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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
12 July 1983

MINUTES OF MEETING

Held in the Centre William Rappard on 12 July 1983

Chairman: Mr. H.V. Ewerlöf (Sweden)

Subjects discussed:

		Page
1.	Guatemala - Request for observer status	2
2.	Aspects of Trade in High-Technology Goods	2
3.	Trade in Counterfeit Goods	4
4.	European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong - Report of the Panel	6
5.	Safeguards - Interim report by the Chairman of the Council	9
6.	Customs unions and free-trade areas, Regional agreements - Biennial reports (a) South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) (b) Agreement between the European Economic Community and Spain	11
7.	United States - Imports of sugar from Nicaragua - Recourse to Article XXIII:2 by Nicaragua	12
8.	Consultation on trade with Hungary - Establishment of Working Party	13
9.	United States tax legislation (DISC) - Follow-up on the report of the Panel - Draft Decisions proposed by the European Economic Community	13
10.	GATT concessions under the Harmonized Commodity Description and Coding System	14
11.	Portugal - Renegotiation under Article XXVIII:4	15
12.	Dates for the thirty-ninth session of the CONTRACTING PARTIES	15

Page

13. European Economic Community - Imports of citrus fruit and products - Composition of the Panel 16
14. Japan - Measures on Imports of Leather - Composition and terms of reference of the Panel 16
15. United States - Manufacturing Clause - Composition and terms of reference of the Panel 17
16. European Economic Community - Application of Article XXVIII to new products 18
17. Suspension of GATT obligations between the United States and Czechoslovakia 20
18. United States - Imports of certain specialty steels 21

1. Guatemala - Request for observer status

The Chairman said that the Director-General had received a request from Guatemala to be granted permanent observer status for Council meetings. He recalled that Guatemala had been granted observer status for the Council meeting on 26 May 1983, as a Rule 8 country. He proposed that the Council agree to invite the representative of Guatemala to attend the present meeting, once again as a Rule 8 country. In respect of Guatemala's request for permanent observer status, this would be placed on the agenda for the next Council meeting.

The Council so agreed.

2. Aspects of Trade in High-Technology Goods (SR.38/9, C/W/409/Rev.2 and Corr.1)

The Chairman recalled that at its meeting on 26 May 1983 the Council had agreed to revert to this item at the present meeting, with the understanding that further consultations would take place in the meantime.

The representative of the United States said that in view of the numerous bilateral and plurilateral consultations which his delegation had held with other delegations, he hoped that the Council could agree at the present meeting to adopt the proposal in C/W/409/Rev.2 and Corr.1. He pointed out that the reference in paragraph 2 of that text to "the provisions and objectives of the General Agreement" was intended

to indicate only that the United States did not expect the Council to address any aspects of trade in high-technology goods which could be viewed as falling outside the scope and competence of the General Agreement; the reference was not, therefore, intended to relate to any of the MTN Agreements. Also, the sectors listed in the footnote were only illustrative; the actual sectors to be studied would be decided through consultations.

The representative of the European Communities said it was clear that his delegation wished to implement what had been agreed at the 1982 Ministerial Meeting concerning trade in high-technology goods. His delegation wondered, however, whether this matter was of immediate priority for a majority of the contracting parties. He also wondered what exactly would be studied, why the study was being requested, and whether the interest of certain contracting parties which had advantages in the high-technology sector reflected a wish to establish a new Code. The EEC member States were trying to restructure their economies to turn towards production of high-technology goods, and they would not like to see their efforts to support research and development in this field undermined by such a study or whatever it might lead to.

The representative of Jamaica believed that the secretariat would make appropriate financial arrangements for such a study if the Council decided to launch it. He did not believe that carrying out the study would prejudge the outcome, although he recognized that the direction of the study could bias the eventual result. While his delegation did not completely agree with the representative of the United States concerning the reference to the MTN Agreements, the secretariat should begin the study, and the Council would see what came of it.

The representative of Argentina said that his delegation preferred to revert to this item at a future Council meeting.

The representatives of Switzerland, Israel and the Philippines said that they could support the latest US proposal.

The representative of Trinidad and Tobago said that the parameters for a study of trade in high-technology goods had not yet been fully outlined, so it would not be wise to mandate the secretariat to begin the study. His delegation reserved its position on the latest US proposal.

The representative of Canada said that while this issue was not of high priority to Canada, his delegation supported the latest US proposal, with the footnote indicating that the reference to sectors was illustrative.

The representative of Japan said that the Council should act favourably on the latest US proposal as soon as possible.

The Council took note of the statements and agreed to revert to this item at its next meeting, on the understanding that further consultations would take place in the meantime.

The Chairman urged interested delegations to conduct the consultations so that this item would not remain thereafter on the Council agenda.

3. Trade in Counterfeit Goods (C/W/418)

The Chairman recalled that at its meeting on 26 May 1983, the Council had considered the Director General's report (C/W/418) on his consultations with the Director General of the World Intellectual Property Organization (W.I.P.O.) in accordance with the Ministerial Decision on Trade in Counterfeit Goods (L/5424, page 11). The Council had taken note of the report and had agreed to revert to this item at the present meeting.

