RESTRICTED

C/M/198
12 June 1986

Limited Distribution

GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
22 May 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 May 1986

Chairman: Mr. K. Park (Korea)

			Page
Subjects discussed:	1.	Council membership - Hong Kong - Kuwait	2
	2.	Accession of Morocco - Working Party report	2
	3.	Japan - Measures affecting the world market for copper ores and concentrates - Request by the European Economic Community for a working party	4
	4.	United States - Manufacturing Clause - Follow-up on the Panel report	8
	5.	State trading - Communications from Chile	11
	6.	Customs unions and free-trade areas; regional agreements - biennial reports - Finland and Czechoslovakia	12
	7.	Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies - Panel composition	12
	8.	Consultation on trade with Hungary - Working Party report	14
	9.	United States - Agricultural Adjustment Act (a) Working Party report (b) Twenty-eighth annual report by the United States	19 19
	10.	Canada - Measures affecting the sale of gold coins - Panel report	24
	11.	Committee on Balance-of-Payments Restrictions (a) Consultation with Argentina (b) Consultation with Greece (c) Consultations with Bangladesh and Peru (d) Meeting in April 1986	25
	12.	Japan - Renegotiations under Article XXVIII on leather and leather footwear	26

Page

13. United States - Measures on imports of non-beverage ethyl alcohol 28
14. European Economic Community - Suspension of food imports from certain East European countries 28
15. United States - Imports of lumber from Canada 32
16. United States - Measures affecting Cuban sugar exports 33
17. Administrative and financial matters
(a) Deputy Director-General post 34
(b) Salaries and pensions of professional and higher category officials 35
18. Observer status in GATT 36
- Progress report by the Chairman on informal consultations

1. Council membership
- Hong Kong
- Kuwait

The Chairman, on behalf of the Council, welcomed Hong Kong as a contracting party, recalling that Hong Kong had become a contracting party on 23 April 1986, in accordance with the procedures of Article XXVI:5(c).

The representative of India said his Government had not yet completed its examination of L/5986, L/5987 and GATT/1384, concerning Hong Kong. India reserved its rights in this regard, and would revert to this matter at a future meeting.

The Chairman noted that Hong Kong had asked for Council membership, and accordingly he welcomed Hong Kong as a Council member.

He then welcomed Kuwait as a Council member following the request for membership by that Government.

The Council took note of the statements.

2. Accession of Morocco
- Working Party report (L/5967)

The Chairman recalled that in April 1985 the Council had established a working party to examine Morocco's application to accede to the General Agreement. The Working Party's report had been circulated in L/5967.

Mr. Mathur, Deputy Director-General, introduced the report on behalf of Mr. López-Noguerol (Argentina), Chairman of the Working Party, who was no longer in Geneva. He noted that the Working Party had examined Morocco's foreign trade régime and its compatibility with the General Agreement. During the examination, the Moroccan delegation had supplied additional information and clarification regarding various points raised. In the light of the explanations and assurances given by the Moroccan representatives, and it being understood that the rights of contracting parties with respect to Morocco's application of the provisions of the General Agreement were fully preserved, the Working Party had concluded that, subject to the satisfactory conclusion of the relevant tariff negotiations, Morocco should be invited to accede to the General Agreement under the provisions of Article XXXIII. The Working Party had prepared, for the Council's approval, a draft Decision and Protocol of Accession which were annexed to the report. Concessions resulting from the tariff negotiations between Morocco and contracting parties in connection with accession would be circulated as an addendum to the report as soon as details were available, and would be annexed to the Protocol of Accession. The Decision would then be submitted to a vote by contracting parties in accordance with Article XXXIII. Upon adoption of the Decision, the Protocol of Accession would be open for acceptance and Morocco would become a contracting party 30 days after signing the Protocol.

The Chairman noted that the Working Party had made a special effort to carry out its mandate quickly. Since all the tariff negotiations had apparently not yet been completed, he urged contracting parties to conclude them as soon as possible in order that the Schedule of Morocco, and any concessions granted by contracting parties, might be circulated in the near future as annexes to the draft Protocol.

The representative of Morocco, speaking as an observer, said that his country's bilateral tariff negotiations had been completed with some contracting parties, while with others the negotiations were continuing. Thanks to the understanding and cooperation shown by the contracting parties, Morocco was convinced that all the negotiations would conclude favourably.

The representative of the European Communities said that the Community and its member States actively supported the whole process leading to Morocco's accession, which would be a good omen for GATT.

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

The Council also approved the draft Protocol of Accession, with the understanding that the Schedule LXXXI - Morocco, and any other Schedules resulting from the negotiations, would be circulated as soon as possible as an addendum to the Working Party's report and would be annexed to the Protocol.

The Council then approved the draft Decision and agreed that it should be submitted to a vote by postal ballot once the relevant Schedules had been circulated.

3. Japan - Measures affecting the world market for copper ores and concentrates
- Request by the European Economic Community for a working party (C/W/439, L/5627, L/5654, L/5992)

The Chairman recalled that this matter had been considered by the Council at its meetings in March, May, June and November 1984, and had also been discussed by the two parties in informal consultations held by the Council Chairman. The item had been put on the agenda for this meeting at the request of the European Communities. He drew attention to L/5992 containing a communication from that delegation.

The representative of the European Communities noted that this problem had a long history. In the early 1960s, Japan's copper industry had not reached its present competitive level. The industry's consumption of copper had been met by supplies from mines in Japan which might not have been as competitive as mines in other countries. Even at that time, the copper price in Japan had been higher than the world price, and a system of dual-pricing had been maintained ever since; Annex II of L/5992 showed that the gap between prices for refined copper in Japan and on the London Metal Exchange (LME) had increased since 1975. Figures which his delegation had just received for the first four months of 1986 showed that the Japanese price was currently 17 per cent higher than the world price. Mines in Japan now met only a very small portion of that country's copper ore needs, so that it was by far the largest importer of copper concentrates; Annex I of L/5992 showed that Japan absorbed close to two-thirds of the world's copper concentrate exports.

Japan imposed an import duty on copper metal but not on the copper content in concentrates; the aim was no longer to protect Japanese mines, but rather to maintain the dual-pricing system. The system guaranteed the Japanese refining industry higher sale prices on the domestic market, and permitted the industry to buy concentrates from abroad at a higher price, thus putting its competitors in an unfavourable position. He said that the Japanese Government claimed that the import duty on refined metal was enough to maintain the higher Japanese price. However, the Community did not believe this, because the duty was very small compared to the current difference of around 17 per cent between the Japanese and LME prices. There was prima facie evidence that some kind of price cartel existed between the Japanese industry and consumers, with the blessing of the Ministry of Trade and Industry (MITI). Without this cartel, the main consumers of copper metal in Japan would naturally prefer to buy on the world market; they did buy a small quantity of metal abroad, but MITI saw to it that not

too much was imported. Another element of prima facie evidence of a price cartel was that if it did not exist, and if Japanese consumers were therefore free to buy at the lower world price, other countries which produced copper concentrates would set up refineries on their own territories. Japan remained the world's main market for refined copper, while other producers tended to abandon any ambitions of creating their own refining plants.

The Community had for many years discussed with Japan how to eliminate the dual-pricing system, and during the Tokyo Round had proposed that Japan eliminate the import duty on copper metal. Japan had refused to do this, saying that this matter was very sensitive and that the duty could not even be reduced. Then, after several more years of bilateral talks, the Community had invoked Article XXII:1 in 1982, and when that approach proved fruitless, had put the matter to the Council in 1984 under Article XXII:2. However, the past three Council Chairmen had met with no success in trying to resolve this issue during informal consultations, and Japan had continued to refuse the Community's request for a working party. He hoped that his delegation had now clearly explained its prima facie case and that this would lead contracting parties to accept that a problem existed and that it should be examined in a working party under Article XXII:2. He stressed that this was the limit of the Community's request, and that it was not at this stage launching a formal complaint or asking for a panel under Article XXIII:2. If it was true that very few precedents existed for setting up such technical working groups under Article XXII:2, establishing one for this case might well provide a useful precedent for examining such grey areas in the future. Furthermore, the Community based its request on the CONTRACTING PARTIES' 1956 Resolution on Commodity Trade (BISD 5S/26) which provided that it would be appropriate for contracting parties to consult on problems arising out of trade in primary commodities pursuant to Articles XXII:2 and XVIII:5. The Community wanted such a body to be established at the present meeting; its terms of reference and Chairman could be settled later. The Community was sure that a number of other copper- or copper-concentrate producers, for example Canada, Australia and the Philippines, would be interested to examine this problem in such a body. It would report to the Council, which would only then pass judgement and perhaps take a decision in the light of that report.

