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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
30 April and 1 May 1985

MINUTES OF MEETING

Held in the Centre William Rappard
on 30 April and 1 May 1985

Chairman: Mr. K. Chiba (Japan)

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1. Accession of Morocco (L/5790)

The Chairman drew attention to Morocco's application to accede to the General Agreement, which had been circulated as document L/5790. He welcomed the request and noted that Morocco had held observer status in the Council since 1977.

The representative of Morocco, speaking as an observer, said that the bulk of his country's foreign trade was with contracting parties to GATT, and that Morocco applied a liberal trade policy consistent with the principles and practices laid down in the General Agreement. Lately, this policy had been reflected in a number of lowered duties and non-tariff liberalizations. His authorities believed that accession to the General Agreement would offer Moroccan exports more reliable and predictable access to markets, and that liberalization of world trade would in the long run open new opportunities for Morocco and for other developing countires. Morocco was aware of the responsibilities it would incur through accession and hoped that its negotiations to join GATT would be successful. His authorities would carry out all the requisite formalities for accession, including submission of a memorandum on its trading régime, and would provide any additional information that the contracting parties might require.

The Council took note of the statement and agreed to establish a working party with the following terms of reference and composition:

Terms of reference: "To examine the application of the Government of Morocco to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession."

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

Chairman: The Council authorized the Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Morocco.

2. "Trade Policies for a Better Future" - Report by an independent Study Group (C/133)

The Chairman drew attention to document C/133, with which the Director-General had circulated to contracting parties, for their consideration, the report which he had received in March 1985 from the independent Study Group.

The Director-General recalled that at the Session of the CONTRACTING PARTIES in November 1983, he had announced that he had invited, on his own responsibility, a group of seven independent persons to study and report on the problems facing the international trading system. He had asked for the report to be placed on the agenda of the present meeting as it was the first meeting of the Council following publication of the report on 27 March 1985.

He said that he had decided to take the responsibility and the risk of setting up the Study Group because he had been extremely perturbed by the evolution of trade policies and trade relations and by all that this implied for the future of the GATT system. Even though in November 1982 Ministers had examined this problem and had drawn up a work program to deal with it, there was little evidence of a fundamental change in the downward trend. It appeared that member governments were finding it increasingly difficult to translate into practice the attachment to open market principles which they still professed in repeated solemn statements; and the decline in respect for the rules which sustained the system was accelerating. He had been especially worried, as were many, by the slow progress in implementing the Ministerial Work Program. Consequently, he had thought it would be useful for governments and for the Secretariat to seek a fresh view of the problem, from a group of independent persons, all highly experienced in relevant fields but without direct involvement in the formulation of trade policy. He was grateful to the Group's members for having given a great deal of their time to its work over the past 14 months, despite the heavy pressure of their other responsibilities.

He said that even though the report was formally addressed to him, it was clear that in a wider sense the Group had addressed itself to governments and to public opinion in general, i.e., to those who were affected by trade policy decisions as well as those who made those decisions. Nevertheless, the report would have little practical effect unless it was taken seriously by governments. He emphasized that his own reactions to the report were necessarily somewhat tentative, because its main value was to provoke and focus debate; his views and those of representatives of contracting parties would evolve in the light of further study and discussion.

He welcomed the brevity and clarity of the report; the Group had been determined that the results of their work should be accessible to the widest possible public, and that it should not be aimed only, or even primarily, at trade policy professionals. To deal briefly with complex issues always carried the risk of over-simplification, but in this case he thought the Group was right to put accessibility first. It was important - and quite remarkable, given the members' very different backgrounds - that the Group had been able to present a unanimous report. Its most striking feature, in his view, was the consistency and coherence with which it reflected their agreement on the need for open and non-discriminatory trade policies. They had refused the easy course of hedging their findings with qualifications to make them politically innocuous, and the report was the stronger for this. He had been particularly struck by the optimism with which the Group looked to the future and by their conviction that adjustment to change was the motor of growth.

The Group's recommendations could be seen as falling into three broad categories: those dealing with trade policy in terms of its transparency and its consistency with monetary, financial and macro-economic policies; those dealing with possible improvements in GATT's institutional framework and working methods; and those which concerned the implementation and strengthening of GATT rules. He attached great importance to the issue of transparency, since he believed that good trade policy would be more common if the public had access to the true costs of bad policy and if governments themselves were more conscious of the secondary effects of protectionist action. He hoped therefore that governments would give serious thought to the first recommendation, and to the proposal of the protection balance sheet. The Secretariat was working, as the Group had suggested, to develop the concept of the balance sheet so as to make it a useful tool of policy. Recommendation 8 suggested that the Secretariat should be given greater powers to assist contracting parties to carry out strengthened surveillance of trade policies, for reasons similar to those which had led the Council to establish its special biannual meetings and himself to set up the Trade Policies Division. This recommendation also proposed that the Secretariat's resources for training and advisory services be expanded. He agreed with the intent of these proposals, but it would be for the CONTRACTING PARTIES to decide whether and how they should be implemented. Recommendation 12, on dispute settlement, had already been anticipated, in one respect, by the decision at the 1984 Session of CONTRACTING PARTIES to set up a permanent roster of independent panelists (L/5752). However, the recommendation contained other ideas which deserved close attention; for example, he would be glad to see the development of complaints by third parties against bilateral agreements or other measures which were thought to be contrary to GATT rules. Referring to Recommendation 14, he said that for some time he had found it difficult to understand the virtual absence of Ministers from GATT's deliberations. Regular contacts and a sense of common purpose among Ministers could do much to prevent issues from being allowed to fester and become politicised. It was high time to bring the discussion of trade problems at political level back into the GATT.

He noted that almost all the remaining recommendations were concerned with better observance and strengthening of GATT rules, and that nearly all the subjects treated appeared in the 1982 Work Program. The Group had taken full advantage of their independent status in making some direct and perhaps controversial proposals. Not all these recommendations would commend themselves equally to all governments. However, the Group's ability to achieve unanimity on these clear views gave the report a special character and value. He was impressed by the consistency with which these recommendations reflected the Group's basic position in favour of non-discrimination. All the following recommendations could be seen as being intended to restore the operation of basic GATT principles: Recommendation 3, on the roll-back of discriminatory quantitative restrictions and other illegal restrictions; Recommendation 4, on the phasing out of the MFA régime for textiles trade; Recommendation 9, on safeguards; and Recommendation 10, on the treatment accorded to developing countries. As Director-General, he was bound to be sympathetic to the restoration of the non-discrimination principle to its central place in the GATT system. Nobody would under-estimate the practical difficulties involved, but he believed that contracting parties should take very seriously the objectives proposed here: the basic rules of the trading system ceased to have meaning if the number of special departures from them exceeded a certain minimum, and in his view that point had nearly been reached.