The representative of the European Communities referred to a recent communication from his delegation (L/5512) which drew attention to the magnitude and difficulty of the problems affecting trade in counterfeit goods, a problem affecting both industrialized and developing countries. The report by the Director-General had concluded that W.I.P.O. was competent to deal with the problem of counterfeit goods, and that GATT had a rôle to play as regards international trade in these goods. His delegation wanted work in GATT on this subject, with the co-operation of the two secretariats; he therefore welcomed the stress in the report on co-operation. His delegation believed that one could not rely simply on treaties such as the Paris Convention for the Protection of Industrial Property, which were based on national legislation; domestic laws were diverse and did not offer an adequate basis for dealing with the problem of trade in counterfeit goods. The Council now had to decide how to tackle the matter, and the Community was open-minded about how action on this issue should be examined within GATT in accordance with the Ministerial Declaration; for example, it could be in the form of consultations, or of a working party. His delegation asked the Council to reflect further on this matter, possibly through informal consultations, so that the best working methods could be decided at a future Council meeting.

The representative of the United States said that his delegation shared many of the views expressed by the representative of the European Communities. The Director-General's report had fulfilled only one aspect of the Ministerial Decision; it remained for the Council to carry out the examination as instructed by the Ministers. It was customary in such cases to establish a working party which would provide an appropriate means, without pre-conditions, for experts to focus carefully on the important issues involved. His delegation hoped that the Council would set up such a working party at the present meeting.

The representative of Brazil said that there was still need to clarify the legal and institutional aspects involved. Consequently, her delegation proposed that a joint study be made by the GATT and W.I.P.O. secretariats on the legal and institutional aspects in this matter. The study would propose ways of dealing with the issue, and would help the Council to decide on the appropriateness and nature of further action.

The representatives of Korea, Argentina, Uruguay, Colombia and Nicaragua supported the proposal made by the representative of Brazil.

The representative of India said that while the problem of trade in counterfeit goods was undeniably important, resources devoted to it should not detract from the efficacy of GATT's rôle in tackling more fundamental issues. It would be premature for the Council to set up a working party on this issue when it had not yet determined the appropriateness of joint action as instructed by the Ministers.

Recently in GATT there had been a tendency to set up working parties for whatever problems came to the Council's notice; but caution was needed in the allocation of GATT's limited resources. His delegation supported the proposal made by the representative of Brazil.

The representative of Jamaica said that his delegation did not believe there was a need either for a working party or for a further study on this matter. He drew attention to the absence of recent notifications on marks of origin and said that perhaps more notifications were needed from countries with an interest in trade in counterfeit goods. The Council should find another way to deal with this item.

The Director-General recalled that in paragraph 5 of his report, document C/W/418, it was recorded that the Director General of W.I.P.O., Dr. Bogsch, had said that he would have to be instructed by the governing bodies of W.I.P.O. before undertaking new activity in the field of counterfeit goods. The Director General doubted that further consultations between Dr. Bogsch and himself could advance the matter in the absence of the necessary action in the governing bodies of the two organizations. The consultations that he had had with Dr. Bogsch had served to clarify to the extent possible the legal and institutional aspects relating to W.I.P.O.'s competence regarding counterfeit goods, as indicated in paragraph 4 of C/W/418. In his view, one way of further clarifying the legal and institutional aspects of the question would be for the contracting parties to conduct an exercise parallel to that in paragraph 4 of C/W/418 in respect of the GATT itself.

The representative of Switzerland said that while his country felt particularly strongly the impact of imported counterfeit goods, there was a need for caution, because governments might take legitimate measures to combat counterfeit goods which at a later stage might become purely protectionist measures. The trade impact of this problem was outside W.I.P.O.'s competence and clearly within GATT's competence. His delegation supported the US proposal to set up a working party.

The Council took note of the statements, agreed that consultations would continue among delegations, and between delegations and the secretariat, in order to find a solution, and agreed to revert to this matter at, if possible, the next Council meeting.

4. European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong.
- Report of the Panel (L/5511)

The Chairman recalled that in October 1982 the Council had agreed to establish a panel to examine the complaint by the United Kingdom on behalf of Hong Kong, and had authorized the Chairman of the Council, in consultation with the parties concerned, to designate the Chairman and members of the Panel. In January 1983, the Council had been informed of the Panel's composition. The report of the Panel had been circulated in document L/5511.

Mr. R. Hochörtler, Chairman of the Panel, introduced the report and drew particular attention to the findings and conclusions contained in paragraphs 24-34.

The representative of the United Kingdom, speaking on behalf of Hong Kong, said that the report contained the most clear-cut and precise findings and conclusions presented by any panel in the past few years. His delegation believed that the Council should adopt the report at the present meeting. There was need for urgency on this matter. Most of the quantitative restrictions which were the subject of the report had been in force for a number of years; but one of them, the restriction on quartz watches, had been introduced in October 1981 and had resulted in a drastic reduction in Hong Kong's exports to France. He quoted figures to illustrate the size of the problem, saying that the trade losses had continued into 1983 and that the Hong Kong industry would continue to suffer for as long as the measures remained in force.