The representative of Japan said that his delegation still did not understand what problems the Community faced on this matter in terms of GATT provisions. Since 1982, his authorities had repeatedly explained to the Community that the difficulties which it claimed to have encountered resulted from commercial transactions or from legitimate tariff protection. Neither of those two reasons warranted the invocation of GATT's dispute settlement mechanism. Japan had a legitimate right to protect its copper industry with a tariff;

furthermore, it had autonomously reduced the effective rate of the tariff by about 30 per cent. The sale prices of refined copper and the purchase prices of copper concentrates were decided on a strictly commercial basis in business negotiations between private, independent parties. Such negotiations, whatever their consequences, were alien to GATT, which was an intergovernmental legal framework. Japan had repeatedly maintained that the problem which the Community claimed to have should be addressed either in consultations between the industries concerned, or in the Working Party on Trade in Certain Natural Resource Products together with other problems concerning world trade in copper. His delegation had actively participated in examining tariff and non-tariff measures, as well as other factors affecting trade in natural resource products, including copper, in that Working Party. A dangerous precedent would be created if any question, irrespective of its relevance to GATT provisions, could be taken up in a working group at the request of only one party.

He said Japan considered that the Community's arguments in L/5992 could not justify setting up a working party under Article XXII:2. It was true that Japan absorbed around two-thirds of world exports of copper concentrates. His delegation wanted to know what was wrong with that fact, which simply reflected Japanese demand. As for the Community's comparison between Japanese and LME prices, he re-emphasized that actual sale prices for copper metal were determined in negotiations between companies on a commercial basis. Within the Community, the sale price was sometimes different from the LME price. Japanese producer prices, as shown in Annex II, were the prices at which the producers offered their copper and were thus often higher than the actual selling prices. The actual Japanese selling prices were higher than the LME prices; the difference came mainly from inland charges. The actual selling price in Japan included inland freight for delivery to the users' plants, whereas the LME price was set on an f.o.b. basis.

Concerning the Community's statement that there were measures other than tariff protection which distorted Japan's copper trade, and the suggestion that there was a hidden cartel in Japan, his delegation categorically denied such allegations. Japan had severe anti-monopoly legislation, and it would be impossible for a Government branch such as MITI to give its so-called blessing to a cartel which violated that legislation. As for the 1956 Resolution, Japan considered that its basic criterion was to approach difficulties in international trade in primary commodities from a global perspective, in particular from the viewpoint of the relationship between producer and consumer countries, i.e., not among the latter.

The representatives of Chile, Korea, and Finland on behalf of the Nordic countries expressed their delegations' interest in participating in a working party to examine this matter under Article XXII:2.

The representative of the European Communites stressed that it should be up to a working party, not the Council, to examine the Community's and Japan's arguments in detail. His delegation agreed with Japan that so far this was not a case of dispute settlement. He reiterated that the Community was not resorting to Article XXIII:2; it was not charging Japan with violating a specific or general provision of the General Agreement, nor was it asking for a panel. He emphasized that Article XXII provided for consultation between contracting parties and was therefore precisely relevant to the Community's request. It might turn out later that invocation of Article XXII could be a first step towards use of Article XXIII. Furthermore, the 1956 Resolution did not stipulate that all primary products, all producers and all consumers had to be involved in a problem. In the present case, it was clear that contracting parties other than the Community's member States, for example Chile, had an interest. The working party requested by the Community should permit a technical discussion of this matter among the largest possible number of interested contracting parties. The Community had in the past disputed Japan's view that this matter should be examined further in the Working Party on Trade in Certain Natural Resource Products. When that Working Party had examined this problem in November 1985, however, Japan had repeated there that it did not accept the Community's arguments. Japan had later asked for the summary of that discussion to be modified in the Working Party's report on non-ferrous metals and minerals (L/5995). He repeated that the Community was maintaining its request for a working party to examine this matter under Article XXII:2 and under the 1956 Resolution.

The representative of Japan reiterated his delegation's position that the Community's request to deal with this matter under GATT provisions was completely unfounded. Consequently, Japan could not agree to setting up a working party on this matter within GATT. It would create a dangerous precedent to set up such a body.

The representative of the European Communities expressed his delegation's dissatisfaction at the course of the debate. The Community had listened to the same arguments by Japan time and again in the Council, and was now insisting on the right to a working party. There had been no major objection to the Community's request, apart from Japan, and even if one contracting party did object, the working party could still be established. This was not a dispute settlement case. The Community considered that any denial or postponement of the right of its 12 member States to have a working party would be intolerable. Japan had been objecting for years to setting up such a body; here was further evidence that a contracting party was trying once again to escape from its obligations.

The representative of Chile said it was serious that the Council could not agree on a forum where this problem could be examined at a technical level, since such an examination could not be carried out in

the Council. As a general principle, it should be possible to examine this or any other subject concerning trade among GATT's members, at a technical level without prejudice to any contracting party's position.

The representative of Japan repeated that it had never been shown how GATT was competent to examine this question, which stemmed from private economic activities and from legitimate tariff protection given by his Government.

The Chairman proposed that the Council take note of the statements and agree to revert to this item at its next meeting. In the meantime, he would try to conduct consultations between the interested parties.

The Council so agreed.

The representative of the European Communities noted that his delegation did not object to the Chairman's proposal. However, every contracting party should have enough wisdom to understand that it could not avoid its obligations simply by not violating the letter of those obligations, and that such conduct created imbalances in the advantages resulting from GATT membership. All contracting parties should also have enough wisdom to find solutions that would enable all of them to take part in the general growth of trade and not lead to any one nation monopolizing its benefits. Such wisdom was needed in order that discussions within GATT did not deteriorate and make the organization's work more difficult.

The Council took note of the statement.

4. United States - Manufacturing Clause
- Follow-up on the Panel report (L/5609, L/5968)

The Chairman recalled that in May 1984 the Council had adopted the Panel report (L/5609) on the complaint by the European Communities, and had discussed this matter at its most recent meeting on 12 March. This item had been put on the agenda of the present meeting at the request of the European Communities.

The representative of the European Communities recalled his delegation's request in L/5968 for authorization, in conformity with Article XXIII:2, to suspend the application of concessions towards the United States equivalent to the economic damage caused to the Communities by the Manufacturing Clause, which prohibited imports of certain printed books into the United States. The United States had now had two years to implement the CONTRACTING PARTIES' recommendation, but had not done so. The US measure was due to lapse on 30 June 1986. However, the US Congress was preparing new legislation which would not only extend the duration of the existing GATT-incompatible measure, but

would also expand its coverage; such further extension would be an even clearer breach of the United States' GATT obligations. The Community considered that the Council would already be justified at this stage in agreeing in principle that the circumstances were serious enough in terms of Article XXIII:2 to justify suspension by the Community of concessions towards the United States; the circumstances would be even more serious if the new legislation were to take effect. The Community was not asking the Council now for a decision on what the equivalent concessions would be; it would submit a list of these at the appropriate time once the final content of any new US legislation became clear. However, the Community wanted the Council to be able to approve the Community's request in L/5968 in a very short time.

The representative of the United States said that the situation had not changed since the most recent Council meeting on 12 March. The United States continued to believe that it was inappropriate for the Council to consider, at the present meeting, the Community's request for authorization to retaliate. He therefore repeated his delegation's proposal that the Council defer consideration of this item until after 30 June. The US Administration's opposition to the Manufacturing Clause was well known, and his delegation continued to believe that the proposed legislation to extend the Clause would not become law. The Administration would again testify against extension on 5 June before a House of Representatives judiciary sub-committee. His delegation could not ratify at this stage, even in principle, any claims that might be made concerning the "seriousness of the circumstances" or the actual effects, current or future, of the Clause on the Community's trade. The United States would be prepared to discuss that issue should the Clause be extended beyond 30 June.

The representative of Argentina said his delegation's interpretation of this issue differed from that of the United States. The Council had adopted the Panel's report two years previously, and in doing so the CONTRACTING PARTIES had found that the Manufacturing Clause was incompatible with the General Agreement. The fact that a contracting party had not implemented a recommendation by the CONTRACTING PARTIES was not only a bilateral problem; it concerned all contracting parties and should be dealt with accordingly.

The representative of Sweden said his delegation still expected that the United States would finally bring the Clause into line with the General Agreement, as recommended by the CONTRACTING PARTIES. This could be done by allowing the present legislation to lapse. Sweden noted the proposed new legislation with regret and hoped that the US Administration would spare no effort in convincing Congress of the United States' international obligations under the General Agreement, and that the Administration would not accept anything contrary to those obligations. A proper resolution of this issue was important for the credibility and respect of GATT's dispute settlement mechanism.

