope that in the final analysis their economies would benefit.

The Community could not accept and let pass the narrow and unenlightened approach thus far taken to the ultra-sensitive and vast problem of the Community's enlargement. The process of European integration would continue, and would be managed responsibly and in the interests of equilibrium while respecting diversity. Spain and Portugal were now indissolubly part of the Community. This fact should benefit all, not just the other member States, because it brought equilibrium and stability into the world. He repeated that the Community would remember the statements that had been made at the present meeting.

The representative of Australia said that contracting parties, particularly the smaller ones, were regularly called upon to appreciate the importance of those contracting parties which were essential to the functioning of GATT. However, these situations should be handled in a dignified manner.

The representative of Chile said that regarding Spain's and Portugal's accession to the European Communities, Chile reserved all its rights under Article XXIV:6 and also under the other relevant Articles of the General Agreement, in particular, with respect to the calculation of a global benefit for Chile of ECU 120 million, and with respect to the following products: merluccius bilinearis and merluccius spp.

The Council took note of the statements and adopted the report in L/6405.

3. Technical Group on Quantitative Restrictions and Other Non-Tariff Measures
- Interim report to the Council (L/6397)

Mr. Williams, Director of the Non-Tariff Measures and Surveillance Division, introduced the interim report of the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures (L/6369).

He said that in accordance with its mandate, the Technical Group had met on 14 September to carry out the review of the accuracy and adequacy of the documentation before it, and the grounds on which measures were maintained and their conformity with the General Agreement. The Group had agreed that more time should be allowed for contracting parites to make or amend their notifications, and had therefore invited those which had not already done so, to submit by 31 October 1988 a complete notification of the quantitative restrictions they maintained. It had noted that notifications should be made in the form prescribed by the CONTRACTING PARTIES (NTM(TG)/W/4), but had agreed that they could be based either on the Customs Cooperation Council Nomenclature (CCCN) or on the Harmonized System (HS), on the understanding that each contracting party would use a single nomenclature. The Group had further agreed that, provided an adequate number of notifications were received by 31 October, the Secretariat should consolidate the notifications in two basic documents, one in CCCN and the other in HS, by 31 January 1989 and up-date its analyses accordingly by 28 February 1989. The Group had agreed to meet again in April 1989.

The Council took note of the statement and adopted the report in L/6397.

4. Agreements among Argentina, Brazil and Uruguay
- Communication from the United States (L/6394)

The Chairman recalled that at its meeting in September 1988, the Council had agreed to revert to this matter at a future meeting. It was on the present Council's Agenda at the request of the United States.

The representative of the United States noted that in the Committee on Trade and Development on 17 October, his delegation had been provided with answers to specific questions on the economic integration agreements among Argentina, Brazil and Uruguay that it had tabled at an earlier meeting of that Committee. This information had been transmitted to his authorities for review and would be discussed with the agreements' participants with the full expectation that this would clarify the nature and effect of the agreements. However, his Government could not at the present time withdraw its request for the establishment of a working party to examine these agreements. The United States still sought notification and GATT discussion of the basic agreements and all of the implementing protocols, in the interest of transparency and in order that all contracting parties would have an equal opportunity to review the possible impact of these agreements on their trade. He urged the agreements' participants to settle these issues promptly.

The representative of Brazil, speaking on behalf of Brazil and Argentina, said that his delegation had made a comprehensive statement at the meeting of the Committee on Trade and Development concerning the report from the contracting parties members of the Latin American Integration Association (LAIA) and, specifically, on the agreements between Argentina and Brazil. These two countries hoped that those statements covered all aspects raised by some contracting parties in previous meetings of the Committee and in the Council, and that their willingness to clarify any doubts concerning their integration process under the 1980 Montevideo Treaty would be understood. Argentina and Brazil would continue to collaborate fully with other delegations to clarify this matter and to provide other information, should it be needed, in the appropriate GATT body, i.e., the Committee on Trade and Development, according to the CONTRACTING PARTIES' Decision of 29 November 1982 (BISD 29S/9, 22).

The representative of Canada said that his delegation would welcome more information for the contracting parties.

The representative of the European Communities supported the requests for fuller information.

The Council took note of the statements.

5. Consultative Group of Eighteen
- Report by the Chairman of the Group

The Director-General, Chairman of the Consultative Group of Eighteen, recalled that the Group was required to report annually on its activities to the Council. As the Council was aware, the Group had not met during 1988. He had understood the general feeling of delegations to be that the intense pressure of work in the Uruguay Round in addition to the normal business of GATT made it preferable not to convene the Group unless a real need to do so became apparent. Therefore, he had not thought it advisable to renew consultations on the composition of the Group for 1988. He recalled that at the time of the CONTRACTING PARTIES Session in November 1987, consultations on that subject had not produced an agreed conclusion, and that it had been decided to remit the decision to the Council. It appeared that the same considerations remained valid at the present time. Therefore, he intended to propose to the CONTRACTING PARTIES at their forthcoming session, that in principle the Group should remain in suspense during 1989. He added that should it appear, for any reason, that a meeting of the Group in 1989 would be desirable, he would convene it, and would request the Council to take the necessary decision on its composition. He emphasized that a decision to allow the Group to remain in suspense according to his proposal would have no implications for its future activities; it would remain in his view a very important and necessary part of the present GATT structure.

The Council took note of the statement.

6. Committee on Tariff Concessions
- Report of the Committee (TAR/171/Rev.1)

Mr. Lau (Hong Kong), Chairman of the Committee on Tariff Concessions, introduced its report (TAR/171/Rev.1). He said that the Committee had held two formal meetings and had met twice informally. Its activities had related mainly to the introduction of the Harmonized System (HS) by contracting parties and to the legal and technical problems involved in the transposition of GATT schedules into the HS nomenclature. On 1 January 1989, when additional countries would have put the new system into force, more than 90 per cent of the trade of all contracting parties would be covered by the System. It was expected that more countries would adopt the new nomenclature later in 1989 and subsequent years. This wide acceptance of the System represented an important step towards facilitating international trade through the use of a common system for collecting customs and trade statistics. The Committee had also pursued its efforts towards obtaining additional consolidated tariff schedules in loose-leaf form. Forty-two of the 61 existing GATT tariff schedules had already been received and circulated in the form provided for by a Decision of the CONTRACTING PARTIES (BISD 27S/22), and of these 42 schedules, 14 had been approved. He urged delegations to intensify their efforts in examining the schedules which had not yet been submitted or approved.

The representative of Jamaica said that the Committee on Tariff Concessions was one of the most important bodies in GATT, as it dealt with one of the central instruments for predictability and security in international trade. In his delegation's view, the procedures for informing the Council about the Committee's activities and the transparency of the process in the Committee might need some improvement. He noted that the Chairman's report was on his own responsibility, that the selection of the Chairman was at the discretion of the Council Chairman after consultations, and that the Committee had held two informal meetings. He asked whether it would be possible for the Council to formulate a decision aimed at putting the Committee on a more formal basis. He also asked whether the establishment of the GATT Integrated Data Base (IDB) had been considered in the Committee and whether there was any reference to this in the report.