The representative of the European Communities said that his delegation had no objection to the Panel's report and its conclusions being adopted. However, he regretted that the conclusions had not taken sufficient account of the arguments by the Community concerning the difficult and long-standing problem of residual quantitative restrictions. These restrictions had been the subject of consultation in the Joint Working Group on Import Restrictions between 1968 and 1971, but without result. Then, in the Tokyo Round of 1973-1979, the negotiating Sub-Group on Quantitative Restrictions had again produced no result on this issue. Clearly there was a basic obstacle which made it impossible for contracting parties to make concessions to one another in this area. His delegation regretted that in its conclusions the Panel had not found a place for this political element which was part and parcel of the whole issue; this would not serve to consolidate multilateral co-operation. It was also regrettable that attempts at conciliation had been rejected by one party: a good legal case should not be abused.

The representative of India said that the Council should adopt the report so as to uphold GATT's dispute settlement mechanism. He congratulated the Community on its constructive approach in not opposing adoption of the report, and hoped that it would take remedial measures to implement the Panel's recommendations.

The representative of Hungary said that the Panel's report offered an excellent example of the reference in the 1982 Ministerial Declaration to "disregard of GATT disciplines" (L/5424, paragraph 1). His delegation disagreed with the Community's argument in paragraph 15 of the report to the effect that "quantitative restrictions had become a general problem and had gradually come to be accepted as negotiable, and that Article XI could not and had never been considered to be a provision prohibiting residual restrictions irrespective of the circumstances specific to each case." His delegation also disagreed with the Community's argument in paragraph 23 covering a so-called "legal principle - 'the law-creating force derived from circumstances' - which had led to a de facto situation that was clearly distinct from the formal objectives of the General Agreement." The Hungarian delegation fully shared the legal position of Hong Kong as reflected in the report, as well as the Panel's findings, and considered paragraphs 26 and 27 particularly important in that it would be wrong to interpret the fact that because a measure had not been subject to an Article XXIII complaint over a number of years, this was tantamount to its tacit acceptance by contracting parties. His delegation looked forward to follow-up action by the Community.

The representative of Japan said that his delegation supported adoption of the Panel report and requested the Council to make appropriate recommendations to the parties concerned, based on the report's conclusions.

The representative of the Philippines said that the ASEAN delegations supported the conclusions and findings of the report, and hoped that the necessary remedial measures would be taken to respond to Hong Kong's needs.

The representative of Australia said that the Panel's findings and conclusions were useful in dispelling arguments found in the body of the report that tacit acceptance of a measure existed by virtue of the fact that it had not been challenged over a number of years under Article XXIII or other relevant GATT Articles. The report put to rest the argument that social and economic conditions currently prevailing justified the maintenance of measures contrary to the GATT simply because of difficulties in removing them. It had also discredited, to the benefit of the multilateral system of the GATT, the so-called principle that circumstances created GATT law. Australia welcomed the constructive position of the Community, and supported adoption of the report and of any proposed recommendation by the Council that the conclusions of the Panel be carried into effect quickly.

The representative of Jamaica said that his delegation supported adoption of the report, and favoured remedial measures to increase Hong Kong's trade; but his authorities needed time to examine the implications of some of the Community's argument in paragraph 15.

The representatives of Peru, Pakistan, Brazil, Colombia, Korea, Sri Lanka and Egypt supported adoption of the report, and welcomed the statement by the representative of the European Communities that he had no objection to the report being adopted. They hoped that the Community would implement the recommendation suggested in paragraph 34.

The representative of Chile supported adoption of the report. He pointed out that the last sentence in paragraph 16 said that the Hong Kong statement at the 1982 Ministerial Meeting had been supported by one other delegation, but in fact more than one delegation had shared Hong Kong's views at that time. Chile appreciated the constructive spirit expressed by the Community on this issue.

The Council took note of the statements and adopted the Panel report (L/5511) with the recommendation suggested in paragraph 34.

The representative of the United Kingdom, speaking on behalf of Hong Kong, congratulated the Community and the French authorities on their positive response to the findings of the Panel. He asked how and when France expected to be able to comply with the recommendaton of the CONTRACTING PARTIES in paragraph 34. He said that under paragraph 22 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), the CONTRACTING PARTIES should keep under surveillance any matter on which they had made recomendations or given rulings. This provision had been strengthened by paragraph (viii) of the 1982 Ministerial Decision on Dispute Settlement Procedures (L/5424, page 7) which said that in furtherance of the provisions of paragraph 22 of the Understanding, the Council shall periodically review the action taken pursuant to such recommendations. His delegation strongly urged the Community and the French authorities to take remedial action to comply with the recommendation. He asked that the Council revert to this matter at its next meeting.

The representative of the European Communities said that the Community had shown a constructive, conciliatory spirit in this case; and members of the Council should remember the great difficulties facing governments in implementing international obligations. Insistence on pressing too hard at this stage, just after the adoption of the Panel's report, might turn out to be counter-productive.

The Council took note of the statements.