The representative of Australia said this was not only a matter of barriers to trade but, since it affected literary material, had a significant impact on the English-speaking world. He gave examples of actual or possible non-dramatic works written by Australians, who were domiciliaries of the United States, that might be printed and published in Australia but which could not be sold in the United States. Australia urged the United States not to renew the Clause. He hoped that the US Administration's opposition to such renewal would be carried though all phases of the US constitutional process, given also that it was known that the Administration had powers which could result in legislation not being renewed.

The representative of Hong Kong shared the concerns expressed over the directly adverse effects of the Manufacturing Clause on trade in the printing sector, and also over the credibility of GATT's dispute settlement mechanism. Hong Kong had noted the assurances by the representative of the United States at this and previous Council meetings. His delegation urged the US Administration not only to continue its efforts to resist any extension of the Clause, but also to meet the existing US obligation to comply with the CONTRACTING PARTIES' recommendation as contained in the Panel's report.

The representative of the European Communities said it was clear that a number of other contracting parties shared the Community's concern on this issue, whether this was because they had an interest in printing English-language books or because of their interest in the credibility of GATT's dispute settlement system; the latter was an important point, particularly on the eve of the new round of multilateral trade negotiations. There was perhaps an additional concern because of the relationship between this matter and the question of intellectual property being discussed in the Preparatory Committee. The Community was not pressing for action by the Council at this stage but rather wanted to help the US Administration resist internal pressures. Should the proposed new legislation take effect, the Community wanted to ensure that rapid reaction by the Council, and by the Community, would be feasible. In the Community's view, this would mean within weeks.

The representative of the United States said his delegation had noted the concerns expressed. It would keep its word and pursue this issue. He hoped to be able to report to the Council that the Administration's efforts had been successful.

The Council took note of the statements and agreed to revert to this matter at a future meeting.

5. State trading
- Communications from Chile (L/5955, C/W/495)

The Chairman recalled that at its meeting on 12 March, the Council had agreed to revert to this item at the present meeting. He drew attention to Chile's most recent communication on this matter in C/W/495.

The representative of Chile reiterated the points made in his delegation's statement at the Council meeting on 12 March. He recalled that at that meeting Chile had proposed that the Council set up a working party, and had also suggested terms of reference as set out in C/W/495.

The representative of India said that for the time being his delegation was not prepared to agree to Chile's request for a working party. India needed more time to reflect on the appropriate way of handling this issue, some aspects of which were being discussed elsewhere in GATT.

The representative of Australia saw merit in Chile's proposal. There were two issues involved: (1) what state trading operations should be notified, and (2) what obligations should follow from contracting parties having what would eventually be defined as state-trading operations. His delegation understood that Chile's proposal was aimed at the first issue; the second, more substantive issue was being addressed in another forum. Australia believed it would be useful for the CONTRACTING PARTIES to consider establishing a periodic review procedure which would look at the obligation to notify on state-trading operations, and which would report to the Council.

The representative of Cuba said her delegation was still not convinced of the need to set up a working party on this issue, for reasons which it had given in the Council and elsewhere in GATT.

The representatives of Israel, the United States and Canada supported Chile's proposal and expressed their delegations' interest in participating in such a working party.

The representative of Israel said that since Article XVII called for notifications, it was only natural that there should be a mechanism to review them and the relevant procedures. The additional idea of trying to define the meaning and coverage of Article XVII:1(a) had merit, and Israel would support such an exercise either in a working party or in the Preparatory Committee.

The representative of the European Communities said that Chile had the right to request a working party on this subject, and that right had to be respected. The Community was ready to accept Chile's proposal or any other appropriate solution, and would participate in such a working party. Discussing the provisions and procedures of Article XVII in the Preparatory Committee was inappropriate since that body would not have

time to undertake a detailed review of Article XVII. On the other hand, the Community still considered it appropriate to review certain GATT Articles, including Article XVII, in the new round itself.

The representative of Chile asked delegations not yet in a position to support his country's request to do so when the Council next considered this matter. In the meantime, Chile would refrain from submitting any notification under Article XVII.

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

6. Customs unions and free-trade areas; regional agreements - biennial reports
- Finland and Czechoslovakia (L/5974)

The Chairman recalled that in June 1985 the Council had established a calendar of biennial reports (L/5825) to be submitted in the period between October 1985 and April 1987. He drew attention to the biennial report in document L/5974, containing information given by the parties to the Agreement between Finland and Czechoslovakia.

The Council took note of the report.

The Chairman then drew attention to the fact that a number of other reports to be submitted in accordance with the agreed calendar were considerably overdue.

The Council took note of the statement.

7. Canada - Import, distribution and sale of alcoholic drinks by provincial marketing agencies
- Panel composition

The Chairman recalled that in March 1985, the Council had agreed to establish a panel to examine the complaint by the European Communities, and had authorized the Chairman, in consultation with the parties concerned, to draw up the Panel's terms of reference and to designate its Chairman and members. At its meeting on 12 February 1986, the Council had been informed of the Panel's terms of reference.

The representative of the European Communities noted that 14 months had passed since the Panel had been established, yet its composition had still not been decided. This went far beyond the time limits suggested by the 1979 Understanding[1]. Bilateral consultations covering the

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

substance of the Community's complaint had been pursued by both parties throughout those 14 months, and while the Community always remained optimistic that they might succeed, these should not preclude effective implementation of the Council's decision to set up a panel. He said that while efforts to compose the Panel had twice failed through unavailability of persons chosen, the Community regretted the lengthy period of time that Canada deemed necessary to reflect on proposed membership, particularly given Canada's interest, stated in other GATT fora, in strengthening the dispute settlement system in areas such as time limits on panel reports and composition.

The representative of Canada said that considerable progress had been made towards resolving this issue. Bilateral contacts had continued, including at Ministerial level, and his authorities hoped that a solution could be reached in the very near future, thus fulfilling the purpose of the dispute settlement system. Regarding the panel process, both parties had agreed on two separate occasions to the Panel's composition, but the individuals agreed upon had been unavailable. Canada was prepared to explore candidates with the Secretariat and the Community, in keeping with the criteria in paragraph 14 of the 1979 Understanding. He reiterated Canada's hope that a satisfactory solution to the problem would be found soon, thereby obviating a panel.

The representative of Australia hoped that any impediments to the Panel's establishment would be quickly removed. Should this dispute be resolved bilaterally, Australia expected the terms of such settlement to be reported in detail to the Council for three reasons: Australia's trade interest in this matter; the broader interest of the Council; and Australia's expectations from previous bilateral negotiations on improvements in Canadian provincial regulations on the import, distribution and sale of alcoholic beverages.

The representative of the European Communities said that the Community would report to the Council the details of any bilateral settlement reached in this case, and that any such settlement would have to be in the interests of the multilateral trading system.

The Director-General said he often heard and read that improving dispute settlement procedures was one of the major problems to be dealt with in GATT. He suggested that a first improvement might be simply to follow existing procedures, something which had not been done in the two cases before the Council at the present meeting.[1] With regard to difficulties in composing a panel, he recalled that in 1984, the

[1] See also item 10.

CONTRACTING PARTIES had agreed to establish a roster of non-governmental panelists from which panel members could be appointed. Only after relating the available mechanism to the way it was being used could a determination be made as to its efficacy. He would, at a later date, make his periodic report on the general functioning of the dispute settlement system.

The representative of the European Communities said that while there was good will on the part of all to improve the dispute settlement mechanism, strengthening the procedures in the abstract was considerably easier than applying them to a specific case. This was particularly true when vital national interests were involved; in such instances, the dispute settlement procedures were not appropriate. The dispute settlement mechanism could aid in finding solutions through conciliation when vital national interests were not at stake, and the Community was ready to participate in efforts to modify and improve the system, but contracting parties should not expect more from the system than it could provide.

The representative of Canada understood the Director-General's comments to be directed to all contracting parties in all dispute settlement cases. He reiterated that Canada had on two occasions agreed on the Panel's composition. Regarding his delegation's statements in the Preparatory Committee on the need to improve GATT dispute settlement procedures, Canada would pursue this issue vigorously in the new round of trade negotiations.

The Council took note of the statements.

8. Consultation on trade with Hungary
- Working Party report (L/5977 and Add.1)

The Chairman recalled that in June 1985, the Council had established a working party to carry out the sixth consultation with the Government of Hungary and to report to the Council. The Working Party's report had been circulated in L/5977 and Add.1.