Four recommendations called for clarification or renegotiation, and more effective application, of GATT rules: Recommendation 2, on agricultural trade; Recommendation 5, on subsidies; Recommendation 6, on MTN Codes; and Recommendation 7, on customs unions and free-trade areas. In his view, it would have been helpful if the Group had specified which MTN Codes they had in mind, and what defects they would like to see corrected; however, it was satisfactory that the CONTRACTING PARTIES had in November 1984 decided (L/5756) to establish a working group to examine the implementation of all the MTN Agreements and Arrangements. He was not certain in which category to place Recommendation 11, on services. However, he underlined the Group's observation that the extension of multilateral rules into new areas of cooperation would serve no purpose if observance of the existing rules continued to decline.

He added that given the experience of several members of the Group in the fields of monetary and development policy, it was not surprising that they put heavy stress, in Recommendation 15, on the need for better coordination of trade, financial and macro-economic policies, for increased flows of development finance and for satisfactory resolution of the debt problem. Action at the level of trade policy alone would not be effective, even in terms of the preservation of the trading system itself, if these wider problems were neglected. The implementation of many of the Group's recommendations would require negotiated solutions and it was therefore logical that in Recommendation 13 the Group supported the launching of a new round of negotiations in

GATT. Their proviso, that such negotiations should be directed towards the strengthening of the multilateral system and further opening of world markets, was important. If accepted, it would imply a very different kind of negotiation from any previous round. He concluded by emphasizing that it would be the views of the contracting parties, rather than his opinions, which would determine the report's impact.

Many representatives expressed appreciation to the members of the Study Group for the report, and to the Director-General for his statement. The report was commended for its clarity, precision and brevity, for its central emphasis on the need to combat protectionism and the erosion of the GATT system, and for its stress on the vital importance of open and non-discriminatory trade policies. Many representatives expressed the view that while the ideas contained in the report were not essentially new, the clear, concise and persuasive manner in which they were expressed would help disseminate those ideas effectively to governments and the public. Since their authorities were still studying the report, their comments were preliminary, and they reserved their rights to comment further on the report in the future.

The representative of Canada said that his Government had reacted swiftly and positively to the report. His delegation considered it particularly important that the Director-General had emphasized the need for Ministers to involve themselves in GATT's work. He quoted from a press release issued by Canada's Secretary of State for External Affairs and the Minister for International Trade on 27 March, the day that the report was published. One point made by the two Ministers was that they endorsed Recommendation 13 for a new round of multilateral trade negotiations in GATT.

The representative of New Zealand said that for too long there had been a reluctance to confront and rectify the patent inadequacies of the multilateral trading system, not least the departure from non-discriminatory principles. As the report said, the trade rules were no longer seen as fully effective, nor were they generally obeyed. Countries had abused the system's flexibility and they had found ways to avoid the intent of the rules; in some areas, such as agriculture, contracting parties had ignored the rules from the beginning. The Group's recommendations constituted a direct challenge to all contracting parties which would have to translate them into practical remedial measures.

The representative of Norway said the report brought out the gospel of free trade in clear and simple language. However, in some cases the ideas were over-simplified; hardly anything had been said about the imperfections of international markets and very little, if anything, was mentioned concerning monopolies, dominant positions, cartels and multinational companies. The report's clear free-trade philosophy concerning agriculture seemed somewhat unrealistic; however, a positive feature was the Group's stress that all restrictions affecting access to

markets for agricultural products should be subject to strengthened rules. The Group was right to say that developing countries should be permitted to take advantage of their competitive strengths, rather than be given preferences. Nevertheless, the report went too far in excluding any asymmetry between developed and developing countries. The Generalized System of Preferences and special treatment for developing countries, particularly the least-developed, were an integral part of the GATT system. It was positive that the Group had shown understanding for the need for preferences for the least-developed countries, although it could have been more specific on this point. He said it was remarkable that the Group had not once mentioned UNCTAD, considering there was such a need for cooperation and mutually reinforcing action between the two organizations. Norway strongly supported the Group's call for greater political involvement by Ministers in GATT's work. This could be done as proposed by the Group, by establishing a permanent Ministerial-level body in GATT, or by holding Ministerial-level sessions of the CONTRACTING PARTIES at regular intervals, as was already normal practice in many other organizations.

The representative of the United States said the report was an indictment of protectionism and should be viewed as a package; otherwise it would slowly but surely go nowhere. His delegation found it significant that the seven members of the Group, coming from very different backgrounds, had in Recommendation 13 unanimously called for launching a new round of GATT trade negotiations.

The representative of Japan said that all 15 recommendations in the report deserved careful and serious attention; they were essentially correct, although a certain amount of time would be needed for some of them to be translated into action.

The representative of Sweden said his delegation would like the analysis as well as the recommendations in the report to be considered within GATT, including at the next meeting of the Consultative Group of Eighteen. Sweden agreed with the Group that the solution to present problems must be found within the framework of the multilateral trading system. His authorities fully supported the recommendation for a new round of trade negotiations.

The representative of Finland said that the Consultative Group of Eighteen would be an appropriate place to discuss the report. Special attention should be given to the recommendation for a new round of trade negotiations. Much of the discussion on this issue had so far taken place outside GATT; while this had been both essential and useful, Finland considered that the issues related to the aims and contents of a new round should be settled within GATT.

The representative of Colombia welcomed the Group's analysis of the problems facing developing countries, including the fact that their exports were frequently kept out of the markets of developed countries

through protectionist measures. However, the analysis following Recommendation 15 had omitted the crucial factor of commodity prices and their influence on the trade balances of developing countries; this omission was a serious defect in what was otherwise a good report. The Group's recommendations needed further study, and Colombia believed that the Consultative Group of Eighteen or the Council could be appropriate places to discuss how the recommendations could be put into practice. The recommendation calling for greater participation by Ministers in GATT's work was particularly important. While the ideas in the report might not be new, what would be new would be to implement them.

The representative of Switzerland said a principal merit of the report was that it stressed the fact that the functioning of an open multilateral trading system went beyond the promotion and defence of specific export and import interests. Such a system constituted one of the essential components in a global system of political and economic relations capable of preventing conflict. The report placed international trade relations in a long-term dynamic perspective, and pointed to basic weaknesses in the GATT system as well as to possibilities of extending the system's application to new fields in the future. Switzerland had appreciated the Group's constant concern not to isolate trade from other aspects of economic policy. Even though the Group's focus had sometimes been too narrow, his delegation felt that the report should be an integral element in future GATT discussions, whether in the Council or in other bodies.