The Chairman of the Committee explained that the informal meetings had been convened for the purpose of completing columns 5, 6 and 7 of the loose-leaf schedules; this matter was also touched upon in the report. The IDB had not been raised in the Committee.

The representative of Jamaica said that if the intention was to have the less-developed contracting parties and all participants in the Uruguay Round participate more fully in the process of trade liberalization through tariff reductions, bindings, contributions and concessions, the procedures should be serious and carried out in a formal manner in GATT. He asked how many less-developed contracting parties had been active participants in the Committee.

The Chairman of the Committee said that he had not kept count of the participants, and noted that the airgrams convening the meetings, including the agenda, were circulated well in advance and that participation was open to all contracting parties. At every meeting, participants had been asked whether they had any additional items to raise for examination in the Committee, and none had been raised.

The representative of Chile reserved all of his country's rights under Article XXVIII and under any other relevant Article of the General Agreement, concerning the Committee's report and with respect to the negotiations alluded to in paragraph 4 thereof, because Chile considered that these negotiations had not been concluded satisfactorily, in particular with Japan, the United States and the European Communities.

The Council took note of the statements and adopted the report in TAR/171/Rev.1.

7. Harmonized System - Request for a waiver under Article XXV:5 - Sri Lanka - Establishment of a new Schedule VI (C/W/567, L/6409)

The Chairman drew attention to the communication from Sri Lanka in L/6409 containing a request for a waiver under Article XXV:5 in connection with its implementation of the Harmonized System, and to the draft decision in C/W/567.

The representative of Sri Lanka said that his Government was in the final stage of completing the transposition of its customs tariff from the CCCN to the Harmonized System (HS), and that upon completion of such transposition, the HS documentation required under Article XXVIII would be prepared and circulated to contracting parties as early as possible. Sri Lanka would ensure that in the process of conversion to the System, there would be no change in tariff rates of bound items, Initial Negotiating Rights or product descriptions, and was prepared to enter into consultations with any interested contracting party. In view of its transposition to the System on 1 January 1989, and owing to the time constraint, his Government would be unable to conduct consultations under the procedures of Article XXVIII prior to the scheduled date of implementation of the System, and therefore requested a temporary exemption from its obligations under Article II of the General Agreement until 30 June 1989.

The Council took note of the statement, approved the text of the draft decision in C/W/567, and recommended its adoption by the CONTRACTING PARTIES by a vote at their Forty-Fourth Session in November.

8. Consultation on trade with Hungary - Establishment of a working party

The Chairman recalled that the Protocol for the Accession of Hungary provides for consultations to be held between Hungary and the CONTRACTING PARTIES biennially, in a working party to be established for this purpose,

in order to carry out a review of the operation of the Protocol and of the evolution of reciprocal trade between Hungary and the contracting parties (BISD 20S/3).

The Council agreed to establish a working party as follows:

Terms of reference:

"To conduct, on behalf of the CONTRACTING PARTIES, the seventh consultation with the Government of Hungary provided for in the Protocol of Accession, and to report to the Council."

Membership:

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman: Mr. C.G. Fortune (New Zealand)

9. European Economic Community - Regulation on imports of parts and components
- Recourse to Article XXIII:2 by Japan (L/6410)

The Chairman drew attention to L/6410 containing a request by Japan for the establishment of a panel under Article XXIII:2 to examine its complaint against the European Economic Community.

The representative of Japan recalled that at its meeting on 22 September, his delegation had informed the Council that an Article XXIII:1 consultation had taken place between Japan and the European Economic Community on the latter's anti-dumping Regulation adopted on 22 June 1987 (EEC No. 1761/87) and its application to some products assembled or produced by Japanese-related companies in the Community. Japan had also reported that no mutually satisfactory solution had been reached, and that it reserved its rights under GATT. Japan now requested the establishment of a panel under Article XXIII:2 to examine this matter. The measures under the Regulation in question were inconsistent with the Community's GATT obligations because (1) they had been implemented without fulfilling the requirements clearly stipulated in Article VI of the General Agreement and (2) because the Community was actually applying the measures with a view to obliging companies to use parts originating in the Community, which was irrelevant to the purpose of anti-dumping duties. Thus, although the levies imposed were referred to as "anti-dumping duties" in the Regulation, in reality, it was far from clear whether they were the "anti-dumping duties" stipulated in Article VI of the General Agreement, or some other kind of levy. In Japan's view, they were simply new forms of protectionistic levies totally inconsistent with GATT and arbitrarily labelled "anti-dumping duties" by the Community. Since the drafting stage of the Regulation, his Government had held a series of bilateral consultations with the Community with a view to ensuring that the content of the Regulation as well as its application were consistent with the

General Agreement and with the Anti-Dumping Code[1], and Japan had asked the Community to amend the Regulation and to improve its application. While these consultations were going on, the Community had decided on 18 April 1988 to impose "anti-dumping duties" on electronic typewriters and electronic scales assembled or produced by five Japanese-related companies in the Community, as the first cases under the Regulation. Following that decision, Japan had conducted bilateral consultations with the Community and had taken action within the multilateral framework of GATT. The Community had not satisfactorily answered the questions and issues raised by Japan, however, and during the bilateral consultation on 16 September 1988, had rejected Japan's requests for the repeal and withdrawal of the Regulation without giving satisfactory explanations as to the GATT-consistency of the measures. Under these circumstances, Japan considered that the benefits accruing to it under GATT were being nullified and impaired by the measures and that its legitimate interests should be redressed immediately. As no progress had been made in bilateral consultations, Japan had no other recourse but to seek establishment of a panel under Article XXIII:2.

The representative of the European Communities said that the legislation referred to in L/6410 had been adopted by the Community after experience had shown that the opening of an anti-dumping proceeding was often followed by the establishment of operations in the Community whereby the product subject to the proceeding was assembled by European subsidiaries of the exporting companies concerned or other parties associated with or related to them. The parts assembled were essentially imported from the exporting country found to be dumping. Since the anti-dumping duty eventually imposed did not apply to the finished product resulting from this process, the exporters were thus able to sell in the Community without being subject to the duty, although they had been found to dump and to cause injury to the Community industry. This was a typical situation of circumvention against which contracting parties were entitled to take action. In so doing, the Community legislation had taken great care to define precisely the conditions where the evasion of anti-dumping duties was obvious. In the Community's view, the measures were fully justified by Article XX(d) of the General Agreement, which provided for the adoption by a contracting party of measures necessary to secure compliance with laws or regulations which were not inconsistent with the provisions of the General Agreement. The Community accepted Japan's right, and the right of any contracting party, to request a panel, and would not oppose the establishment of one in the present case, where the Community was confident that this would lead to the confirmation of its views.

The representatives of Brazil, Hong Kong, Singapore, Canada and Thailand supported Japan's request for the establishment of a panel.

The representatives of Korea, Hong Kong, Singapore, the United States, Canada, Australia, Thailand and Mexico reserved their delegations' rights to make a submission to the panel.

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[1]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

The representative of Korea expressed his delegation's satisfaction with the Community's acceptance of the establishment of a panel in this case.