Mr. Nottage (New Zealand), Chairman of the Working Party, introduced the report. The consultation had been carried out in accordance with the plan set out in Annex B to the Protocol of Accession (BISD 20S/3). The Working Party had noted that discriminatory quantitative restrictions not consistent with Article XIII were still maintained against Hungarian exports by the European Economic Community, and had discussed at length the slow pace at which the remaining restrictions were being removed. Several members of the Working Party had questioned the conformity of those restrictions with the Protocol of Accession. The discussions had focused on definitional problems raised

by Hungary regarding the Community's notification, and he had invited Hungary and the Community to conduct bilateral consultations to clarify the facts. The results of these consultations were contained in a joint report in document L/5977/Add.1. While many points had been clarified, and the Community's notification amended, there remained a point of basic divergence between the two parties. The Working Party had also discussed a measure taken by Turkey to limit, according to turnover size, the firms that could trade with the East European countries. It had also discussed the volume, origin and related statistics of Hungary's imports, and the degree of autonomous decision by importing firms in Hungary. Specific points had been raised concerning the average rates of exchange of the Forint, and the disclosure of lists appended to the bilateral agreements between Hungary and CMEA countries.

The representative of Hungary said that the report in L/5977 reflected the Working Party's concentration on the review of the elimination of quantitative restrictions on Hungarian products not consistent with Article XIII. Thirteen years after Hungary's accession to GATT, the member States of the Community still maintained such restrictions. The third paragraph of the joint report in L/5977/Add.1 referred to the announced elimination of discriminatory quantitative restrictions maintained by Greece during the transitional period of its accession to the Community. However, Greece still maintained discriminatory quantitative restrictions on 69 NIMEXE positions of imports from Hungary -- a fact recognized by the Community in its notification (L/5870/Add.1). The fourth paragraph of the joint report reflected the agreement of the two parties that the Community would submit to the Working Party a corrigendum covering the restrictions omitted in its notification. The final paragraph of the joint report reflected the differing views of the two parties on the legal nature of the restrictions applied by the member States of the Community not only on Hungarian products but also on imports from other contracting parties. The Hungarian delegation did not accept the Community's view that those discriminatory restrictions did not fall under paragraph 4(a) of Hungary's Protocol of Accession. Neither the Protocol, nor the report of the Working Party which had negotiated it, contained any element suggesting any other meaning of the term "quantitative restrictions not consistent with Article XIII" than that provided in Article XIII. The Community had omitted in its notification, restrictions on 372 NIMEXE positions corresponding to approximately 100 CCCN headings, representing a fifth of all discriminatory quantitative restrictions maintained by the Community on Hungarian products. Other contracting parties were also subject to some of those restrictions. Hungary's aim in raising this issue was to dispel any misunderstanding on the legal status of these residual restrictions under GATT. Hungary intended to seek the Secretariat's opinion on what kind of restrictions and prohibitions would fall under "prohibitions or quantitative restrictions not consistent with Article XIII of the General Agreement" as stated in paragraph 4(a) of its Protocol of Accession.

Turning to Spain's accession to the Community, he said that neither the discussion in the Working Party on Trade with Hungary nor the subsequent consultations had clarified whether that accession had resulted in Spain's introducing discriminatory quantitative restrictions on imports from Hungary. However, regulations published subsequently by the Community indicated that Spain had introduced such restrictions on 387 NIMEXE positions, i.e., on 94 tariff lines, covering roughly one quarter of Hungarian exports to Spain. This was contrary to Spain's GATT obligation not to introduce new discriminatory restrictions or prohibitions on Hungarian exports. Prior to its accession, Spain had not maintained any such discriminatory restrictions. Neither the Accession Treaty nor Article XXIV waived Spain's or any other contracting party's obligations under Articles XI and XIII. Hungary questioned the Community's view that this matter could be examined in the Working Party on the Enlargement of the European Economic Community. That Working Party, in determining the impact of Spain's accession, could take into account only the legal measures applied by Spain and not the illegal ones, such as discriminatory quantitative restrictions. Hungary reserved all its GATT rights in connection with the introduction of such restrictions by both Greece and Spain.

The representative of Canada said that his delegation had noted the Community's view in the joint report in L/5977/Add.1 that restrictions which were applied to Hungary and also to other contracting parties were not discriminatory vis-à-vis Hungary in terms of its Protocol of Accession. He asked the Community to clarify this view in the light of Article XIII.

The representative of the European Communities said his delegation was not in a position to respond in detail to all the points raised by Hungary. He noted that the Community had already submitted to the Secretariat a corrigendum with the information requested by Hungary.[1] As to Hungary's remarks on paragraph 4 of the Protocol of Accession and its relationship to Article XIII, the final paragraph of the joint report indicated little hope of agreement on this issue at present. The Community's response to Canada's question could be found in that paragraph. The incidence of the Community's enlargement and modifications of its trade régime were matters for discussion in the Working Party on the Community's enlargement. The quantitative restrictions cited by Hungary, which the Community did not consider discriminatory in terms of that country's Protocol of Accession, were clearly measures which could be examined in the Group on Quantitative Restrictions and Other Non-Tariff Measures.

---

[1] Subsequently issued as L/5870/Add.1/Corr.1 and Add.2/Corr.1.

The representative of Australia said that his delegation welcomed the removal of a number of quantitative restrictions previously maintained against Hungary. However, developments in the interpretation of rights and obligations under the terms of the Protocol were matters of concern. Australia's views were set out in the Working Party's report, particularly in its paragraph 25. No reasons defensible in GATT had been given by those contracting parties maintaining discriminatory quantitative restrictions on Hungary's exports, for not bringing those measures into conformity with Article XIII. That should be a matter of concern to all contracting parties.

The representative of Hong Kong expressed his delegation's concern at the implications of the opinion attributed to the Community in the final paragraph of the joint report in L/5977/Add.1. Article XIII required that no prohibition or restriction should be applied by any contracting party on imports from any other contracting party, unless the same prohibition or restriction were applied on an erga omnes basis. Nothing in the joint report could detract from or in any way modify GATT rights and obligations and particularly, in the context of the present discussion, Article XIII. The Community's opinion in the joint report recalled certain views stated by the Community in the context of the July 1983 Panel report on French quantitative restrictions against imports from Hong Kong (L/5511). Although nearly three years had elapsed since adoption of that report, the Panel's recommendation that the measures be eliminated had still not been fully complied with. That recommendation applied to measures which France still maintained against imports from Hong Kong and some other suppliers, including Hungary; Hong Kong would continue to pursue this matter on appropriate occasions.

The representative of India said that his delegation shared the serious concern over the Community's interpretation of the discriminatory nature of the quantitative restrictions maintained against Hungary, and of Article XIII. India had always held a clear position in GATT on such restrictions.

The representative of Japan said his delegation had repeatedly stated that it could not admit discriminatory quantitative restrictions against a specific contracting party or parties and therefore strongly supported Hungary's statement in this respect.

The representative of Argentina did not agree with the Community's position in the last paragraph of the joint report. The Community's suggestion that this matter be referred to the Group on Quantitative Restrictions and Other Non-Tariff Measures was not satisfactory since that Group's efficiency had so far not been demonstrated. Very little information had been received from the Community on these measures. His

delegation supported adoption of L/5977 but could not accept the first sentence of the last paragraph of the joint report without specific reference to the fact that a number of contracting parties considered this to be a recognition by the Community that it maintained discriminatory restrictions against a number of contracting parties.

The representative of the United States said his delegation believed that the elimination of residual quantitative restrictions maintained by the Community on Hungarian trade had been an issue for too long. While there had been some liberalization over the years, and remaining barriers covered small amounts of current and potential trade, the pace of liberalization had been far too slow to comply with the provision of the Protocol to eliminate those barriers. The United States hoped that before the next review of trade with Hungary, this issue would have been settled.

The representative of Poland said that the application of discriminatory import restrictions inconsistent with Article XIII had been of great concern to her country since its accession to GATT. Her delegation supported Hungary's proposal to ask the Secretariat's opinion on what kinds of measures would fall under the definition of "prohibitions or quantitative restrictions not consistent with Article XIII" in Hungary's Protocol of Accession, and would be interested in the response.

The representative of Czechoslovakia said that his delegation could not accept the Community's view that quantitative restrictions which applied to some contracting parties, and not to others, were not discriminatory.

The representative of Hungary reiterated that his country regarded the measures in question as illegal, and recalled that his delegation had raised the same problem in the context of Greece's accession to the Community. He quoted from the Working Party's report on that subject (L/5453), in which the Community had said that while the general incidence of the effects of creating a customs union could be discussed in a working party under Article XXIV:5, particular implications for a contracting party with respect to individual products should be discussed in another forum.