5. Safeguards
- Interim report by the Chairman of the Council (Spec(83)27)

The Chairman recalled that in November 1982, GATT Ministers had called for a comprehensive understanding on safeguards to be presented to the CONTRACTING PARTIES at their forthcoming session. He was now presenting, on his own responsibility, an interim report on developments since that time to the Council as requested by the Chairman of the Ministerial Meeting (SR.38/9).

At the Council Meeting on 26 January 1983, the Chairman of the Council had indicated that it was his intention to convene informal consultations on this matter. The consultations had indicated that a restatement of positions of principle would not be helpful and that it would probably be more useful to examine, frankly and informally, measures of a safeguard nature that had actually been taken, in order inter alia to understand better the underlying reasons for them, to seek to draw conclusions therefrom, and to use this examination as a basis for deciding on how to proceed further. The atmosphere in the consultations had been good, partly because the delegations participated in them on a personal basis. It had also been clearly understood that the examination did not prejudice the legal nature of the measures discussed, nor the GATT rights and obligations of the participants.

The talks had taken as their starting point, but were not limited to, the list of measures established in 1982 by the secretariat (Spec(82)18/Rev.2). It had become clear at an early stage that the scope of these measures extended far beyond Article XIX of the General Agreement.

The examination of existing actions that had been held so far had, in particular, aimed at answering the following questions:

(a) What was the precise nature of the action?
(b) What were the reasons that had led countries to take such action?
(c) What were the reasons that had led exporting countries to agree to such actions?
(d) What were the reaons why Article XIX-type action had not been taken?
(e) What could be said about the effects of the action including their effects on trade of third countries?
(f) What could be said about the phasing-out of the action, including any problems that needed to be dealt with and how multilateral disciplines could be established?

The Chairman said that the discussion that had taken place so far could not be expected to provide a final picture of the nature of these measures, the reasons underlying them or their effects. However, the discussion had clearly demonstrated that the so-called "grey-area"

measures were of very different kinds. There was a considerable variety, comprising not only bilateral arrangements of a VER or OMA type between governments providing for quantitative restrictions, surveillance systems, price undertakings or export forecasts, but also industry-to-industry agreements where the specific rôle of governments was not always clear, and actions of a unilateral character. The discussions had also thrown some interesting light on the circumstances in which both Article XIX and these other measures had been used. The use of Article XIX measures had been less frequent than that of the co-called "grey-area" measures and the latter had been used not only as alternatives to Article XIX action, but frequently as substitutes for procedures relating to other GATT Articles, notably anti-dumping or countervailing duties provided for in Article VI. These actions were sometimes used under conditions not provided in Article XIX or other Articles of the General Agreement.

The Chairman said that the consultations had so far been carried out within a relatively small circle; but he and the Director-General continued to be ready at any time to consult with other interested contracting parties on the matters under examination. It was his firm intention to carry the consultations forward in the coming months and to make a vigorous effort to develop realistic and pragmatic proposals in sufficient time to serve as a basis for action by the CONTRACTING PARTIES, in accordance with the decision taken at the 1982 Ministerial Meeting.

The representative of Jamaica said that his delegation wanted to encourage fully the Chairman and all those undertaking the consultations, but to ensure transparency he suggested that future statements of this kind, covering not only safeguards but all other work of the CONTRACTING PARTIES, should be circulated in advance so that members of the Council could follow them as they were being read.

The representative of Japan said that the substantial progress made in examining the content and nature of safeguard measures had revealed that these problems were wide-ranging. Japan was prepared to make a positive contribution towards work in this field.

The representative of Israel said that his delegation appreciated the Chairman's indication that other countries would be brought into the consultations within the next few months. He asked for working papers on the issues being dealt with in the consultations to be circulated to delegations which had not so far been participating in the exercise.

The representative of the European Communities said that to ensure transparency, it was important that at some stage all contracting parties should be brought into the decision-making process on this issue. As a result of the detailed examination of safeguard measures over the past few months, his delegation had seen the issues in a new

and unexpected light. The aim should now be for the CONTRACTING PARTIES, on the basis of an agreed analysis, to draw some collective conclusions from the consultations; for the Community, it was important that real progress should be made on this issue rather than that a solution be found at all costs.

The representative of India hoped that the CONTRACTING PARTIES would reach an understanding on safeguards at their November 1983 Session. The basic focus in this exercise should be to work out a system based on objective and firm criteria within an effective multilateral discipline. Even more important was the credibility of the system for the weaker trading partners so that they felt secure in such a new system.

The representative of the United States agreed that progress was being made on the safeguards issue; efforts to move the situation forward should be accelerated, but contracting parties should be careful in drawing observations or conclusions so that they did not undermine the spirit of the GATT.

The representative of Canada agreed that progress was being made on this issue which had a significant relationship to paragraph 7(i) of the 1982 Ministerial Declaration. The process now had to move from the examination phase to drawing up the understanding called for by the Ministers. Canada promised its full support in this effort.

The Council took note of the Chairman's interim report[1] and of the statements.

6. Customs Unions and Free-Trade Areas; Regional Agreements - Biennial reports.

(a) South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) (L/5488)

(b) Agreement between the European Economic Community and Spain (L/5516)

The Chairman drew attention to documents L/5488 and L/5516, containing information furnished by the parties to the agreements referred to in those biennial reports.