The representative of Brazil said that while Brazil did not deny the right of any contracting party to protect its market, unilateral measures inconsistent with GATT rules were not the best way to do so. The general exceptions provided for in Article XX, specifically its paragraph (d), on which Article 13(10) of the Regulation in question was based, could not justify discrimination or a hidden restriction in international trade. The application of any anti-dumping duty had to be in full accordance with the Code.

The representative of Hong Kong said that as his delegation had stated on previous occasions, Hong Kong was concerned by what it perceived as the GATT-inconsistency of measures taken by the Community to counter circumvention of anti-dumping measures. Hong Kong supported Japan's request for a panel and welcomed the Community's acceptance of the merits of this case.

The representative of Singapore said his country believed that a contracting party had a right to seek recourse to the GATT dispute settlement procedures. His delegation, too, was concerned about the implications of the Community's anti-dumping legislation in the context of GATT provisions and obligations.

The representative of the United States said that his delegation also had an interest in this matter and reserved its GATT rights.

The representative of Canada said that the dispute settlement system seemed to continue evolving. Canada welcomed the Community's willingness to accept the establishment of a panel in this case.

The representative of Jamaica asked for clarification as to whether the measures in question were, in fact, anti-dumping duties. He also asked for answers to the following questions: Were the duties levied at the border? Were they intra-Community duties? To which products or parts did the duties apply? What steps were being taken in the Committee on Anti-Dumping Practices with regard to this matter?

The Chairman pointed out that in the communication from Japan in L/6410, the words "anti-dumping duties" were in inverted commas.

The Director-General said that the Committee on Anti-Dumping Practices was scheduled to meet the following week and that this item was on its agenda.

The representative of Jamaica said that in order for the Council to take decisions, it would be useful to have an understanding of the facts and the basis on which the decision was to be taken. He felt that answers to his questions would be more relevant if they came from Japan and the Community.

The representative of Mexico said that this matter could be of interest to his delegation from a legal point of view.

The representative of the European Communities said that his delegation had already provided detailed answers to the questions raised by Japan regarding this matter. Since the Community had agreed to the establishment of a panel, it would be more appropriate to explain further the details of the Regulation's operation in the panel proceedings.

The representative of Jamaica said that he considered the Community's answer to be unsatisfactory. His authorities had for some time been interested in the Regulation, and he again asked the Community to answer his questions.

The representative of the European Communities said that the measures in question did not essentially concern trade within the Community. His delegation would be pleased to provide more detailed answers bilaterally at a later time.

The representative of Jamaica said that this response was equally unsatisfactory. The Council was a place for collective decision-making and collective understanding. If the Community did not want to answer his delegation's questions in the Council, the record should so state.

The Director-General said that the measures in question had been described in detail in the Anti-Dumping Committee and that this information was contained in the working document of that body, which was available to delegations.

The representative of Jamaica said that his delegation found it unsatisfactory that important questions in the Council were being answered in another forum with restricted membership.

The representative of the European Communities said that as the Director-General had pointed out, there had been an extensive discussion and replies had been given to specific questions raised by Japan in the Committee. Following this, Japan had chosen to bring this matter to the Council. The Community had accepted this and was prepared to answer any questions in the panel. Should Japan want to address the questions raised by Jamaica, the Community would have no objections.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

The representative of Japan said that in his delegation's view, the establishment of a panel under Article XXIII:2 of the General Agreement did not preclude in any way Japan's right to pursue the dispute settlement procedures under the Anti-Dumping Code. Japan therefore reserved its rights to follow up in due course the procedures it had already initiated in the Committee on Anti-Dumping Practices.

The representative of the European Communities said that, in response to Japan's statement, the Community considered the procedures under the Anti-Dumping Code to be completed for the time being.

The Council took note of the statements.

The representative of Jamaica, speaking later in the meeting, said that his delegation had raised a number of questions which it thought were pertinent to the Council's work. Satisfactory answers had not been given. He was making the present statement in light of the relationship between the work of the Committee on Anti-Dumping Practices and the work of the Council in discharge of its responsibilities with respect to the General Agreement.

He recalled that for some ten years, a number of delegations, including Colombia and Jamaica, had been trying to ensure greater consistency among the different instruments and institutions within the GATT system. Some of the considerations which had led them to raise these questions were the following: There were no complete records regarding the negotiating history of the instruments emerging from the Tokyo Round, which might give some idea of the issues and the different points of view that had been raised regarding the final outcome of those instruments. That was important when considering panels or working parties where contracting parties believed their rights to have been impaired. It was his delegation's understanding that the contracting parties which had negotiated those instruments had stated that they had taken on obligations over and above those specified in the General Agreement, and that it was for this reason that they extended certain rights and benefits on a purely reciprocal basis. Therefore, contracting parties which were not parties to the MTN Agreements and Arrangements and did not participate in those Committees or Councils could not expect to secure equal rights or equal benefits.

He recalled that when these instruments had been brought before the CONTRACTING PARTIES, Jamaica had stated its understanding regarding their incorporation into the GATT system. When the proposed rules regarding the participation of contracting parties which were not parties to these agreements had been brought to the Council, Jamaica had expressed its concern that they would deprive contracting parties of even minimal rights of participation at the meetings of the MTN bodies. Those rules had subsequently been changed to allow for the attendance of observers, thus allowing developing contracting parties not parties to those agreements to give serious consideration to adhering to those instruments.

Over the years, Jamaica had remarked that there would be disputes arising from the application of these agreements and arrangements. Panels would be established, and when there was no satisfaction, the problem would be brought to the Council. When such a matter was brought to the Council, it was difficult to understand the refusal of a contracting party which was seeking redress under the General Agreement to fail to answer a question. It should be noted that while Jamaica was not a party to the decisions of the bodies established by the MTN Agreements and Arrangements, their activities were nevertheless financed out of the CONTRACTING PARTIES' regular budget. Thus there had to be some minimum responsibility.

The representative of the European Communities said that the Community firmly believed in transparency. This particular matter had first been raised in a special meeting of the Committee on Anti-Dumping Practices, in

which a full exchange of views and information had taken place. The measures had, of course, been notified. Japan had chosen to ask for a panel under Article XXIII:2 in the Council. He asked Jamaica to understand that the Community was a defendant in this case and had to prepare its strategy for that panel. It was therefore not appropriate at the present time to go into the details of the case in the Council.

The Council took note of the statements.

10. United States - Restrictions on the importation of agricultural products applied under the 1955 Waiver and under the Headnote to the Schedule of tariff concessions (Schedule XX - United States) concerning Chapter 10
- Recourse to Article XXIII:2 by the European Economic Community (L/6393)

The Chairman recalled that at its September meeting, the Council had considered this item and had agreed to revert to it at the present meeting.

The representative of the European Communities said that he hoped that the Council would establish the panel which the Community had requested at the September meeting.