The Council took note of the statements and adopted the report.

9. United States - Agricultural Adjustment Act

(a) Working Party report (L/5983)

The Chairman recalled that in January 1985, the Council had established a working party to examine the twenty-seventh annual report (L/5772) submitted by the United States under the Decision of 5 March 1955 (BISD 3S/32), and to report to the Council. The Working Party's report was contained in L/5983.

Mr. Olarreaga introduced the report on behalf of Mr. Lacarte (Uruguay), Chairman of the Working Party. He said that the report documented the detailed, and in many respects difficult, examination which the Working Party had carried out. Views had been expressed on (1) the reasons advanced by the United States for maintaining the waiver; (2) the measures taken by the United States to meet the conditions it had accepted when the waiver was granted; (3) the possibility of the United States using alternative measures consistent with the General Agreement; and (4) possible and appropriate actions which could lead to terminating the waiver. The statements made and approaches suggested were fully reflected in the report. Notwithstanding the differences of opinion on some of the issues addressed, the Working Party had conducted its work in a constructive and frank manner.

The representative of the United States said that the report reflected faithfully the results of the Working Party, and his delegation had nothing to add at the present time.

The representative of the European Communities quoted the report's final paragraph in which the Working Party's members appealed to the United States to bring its measures into conformity with GATT rules and to terminate the waiver. This type of recommendation, made time and again, was an expression of despair and impotence on the part of GATT. The Community had found the evolution of the US measures hard to understand and was concerned that the waiver was becoming permanent. Yet the United States had again asserted its readiness to seek solutions within the framework of the Committee on Trade in Agriculture. He wondered if this was a delaying tactic or if the United States was able to give clearer indications of a possible solution to remove the problem of this waiver.

The Council took note of the statements and adopted the report.

(b) Twenty-eighth annual report by the United States (L/5981 and Corr.1)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32) the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision, on

the basis of a report to be furnished by the United States. The twenty-eighth annual report by the United States was contained in L/5981 and Corr.1.

The representative of the United States noted that L/5981 contained the annual report by the US Government on actions taken under Section 22 of the Agricultural Adjustment Act. The report reviewed recent developments and steps taken to balance supply with demand, and summarized support programs and the supply situation for commodities subject to Section 22 controls. The report covered the period October 1984 to September 1985; supplementary information on the Food Security Act of 1985, which would apply to the period 1986 to 1990, had also been provided.

The representative of Canada requested that a working party be established to study the report. Canada believed that a number of measures described in the report would require careful scrutiny. In particular, he drew attention to the US failure to meet the requirements of the waiver by maintaining restrictions on imports of certain sugar-containing products, despite findings by the United States International Trade Commission (USITC) in October 1985 that imports of many sugar-containing products currently subject to quotas were not interfering with the US sugar price-support program. Furthermore, the waiver had been granted on the basis of the US assurance that should import restrictions be imposed on an emergency basis prior to a USITC investigation, "...the continuance of such restrictions is subject to the decision of the President as soon as the Commission has completed an immediate investigation...." (BISD 3S/34). Accordingly, the US Government was obliged to take immediate action to remove or relax current restrictions. Canada urged the United States to take immediate corrective action.

The representatives of Argentina, New Zealand, Brazil, Colombia, Peru, Uruguay, Australia, the European Communities and Thailand supported Canada's request for establishment of a working party.

The representative of Argentina said that the waiver was again being extended for another year, but the United States had given no indication of possible solutions to the problems necessitating the waiver, or even of slight liberalization under it. He stressed his authorities' serious concern over the Food Security Act of 1985, especially in regard to his country's exports; the Act complicated an already difficult situation in agricultural trade. US intentions in the area of negotiations on this sector of trade were unclear. At a time when contracting parties were trying to envisage such negotiations with goodwill, greater transparency and more negotiating powers for all, the US actions gave certain contracting parties more advantage than others which did not have recourse to such measures. Argentina fully supported Canada's remarks in this respect.

The representative of New Zealand reserved his delegation's right to comment in detail on the report at a future date. He recalled that in granting the waiver in 1955, the CONTRACTING PARTIES had declared that "they regret that circumstances make it necessary for the United States to continue to apply import restrictions which, in certain cases, adversely affect the trade of a number of contracting parties, impair concessions granted by the United States and thus impede the attainment of the objectives of the General Agreement" (BISD 3S/35). While that declaration might have been directed at a number of contracting parties at the time, the fact remained that this waiver involved terms and conditions which were still in effect, and that the grounds for concern were still present. A working party set up to conduct the review under paragraph 6 of the waiver should include consideration of the reasons for maintaining the restrictions.

The representative of Brazil recalled that his delegation believed the exceptional circumstances which might originally have justified the granting of this waiver were no longer present. The twenty-eighth annual report by the United States should be examined in depth and in detail by a working party. His country was concerned by references in the report to measures under the Food Security Act of 1985 which seriously affected products of interest to Brazil. His delegation expected the United States, at an appropriate time, gradually to liberalize measures covered by this longstanding waiver. He recalled Brazil's statements in other GATT bodies regarding the examination, in an eventual new round of multilateral trade negotiations, of all exceptional measures applied to trade in agricultural products, such as those maintained under waivers.

The representative of Colombia shared the concerns expressed by other delegations.

The representative of Peru said that for years her Government had followed the evolution of the US waiver, consideration of which had become a yearly ritual in GATT. However, new measures adopted under the waiver and under the Food Security Act of 1985 necessitated an in-depth review of the most recent US report. Peru supported Canada's views.

The representative of Uruguay said his authorities were concerned that US restrictions on imports of agricultural products continued to be maintained and thus worsened the difficulties in agricultural trade. Those restrictions had to be considered in the light of the Food Security Act of 1985, the effects of which were damaging Uruguayan exports.

The representative of Australia said that 31 years after the granting of the waiver, the United States still had not met the waiver's terms, because the United States had failed to justify its inability to bring the measures into conformity with GATT or progressively to

liberalize them. This waiver, and the domestic interests it protected, were too important for the Council to ignore, and any review by the CONTRACTING PARTIES should reflect the seriousness of the waiver for the GATT system as a whole, and the effects of the measures on contracting parties' trade with the United States. The present and any subsequent reports on the waiver should not be allowed to pass automatically in the Council without any discipline as to their content, and without some analysis and discussion. The working party forum had enabled a useful analysis of US practices and their conformity with the terms of the waiver. Australia saw no reason to suspend this body as a review mechanism in the hope that negotiations in another forum would result in removal of the measures under the waiver. The working party should obtain from the United States an explanation for its failure to bring the measures into conformity with GATT and to liberalize them. Australia's serious concern over the US waiver reflected its concern over progressive variations from the uniform application of GATT rules.

The representative of the European Communities asked if there were any precedents for establishing a working party immediately so that it could begin work without delay.

The representative of Thailand said her delegation shared the concerns expressed by Argentina, Brazil and Uruguay.

The Director-General, in response to the question by the representative of the European Communities, said that given the past practice of establishing a working party on the present issue, he saw no reason why this could not be done immediately, entrusting the Council Chairman to appoint a chairman for that working party.

The representative of the United States said that his delegation accepted establishment of a working party at the present meeting or later. The United States did not share Canada's views on sugar-containing products and would address the issues raised by Canada, and all other relevant issues, in the working party. The United States had always been fully transparent in taking actions covered by the waiver, and would continue to be cooperative in any GATT examination of those issues.

The representative of the European Communities said that past reviews of the US reports on this waiver had been nothing more than ritual, without any consequences and follow-up. This should change. There could be no question, for example, that the Food Security Act of 1985 could be blessed by GATT without an in-depth examination of its implications for international trade and for US rights and obligations under GATT. While the Community had always been skeptical of the yearly ritual of setting up a working party on this issue, something new had to

be done to give a signal to the United States. Therefore, the Community proposed the immediate establishment of a working party with Mr. Lacarte (Uruguay) as Chairman, and with terms of reference to examine the US report in L/5981, to report to the Council and to make appropriate recommendations. The working party should begin its work immediately. He said that precedents had to be created where these might lead to solutions. A new approach was necessary if something credible were to be achieved.

The representative of the United States said that the working party's terms of reference and chairmanship would have to be subject to consultation.

The representatives of Chile and Brazil expressed their delegations' interest in participating in the working party.

The representative of Australia said his delegation could accept the Community's proposal for accelerated procedures, terms of reference and chairmanship for the working party, but had taken note of the US concern regarding procedures.