The representative of Spain said his delegation particularly agreed with the Group's call for a protection balance sheet, and also with its proposal to set up a permanent Ministerial-level body in GATT. It was regrettable that in Recommendation 2 the Group had not sufficiently taken into account the special characteristics of agriculture. Recommendation 7 contained a series of statements concerning customs unions and free-trade areas which were not fully correct; this subject was complex and should have been analysed in greater depth. He suggested that the report could be examined in greater detail during one of the Council's special meetings.

The representative of India noted that the Director-General had asked for the report on his own responsibility; India considered that the report should be treated in that context. His authorities were still examining the report, and he reserved his delegation's position on its substance.

The representative of Uruguay said the report was useful, especially as far as its comments on protectionism and the weakening of the GATT system were concerned. Certain aspects of the report were a bit simplistic, but perhaps this was unavoidable; for example, the Group had not sufficiently considered some fundamental elements in the situation of developing countries. He agreed that the report should be examined further, either at a special meeting of the Council or in the Consultative Group of Eighteen.

The representative of Chile said it was now up to the contracting parties to follow up on the report. Three aspects of the Group's analysis and conclusions were particularly important; those concerning subsidies, distortions caused by the application of Article XXIV, and the issue of dispute settlement.

The representative of Korea said that while some of the Group's recommendations were not entirely in line with the developing countries' trade interests, the report showed the basic direction that GATT should follow in carrying out its future work, and should be viewed positively. Korea believed that two basic factors had brought about the erosion of m.f.n. principles: the abuse of selectivity and the proliferation of preferential customs union and free-trade arrangements under Article XXIV, and the continuing increase of grey-area and non-tariff measures. In effect, the report was praiseworthy as an anti-protectionist manifesto.

The representative of Jamaica said that there were fundamental similarities as well as differences between this report and the 1958 Haberler Report, which had drawn attention to macro-economic policy measures, had drawn the link between trade and finance, and had addressed the question of commodities, market access for developing countries' exports of tropical products, and the need to moderate agricultural protection in Western Europe and North America. His delegation saw the current report as making a positive contribution towards adopting appropriate trade policy measures in the GATT framework. He stressed the need for consistency and coherence in all the work done in GATT's various bodies, whether the meetings were informal or formal. Jamaica supported in particular the Group's Recommendations 1 (calling for trade policy to be brought into the open and for the protection balance sheet), 8 (calling for transparency and regular surveillance of trade policies and actions), 12 (application of improved and strengthened dispute settlement procedures), and 14 (suggesting that a permanent Minsterial-level body should be established in GATT). However, Recommendations 2 (saying there should be no special treatment for particular countries or commodities as far as agricultural trade was concerned) and 10 (dealing with special treatment for developing countries in GATT) were less than realistic. The report should be discussed further; while this could be done in the Consultative Group of Eighteen, a more representative and transparent forum would be a special Council meeting.

The representative of Yugoslavia said his delegation continued to consider that the 1982 Ministerial Declaration constituted the best possible program for trade policies for a better future.

The representative of Argentina said the report reflected the commitment of the contracting parties towards transparency and an open trading system. It came at a time when a new initiative was needed to combat protectionism. While his delegation had reservations about the

Group's analysis of the situation of developing countries in GATT, Argentina could, in particular, support Recommendation 15 calling for better international coordination of macro-economic policies and greater consistency between trade and financial policies.

The representative of the European Communities said the report did not contain any miracle formula for improving world trade relations. Contracting parties should avoid extracting from the report only those elements they found convenient. If all fifteen recommendations were to be implemented, this could have as yet incalculable consequences on each contracting party's trade policy. The Community's preliminary reaction to the report was that it seemed to constitute a message which was half way between theory and practice, between the academic and the operational, the political and the technical. As a message against protectionism, bilateralism and sectorialism and in favour of joint action, the future would show what contribution the report had made to strengthening the multilateral trading system.

The representative of Brazil said it should be made clear that the report had not been requested by the CONTRACTING PARTIES but rather by the Director-General on his own responsibility. It was regrettable that the report had been made available to the press before being circulated to delegations, and that it had been presented to the World Bank - International Monetary Fund Development Committee before being put before the GATT Council. His delegation also found it peculiar that the report had been published with "GATT" on its front cover, which could give the wrong impression that its contents had been approved by the CONTRACTING PARTIES. Contracting parties should reflect carefully before deciding whether there was any need or justification for the report to be discussed at a special Council meeting or in the Consultative Group of Eighteen. Brazil considered that the 1982 Work Program remained the best guide for GATT's future work. He agreed with those who had said that contracting parties should not make selective use of parts of the report.

The representative of Australia noted that his Minister for Trade had supported the general direction of the Group's recommendations in a press release issued the day after the report was published. His delegation had one preliminary qualification concerning the Group's tendency to rely on so-called improvements to GATT rules in certain of the more difficult areas covered by the recommendations, as distinct from pursuing real trade liberalization solutions. Australia considered the report timely for the purpose of influencing the agenda of a new round of multilateral trade negotiations, which would have to be based on broad support from the contracting parties and which should include items of interest to the developing countries as well as new issues. The follow-up to the report would depend on how contracting parties individually and collectively implemented its recomendations; it would be regrettable if these were not followed for reasons of narrow, sectoral or general domestic interests which were increasingly becoming the dominant influence in formulating domestic industry and international trade policies.

The representative of Egypt endorsed the views expressed by the representative of Brazil. His delegation regretted that there had been no representative of the African continent in the Group and that the report had been published with "GATT" on its cover before being considered by the Council. The unusual procedure followed in this case had created a misleading impression that the contracting parties had been eagerly awaiting advice by a group of independent experts to tell them what needed to be done to improve the world trading system, and that the contracting parties had now given widespread support to the Group's views. Egypt particularly disagreed with the implication in the report that the Generalized System of Preferences and special treatment for developing countries undermined GATT disciplines, when these were in fact integral parts of the GATT system.

The representative of the United Kingdom, on behalf of Hong Kong, said that much of the thinking in the report coincided with Hong Kong's own philosophy. His delegation would have little difficulty in accepting most of the Group's recommendations although some of them, such as those concerning textiles and safeguards, interested Hong Kong more than others. It was not so much the trading system and the GATT itself that were faulty, as the will of contracting parties to observe the rules that was sometimes lacking. If the report could help towards developing such a will, it would certainly serve a useful purpose.

The representative of Indonesia said her authorities were still examining the report, and she reserved her delegation's right to comment on it at a later date.

The representative of the European Communities said that the Community and its member States had always advocated that the Secretariat and the Director-General should assume their responsibilities. The Community felt that the Director-General had in this case taken a valuable initiative, even though it withheld final judgement on the report's substance.