The representative of the United States said that at the September Council meeting, his and several other delegations had found that the Community's communication in L/6393 was deficient in that it did not identify the products about which the Community was complaining or the bases of its complaint. The United States had explicitly stated that, at a minimum, the Community had to amend its complaint to correct these deficiencies. This had not been done; the Community had simply sent a short letter on the previous Friday asserting that the oral response at the Council meeting satisfactorily met the United States' concerns. His delegation suspected that it did not alleviate the concerns of other contracting parties. Apart from this serious technical deficiency, there remained a major political problem: the United States could not agree to the establishment of the panel presently requested by the Community until the latter was prepared to move forward to allow the Panel established at the 15-16 June Council meeting, concerning Community subsidies on oilseed production, to begin its work. The United States was ready to move forward expeditiously on both panels once that earlier established panel was allowed to begin its work.

The representative of the European Communities said that the United States had apparently become the spokesman for representatives who had expressed concern at the September Council meeting but now remained silent. He noted also that some sort of a link was being established between the two panels. That was an interesting precedent and the Community would draw the necessary conclusions from it. He asked the Council to register his "disappointment credit" which one day would become one of "revolt".

The Council took note of the statements.

11. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (L/6175, C/W/540 and Add.1, Spec(88)48)

The Chairman recalled that at its meeting on 22 September, the Council had agreed to revert to this matter at the present meeting.

The representative of the United States said that, as stated at the September meeting, his delegation believed that the appropriate next step was to negotiate with affected contracting parties on the issue of compensatory adjustments which the US Administration could present to Congress for implementation. US officials in Brussels had asked Community officials for their views on the agenda, dates and venue for such compensation negotiations; his delegation understood that these administrative details were being resolved.

The representative of the European Communities acknowledged that the US message had been received in Brussels; the Community was always prepared to discuss. Its Article XXIII:2 request remained on the table, however, and the Community was disappointed that this matter was taking so long. This was another instance in which the Community had a "disappointment credit" which hopefully would not become one of "revolt".

The representative of Mexico recalled that his delegation had stated at the September Council that it expected the US Congress to remove the discriminatory tax when discussing the budget appropriations for the 1989 fiscal year. Mexico's hopes had not materialized, and its position remained unchanged.

The representative of Canada expressed his Government's strong preference for the removal of the offending measure. The United States had had more than a year to implement the Panel's findings; Canada considered that to be a reasonable period by Article XXIII standards. He noted that the Community's proposal for withdrawing concessions was still on the table. His delegation held the view that the point had been reached where a Council decision would be appropriate with respect to that request. Canada supported the Community's decision to pursue the issue of balancing concessions through the GATT as opposed to considering taking sanctions through unilateral action.

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

12. Roster of non-governmental panelists
(a) Proposed nomination by the European Communities (C/W/565)
(b) Proposed nomination by the United States (C/W/568)

The Chairman drew attention to documents C/W/565 and C/W/568 containing proposals for nominations to the roster of non-governmental panelists.

The representative of the European Communities drew attention to another proposed nomination (C/W/569) which had been recently circulated but was not on the agenda of the present meeting. He asked whether it would be proper for the Council to examine this proposal at the present meeting.

The representative of the United States said that, as a matter of principle, his delegation had a problem with examining the proposed nomination referred to by the European Communities because there had not been sufficient time to consider it.

The representative of Jamaica recalled that when the original list of non-governmental panelists had been circulated, his delegation had expressed reservations on some names being added to the list. Experience over the last years in the Council might have given the impression that this was a routine "pro forma" exercise. He had been struck by the United States' remark concerning a nominee from another contracting party. He asked the Secretariat to circulate the current Roster in order to see the balance of participation. He also said that the proposed US nominee could be considered as being a member of the legislative branch of the US Government.

The representative of the United States replied that the nominee in C/W/568 had retired from service with the Congressional Research Service and was no longer an employee of the US Government.

The representative of the European Communities said that he had difficulties with Jamaica's notion of balance. It was more important that the Roster have highly qualified and independent persons who were knowledgeable about GATT matters. He gave additional information on the nominee proposed by his authorities in C/W/565 and said that he fully met these criteria.

The Director-General pointed out that the Roster of non-governmental panelists had been circulated in L/6229 and that addenda to that document were regularly issued. As for balance, this depended on the nominees put forward by contracting parties. He could only encourage delegations to propose good nominees and noted that some delegations were more active than others in this respect.

The representative of the United States said that the information submitted in C/W/568 might be misleading. He would therefore propose withholding action on this particular nomination until the situation could be clarified.

The Council took note of the statements, approved the proposed nomination in C/W/565 and agreed to defer consideration of the proposed nomination in C/W/568.

13. Training activities (L/6404)

The Director-General introduced his report (L/6404) on the trade policy courses organized by GATT. He recalled that at Punta del Este, Ministers had agreed in 1986 that technical support by the Secretariat should be available to the developing countries participating in the Uruguay Round. He thanked the Canadian Government for its generosity in inviting once more the participants in the English-speaking course for a study tour in Canada and for that country's continuing support for the training activities. He also thanked the Government of Spain for the study tour organized for the Spanish-speaking course. He thanked the Swiss authorities for the renewal of their unilateral contributions, which had enabled a special workshop on trade negotiation techniques to be added to the training program and to be continued, particularly in the period of multilateral trade negotiations. Switzerland had also continued each year to invite participants in the courses to take part in a short study tour in that country. He expressed gratitude to the United Nations Development Programme for its help in the processing of applications. Finally, he thanked those members of delegations and representatives of other international organizations who had given their time to discuss various questions with the participants in the courses.

The representatives of Bangladesh, Mexico, Uruguay, Cuba, Colombia, Nigeria, Peru and Chile expressed appreciation for the courses and for the Secretariat's efforts to maintain and strengthen the training program.

The representatives of Bangladesh, Cuba and Nigeria expressed particular appreciation to the host countries for having organized study tours.

The representative of Bangladesh said that the GATT training courses were acquiring even greater importance because of the Uruguay Round. He suggested that the programme give more emphasis to the work of the Negotiating Groups. In connection with the balance of interests in the negotiations, he suggested that the Secretariat circulate a list of the guest speakers invited to address the participants in the courses and that such a list be part of future reports by the Director-General. He suggested also that courses be arranged in the field to allow senior officials of the countries concerned either to give lectures or to perfect their own knowledge. He further suggested that the participants in the courses be encouraged to deal with their respective countries' specific problems and interests, and to submit a report thereon to their authorities.

The representative of Mexico thanked the European Communities for the assistance provided to Mexican negotiators through sponsoring a special course at the GATT Headquarters.

The representative of Cuba thanked Switzerland for having made possible the workshop on trade negotiating techniques.

The representative of Nigeria expressed deep appreciation for Canada's support of the training activities in general and more specifically for recent East and West African seminars for traders of those regions.

The Director-General said that the thanks expressed should really go to contracting parties, whom he encouraged to take note of the interest and support for the programmes. In his view, it was particularly striking that a world-wide network of ex-trainees of the GATT courses was being created. As to Bangladesh's request, modesty had dictated the decision not to publish a list of guest speakers, but if the latter agreed, such a list could be published. He noted that IMF, IBRD and UNCTAD officials, as well as numerous GATT representatives were regularly invited and contributed to the courses. With respect to in-the-field courses, those belonged to a different sector of the Secretariat's activities.