The representative of the European Communities said there was need to shake up the atmosphere of resignation among participants in the working parties dealing with the US waiver. The only innovation in his proposed terms of reference was to give the working party the chance to make "appropriate recommendations". The opportunity to send a signal to Washington should not be missed. He insisted that his proposal be taken up right away.

The representative of the United States reiterated that his delegation could agree to the establishment of a working party, but insisted that the terms of reference and chairmanship had to be subject to consultation.

The representative of Uruguay said that his delegation understood the US concern regarding procedures. Uruguay could agree to the proposed terms of reference and was ready to participate in the working party regardless of who chaired it.

The Council took note of the statements, agreed to establish a working party, with the terms of reference and chairmanship to be decided in consultations to be held as soon as possible, and agreed to revert to this item at its next meeting.

The Chairman said that the Working Party would begin its work as soon as its terms of reference and chairmanship had been decided.

10. Canada - Measures affecting the sale of gold coins - Panel report (L/5863)

The Chairman recalled that at its meeting on 12 February 1986, the Council had discussed the Panel's report (L/5863). At that meeting, the Council had commended the action taken by Canada in accordance with the Panel's relevant recommendations, and had noted the right of the parties to revert to this question as circumstances might require. This item had been put on the agenda of the present meeting at South Africa's request.

The representative of South Africa said that although Canada had withdrawn the measures in question, the dispute had not been completely resolved. The length of time this matter had been before the Council did not augur well for the dispute settlement process. South Africa trusted that Canada would agree to adopt the report at the present meeting. While the new round of multilateral trade negotiations might include a review of Article XXIV and its paragraph 12, this possibility should in no way inhibit or delay the disposal of business currently before the Council. The present dispute could be disposed of satisfactorily only by adopting the Panel report. He recalled that at the 12 February Council meeting, his delegation had addressed the three main concerns with the report which Canada believed required further examination. It was now time to reconsider those issues, the details of which were accurately reflected in C/M/195. Since South Africa's reasons for requesting adoption of the report were well known, he would not repeat them, but highlighted one additional aspect: the CONTRACTING PARTIES should send a clear signal to the second tier of government in federal states, or in countries with a comparable constitutional system, that there was an onus on regional or local authorities to observe, of their own accord, GATT obligations. This was a vital consideration which made adoption of the report imperative. In addition, adoption would make a substantial contribution to avoiding a repetition of similarly-based disputes and the resultant protracted conciliation procedures. Failure to adopt and derestrict this report would send the wrong message and might, in fact, encourage the circumvention of GATT provisions by protectionist measures at the second or third level of government. While each dispute settlement case had to be considered on its own merits, adoption of the report was fully justified and should in no way prejudice the outcome of any other current or future dispute.

The representative of Canada said that his delegation's views had been accurately recorded in the Council Minutes. The measure in question had been removed, in keeping with the Panel's finding, following the repeal of the relevant sections of the legislation. However, for reasons previously stated, Canada was still not in a position to decide on adoption of the Panel's report.

The representative of the European Communities said that the Community had already stated its position on the substance of the report and fully supported its adoption. In taking a decision on this matter, the Council should consider the message which might be sent to local levels of government with respect to the level of their obligations under GATT.

The Council took note of the statements without prejudice to the right of the parties to revert to this question as circumstances might require.

11. Committee on Balance-of-Payments Restrictions

Mr. Girard (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, noted that the Committee had met in April 1985 for consultations with Greece under Article XII:4(a), full consultations with Argentina under Article XVIII:12(a) and simplified consultations with Bangladesh and Peru under Article XVIII:12(b).

The Committee had noted that the adjustment program introduced by Greece in October 1985 was principally aimed at redressing internal economic imbalances, restoring price stability and improving Greece's international competitiveness. The Committee had regretted that the Greek authorities had considered it necessary to reintroduce an import deposit scheme in addition to domestic adjustment measures. It had noted with satisfaction, however, that the scheme was non-discriminatory, and had welcomed the assurances by Greece and the Community that the scheme was temporary. A marked improvement in the current account was foreseen by the Greek authorities for 1986, and the program established by Greece envisaged the elimination of all net public-sector foreign borrowing by 1988. The Committee had invited the Greek and Community authorities to establish a timetable for phasing out the temporary import deposits on a non-discriminatory basis, pursuant to paragraph 1(c) of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205).

The Committee had recognized that Argentina had faced serious economic imbalances since 1980. Despite Argentina's efforts, there had been no durable improvement in either internal or external imbalances. The Committee had noted that import restrictions had markedly increased and that the import system had become considerably more complex and restrictive between 1982 and 1984, with certain discriminatory elements. The Committee had noted the significant positive results of the adjustment measures taken by Argentina under the Plan Austral. The Committee had welcomed Argentina's efforts since mid-1985 to liberalize its trade and payments systems, and had encouraged Argentina to continue to strengthen its adjustment and liberalization policies.

The Committee recommended to the Council that Bangladesh be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1986, and that a full consultation should be held with Peru at the Committee's first meeting in 1987, bearing in mind the period elapsed since the most recent consultation with Peru and the changes which had taken place in Peru's economy and trading policies.

The Committee had taken note of a notification by Portugal stating that measures taken for balance-of-payments purposes had been eliminated, and that Portugal was no longer invoking the balance-of-payments provisions of the General Agreement. The Committee had also taken note of a notification by Israel stating that the rate of special import deposit had been fixed at 15 per cent for the period 1 February - 31 July 1986. Regarding the question of countries identified as taking measures for balance-of-payments reasons, which had not yet clarified the status of those measures, the Committee had noted that no information had so far been received from Cameroon, Côte d'Ivoire, Guyana or Zimbabwe. The Committee urged those contracting parties to clarify the status of their trade measures and had requested the Secretariat to continue its efforts to seek the relevant information.

The Council took note of the statement.

(a) Consultation with Argentina (BOP/R/159)

The Council adopted the report.

(b) Consultation with Greece (BOP/R/160)

The Council adopted the report.

(c) Consultations with Bangladesh and Peru (BOP/R/161)

The Council adopted the report.

(d) Meeting in April 1986 (BOP/R/162)

The Council took note of the document.

12. Japan - Renegotiations under Article XXVIII on leather and leather footwear (L/5978)

The representative of Japan, speaking under "Other Business", presented his Government's final information on its measures on imports of leather and leather footwear. Japan had concluded Article XXVIII negotiations on this matter in February 1986. As from 1 April 1986, his

Government had eliminated quantitative restrictions on leather imports in accordance with the Panel report (L/5623) adopted in May 1984, and had voluntarily eliminated those on leather footwear imports for unbound as well as bound items, while introducing a tariff quota system for those products, as had been communicated in document L/5978. He outlined the principles on which enforcement of that system was based. He noted that as from 31 March 1986, the United States had introduced a retaliatory measure against leather and leather footwear imports from Japan. Japan had raised with the United States the question of the legal status of that measure under GATT and intended to pursue the issue bilaterally. Japan reserved its GATT rights in this case.

The representative of Hong Kong welcomed the communication in L/5978 to the extent that it represented compliance with the Panel's recommendation on this matter (L/5623, paragraph 59). The low level of Hong Kong's footwear exports to Japan indicated that the quantitative restrictions formerly maintained by Japan might have impeded trade. It was hoped that information published in the official Bulletin of MITI would provide an adequate basis on which to assess the new import régime. Hong Kong had reservations over the GATT validity of tariff quotas, particularly if the device were used to prohibit imports beyond an artificially depressed level.

The representative of Chile welcomed the statement by Japan and said his delegation intended to examine closely the evolution of this matter including the overall impact of the restrictions.

The representative of Uruguay said that his authorities would follow closely the implementation of the new system. While a tariff quota might provide more transparency and stability, it did not modify high protection. He stressed the need to ensure that the tariff quotas be substantially increased in the future.

The representative of Korea said that his delegation had asked to participate in the negotiations on this issue but had been unable to do so. This showed the need to examine the adequacy of the provisions of Article XXVIII, among others, relating to the definition of suppliers' rights, particularly during the forthcoming new round of multilateral trade negotiations.

The representative of the European Communities said that his delegation had been satisfied with the results of the Article XXVIII negotiations and would follow the implementation of the tariff quotas. This issue would no doubt come up in the context of the new round or in other bilateral negotiations with Japan, and the Community would pay due attention to Japan's declared willingness to eliminate tariffs on industrial products.

The Council took note of the statements.