The representative of Peru said the report would be used as a reference document by governments and not by the public sector. In no way would the Group's 15 recommendations prevail over the 1982 Ministerial Work Program, which was not subject to further negotiation. As far as the Group's Recommendation 13 was concerned, developing countries were still reflecting whether a new round of GATT negotiations would be appropriate to their interests.

The representative of Sri Lanka said that the report lacked a certain balance and perspective in its treatment of developing country problems. Referring to the Group's Recommendation 10, he said that special treatment for developing countries had to remain an integral part of the GATT trading system.

The representative of Czechoslovakia said his delegation did not consider it necessary to discuss this report either in the Consultative Group of Eighteen or at one of the Council's special meetings. However, contracting parties could take account of the report when discussing implementation of the 1982 Work Program.

The Director-General said that he would not comment on the details of the interesting and useful discussion of the report during the present meeting. It was not for him to defend an independent report. He had been struck by the fact that it had provoked discussion in the Council not only on what the Group had said but on what it had omitted to say. He believed there had never been any ground for misunderstanding the independent nature of the report, which had been emphasized at every stage in its progress and which appeared clearly in the report itself. The reason for the appearance of "GATT" on the report's cover was that for legal reasons all publications had to mention their publisher on the front cover. Since a number of representatives had reserved their rights to comment further on the report at a later date, it would seem normal that this item should be on the agenda of the next Council meeting.

The Council took note of the statements.

3. Structural Adjustment and Trade Policy

- Statement by the Chairman of the Council

The Chairman recalled that the report of the Working Party on Structural Adjustment and Trade Policy (L/5568) had been discussed on several occasions by the Council and that in 1984 the Canadian delegation had circulated a proposal (C/W/454) containing draft terms of reference for the continuation of work in this field. In November 1984 the Council had agreed (1) to adopt the report of the Working Party, together with the recommendation in paragraph 47 asking relevant GATT bodies to take into account the insights gained and the conclusions reached in the Working Party; (2) that informal consultations should continue on the further work that might be done in this area and on the question of establishing a specific body for that purpose; (3) that the Canadian proposal (C/W/454), and any other proposals received, should be taken into account; and (4) that the Council would revert to this question. Regarding point (1), he said that the Working Party's recommendation was being drawn to the attention of relevant GATT bodies, to ensure that consideration continued to be given to questions relating to structural adjustment and trade policy in the ongoing work of those bodies. Turning to the informal consultations called for by the CONTRACTING PARTIES in November 1984 (L/5757) regarding further work that might be undertaken in this area, he said it appeared that there was no consensus at present on the Canadian proposal but that it remained on the table; that delegations reserved the right to come back to this question; and that it was felt that the Council might address the question of creating a specific body when the relevant GATT bodies had examined questions concerning structural adjustment as they related to their work.

The representative of New Zealand said his delegation was pleased to see this subject on the Council's regular agenda and not treated under "Other Business" as tended to be the case recently in other GATT

bodies. It was important that relevant GATT bodies should take into account the insights gained and the conclusions reached in the Working Party, regardless of any future decision as to establishment of a specific body to continue work in this area. According to the Working Party's report (L/5568, page 44) there was a widespread view that the GATT framework for dealing with trade effects of structural adjustment measures was having diminished effectiveness. He said that the increasing resort to dispute settlement procedures was a concrete indication that existing preventive disciplines were ineffective. This situation underlined the need to examine how to ensure that trading obligations were taken into account at the earliest stage of national adjustment planning. Such a need was recognized in the Study Group's Recommendation 1 (for a protection balance sheet) and 8 (for a surveillance body)[1]. The similarity of problems in safeguards, agriculture, textiles and other sectors emphasized the need for a co-ordinated approach, which his delegation felt could be provided by a working party with clearly defined objectives. If this were not to be done, it was up to the contracting parties working in individual GATT bodies to provide such co-ordination.

The representative of Jamaica supported the statement by New Zealand. He suggested that the microeconomic aspects of structural adjustment be examined, as GATT had so far concentrated on the macroeconomic. Given the rôle of structural adjustment in removing structural rigidities in the markets of a number of major trading partners, it was important that GATT pursue work in this area. While recognition should be given to adjustment assistance measures, the question of structural adjustment was more broad and far more important than that element alone. He said there should be no direct link between work on this matter and progress on safeguards, which warranted its own separate and urgent attention. He asked the Director-General to assist contracting parties in making progress on structural adjustment.

The representative of Chile said his delegation would like to know the effects of the Tokyo Round tariff cuts -- all of which would have been implemented within the next two years -- on the structural adjustment process, and suggested that an assessment of their impact on national economies be made in 1987.

The representative of India recalled that his delegation had supported Canada's proposal (C/W/454) regarding future work on structural adjustment, and had indicated that such work could be given a sharper focus by concentrating on certain sectors in which the lack of adjustment and the presence of structural rigidities had led to problems. This approach could show why and how the autonomous process

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[1] See item 2.

of adjustment had not been allowed to take place, and by so doing, provide the further insight needed for making trade policies more responsive to changes in comparative advantage, and thus for restoring the open multilateral trading system and the application of GATT rules. India believed that this work was of great importance and should not be left on the shelf.

The representative of Australia said his delegation considered that structural adjustment was central to GATT's work and to efforts to liberalize trade. Australia could have supported elements of Canada's proposal to re-establish the working party, on condition that such a body dealt with matters of substance; however, his delegation was concerned that the lack of consensus on the proposal might be based on a reluctance to address substantive matters. Any examination of structural adjustment in GATT should relate to its trade policy aspects and not merely be the subject of a transparency and surveillance exercise.

The representative of Canada reiterated that his delegation had welcomed the Council's decision of November 1984. While no consensus had been reached on its proposal, Canada maintained the view that the Working Party should be reconstituted and was ready to participate in any consultations to bring this about.

The representative of the United States said that this issue was integral to the multilateral trading system. While there was a process of adjustment in all economies, a country could not be expected to shift out of particular areas without the opportunity of gaining in others. The best way to bring about adjustment was through negotiations.

The representative of the European Communities recalled that there had been no consensus in the informal consultations on this matter. It was important that the record show who were not in favour of re-establishing the working party. He referred to a number of GATT bodies which were already dealing with the question of structural adjustment, and said that the Community felt these activities were sufficient for the time being. Any sectoral problems which might exist would come to light in the course of a new round of trade negotiations, should one be held.