The representative of the United States suggested that consideration of this item be postponed until the next Council meeting, so as to give more time for delegations to analyse the reports and thus permit broader discussion of the issues.

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

7. United States- Imports of sugar from Nicaragua
- Recourse to Article XXIII:2 by Nicaragua (L/5513)

The Chairman drew attention to document L/5513 containing a communication from the delegation of Nicaragua.

The representative of Nicaragua recalled that his delegation had requested Article XXIII:1 consultations with the United States in order to seek a satisfactory settlement of this dispute. He said that at the Council meeting on 26 May 1983, the representative of the United States had accepted the political origin of the US measure against Nicaragua, and had agreed to Article XXIII:1 consultations. These had been held on 8 June, but no satisfactory settlement had been reached. Taking into consideration the intransigent attitude which had been adopted by the United States in those consultations, Nicaragua did not consider it appropriate to request the good offices of the Director-General to find a solution to the dispute, in accordance with the Article XXIII procedures adopted in 1966 (BISD 14S/18). Consequently, Nicaragua was asking the CONTRACTING PARTIES to establish a panel to examine the matter under Article XXIII:2.

The representative of the United States said that his delegation regretted Nicaragua's request for a panel. The US measure in question, when it became effective in October 1983, would not enhance protection of the US sugar industry. The United States did not consider that the future measure was inconsistent with the General Agreement. The motives for the measure were not strictly trade considerations; and it followed that any examination of this matter in purely trade terms would be sterile or disingenuous. A political solution could resolve the trade aspect of this dispute; but a GATT panel could not appropriately examine or assist in the resolution of the political or security issues that lay at its core. Consequently, the United States questioned whether establishing a panel in this case was either wise or useful for the resolution of this dispute or for the GATT as an institution.

The representative of India noted the two different planes on which the Nicaraguan and United States delegations saw this problem. A contracting party had requested a panel after fulfilling the proper procedures and being convinced that any further conciliatory approach would not achieve results. It was not for the Council to judge the merits of the case at this stage. The Council should follow the established practice of the GATT dispute settlement mechanism, which had been reaffirmed at the 1982 Ministerial meeting, and establish a panel.

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[1]The full text of the Chairman's interim report was subsequently made available in document Spec(83)27

The representatives of Colombia, Spain, Brazil, Singapore, Argentina, Switzerland and Finland on behalf of the Nordic countries supported Nicaragua's request for a panel.

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

The representative of the European Communities said that his delegation wanted to be associated with drafting the Panel's terms of reference.

The Council took note of the statements.

8. Consultation on trade with Hungary
- Establishment of Working Party

The Chairman said that the Protocol for the Accession of Hungary provided for consultations to be held between Hungary and the CONTRACTING PARTIES biennially, in a working party to be established for this purpose, in order to carry out a review of the operation of the Protocol and of the evolution of reciprocal trade between Hungary and the contracting parties. He proposed that the Council establish a working party to carry out the review in the autumn of 1983.

The Council agreed to establish a working party with the following terms of reference and membership:

Terms of Reference

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

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

Chairman: Mr. R.E.B. Peren (New Zealand).

9. United States tax legislation (DISC) - Follow-up on the report of the Panel
- Draft Decisions proposed by the European Economic Community
(C/M/157, C/W/389 and Suppl.1, C/W/391, C/W/392, L/4422, L/5271)

The Chairman recalled that the Council had most recently considered this matter at its meeting on 26 May 1983. It had been proposed for the Agenda of the present meeting by the delegation of the European Communities.

The representative of the European Communities said that since the Panel report on the DISC had been adopted in December 1981, the United States had promised a number of times to take the necessary steps domestically to bring its tax legislation into line with GATT rules. The Council still had no concrete idea on the new legislation to replace the DISC. Until US tax law was brought into line with GATT rules, US firms would continue to enjoy a subsidy that had continued for years and that affected an enormous volume of trade. The Community had proposed two draft decisions to the Council which were still on the table. The Community was astonished that it had not yet been possible even to discuss these draft decisions.

The representative of the United States said that since the Council meeting on 26 May, the US Administration had made further progress and had concluded the general and technical explanation of its proposal to replace the DISC. The drafting of the relevant bill was underway; and the Administration was currently seeking to arrange Congressional sponsorship of the bill. He warned, however, that the value of this information would depend on future events.

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

10. GATT concessions under the Harmonized Commodity Description and Coding System (L/5470/Rev.1)

The Chairman recalled that on 28 February 1983, the Committee on Tariff Concessions had unanimously adopted a document containing procedures for the rectification and renegotiation of GATT schedules which would become necessary in connexion with the introduction of the Harmonized Commodity Description and Coding System (Harmonized System). The Committee had also decided to submit the document containing the procedures to the Council for approval.

At its meeting on 20 April, the Council had agreed to revert to this item at a future meeting.

The Chairman informed the Council that the Customs Co-operation Council had in the meantime adopted the Harmonized System, with the proviso that the System would enter into force, at the earliest, on 1 January 1987 (rather than 1985). This new date was reflected in the Annex to document L/5470/Rev.1.