The Chairman said that he joined all those who had expressed their deep appreciation for the valuable courses offered by the GATT. In his view, they represented a sound investment.

The Council took note of the statements and of the Director-General's report (L/6404).

14. Committee on Budget, Finance and Administration
(a) Report of the Committee dated 12 September 1988 (L/6384)
(b) Report of the Committee dated 7 October 1988 (L/6408)

Mr. Hill (Jamaica), Chairman of the Committee on Budget, Finance and Administration, introduced its two reports, noting that the first of these (L/6384) was the report dated 12 September 1988 on ways to improve the cash situation of the GATT, and the second (L/6408) was the report dated 7 October 1988 on the 1989 Budget Estimates.

Regarding the first report, he recalled that two interrelated factors had caused GATT's financial problems in 1987: the annually increasing level of outstanding contributions (roughly SwF 20,000,000 at the end of 1987), and the irregular and unpredictable payment of current-year contributions. In 1987, the Council had requested the Budget Committee to examine GATT's cash position and to make recommendations to avoid a recurrence of a cash-deficit situation in the future. The report in L/6384 was the result of several months of consultations and negotiations, and reflected a carefully balanced set of interrelated recommendations which, if adopted, should lead to an improvement in the financing of GATT's activities. He said that the Council had a unique opportunity to put GATT's finances on a much sounder basis, and emphasized strongly the inter-relationship of the recommendations, on the whole of which the Council should act. He said that a number of concerns had been raised in the Committee regarding some of the recommendations; these had been thoroughly discussed. Informal consultations had also been held by the Council Chairman. The recommendations which had emerged represented a compromise which did not impair the rights and obligations of contracting parties, and which went a long way towards improving GATT's financial position. Those recommendations covered issues such as: (1) the reduction

of the minimum contribution from 0.12 per cent to 0.03 per cent of the total assessed contributions; (2) the implementation of instalment-payment schemes for contracting parties with contributions in arrears for 1987 and earlier; (3) the implementation of an early payment encouragement scheme for contributions in the year they fell due; (4) a set of administrative measures to be implemented gradually in order to avoid arrears in the future; (5) the increase in the level of the Working Capital Fund up to SwF 4,000,000; (6) an invitation to observer countries to contribute to the cost of the documentation they received; and (7) the intention to prepare financial rules and regulations tailored to GATT's needs.

This set of recommendations, if implemented would be beneficial in a number of ways: (1) it would improve GATT's cash situation by redistributing the shares of contributions and by establishing a feasible plan for the collection of outstanding contributions which in many cases were years in arrears; (2) it would assist 28 of the smallest and poorest contracting parties by reducing their minimum contribution by 75 per cent, while their assessment would remain in excess of their trade shares; (3) it would help another 19 less-developed contracting parties by reducing their contributions below the current 0.12 per cent level and assessing them on the basis of their actual trade shares; and (4) it would enable 37 contracting parties currently in arrears to adopt installment schemes for settling arrears accumulated before 1988. The Committee therefore recommended approval of the set of recommendations in Part A of the report.

He said that Part B included three other recommendations for which approval was needed in order for the auditors to proceed with their verification of the 1987 accounts and their interim audit of the 1988 accounts. These concerned the assessment on Lesotho and its contribution to the Working Capital Fund consequent to its GATT accession, transfer between budgetary sections and the revision of the 1988 level of expenditure.

Before turning to the second report on the 1989 Budget Estimates (L/6408), he reminded the Council of the relationship between the two reports, since the financing of the 1989 expenditure budget was based on a new scale of contributions. He drew attention to the Committee's conclusions in paragraph 62 of L/6408, where it had identified specific issues which made the monitoring and controlling of budgetary expenditure more difficult. Committee members had expressed a general need for more information in order to carry out a more comprehensive examination of the budget proposals and to facilitate the monitoring of the expenditure. They had noted, inter alia, the large and increasing number of meetings and the effect this had on a wide range of supporting activities. For example, it was estimated that nearly 50 million pages of documentation would be reproduced during 1988, a 20 per cent increase over 1987. All this pointed to a financial situation which was increasingly difficult to keep under control and which had important implications for GATT as an institution. Questions had been raised in the Committee as to whether there should be limitations on budgetary increases and thus limitations also on the number of meetings; these were questions for contracting parties to reflect on and to give the Committee guidance for future deliberations. Paragraph 62

identified other areas which the Committee would be examining in 1989 and which would have to come before the Council again in order to be taken into account in the preparation of the 1990 budget.

He then highlighted parts of the 1989 budget estimates. These included a contingency provision of SwF 500,000 for a possible Trade Policy Review Mechanism (TPRM) (paragraph 63). He emphasized that the funds in this provision would remain frozen unless and until the establishment of the TPRM was accepted by the Ministers at the December meeting of the Uruguay Round Trade Negotiations Committee in Montreal, and the detailed budget approved by the Budget Committee and the Council. Should the TPRM not be established or should the budget approved for this purpose be less than SwF 500,000, contracting parties would be refunded accordingly.

He noted that excluding the provision for the TPRM, the proposed 1989 budget represented an increase of 4.8 per cent over that for 1988. The budget for GATT's regular activities showed an increase of 3.6 per cent while that for the Uruguay Round was 49 per cent higher than the 1988 budget allocation; the latter increase reflected the increased activity taking place in the Uruguay Round and took into account the continuation for a full year of posts approved for less than one year in 1988. Nevertheless, the overall budget did not provide for any increase in the permanent establishment, and practically all of the inflationary effects on the budget for regular activities had been absorbed. The provision for Technical Co-operation Missions had been increased slightly at the Committee's request, on the understanding that the Secretariat should have the means to assist the developing country participants in the Uruguay Round. Regarding electronic data processing, the increase requested by the Director-General had been accepted; however, any future development in this field would be assessed by the Budget Committee, taking into account contracting parties' needs.

In conclusion, he said that as a result of its examination of the 1989 budget estimates presented by the Director-General, the Committee had recommended that the Council approve total expenditure amounting to SwF 63,790,000, miscellaneous income estimated at SwF 1,071,000, and the ways and means to meet such expenditure as set out in paragraph 64 of L/6408, and the recommendations in paragraphs 73 and 74 regarding expenditure for and contributions to the International Trade Centre UNCTAD/GATT for 1988-1989.

The Director-General said that he felt strongly about the need for the Council to take positive action on these reports. As all Council members were aware, and as the Budget Committee Chairman had made very clear, the two reports were directly related to the effectiveness of the tool which contracting parties' Governments had created to assist them in co-operating, consulting and negotiating at the multilateral level in the trade policy field -- the GATT Secretariat. In other words, these two reports, taken together, were related to the fundamental material needs of this institution.

He said that both reports had been unanimously approved by the Budget Committee members. The first, in L/6384, was in his view a carefully balanced set of inter-related proposals aimed at improving GATT's cash

situation. The Budget Committee had devoted considerable time and energy to this matter, and in his view, had come up with a set of very balanced proposals. He thanked the Committee, its members and its Chairman for their efforts, which at last provided an opportunity to put GATT's finances on a sounder basis. The report contained elements to encourage the prompt payment of contributions, the assumption being that most if not all of these elements would never actually have to be used. It also made it possible to reduce the financial burden on the smaller trading partners in the GATT family.