The representative of Brazil said that structural adjustment should be given continued attention in GATT, but that any new impetus should be contingent on establishment of a basis for successful work in this area. Concrete measures for trade liberalization might be jeopardized by a lack of progress in this area. He said that work in GATT had had a micro-economic orientation, and that macro-economic questions such as the relationship between structural adjustment and trade policy had been difficult to tackle. A conciliation between the micro-economic and macro-economic approaches should be possible in GATT, and a clear statement of the problems to be addressed could permit trade liberalization without the risk of falling back into grey-area measures due to uncertainty in the field of structural adjustment.

The representative of Norway, on behalf of the Nordic countries, said that structural adjustment should be seen in relation to trade policy and should be a matter of continuous concern to GATT. Referring to the CONTRACTING PARTIES' decision (L/5757) that relevant GATT bodies should take into account the insights gained and conclusions reached in the Working Party, he said that this still remained to be done, and should be the first step of further work on structural adjustment. Discussion in the relevant GATT fora would create a broader basis for a decision on further work, and could help to clarify whether a new separate body was needed for this purpose.

The representative of Switzerland reiterated his delegation's position on this matter. He said that there were a number of different approaches, and at different levels, to structural adjustment, and that all the various aspects of this question should be taken into account. Referring to the CONTRACTING PARTIES' decision to have the relevant GATT bodies discuss this subject, he said it was important to allow enough time to carry out this mandate; in this way, all the comments and proposals made by these bodies could be examined and the necessary decisions taken.

The Council took note of the statements and agreed to revert to the question of further work which might be undertaken in this area, in particular the establishment of a specific body for this purpose, if requested by any delegation.

4. Japan - Measures on imports of leather

- Follow-up on the Panel report (L/5623)

The Chairman recalled that in May 1984 the Council had adopted the Panel report (L/5623) on the complaint by the United States, and in November 1984 and March 1985 had discussed the follow-up to the report.

The representative of the United States said that his authorities had made a thorough evaluation of recent Japanese measures on wet-blue leather, had consulted with the US tanning industry, and did not believe that these measures responded to the Panel's recommendation. He said that frustrations were at a high level in the United States, due to Japan's failure to take steps to conform with the Panel's recommendation, which had been adopted by the Council nearly a year earlier. It was, therefore, essential to have a clear understanding of what would be done on finished leather, and he asked the Japanese delegation to describe the steps that the Government would take in order to bring its practices into conformity with the Panel's recommendation.

The representative of Japan reiterated that his authorities had been making every possible effort to implement the Panel's recommendation and had successfully implemented the measures announced by his delegation when the Panel report had been adopted in May 1984. The elimination of the customs duty on wet-blue grain leather as of 1 April 1985 completed the implementation of all the announced measures.

Japan was well aware of US interests in this matter, and consideration was being given to improving measures on finished leather. He said that the value of Japanese leather imports had nearly doubled in 1984 compared to 1983.

The representative of Uruguay agreed with the United States that the measures adopted by Japan did not satisfy the Panel's recommendation on this matter. His Government wanted to know when and how the quotas were to be eliminated, particularly for finished leathers.

The representative of the European Communities noted that the Community also was a leather exporter and would like to be informed of Japan's implementation of the Panel's recommendation.

The representative of Argentina supported the statements by Uruguay and the European Communities.

The representative of Japan said that his authorities were studying possible improved measures for finished leathers, but he could not indicate when or how such improvements would be effected.

The representative of the United States asked whether, given the efforts the Japanese had said they were making, Japan would make an announcement at the next Council meeting.

The representative of Japan said that he understood the importance the United States attached to the time element, but that he was unfortunately not in a position to say that Japan would announce new measures at the next Council meeting.

The representative of the United States asked that this item be on the agenda of the next Council meeting.

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

5. India - Auxiliary duty of customs

- Request for extension of waiver (L/5780 and Add.1, C/W/463)

The Chairman recalled that by the Decision of 15 November 1973, the CONTRACTING PARTIES had waived application of the provisions of Article II of the General Agreement to the extent necessary to enable the Government of India to apply its auxiliary duty of customs on certain items included in its Schedule XII. The waiver, which had been extended a number of times, had expired on 31 March 1985. On 12 March 1985, the Council had considered a communication from India (L/5780) on this matter and had agreed to revert to this matter at the present meeting. Subsequently, the delegation of India had submitted a request for a further extension of the waiver (L/5780/Add.1).

The representative of India recalled his delegation's statement at the last Council meeting that India might have to seek approval from the Council for an extension of the waiver for a further period beyond 31 March 1985. He then drew attention to L/5780/Add.1 whereby his Government had notified that it was obliged to continue the auxiliary duty of customs at the existing rates for a further period of one year, i.e., until 31 March 1986. He pointed out that while his country's budget deficit had necessitated some increase in the auxiliary customs duties on several items, there had been no increase proposed for GATT-bound items. His delegation considered that the continuation of these duties would have no adverse effect on imports of these items within the framework of India's GATT obligations. The auxiliary duties were being continued as a revenue measure and not as a protectionist measure designed to restrict imports. He reiterated that India was ready to consult with any contracting party which might consider that application of the auxiliary duties was seriously damaging or imminently threatened its trade interests. He urged that the measure be viewed in the larger context of India's overall fiscal policy and conscious efforts to improve and streamline its import policy. He expressed confidence that, in view of these circumstances, the Council would consider the present proposal with the same understanding as had been shown so far and would approve the requested extension.

The Chairman drew attention to the text of the draft decision in C/W/463.

The representative of the United States said his delegation had hoped that India's auxiliary duty would not be continued, but appreciated India's readiness to follow GATT rules. The United States was willing to grant the requested waiver for one more year.

The Council took note of the statements, approved the text of the draft decision extending the waiver until 31 March 1986, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

6. Committee on Balance-of-Payments Restrictions

(a) Consultation with Pakistan (BOP/R/150)

Mr. Girard (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, noted that consultations under simplified procedures had been held with Pakistan in March 1985. The Committee had decided that full consultations were not necessary and had recommended to the Council that Pakistan be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1985.

The Council took note of the statement, adopted the Committee's report (BOP/R/150), and agreed that Pakistan be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled its obligations under Article XVIII:12(b) for 1985.

(b) Note on the meeting held on 22 March 1985 (BOP/R/151)

Mr. Girard drew the Council's attention to the main points of the report (BOP/R/151) on the Committee's meeting in March 1985, viz: Israel had submitted a notification concerning the replacement of temporary import restrictions on luxury goods by a degressive import deposit; the schedule of consultations for the October 1985 meeting would comprise full consultations with Portugal and simplified consultations with Egypt, Sri Lanka and Turkey; at the December 1985 meeting, full consultations were planned with Argentina, Colombia, Israel and the Philippines, and simplified consultations with Brazil, Ghana, Peru and Tunisia. The Secretariat had been requested to follow up on countries identified by the Group on Quantitative Restrictions and Other Non-Tariff Measures to have invoked balance-of-payments reasons for import restrictions.