13. United States - Measures on imports of non-beverage ethyl alcohol (L/5993)

The representative of Brazil, speaking under "Other Business", said that on 13 May 1986, his Government had formally requested Article XXIII:1 consultations with the United States (L/5993) on the effect on Brazilian exports of non-beverage ethyl alcohol to the United States of (1) the additional US duty of 60 cents per gallon, and (2) certain alleged US subsidies on the production of ethyl alcohol. The additional tariff, which was neither a countervailing or anti-dumping duty, was not consistent with US obligations under GATT. The US International Trade Commission had found, on 4 March 1986, no evidence of injury or threat thereof to the US domestic industry resulting from subsidies or dumping of Brazilian exports of this product. Brazil also had reason to believe that US production of fuel ethanol was subsidized, thus prejudicing the interests of Brazilian exporters. His delegation hoped that the consultations would yield positive results.

The representative of the United States said her delegation did not share Brazil's characterization of the measures described, but had referred Brazil's request to her authorities.

The Council took note of the statements.

14. European Economic Community - Suspension of food imports from certain East European countries

The representative of Hungary, speaking under "Other Business", noted that following the nuclear accident at Chernobyl in the Soviet Union, the Community had on 7 May suspended imports of live animals and fresh meat from certain East European countries including Hungary; on 12 May, the prohibition had been extended to several other fresh foods. The Community's stated reason for singling out certain countries subject to the import ban was that they were allegedly not ready to cooperate in exchanging information and establishing a control procedure. Hungary noted that Article XX permitted the adoption of measures necessary to protect human, animal or plant life or health, "subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade...." Since 1 May, Hungarian embassies in West European capitals had been supplying daily all relevant data on the level of radioactivity measured in his country. Hungary had voluntarily provided the Commission and the member States of the Community with this data, notwithstanding the fact that no request had been addressed to Hungary to establish administrative cooperation for controlling the trade in question. The Commission and the 12 member States had not

indicated in any way that the information given to them by Hungary was insufficient or not commensurate with what was needed to protect public health. On the contrary, the authorities of some of the member States had expressed satisfaction at Hungary's readiness to cooperate.

In view of the above, his authorities considered that the suspension of food imports from Hungary on the grounds of lack of readiness to cooperate was unfounded. Equally, they considered as unjustified and arbitrary the selection of countries within a 1000 kilometre radius from the place of the accident. The radiation level had risen throughout most of Europe after the accident, and certain countries outside that radius had experienced a higher level of radiation than some within it. Hungary also recalled the recommendation of the World Health Organization (WHO) according to which there was no public health justification to ban imports from East European countries. Also, several other countries had not considered it necessary to prohibit imports. Moreover, Sweden and Norway, which had introduced an import ban after the accident, had lifted their prohibitions after a few days, and Austria had lifted its ban on 22 May. The measures affected about 50 per cent of Hungary's total agricultural exports to the Community, and 15 per cent of its total exports to that group. His country was seriously concerned that a substantial part of its farm exports to the Community were subject to arbitrary and unjustifiable discrimination. Therefore, Hungary reserved its GATT rights in respect of the Community measure. He reaffirmed his authorities' readiness to continue to cooperate with the Commission and the member States of the Community in providing the information necessary to establish that Hungarian food products were likewise not hazardous to health as the identical or like products produced in those member States or imported by them from other West European countries, where the level of radioactivity had also risen, where the same conditions prevailed and which were not subject to the import ban. He noted that Hungary had expressed its readiness to have its food products controlled at the border by the importing countries, and/or to certify with every shipment that the exported goods had no radioactive contamination. His authorities expected, on the basis of an objective consideration of this situation and given Hungary's readiness for continued cooperation, that the Community would lift its import ban without delay.

The representative of Poland said it was clear, in the light of judgements by competent international organizations and opinions of international experts, that the Community's embargo on fresh food imports from her country had no reasonable justification. Moreover, the import ban contravened the basic GATT principle of non-discrimination. The embargo's effects were not only disastrous for Poland's agricultural exports, but would influence its entire economy, including its balance of payments. She reaffirmed her Government's intention to continue cooperating with all interested partners on this issue.

The representative of Czechoslovakia noted that his country also had been affected by the Community's import ban on some agricultural products. Czechoslovakia supported the statement by Hungary and expected that the Community would reconsider the import ban and lift it without delay. Until then, Czechoslovakia reserved its GATT rights in regard to that measure.

The representative of the European Communities stressed that the measures taken by his authorities were temporary and of a conservative character. It was not correct to describe them as unjustified, arbitrary or discriminatory; they were certainly not directed against any particular contracting party or parties. The measures had been taken because of an irrational, contagious concern and fear among European populations. That fear had been doubly difficult to calm because the Community's authorities, until the time when they had decided on the measures, had not received clear, precise and irrefutable scientific information which would have made it more possible to reassure their populations. The Community was composed of democratic societies and therefore had also to take into account ecologists' concerns. At the time, the Community's authorities had no choice but to take the measures so that deep fears could be calmed. It would now be possible to start verifying whether the measures were well-founded and necessary. He agreed that Hungary had shown a responsible attitude in giving the Community daily bulletins of radioactive levels in Hungary. However, reports by the Community's scientific experts suggested that some of the radiation levels registered in Hungary were somewhat high compared to the Community's standards. Furthermore, some figures on radiation levels in vegetables and fruit were still missing. The Community therefore needed more time to verify certain technical data so that it could reassure its population. He stressed that the Community had not received necessary assurances on radiation levels from the Soviet authorities. Bulgaria had transmitted to the Commission a communiqué from the Bulgarian Committee on the use of atomic energy; but this had been couched in general terms and even though it had been supplemented by more concrete data, these were still insufficient. Czechoslovakia had given the Community an aide-mémoire in general terms and had expressed its readiness to deliver export certificates; however, the validity of such certificates remained to be agreed. Poland had transmitted data and had introduced a control system on exports at the border, but the type of control still had to be agreed. Such matters had to be satisfactorily settled, since there would be no point in importing products which consumers in the Community did not buy.

The representative of Hungary noted with satisfaction that the Community had stressed that the import ban was temporary, and that the Community's intention was not to single out certain countries. However, Hungary considered it was justifiable to be sceptical, given that (1)

there were huge stockpiles of fresh foods in the Community and (2) a 1000 kilometre radius from Chernobyl would fall on the triangular meeting point of the Austrian/Czechoslovakian/Hungarian border. Since the Community recognized Hungary's readiness to cooperate in administrative control, he reiterated the hope that the Community would find it possible to lift the import ban on Hungarian products without delay.

The representative of Poland expressed satisfaction that the Community's measure was temporary. She emphasized the willingness of her authorities to cooperate on this issue with the European Communities so that the import ban could be lifted as soon as possible.

The representative of the European Communities said that it was in the common interest of all the countries concerned to see that the Community's measures could be eliminated as soon as possible. As for the 1000 kilometre radius, the Community had had to decide on a criterion on which to base its measures and had chosen that one. Opinions could differ as to whether the criterion was good or bad. Countries within the radius included great parts of the Soviet Union, Poland, Czechoslovakia and Hungary. The whole of Romania was included; until now, Romania had given no information to, nor cooperated with, the Community to enable the measures to be lifted. Small parts of Yugoslavia and Bulgaria were also included, whereas Albania and the German Democratic Republic were not covered. The Community would shortly give an aide-mémoire to the latter two countries to keep them informed of developments; it hoped that radiation levels could be verified so that imports from the German Democratic Republic and Albania would not be subject to the measures; however, the measures would be applied to those countries if necessary. He stressed once again that no discrimination was intended and also that it was extremely difficult to control irrational fears in any population.

The representative of Hungary said he was sure that the Community would agree that the radius could equally well have been put at 1600 or 2000 kilometres, given the fact that the radioactivity level in some countries outside the 1000 kilometre radius was higher than that in Hungary. He noted that the Community had not offered Hungary the same kind of cooperation offered to the EFTA countries; it had not established a common benchmark for the maximum allowable level of radioactivity, which would be an objective criterion to be followed by countries exporting to the Community.

The Council took note of the statements.