The second report in L/6408 contained the budget proposals for 1989. It was linked to the first report because, among other things, it took account of the reduced scale of contributions put forward in L/6384. He said that it would indeed be a very long time -- perhaps never -- before contracting parties would again have such a chance to put GATT's finances on a sounder basis. In conclusion, he noted that he had gone beyond his usual rôle, which was to assist contracting parties to negotiate among themselves, rather than to negotiate with them himself. In the present case, he was certain that contracting parties would understand that it would not be responsible for him, as head of the GATT Secretariat, to refrain from taking a clear stand.

The Chairman made the following statement, as requested by and on behalf of Argentina, Colombia, Cuba, Mexico, Nicaragua, Peru and Uruguay: "These Governments have maintained in all international fora that the introduction of administrative measures is not the best way to solve problems of arrears in the payment of contributions. Financial problems must be resolved by financial measures and not by administrative sanctions which could be detrimental to the rights and obligations of contracting parties. They therefore consider that Chapter IV of Part A of the report under consideration (L/6384) should not be included in the report. Nevertheless, should there be a consensus in this meeting for the adoption of the report as a whole, having made the foregoing clarification, they place on record that while they do not join in the consensus for the above reasons, they understand that such adoption would be without prejudice to the rights and obligations of contracting parties under the GATT."

The representative of Brazil said that his country had constantly maintained in all international fora that the introduction of administrative measures was not the best way to solve problems of arrears in the payment of contributions. Financial problems had to be resolved by financial measures and not by administrative sanctions or even by early payment encouragement schemes which could be detrimental to the rights and obligations of contracting parties. Brazil therefore considered that Chapters III and IV of Part A of the report in L/6384 should not be included in the report. Nevertheless, should there be a consensus at the present meeting for its adoption as a whole, Brazil did not oppose that, but did not join in the consensus, reserving its position specifically on paragraphs 33 and 41 of L/6384. His delegation understood that the report's adoption would be without prejudice to the rights and obligations of contracting parties under the GATT.

The Chairman proposed that the Council take note of the statements, including his own on behalf of a number of contracting parties, approve the Budget Committee's specific recommendations in Paragraphs 16, 25, 33, 41, 43, 46, 48, 49, 53 and 57 of its report in L/6384, and adopt the report in L/6384.

The Council so agreed.

The representative of Tanzania said that his delegation welcomed the Council's decision to endorse the Committee's recommendations in L/6384. However, had an equitable basis of burden sharing been established at the outset, thus enabling many developing countries to meet their financial obligations, the administrative sanctions being proposed might not have been necessary. Tanzania strongly hoped that the least-developed contracting parties which were currently in arrears would be relieved of their past obligations, should they continue to meet the agreed installments for the coming three years, for example, in addition to meeting their current dues. These countries needed to retain whatever foreign exchange they could earn in order to meet their essential requirements. Tanzania hoped that the Director-General would soon be able to recommend the cessation of payment of past arrears, once there was clear evidence of good performance in paying both current and past dues for a period of time that could be seen as evidence of serious intent.

The representative of Bangladesh said that although his delegation had not opposed the recommendations in L/6384, it had some serious concerns. Bangladesh believed that the rationale of the Committee's exercise was to provide an incentive for the small and weakest contracting parties to pay their assessed contributions regularly and to clear their contributions in arrears; in that respect, his delegation associated itself with the essence of the Budget Committee's recommendation to lower the minimum level of contribution. However, the new scale did not reflect the situation of the least-developed countries like Bangladesh, which would be seriously aggrieved for the following reasons: (1) Twenty-five contracting parties having greater economic weight and strength as manifested by higher per capita GNPs than that of Bangladesh, had been proposed to be assessed at the minimum level of 0.03 per cent; 18 others had been proposed to be assessed at lower levels than that of Bangladesh. (2) For many developing countries, such as Bangladesh, their volume of imports was three times that of exports, and as trade share was based on both, this element should be considered. (3) Bangladesh's status as a least-developed country and the realities of its economic situation, battered by recurring natural disasters, had not been taken into account; to assess Bangladesh on the basis of trade share would amount to treating it as an equal among non-equals. He said that the end-result of the recommendation was not equitable and did not do justice to the weakest trading partners. The rigid application of the proposed scale of assessment defeated its very purpose. For these reasons, Bangladesh requested that during 1989, the Budget Committee evolve ways and means for the least-developed contracting parties to be assessed at the minimum level as from 1989, for the sake of fairness and equity.

The Chairman said that the United Kingdom had asked for the floor and that he understood that the European Communities would find this satisfactory. He then gave the floor to the representative of the United Kingdom.

The representative of the United Kingdom said that GATT was unusual among international institutions in that its subject matter, trade, could be used as a basis for providing a formula for its own funding. Adoption of this new budgetary package reconfirmed contracting parties' commitment to the principle of payment according to trade share. However, care should be taken not to extend this principle beyond its proper bounds. Clearly, an approach to budgetary funding based on trade share was not an appropriate criterion for assessing contributions to organizations whose functions and constitutional bases were different and could not be quantified in the same way. His Government did not, therefore, see GATT budgetary reform as a precedent for budgetary reform in other international bodies. The maintenance of a minimum contribution in no way undermined the principle in GATT of payment according to trade share. Any contracting party, by its very membership of and participation in the organization, entailed certain basic financial costs. Having a minimum contribution merely reflected that fact.

The representative of Romania said that his delegation had opposed the consensus in the Budget Committee to adopt the report in L/6384. However, his Government considered that the content of its Chapter IV of Part A did not prejudice contracting parties' rights under the General Agreement.

The Council took note of the statements.

The Chairman then turned to the second report in L/6408, and proposed that the Council approve the Budget Committee's specific recommendations in Paragraphs 63, 73 and 74, and agree to submit the draft resolution referred to in Paragraph 64 to the CONTRACTING PARTIES for consideration and approval at their Forty-Fourth session. He also proposed that the Council approve the Budget Committee's report in L/6408 and recommend that the CONTRACTING PARTIES adopt it at their Forty-Fourth session, including the recommendations contained therein and the Resolution on the expenditure of the CONTRACTING PARTIES in 1989 and the ways and means to meet that expenditure.

The representative of Brazil said that in his delegation's view, the recommendation in Paragraph 63 of L/6408 unduly and unnecessarily anticipated decisions which might or might not be taken by Ministers of the countries participating in the Uruguay Round. It was not appropriate, through a budgetary device, to pressure or constrain those Ministers on a decision regarding the creation of a trade policy review mechanism, or regarding the characteristics or dimensions such a mechanism might eventually assume. Consideration of this recommendation was inappropriate and unnecessary, since it could have been deferred to the first Council meeting after the Montreal meeting. Nevertheless, should there be a consensus at the present meeting for the adoption of paragraph 63, and on the understanding that it could neither prejudge the issue nor Brazil's position on it, Brazil would not oppose a consensus, but would not join in it.