The Council took note of the statement and of document BOP/R/151.

(c) Report by the Chairman of the Committee on consultations concerning proposals by Chile and Colombia (C/132)

The Chairman recalled that in November 1984 the Council had agreed that the Chairman of the Committee on Balance-of-Payments Restrictions would hold consultations concerning the proposals by Chile and Colombia. At the Council meeting on 12 March 1985, the Chairman of the Committee had made some personal observations on the consultations which he had held, pending circulation of his full report, and the Council had discussed this matter. The full report by the Chairman of the Committee had subsequently been circulated as document C/132.

The representative of Chile expressed satisfaction that Chile's initiative had been accepted. Her delegation considered that pre-consultations should be carried out within the Committee as foreseen in Articles XII:4(a) and XVIII:12(a). The consultations had confirmed that the Committee's present mandate enabled it to carry out pre-consultations. The preventive method suggested by Chile corresponded to the need to ensure that adjustments for balance-of-payments reasons were not carried out by means of import restrictions.

The representative of Colombia said that his country's proposal had not been fully considered in the consultations, as it went beyond the Committee's scope. The Study Group's report (Recommendation 8)[1] embodied the idea proposed by Colombia, namely, that there should be greater transparency in the trade policies of all contracting parties,

[1] See item 2.

particularly in those of the more developed contracting parties as these countries did not consult in the Committee. His delegation reserved the right, when the Study Group's recommendations were considered, to revert to its own proposal and to Recommendation 8.

The representative of Jamaica referred to the Brazilian proposal and said that despite Brazil's efforts, there had been no progress in solving the problems to which it was addressed. As the Chilean proposal seemed to have secured a broader range of consensus, he hoped this would lead to positive and concrete results for those countries with balance-of-payments problems. He referred to specific suggestions in paragraphs 2 and 3 of C/132 regarding possible measures to help countries to deal with balance-of-payments problems, and said there seemed to be less than full consensus on these points. He hoped that this would not be the spirit in which the proposal would be implemented.

The Council took note of the statements and of document C/132.

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

- Panel report (L/5778)

The Chairman recalled that in March 1982 the Council had established a panel to examine the complaint by the United States. At its meeting in March 1985, the Council had considered the Panel's report (L/5778), and had agreed to revert to this item at its next meeting.

The representative of the United States said that the Panel had considered a number of legal and factual issues relating to four different products and had unanimously recommended, with respect to three of the products, that the Community find a way to restore the competitive conditions derived from certain tariff concessions. The United States hoped that the Community would implement the Panel's recommendation, and urged the Council to adopt the report and to restore faith in the GATT dispute settlement process. He recalled his delegation's view, expressed at the last Council meeting, that the Panel should have concluded that the Community's scheme nullified or impaired tariff concessions on dried grapes; the United States was disappointed with that aspect of the report. Nonetheless, the United States was willing to accept the report as it addressed the conditions of competition for US canned fruit exporters, reaffirmed some well-established legal precedents and clarified important principles. Specifically, the Panel had reaffirmed that nullification or impairment of a tariff concession arose where the competitive position of an imported product was upset as a result of any subsequent domestic measure (in this case production subsidies) which could not have reasonably been anticipated when the tariff concession on that imported product was negotiated (paragraph 50); the Panel had recognized that a party need not have initial negotiating rights on that product to bring a subsequent GATT complaint (paragraph 45); the Panel had also

recognized that benefits accruing from bound tariff concessions under Article II also encompassed "future trading opportunities" (paragraph 77) in order that a GATT complaint could be brought before damage was done; and the Panel had concluded that the opening of Article XXIV:6 negotiations on the Community's enlargement could not curtail the rights of other contracting parties to invoke existing tariff bindings and resort to Article XXIII (paragraph 46). These were significant findings based on sound reasoning and established principles. The United States had hoped that bilateral consultations would yield an economic solution to this dispute, and appreciated the Community's willingness in this case to pursue such consultations. It was also hoped that after adoption of the report, discussion could continue with the Community on ways and means to restore the value of tariff concessions. He recalled that the Director-General had pointed out that adoption of panel reports should not preclude efforts at an amicable solution, and urged the Council to follow established GATT practice and to adopt the report at the present meeting.

The representative of the European Communities said that while the Panel had done its best to deal with every aspect of the issue before it, the Community had severe problems with some of the Panel's conclusions. He said that great care should be taken, with regard not only to the practical matters resolved by a panel, but also to the precedents which might be created. The Panel had, for the first time, interpreted the conclusions of the 1955 Working Party[1] concerning the relationship between tariff concessions and domestic subsidies, but had not taken sufficient account of the Subsidies and Countervailing Measures Code which had been subsequently negotiated and to which both parties in this dispute were signatories. In effect, the Panel had determined that it was unnecessary to take into consideration the unfavourable effects on trade under Article 8 of that Code. This had led to the belief, as evidenced by the US position, that any subsidy could endanger a tariff concession. Such was not the meaning of the 1955 text, and the Community was concerned that the Panel's results might be interpreted in this way. Regarding dried grapes, the Community accepted the factual conclusions, but felt that even here, the logic applied might set a regrettable precedent; the meaning of the 1955 text was to protect tariff concessions, and, in this case, the Community contested that Greece had granted a tariff concession on this product.

The representative of the United States said that the Community had added nothing new to its arguments; it had made the same points to the Panel, which had fully considered them. He repeated that it was established GATT practice to give great weight to a panel's findings and

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[1] BISD 3S/222

to adopt its report. It was not for the Council to do the Panel's work. Were this to be the case, there would be no need for panels, and every case would be argued in detail before the Council.

The representative of the European Communities said that the Council's rôle was to debate on a panel's report and then to decide on appropriate recommendations and conclusions. It was not a matter of a simple yes or no answer, due to the precedents which might be set. Individual contracting parties must be informed of the dimensions of the problem and be fully aware of the importance of their decisions, before participating in a collective decision. So far, the Community had not completed its evaluation of the consequences of the Panel's findings and conclusions.

The representative of the United States said that the report had been ready since July 1984 and did not establish any new precedents. He asked the Community if, having argued its case a number of times, it was now prepared to have the Council adopt the report.

The representative of the European Communities said that the Community could not, at this stage, take a position. He said that this was not a delaying tactic; the Community needed more time to study this matter and suggested that its consideration by the Council be postponed so that his delegation could come back to the Council with an appropriate position.