The Chairman added that in no way could the position of any contracting party be prejudiced by the adoption of the procedures contained in the Annex to document L/5470/Rev.1, in respect of that contracting party's ultimate decision on the adoption of the Harmonized System itself.

The representative of Brazil said that while accepting document L/5470/Rev.1, she wished to express the understanding of the Brazilian Government that, under this document, any contracting party was entitled to request the maintenance of particular tariff items of interest to it in the new nomenclature, whenever tariff lines with different bound rates were combined or whenever bound rates were combined with unbound rates. This understanding was in keeping with the basic principle stated in paragraph 2.1 of the Annex to document L/5470/Rev.1, namely that "existing GATT bindings should be maintained unchanged".

The Council took note of the statements and approved the procedures contained in the Annex to document L/5470/Rev.1.

11. Portugal - Renegotiation under Article XXVIII:4 (SECRET/300)

The Chairman drew attention to document SECRET/300, in which the Government of Portugal had submitted a request for authority under the provisions of Article XXVIII:4 to renegotiate a concession included in the Portuguese Schedule.

The representative of Portugal said that the withdrawal of the concession on the product in question was indispensable in the context of restructuring industry in his country; the withdrawal affected a product which at present was not produced in Portugal and would permit development of a new industry in that product within the next few months. This would have a positive influence not only on employment in Portugal but also on its balance of payments. His delegation was ready to negotiate on this matter immediately with any interested contracting party.

The Council took note of the statement, agreed to grant the authority sought by Portugal, and invited any contracting party which considered that it had a principal supplying interest or a substantial interest, as provided for in Article XXVIII:1, to communicate its claim in writing and without delay to the Government of Portugal and at the same time to inform the Director-General. Any such claim recognized by the Government of Portugal would be deemed to be a determination within the terms of Article XXVIII:1.

12. Dates for the thirty-ninth session of the CONTRACTING PARTIES (C/123)

The Chairman recalled that at their thirty-eighth session the CONTRACTING PARTIES had agreed that the thirty-ninth session should be held in the week beginning 21 November 1983, and that the Council should be authorized to fix the opening date and the duration of the session in the course of 1983.

The Council agreed that the thirty-ninth session should open on the afternoon of Monday, 21 November, and that the duration should be fixed at three to four days. This decision could be modified by the Council should circumstances so require.

13. European Economic Community - Imports of citrus fruit and products - Composition of the Panel

The Chairman recalled that in November 1982 the Council had established a panel to examine the complaint by the United States, and had authorized the Chairman, in consultation with the two parties concerned and with other contracting parties which had indicated an interest in the matter, to decide on appropriate terms of reference and, in consultation with the two parties concerned, to designate the Chairman and the members of the Panel. On 26 May 1983, the Council had been informed of the Panel's terms of reference.

He informed the Council that following such consultation the composition of the Panel was as follows:

Chairman:	Mr. P. Wurth
Members:	Mr. B. Eberhard
	Mr. J. Goodman
	Mr. A. Kuosmanen
	Mr. H.S. Puri

The representative of Brazil said that her delegation reserved its right to make a representation to the Panel and to follow its work.

The Council took note of the statements.

14. Japan - Measures on imports of leather - Composition and terms of reference of the Panel

The Chairman recalled that in April 1983 the Council had established a Panel to examine the complaint by the United States, 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.

He informed the Council that following such consultation the composition and terms of reference of the Panel were as follows:

Chairman:	Mr. M. Huslid
Members:	Mr. D. Jayasekera
	Mr. H. Reed

Terms of reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States (L/5462), relating to restrictions maintained by Japan on the import of certain semi-processed and finished leather, and to make such findings, including findings on the question of nullification or impairment, as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

The representatives of India, the European Communities, Pakistan, Australia, Canada and New Zealand reserved the rights of their delegations to make representations to the Panel and to follow its work.

The Council took note of the statements.

15. United States - Manufacturing Clause
- Composition and terms of reference of the Panel

The Chairman recalled that in April 1983 the Council had established a Panel to examine the complaint by the European Communities and had authorized the Chairman, in consultation with the two parties concerned and with other contracting parties which had expressed an interest, to decide on appropriate terms of reference and, in consultation with the two parties concerned, to designate the Chairman and members of the Panel.

He informed the Council that following such consultation the composition and terms of reference of the Panel were as follows:

Chairman: Mr. P. Rantanen

Members: Mr. S. Haron
Mr. N. Kemmochi

Terms of reference:

"To examine, in the light of the relevant GATT provisions and related GATT documents, the matter referred to the CONTRACTING PARTIES by the European Communities relating to Section 601 of Title 17 of the United States Code (the "Manufacturing Clause") as extended by the United States Public Law 97-215 (L/5467 and C/M/167, page 15, paragraph 2), and to make such findings, in particular in relation to possible impairment of benefits, as will assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in Article XXIII:2."

The Council took note of this information.