The representative of Jamaica drew attention to paragraph 63 of L/6408 and to his delegation's views expressed in paragraph 44. Jamaica did not consider that an expenditure for a trade policy review mechanism could reasonably be anticipated during 1989, and regretted that there had not been consultations on this matter before it was included in the draft budget. Any provision in the budget regarding the outcome of the Montreal meeting should have been made as a contingency provision for a general, rather than a specific, purpose.

The representative of India referring to paragraph 63 of L/6408, said that in his delegation's view, a contingency of this type and order was premature, and did not, as India understood it, prejudge any decision Ministers might take in Montreal. The meaning of the term "Trade Policy Review Mechanism" was somewhat vague, and India would like this to be clarified. This would emerge only after the conclusion of ongoing discussions in another forum.

The representative of Malaysia reserved his delegation's position regarding paragraph 63; Malaysia's willingness to go along with a consensus on this matter should not prejudice his delegation's position on this issue of the Montreal meeting or in the Uruguay Round.

The Council took note of the statements and agreed to the Chairman's proposal.

The representative of Australia drew attention to paragraph 47 of L/6408 concerning regrading of posts within the Secretariat. He underlined the hope expressed by one of the Deputy Directors-General in the report that, in future, this matter be placed on a sounder basis. The staffing structure in the GATT Secretariat put far too much weight on seniority. He hoped that sometime in 1989, there could be some proposals designed to give the GATT Secretariat a modern personnel structure.

The Chairman of the Budget Committee said that he had been asked by a number of mostly less-developed contracting parties which had not been involved in the budget process to announce their request for consultations early in 1989 on the Committee's composition. He said that the process in the Committee was rather strenuous and that the views of some contracting parties, considered to be "minority", were not always fully reflected. All contracting parties had a responsibility to pay the closest attention to every aspect of the General Agreement.

The representative of Colombia expressed his delegation's concern regarding the contents of paragraphs 26, 27 and 28 of L/6408 regarding technical cooperation missions. The amounts approved for this purpose in the 1989 budget for GATT's regular activities were exactly the same as those approved for 1988; in light of the increasing costs and need for these activities, this represented a decrease in the amounts which had been allocated. This was contrary to the interests of the developing countries which benefitted from GATT's technical cooperation. He said that the Council should take this matter into consideration, and stressed his country's deep concern.

The Chairman expressed appreciation, on behalf of the Council, to the Budget Committee's Chairman and members for their long and intensive efforts in the very difficult work before the Committee.

The Council took note of the statements.

15. Appointment of presiding officers of standing bodies
- Report by the Council Chairman on informal consultations

The Chairman informed the Council that four informal consultations had been held on how to regularize the process of appointing the presiding officers of standing bodies in GATT. Unfortunately, the consultations were not yet concluded. If it proved possible to reach a satisfactory conclusion in the coming days, he would report the results to the CONTRACTING PARTIES at the forthcoming Session in November.

The representative of Jamaica said that this matter had arisen in a rather unorthodox way, but that the Chairman had ably seized upon it to bring more rationality and more transparency to the operation of the GATT. He was not sure, however, that this transparency and rationality were sufficiently clear to all contracting parties, notwithstanding the Chairman's consultations. The Chairman had said that appointment of presiding officers of standing bodies was the issue. Jamaica understood this to include all bodies which carried out GATT activities on a continuing basis -- the CONTRACTING PARTIES, the Council, the Committee on Trade and Development, the Committee on Budget, Finance and Administration, the Balance-of-Payments Committee, the Committee on Tariff Concessions, and, by extension, the MTN Committees and Councils. In the informal consultations, one was trying to find a common procedure of transparency, democracy, equality and equity. His delegation did not believe that its views had been sufficiently well understood or reflected therein and he wanted to put them on record.

Regarding the Chairman of the CONTRACTING PARTIES, it was understood that the current year's Council Chairman would become the following year's Chairman of the CONTRACTING PARTIES. To his knowledge, there had been only one exception to that custom. There was no need to change this, and this customary practice ought to be considered. As for the Chairman of the Council, consultations took place but not always in the same way; they varied according to the approaches adopted by the particular Chairmen of the CONTRACTING PARTIES. One common feature, however, was the rotation between the developed and the less-developed contracting parties. His delegation believed that a more transparent and formalized procedure for full consultation among all contracting parties should be adopted. There should be meetings to which all the heads of delegations should be invited, rather than telephone discussions.

As for other standing bodies under the Council, he had earlier in the present meeting referred to the fact that the Chairman and Vice-Chairman of the Committee on Tariff Concessions were appointed by the Council

Chairman.[2] That practice should cease if procedures were to be regularized. No Chairman of the Council should have the authority to carry out consultations on his own. Jamaica wanted a procedure to which all bodies would be subject.

As to the MTN Committees and Councils, some participants in the Council Chairman's consultations were of the view that these were not responsible to the Council. Jamaica did not believe that this was a relevant question in any consultations with regard to presiding officers or procedures. The matter at hand was the procedure for appointing or selecting presiding officers, and substantive matters such as who was responsible to whom should not be raised. In fact the Council did have some jurisdiction as illustrated by Japan's complaint[3] in the Anti-Dumping Committee which was now being brought to the Council. Jamaica therefore did not accept any arbitrary understanding that the MTN bodies were not responsible to the Council and were free to appoint their Chairmen as they wished. Jamaica looked forward to a common set of procedures within the GATT system. The customary practice to be observed should be such as to ensure a proper balance of interests in the distribution of posts among all contracting parties. Finally, with regard to the Community's remark[4] to the effect that competence, not balance, was the important element, Jamaica would never agree to such a "code-word" being introduced in this context.

The representative of Colombia, referring to the ongoing informal consultations on this matter, said that his delegation agreed fully with Jamaica and could not accept that the MTN Committees and Councils were not responsible to the Council, which held the same prerogatives as the CONTRACTING PARTIES.

The representative of Chile said that his delegation also supported Jamaica's statement.

The representative of the European Communities said that the previous statements demonstrated that his own statement at the special Council meeting the previous day[5] had been followed. This was an example of what he had called overall integration into the system.

The Council took note of the statements and of information by the Chairman.

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[2] See Item no. 6.

[3] See item no. 9.

[4] See item no. 12.

[5] C/M/225 - Minutes of Meeting - Review of Developments in the Trading System.

16. Sweden - Restrictions on imports of apples and pears - Recourse to Article XXIII:2 by the United States (L/6330)

The representative of the United States, speaking under "Other Business", said that the bilateral resolution to the United States' dispute with Sweden regarding the latter's restrictions on imports of apples and pears, agreed to during the summer of 1988, had broken down and was unlikely to be implemented in the near future. Therefore, the United States expected to renew its request for a panel at the forthcoming CONTRACTING PARTIES Session in November.

The representative of Sweden expressed his delegation's surprise that the United States was raising this issue again and at the present Council meeting. Sweden had made, and continued to make, considerable efforts to find a mutually acceptable solution to this problem and was confident that such a solution could be found within the time contemplated. Sweden had requested a de-consolidation of the existing tariff bindings on the products in question, and sufficient time had to be allowed to carry out the necessary renegotiations with the main suppliers.

The Council took note of the statements.

17. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade

The representative of the United States, speaking under "Other Business", re-emphasized the importance the United States attached to its proposal that GATT take a serious look at how internationally-recognized labour standards related to trade. His delegation would continue its efforts to find a consensus for discussion of this issue in GATT.

The Council took note of the statement.

18. EEC - Hungary Agreement

The representative of the European Communities, speaking under "Other Business", informed the Council that on 26 September 1988, the European Economic Community and Hungary had signed a bilateral agreement on trade, commercial and economic cooperation. This was the culmination of negotiations which had begun in mid-1987. Under the terms of the commercial part of the Agreement, quantitative restrictions maintained by the Community against Hungary on more than two thousand tariff positions would be abolished in three phases, by 1989, 1992 and 1995. The Agreement would increase the possibilities of two-way trade, joint ventures, licensing agreements and other bilateral economic activity. The text of the Agreement would be made available to the Secretariat for the information of contracting parties.

The representative of Hungary confirmed the information provided by the Community. The Agreement was based on the full respect of contracting parties' rights and obligations under the GATT, and was aimed at developing

trade on the basis of equality, non-discrimination, mutual benefit and reciprocity. As a full implementation of the contractual obligation undertaken in Hungary's Protocol of Accession to the GATT, the Community had committed itself in the Agreement to eliminate, within a definite time-frame, all quantitative restrictions referred to in paragraph 4(a) of that protocol (BISD 20S/3). The Agreement was non-preferential and reaffirmed the two parties' obligation under GATT to accord each other m.f.n. treatment. It provided, on a reciprocal basis and under specified circumstances, the possibility of recourse to selective safeguard measures. The text of the Agreement would be given to the Secretariat for the information of contracting parties as soon as the respective ratification procedures had been completed.

The representative of the European Communities said that in the Community's view, this Agreement was the result of negotiations and concessions on both sides, and not just the implementation of the provisions of the Protocol of Accession of Hungary.

The Council took note of the statements.

19. Japan - Trade in semi-conductors
- Follow-up on the Panel report

The representative of the European Communities, speaking under "Other Business", recalled that five months had elapsed since the Council's adoption of the Panel report on Japan's trade in semi-conductors (L/6309). The Community asked Japan to provide information regarding the way in which this panel report had been or was being implemented.

The representative of Japan said that he had taken note of the Community's statement and would promptly contact his authorities.

The Council took note of the statements.

20. Pakistan - Renegotiation of Schedule

The representative of Pakistan, speaking under "Other Business", recalled that by their Decision of 3 December 1987 (BISD 34S/34) the CONTRACTING PARTIES had agreed to extend until 31 December 1988 the time limit for the finalization of consultations and negotiations on Pakistan's schedule of tariff concessions. His authorities hoped to submit shortly a new draft schedule of concessions in the Harmonized System nomenclature. If a further extension of the waiver became necessary, however, Pakistan would circulate a request for this with the hope that it could be dealt with before the end of 1988.

The Council took note of the statement.

21. Accession of Bulgaria

The representative of Bulgaria, speaking as an observer and under "Other Business", referred to the informal consultations that had been held regarding the procedural aspects of the Working Party established by the Council in November 1986 to examine Bulgaria's request for accession. He said that at the most recent consultations, wide-spread support for standard terms of reference had emerged. Bulgaria hoped that further consultations on this matter could be held prior to the Council's first meeting after the CONTRACTING PARTIES Forty-Fourth Session.

The representative of the United States said that it was his understanding that it had been agreed in consultations already held, that further consultations would be held prior to the Council's first meeting in 1989.

The Chairman confirmed that this was his understanding.

The Council took note of the statements.

22. Export of Domestically Prohibited Goods

The Chairman, speaking under "Other Business," recalled that the subject of "Export of Domestically Prohibited Goods" had been included in the 1982 Work Program (BISD 29S/19). At the Forty-Third Session of the CONTRACTING PARTIES in 1987, it had been decided that the Secretariat should arrange for further informal consultations among interested delegations on the nature and type of action that could be taken in this area, taking into account the work being done by other international organizations (SR.43/4, page 8), and that the report on these consultations would be submitted to the Forty-Fourth Session of the CONTRACTING PARTIES in November. Pursuant to that Decision, the Secretariat had considered holding the consultations earlier in 1988; however, some delegations with an active interest in the subject had requested postponement of them because informal consultations were being held on the type of action that could be taken in GATT in this area. He said that Nigeria had recently made available to the Secretariat a "technical note", circulated to delegations on 7 October, indicating the nature and type of action that could be taken in this area, taking into account the work being done in other international organizations such as WHO, FAO and UNEP.

He announced that informal consultations had been scheduled for 24 October 1988. The Secretariat would report on the results of those and other consultations which might subsequently be held, at the Session in November when the CONTRACTING PARTIES considered this point in the Council's report.

The Council took note of this information.

23. Korea - Restrictions on imports of beef
- Recourse to Article XXIII:2 by New Zealand

The Chairman, speaking under "Other Business", recalled that at its meeting on 22 September 1988, the Council had agreed to establish a panel to examine New Zealand's complaint in L/6354 and Add.1, and had authorized him, in consultation with the parties concerned, to designate its Chairman and members.

He announced that the composition of the Panel would be the same as for the panels established earlier to examine complaints by the United States and Australia, as follows:

Chairman: Mr. Tai Soo Chew

Members: Miss Yvonne Choi
Mr. Piotr Freyberg

The Council took note of this information.

24. European Economic Community - Restrictions on imports of apples
- Recourse to Article XXIII:2 by the United States

The Chairman, speaking under "Other Business", recalled that at its meeting on 22 September 1988, the Council had agreed to establish a panel to examine the United States' complaint in L/6371, and had authorized him, in consultation with the parties concerned, to draw up the Panel's terms of reference and to designate its Chairman and members.

He announced that the terms of reference and composition of the Panel would be as follows:

Terms of reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6371 and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

Chairman: Mr. G. A. Maciel

Members: Ms. M. Liang
Mr. T. Cottier

The Council took note of this information.

25. Office of Director-General

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", recalled that he had convened a consultation for 25 October and had circulated to heads of contracting-party delegations a draft decision on the subject of the reappointment of the Director-General.

The Council took note of this information.

26. Arrangements for the Forty-Fourth Session
- Consultations by the Chairman of the CONTRACTING PARTIES

The Chairman of the CONTRACTING PARTIES, speaking under "Other Business", informed the Council that he had convened a consultation for 1 November regarding the election of officers at the CONTRACTING PARTIES Session in November.

The Council took note of this information.

27. Report of the Council (C/W/564)

The Secretariat had distributed in C/W/564 a draft of the Council's report to the CONTRACTING PARTIES on matters considered and action taken by the Council since the Forty-Third Session.

The Chairman proposed that the report, together with appropriate additions which the Secretariat was requested to make, be approved. It would be distributed and forwarded to the CONTRACTING PARTIES for consideration at their Forty-Fourth Session.

The Council so agreed.

At the close of the meeting, the Chairman made some concluding remarks.[6]

[6]The text of the Chairman's concluding remarks was subsequently circulated in C/161.