The representative of the United States said that his Government pursued cases such as this one in GATT, so as to counter very heavy domestic pressure for taking more severe action. Yet with regard to agricultural disputes involving the Community, the dispute settlement process did not seem to exist. There was bound to be an adverse reaction from the US Congress.

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

8. European Economic Community - Tariff treatment on imports of citrus products from certain countries in the Mediterranean region

- Panel report (L/5776, C/W/462, C/W/465, C/W/468)

The Chairman recalled that in November 1982 the Council had established a panel to examine the complaint by the United States. At its meeting in March 1985, the Council had considered the Panel's report (L/5776) and had agreed to revert to this item at its next meeting. He drew attention to two documents which had been circulated at the request of the European Community (C/W/462) and the United States (C/W/465).

The representative of the European Communities said the US paper (C/W/465) seemed to be aimed at convincing the Community that its concerns over the Panel's report were not justified, and he recalled the

basis of these concerns. Both common sense and GATT law indicated that if preferences were allowed by GATT, as they were under Article XXIV, the Enabling Clause (BISD 26S/203) or Article I, it was not possible that compensation should at the same time be required for these preferences. For that reason, the possible application of Article XXIII:1(b) to the Community's Agreements with the Mediterranean countries could lead to contradictions. He reiterated that in applying this Article to agreements examined under Article XXIV, the Panel had opened a Pandora's box of potential complaints for a whole series of preferences which conformed with the General Agreement. The United States, in indicating its willingness to accept that the Council merely take note of the report if the Community agreed to implement "an economic solution to an economic problem", seemed to be suggesting that the Community grant concessions free of charge without being legally required to do so.

The representative of the United States said that the Community was, in fact, putting Article XXIV on a higher plane than Article XXIII. He repeated that the Panel's recommendation redressed the real harm to US exports of oranges and lemons without affecting the Community's preferential arrangements as a whole, and that acceptance of the recommendation would result in reducing duties on these products for the Mediterranean countries as well as for the United States. While the Study Group's report[1] had viewed the issue of regional agreements in a broader perspective, and had found that the exceptions and ambiguities tolerated in the past had weakened the trade rules and made dispute settlement difficult, the Panel report had essentially skirted the difficult issue and had tried to find a pragmatic solution. The most difficult aspect of this case was the notion of refusing to make concessions free of charge, and the protective attitude behind it. This case appeared to be yet another in the long series of agricultural disputes between the United States and the Community in which the Community refused to accept panel findings.

The representative of the European Communities said that the United States should not forget that all these agreements included a political dimension. The citrus preferences were but one element in a very delicate structure; tampering with one of these elements might upset the entire structure. The United States had suggested that an m.f.n. reduction, even if the percentage margin of preference was not touched, would be welcomed by the preference receiving country. In fact, however, such a reduction did have an effect on a country's preferential trade, as had been stated by the beneficiary countries. In fact, even if the preferential margin was not reduced, the level of the m.f.n. duty had an impact on the trade of the preference receiving country: the

[1] See item 2.

lower the m.f.n. rate, the more the export trade to the Community would be affected. He reiterated that the Community was merely trying to protect the common interest of all the associated countries. Perhaps the concept of concessions free of charge had been misunderstood; the Community had meant that it could not grant concessions without reciprocity, as this might harm the interests of its preferential partners.

The representative of Austria, on behalf of the EFTA countries[1], said that several legal aspects of the Panel's report were of paramount importance to those countries. Under Article XXIV, an agreement should be examined as a whole and not on the basis of individual products included in it. The Panel had correctly decided that a judgement on the GATT compatibility of the Agreements was outside its purview. He said that care should be taken in any follow-up of the report, that legal reasonings were not endorsed which would create an unacceptable precedent on the legal status of agreements under Article XXIV. Regarding Article XXIII:1(b), its essential characteristic was that it had hitherto been applied only to cases involving issues under Article II. In the case at hand, which related to Article I, the Panel itself had selected as criteria certain characteristics of the Mediterranean agreements under Article XXIV. The discussion so far had indicated there was no consensus on these criteria. Both Articles XXIII and XXIV aimed at maintaining a balance of rights and obligations as between contracting parties, and both contained procedural provisions. The procedure under Article XXIII aimed directly at reaching satisfactory adjustments with respect to an injured party, whilst Article XXIV dealt with agreements in their entirety. Given the danger of collision of these two approaches, a clear line of demarcation should be drawn by the CONTRACTING PARTIES. The EFTA countries suggested that the Council proceed in the following manner: take note of the report; examine, in the context of ongoing efforts to improve the GATT dispute settlement procedures, issues such as the relationship between Articles XXIII and XXIV (the EFTA countries intended to present at a later stage specific proposals in this respect); examine the possible modalities for preferential arrangements between developed and developing countries, in particular Articles XXIV, XXV, Part IV and other GATT provisions (the EFTA countries would submit proposals in this regard as well); and ask the parties to the dispute to continue discussions aimed at a mutually satisfactory solution.

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[1]The text of the statement by the representative of Austria was subsequently circulated, at the request of that delegation, to contracting parties in C/W/468.

The representative of Spain said that the preferences granted to the Mediterranean countries on citrus products were part of a much larger agreement with concessions on both sides; the present balance should not be upset by a unilateral measure. His delegation considered that the Community was wise in not accepting the Panel's recommendation. Contrary to the US contention, implementation of the recommendation would compel modification of the Agreements and would probably necessitate renegotiation of all of them. It was not true, as the United States had said in C/W/465, that a decrease in the Community's tariffs on citrus products would not affect the Mediterranean countries' preferences; this would totally modify the general structure of the negotiated preferences. He reiterated that the Panel's conclusions went against the legal assurances provided for agreements under Article XXIV, and that there had been an error in the procedure followed by the Panel. He pointed out that Spain supplied 45 per cent of the Community's total orange imports and 66 per cent of its lemon imports. He said that the Panel should have examined all the factors which bore on US competitiveness in these products, such as freight, packaging and supply, and not merely tariff duties. He drew attention to certain statistical information in the report which, in his view, was of no value. He considered that, as the EFTA countries had suggested, the only solution was for the Council to take note of the report. His delegation might comment on the other EFTA proposals at a later date.

The representative of the United Kingdom, on behalf of Hong Kong, noted that the United States had not ignored the Pacific markets for citrus products. For example, Hong Kong had imported over 113,000 tonnes of fresh oranges in 1984, of which 90 per cent had come from the United States; however this did not detract from the right of the United States to seek improved access to the European market. Hong Kong's interest in this case was based on its concern for the integrity of GATT's dispute settlement mechanism, in which the panel procedure was the principal element. No effort should be spared to arrive at an equitable settlement of any dispute, but great care had to be taken to avoid undermining the mechanism itself by failure to adopt panel reports or by undue delay in doing so. Such a practice could destroy GATT's efficacy and credibility.