16. European Economic Community - Application of Article XXVIII to new products (L/5522)

The representative of Japan, speaking under Other Business, referred to a recently circulated Japanese communication on this matter (L/5522). His authorities considered that the European Economic Community's raising of its tariff rate on compact disc players was not a matter solely to be dealt with under Article XXVIII; it should be considered in a much wider relationship with high technology goods in general, as well as with rules concerning safeguards measures and standards. The pre-emptive raising of the tariff rate would block development of new high-technology products and would affect the interests of all contracting parties, including developing countries, as well as the administration of the GATT system itself. Consequently, Japan had concluded that it was not appropriate to enter into negotiations with the European Community under Article XXVIII, as the Community had proposed in its notification of 15 February 1983, and his authorities had communicated this conclusion to the Community.

Concerning negotiating procedures, he asked whether it was reasonable and appropriate to apply strictly the existing formula under Article XXVIII to cases where the volume of trade in a product had not reached a high enough level to provide a useful quantitative basis for negotiations, and where great expansion of trade was foreseen for a product even though its present trade volume was small or negligible. If the answer were affirmative, he asked whether it was appropriate under GATT to exclude from negotiations those contracting parties which had an opportunity to export the product in the near future. As to the calculation of a fair and objective amount of compensation, he asked whether the existing formula under Article XXVIII would be considered reasonable and appropriate. His delegation also wanted to point to the relationship between the pre-emptive raising of a tariff rate on a new product and safeguard measures. Furthermore, his authorities wondered whether it might not be necessary to work out, on the basis of the above, ways to adapt the existing system to new circumstances, for example, by formulating guidelines for applying Article XXVIII in the context of securing the stability of tariff concessions. This was why Japan was proposing the establishment of a working party to examine these problems.

The representative of the European Communities referred to earlier instances where Japan had renegotiated tariff rates on new items such as plastic ski-boots and 16 2/3 r.p.m. gramophone records. In his view, these newly emergent products had been singled out for separate tariff treatment to provide additional protection. He asked why Japan should now refuse the Community the same opportunities that it had afforded itself in the past. The Community continued to believe that Article XXVIII and the possibilities offered to renegotiate concessions should be used in a limited and exceptional way; over the past twenty years, the Community had resorted to Article XXVIII only eight times,

and for minor products. The Community intended to apply the letter and spirit of this Article, which was one of the basic provisions of the General Agreement, and was ready to offer compensation. His authorities were deeply concerned by the Japanese proposal, because it might jeapordize the basic rights provided by Article XXVIII.

There was no case for suspending an on-going renegotiation involving a particular case and duly notified under Article XXVIII:5. If a trading partner were to take the attitude that it could not negotiate pending the outcome of such an examination, the Community would then be obliged to conclude that an agreed result within the terms of Article XXVIII was not possible within a reasonable period of time. In that case Article XXVIII provided a procedure to be followed by the Community in such circumstances. The Committee on Tariff Concessions already provided a proper forum to discuss this issue, but the Community was not prepared to renounce its rights under Article XXVIII in any way.

The representative of Japan said that his delegation had no intention of infringing the fundamental rights of the Community under Article XXVIII. He said that sale of plastic ski boots had already been going on for at least three years before Japan had invoked Article XXVIII, whereas compact disc players were not yet widely sold on the market. Also, gramophone records were soft-ware, whereas the compact discs players were hard-ware. This problem had such wide scope that it transcended Article XXVIII; and the Committee on Tariff Concessions would be too limited a forum for examination of the issues involved.

The representative of the United States said that his delegation shared Japan's concern about withdrawal under Article XXVIII of bindings covering new products which were not yet being traded but which had prospects for significant future trade. He said that this practice could seriously undermine the traditional GATT system of tariff concessions, and that unlike a normal safeguard action, no determination of injury to domestic producers was required. Moreover, the United States disagreed with the view that since there was no current trade, little if any compensation was required. If that view gained wide acceptance, recourse to Article XXVIII for new products would be greatly encouraged. A growing practice of new product "carve-outs" could lead to increasing attempts to interpret existing bindings restrictively. Now that new products seemed to be increasingly important in trade, lack of the GATT tariff discipline for such products could lead to narrowing GATT's rôle in world trade. His delegation supported Japan's proposal that future study be addressed to this issue, but was open-minded on where that discussion should take place.

The representative of Canada said that his authorities wanted more time to consider this matter, and proposed that the Council revert to this item at its next meeting.

The representative of the European Communities said that it was out of the question that the exercise of a basic right in the General Agreement should be jeopardized. The Community was not against discussing this matter, but not in a working party; the Committee on Tariff Concessions was the only appropriate forum.