15. United States - Imports of lumber from Canada

The representative of Canada, speaking under "Other Business", said his country faced a potential trade problem which could jeopardize Canadian lumber exports to the United States, valued in 1985 at about Canadian $3.5 billion. On 19 May 1986, a group of US lumber producers had filed a countervailing duty petition alleging that four Canadian provinces had set stumpage (the price fixed by them for the right to cut standing timber) at preferential prices which conferred a benefit on the industry. The petition had also alleged that certain Canadian federal and provincial industry assistance programs constituted countervailable subsidies. He added that the same issues had been exhaustively examined in a countervailing duty action concluded in 1983. At that time, the US Commerce Department had ruled that Canadian stumpage practices were neither export nor domestic subsidies; moreover, the practices had been held not to constitute preferential pricing and, in any event, any benefits were generally available to all industries capable of using timber. The Department had also determined that all the industry assistance programs combined conferred benefits of less than 0.5 per cent and were therefore deemed to be de minimis. Since there had been no change in the US law and no significant changes in Canadian programs or stumpage systems, there were no grounds for accepting a new petition, which Canada considered to be a calculated protectionist action by the US lumber industry that would subject Canadian industry and federal and provincial governments to unwarranted costs and harassment and would go against principles of natural justice. While the procedural issue of whether a new petition on essentially the same facts should be accepted was important, initiation of an investigation would raise a substantive issue of even greater significance for all contracting parties, especially those relying heavily on exports of natural resource products. The major contention was that the resource-pricing policies of certain Canadian provinces constituted a subsidy and, in effect, that countervailing duties should be used to offset another country's comparative advantage. Canada believed strongly that such an interpretation of the General Agreement had never been intended by the CONTRACTING PARTIES, and in particular that it would be an abuse of the remedy provided in Article VI. Canada would invoke its right to hold consultations with the United States on this issue.

The representative of the United States said his delegation found it difficult to understand why Canada had raised this issue in the Council at this stage. A US industry had exercised its right to file a petition with the authorities in charge of administering the US countervailing duty statute, and those authorities had not decided on this case. The United States knew that softwood lumber trade was important to Canada, and remembered the 1983 countervailing duty case, including the finding by the Department of Commerce that softwood lumber

from Canada had not been subsidized. In that case, Canada had jumped the gun by asking for conciliation under the Subsidies Code[1] (BISD 26S/56) before the Department had even made a preliminary determination. His delegation hoped that Canada would not jump the gun again.

The representative of Canada did not agree with the US view that Canada's concerns on this matter were premature. Canadian lumber exporters had gone through a time-consuming and costly process with the US authorities in 1983, which had resulted in a de minimis finding. His country's exporters were now faced with the uncertainty of a second countervailing duty investigation. This had a highly disruptive effect on the commercial operations of the Canadian industry which depended greatly on international markets, particularly the United States.

The Council took note of the statements.

16. United States - Measures affecting Cuban sugar exports (L/5980)

The representative of Cuba, speaking under "Other Business", reiterated the points made by his delegation in L/5980 concerning US measures affecting Cuba's sugar exports. He noted that Section 902(c) of the US Food Security Act of 1985 empowered the President not to grant any cane or beet sugar import quota unless the authorities of the country concerned certified that it did not import sugar produced in Cuba for re-export to the United States. The measures not only harmed the Cuban economy but were also designed to penalize countries which, in exercise of their sovereign rights, maintained trade relations with Cuba and wanted nothing to do with the dispute between Cuba and the United States. The measures were part of a policy of force which undermined international relations and rendered null and void obligations assumed under the General Agreement. In the present case, the United States was undermining free trade not only by harming Cuba, but also by trying to hamper its normal trade with third countries. The US measures violated Part IV and GATT Articles dealing with quantitative restrictions, non-discrimination and most-favoured-nation treatment, as well as US obligations under other international instruments. Now that GATT was preparing for a new round of multilateral trade negotiations, the arbitrary US measures sounded a warning that should be taken into account by all contracting parties, especially developing countries. Cuba was not yet able to weigh the consequences of the US measures for its economy, and therefore reserved its right to invoke GATT provisions at the appropriate time to determine the harm that the measures were causing.

---

[1] Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (BISD 26S/56).

The representative of the United States said his delegation totally disagreed with Cuba's presentation in L/5980, and was surprised that Cuba had raised this issue in the Council. The measures required by Section 902(c) of the Food Security Act in no way breached GATT obligations, but reflected the fact, long recognized by contracting parties, that the United States had maintained an embargo on bilateral trade with Cuba since 1962 for national security reasons. The measures referred to by Cuba did not change the substance of the US embargo; they constituted a procedural safeguard that would not inhibit any trade that had previously been permitted under the terms of the embargo. Neither did the measures affect the trade of third countries. The United States was merely seeking adequate verifications from its trading partners that they were not trans-shipping sugar to the United States from Cuba.

The representatives of Nicaragua, Argentina, Brazil, Hungary, Peru, Czechoslovakia, Poland and Uruguay expressed their delegations' concern over, and opposition to, the US action affecting Cuba's sugar exports. Such measures were considered to be politically motivated, coercive, discriminatory, and undermined the General Agreement, the GATT system and international relations; they were also not conducive to a new round of multilateral trade negotiations.

The representative of Nicaragua warned that such measures could be applied in future against any products exported by a country which followed policies not agreeable to the United States.

The representative of Cuba contested the US assertion that the measures did not prejudice third countries. If the Food Security Act prohibited re-export of products from other countries because they contained Cuban sugar, then the measures clearly did cause such prejudice. As for the United States resorting to reasons of national security for its action, Cuba considered that this may have been somewhat plausible in the early 1960s but could no longer be so.

The Council took note of the statements.

17. Administrative and financial matters

(a) Deputy Director-General post

The Chairman, speaking under "Other Business", noted that the contract of Mr. William Kelly, Deputy Director-General, was due to expire on 31 May 1986. The Director-General had requested Mr. Kelly to stay in his post until 31 December 1986, and Mr. Kelly had agreed to do so. This had been considered desirable in the interest of continuity in the Secretariat, particularly in view of the special nature of the work that was immediately ahead between May and December 1986.

The Council took note of this information.

(b) Salaries and pensions of professional and higher category officials

The Director-General, speaking under "Other Business", informed the Council of two problems which were causing great concern among GATT professional and higher category officials, and which could have a serious impact on the future staffing of the organization. One concerned the level of pensionable remuneration, the basis upon which staff pensions were ultimately calculated. The other was the effect of the fluctuating rate of the US dollar against the Swiss franc and other currencies on both take-home pay and pensions. He noted that the staff had brought both matters to the attention of the Chairman of the CONTRACTING PARTIES as the representative of the staff's employers. There had been a preliminary exchange of views at a meeting between staff representatives, the Chairman of the CONTRACTING PARTIES assisted by the Chairman of the Council and the Chairman of the Committee on Budget, Finance and Administration, and himself in March 1986. These issues were also on the agenda of the Committee on Budget, Finance and Administration.

The first issue concerned the substantial reductions in pensionable remuneration which had already been imposed on staff as a result of decisions taken in the United Nations General Assembly; still larger reductions were in prospect. New proposals by the International Civil Service Commission would be discussed at a meeting of the United Nations Joint Staff Pension Board to be held from 10-20 June 1986 in Copenhagen. That meeting, at which the CONTRACTING PARTIES, the Director-General and the staff would be represented, would be the only opportunity for GATT representatives to express their views before the matter went before the UN Fifth Committee and General Assembly for approval. Under the latest proposals, which it had been suggested should become effective from the beginning of 1987, a professional officer with 25 years service in the GATT Secretariat would receive a net pension of between 36 and 39 per cent of his or her final take-home pay. That would represent a cut of more than two-fifths in pension rights imposed on staff over a period of only two years. The figures would be worse for a staff member whose pensionable service began after 1983. As Director-General, with all that implied in his responsibility for the personnel policy, effective management and administration, and future staffing of GATT, he could not stress too strongly that he found the new proposals completely inequitable. Accordingly, he had instructed his representative at the Pension Board meeting in Copenhagen to oppose any measure in support of those proposals.

The second issue concerned the fluctuations of the US dollar rate against the Swiss franc, which were also causing salary problems for the staff. Staff salaries were entirely paid in Swiss francs, with no alternative. Some offset to currency fluctuations was provided by the so-called post adjustment mechanism, but this provided only incomplete

compensation. In consequence, staff salaries had seriously decreased over the past twelve months. Other agencies similarly affected, such as the United Postal Union in Bern and the World Intellectual Property Organization in Geneva, had already taken steps to counteract such contingencies, the former by applying a floor rate of SwF 2.09 to the US dollar and the latter by incorporating a ruling in its Staff Regulations implying no loss in take-home pay due to exchange rate fluctuations. The possibility of introducing some form of control mechanism that would put a floor, and perhaps also a ceiling, on the effects of currency fluctuations on salaries and allowances was on the agenda of the Budget Committee. He hoped that a satisfactory solution could be found in the near future and brought to the Council for approval.

The Council took note of the statement.

18. Observer status in GATT
- Progress report by the Chairman on informal consultations

The Chairman noted that since the most recent Council meeting on 12 March, he had held another informal consultation on observer status in GATT; he expected to hold a further consultation in the next few weeks and would report on the results at a future Council meeting.

The Council took note of this information.