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

17. Suspension of GATT obligations between the United States and Czechoslovakia

The representative of Czechoslavakia, speaking under Other Business, recalled that the United States and Czechoslovakia had been contracting parties to the General Agreement since its foundation. In 1951, the United States had informed the CONTRACTING PARTIES at their sixth session of its determination to withdraw from Czechoslovakia the benefits of trade-agreement tariff concessions, and had proposed that all GATT obligations existing between the United States and Czechoslovakia be formally terminated. The United States had based its proposal on political and economic grounds according to which Czechoslovakia, through her actions, had nullified benefits which should have accrued to the United States under the General Agreement. The CONTRACTING PARTIES had discussed this matter at that session and had adopted, against the will of Czechoslovakia, the Declaration (GATT/CPS/5, page 36) in which they stated that considering that the United States and Czechoslovakia had declared that through their mutual actions they had nullified benefits which should have accrued to them both under the General Agreement, the CONTRACTING PARTIES declared that the United States and Czechoslovakia should be free to suspend, each with respect to the other, the obligations of the General Agreement, without however thereby modifying the obligations of their Governments under the General Agreement towards the other contracting parties. The suspension of obligations between the United States and Czechoslovakia under the General Agreement had taken effect shortly after the adoption of the Declaration and was still in force.

He said that Czechoslovakia had considered for a number of years that the reasons stated by the United States more than thirty years earlier had ceased to exist, and that the termination of the suspension of mutual obligations and the restoration of normal trade relations under the General Agreement between both countries would benefit the development of trade between them and would reinforce confidence in the GATT. On the basis of these considerations, Czechoslovakia had in February 1983 asked the United States for consultations within GATT over the suspension of obligations. The United States had not agreed to such consultations, on the grounds that there was no obligation to hold them under Article XXII of the General Agreement, and that the United States did not consider formal consultations within GATT to be useful at that

time. Czechoslovakia had now considered it appropriate to inform the Council about this problem which, among other things, affected the operation of the General Agreement. His authorities intended to revert to this matter later at an appropriate time.

The representative of the United States said that the suspension of GATT obligations between the United States and Czechoslovakia was reciprocal and had been authorized by a decision of the CONTRACTING PARTIES. This matter had been discussed bilaterally on an informal basis; and the United States had informed Czechoslovakia that it saw no basis under current circumstances for changing the reciprocal suspension of obligations, which did not affect the rights of third countries.

The Council took note of the statements.

18. United States - Imports of certain specialty steels

The representative of the European Communities, speaking under Other Business, said that his authorities were astonished by the severe measures taken by the United States against imports of certain specialty steels. On a prima facie basis, the Community was struck by the drastic and unfair character of the measures; Community exports would be severely penalized, all the more so as certain specialty steel exports from EEC member states had already been hit by US anti-dumping duties; this was a clear case of double jeopardy and harrassment. The cumulative effect of all these US measures would amount to a prohibition of imports of these products, causing irreparable damage to the Community. If the measures were to be based on Article XIX of the General Agreement, the Community might query first, whether there was real damage, and second, whether a causal link between the alleged damage and imports had been demonstrated. His authorities believed that any difficulties in the US market did not stem from imports of specialty steels from Europe, but resulted from the general world economic crisis which had led to a decrease in consumption of specialty steel, and from the high value of the US dollar. This action showed the low esteem in which the United States held its international trade commitments, shrugging them off when it suited the United States. The Community fully reserved its rights under the General Agreement, and requested the United States to notify the measures to GATT formally there and then, and to launch consultations as soon as notification had been made.

The representative of Japan said that his country counted specialty steel as one of its most important export items. Japan reserved its GATT rights and trusted that the United States would notify the measures to GATT and afford opportunities for consultation in accordance with Article XIX.

The representative of Brazil said that her delegation regretted that only a few months after the 1982 Ministerial Meeting, the United States had taken restrictive measures against specialty steel imports.

It also regretted the measures in the light of the fact that only a month previously at the Sixth United Nations Conference on Trade and Development (UNCTAD) in Belgrade, the US delegation had supported a standstill commitment on protectionist measures.

The representative of Jamaica wondered whether there was a fairly substantial difference between a transparent tariff measure in the field of specialty steel and "grey-area" non-tariff measures which had been taken. In his view, there needed to be a better understanding as to why transparent tariff measures and non-transparent non-tariff measures should be treated so differently.

The representative of Canada said that the action by the United States seriously threatened Canadian interests as an exporter as well as an importer of specialty steel products. Canada reserved all its GATT rights.

The representative of Austria said that his authorities regretted the US measures and hoped that they would be withdrawn as soon as possible.

The representative of Sweden said that once again imports of specialty steel into the United States were subject to restrictions, only three-and-a-half years after the discontinuation of previous measures. No clear evidence had been presented to show that the difficulties experienced by the US specialty steel industry resulted from imports; they seemed to be due more to the structure of the US industry and to the demand situation in the United States. Swedish exports of such steel to the United States had been stable both in value and volume, and could not have caused injury to the US industry. Sweden would follow closely the effects on trade of the US measures and it reserved its GATT rights.

The representative of Spain said that his delegation was concerned by the US measures. It was anxious to receive the notification to GATT from the United States, and reserved all its GATT rights.

The representative of the United States said that under the transparent US procedures, it was not up to the Administration to determine whether or not there was injury; affected parties had the right to present their views to a third party for an injury determination. The final action on specialty steel taken by the Administration was less severe than the restrictive measures suggested by the US International Trade Commission. This was an indication that although restrictive action had been taken, the United States had tried to take into account the views of its trading partners. The United States intended to notify the action to GATT shortly, and was prepared to enter into consultations with any interested party.

The Council took note of the statements.