The representative of Turkey recalled that at the most recent Council meeting his delegation had expressed the reasons for its rejection of some of the arguments and conclusions in the Panel's report. Turkey felt that the report should not be adopted. As the Panel's recommendation rested on faulty ground, Turkey could not accept that it be implemented, even without adoption of the report. Such implementation would result in a modification of the Agreements for which, at the time they were concluded, the CONTRACTING PARTIES had made no recommendation for modification. His delegation was not in a position to express a firm view on the EFTA proposals, but hoped that the Council could revert to these at some future time.

The representative of Chile, referring to paragraph 1 of the Community's document (C/W/462), said that the Panel had simply noted that no free-trade area or customs union existed as yet between the Community and the Mediterranean countries. Article XXIV permitted discrimination against third countries when a free-trade area or customs union was in formation, but the CONTRACTING PARTIES could take action against the negative impact of preferences granted under such conditions when the final aim had not been achieved. Therefore, it was reasonable and equitable that the CONTRACTING PARTIES recommend compensation for any trade prejudice which could be proven to result from such preferences. Regarding paragraph 2 of C/W/462, there had been no consensus on the GATT compatability of the Agreements. Chile, among other countries, had had reservations and doubts, and had reserved its rights when the Agreements were examined. She reiterated her Government's position, as stated to the Panel, that the preferences to the Mediterranean countries came under Part IV, but that neither Part IV nor the Enabling Clause permitted a developed country to discriminate between beneficiary developing countries, with the exception of the least-developed countries. With regard to the alleged conflict and uncertainty which the Panel report would create, this situation already existed for the Mediterranean countries, as no free-trade area or customs union had been established. The report would have no impact on agreements which had been granted waivers under Article XXV or the Generalized System of Preferences. She reiterated Chile's support for adoption of the report and, in particular, its conclusions.

The representative of Egypt reiterated his delegation's statement at the most recent Council meeting, in particular, the view that the Panel's work was incomplete. Referring to Paragraph 5.3 of the report, he said it was unacceptable for the Panel to have concluded that a reduction of the Community's m.f.n. tariff rates on fresh oranges and lemons would be in the interest of all parties concerned. By adopting the report, the CONTRACTING PARTIES would be accepting the principle that a third country could require modification of a preferential agreement without consulting with the preference recipient. Egypt felt that the EFTA proposals on this matter warranted consideration by the Council.

The representative of Tunisia said his delegation was pleased at the evolution of the US position in this matter and its pragmatic proposal that the Council take note of the report. However, he reiterated that the United States was forgetting that these Agreements were a structure composed of a number of inter-dependent elements, of which the economic aspect was particularly important; in this regard, Tunisia supported the statement by the representative of the European Communities.

The representative of Peru said that the Council should continue to reflect on the legal consequences of the Panel's report. Any solution reached should not erode the Generalized System of Preferences, which was fundamental to the functioning of the General Agreement.

The representative of Israel recalled that at the most recent Council meeting, he had expressed doubts concerning certain of the Panel's interpretations and conclusions and had stressed that Israel's main preoccupation was of a procedural nature: namely, the Panel's failure to submit the descriptive part of its report to all the parties concerned, which the Council had interpreted to mean, in this case, all the Mediterranean countries including Israel. As a result, certain important factual aspects of Israel's agreement with the Community had not been reported in a correct and even-handed manner. For example, the part of the report which reviewed the agreements of the Community currently in force, had omitted any mention of the 1975 Agreement with Israel, which formed the basis of the Community's tariff treatment accorded to citrus from Israel. Furthermore, the report had failed to mention that after examination in accordance with Article XXIV, the CONTRACTING PARTIES had made no recommendation, as provided for in paragraph XXIV:7(b) -- an essential fact to appreciate the legal situation with reference to the provisions of the General Agreement concerning free trade areas. Had the Panel sought Israel's comments on the descriptive part of the report, as it was required to do, its conclusions might have been completely different. He reiterated his delegation's attachment to the principles of free trade as embodied in the General Agreement. The integrity of the dispute settlement mechanism was an important part of this framework, but it was essential that the procedures, as laid down in the 1979 Understanding[1], be strictly followed.

The representative of Yugoslavia maintained the position, taken at the most recent Council meeting, that the Panel's conclusions and recommendation were not legally justified. Her delegation felt that the EFTA proposals needed time to be studied and should be taken up at the next Council meeting.

The representative of Brazil reiterated his delegation's support for adoption of the Panel's report and for its conclusions and recommendation. Nevertheless, his delegation did not agree that, had the CONTRACTING PARTIES found that an agreement was in conformity with Article XXIV, its implementation could no longer be considered as nullifying or impairing benefits under the General Agreement. In fact, Article XXIII:1(b) stated that any contracting party had the right to complain against nullification or impairment stemming from another contracting party's measure, whether or not it conflicted with the provisions of the General Agreement. Furthermore, the Community's Agreements in the present case remained in a sort of juridical limbo vis-à-vis the GATT, as long as the CONTRACTING PARTIES had not established their GATT conformity; thus, Article XXIII provisions were applicable in this case. The Panel was correct in basing its recommendation on the trade effects of the Community's Mediterranean Agreements.

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[1] 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

The representative of Argentina said that more time was needed for further reflection on the report. His authorities agreed with the Panel's conclusions in paragraphs 4.10 and 4.15 that the CONTRACTING PARTIES had not taken a specific decision on the Community's Agreements under Article XXIV.

The representative of Morocco, speaking as an observer, supported the statements by Spain and Tunisia that these Agreements constituted a whole from the trade, political and historical points of view. He agreed with the Community's position that the Mediterranean countries concerned should continue to receive the preferences granted within this larger context.

The representative of the United States said it seemed that the major point being argued was that a margin of preference was more important than major GATT principles, and that Article XXIV was supreme over Article XXIII. The concern expressed by many contracting parties over this case showed how serious this matter was, not only for the viability of the dispute settlement process but also for the survival of the multilateral system. Referring to the suggestion made by Austria on behalf of the EFTA countries, he said that if the Community was prepared to offer a practical solution to an economic problem, the United States would be willing to hold bilateral consultations with a view to resolving this matter prior to the next Council meeting. However, the Community's position thus far did not augur well for such consultations. Regarding the broader issue of the treatment of preferential arrangements in GATT, the United States agreed that examination of Article XXIV and other relevant provisions could be useful, especially if it included all aspects of Article XXIV; the United States did not believe, however, that Article XXIII rights should be limited in the process. Moreover, it would not be easier to address the issues raised by preference agreements in the abstract, when these issues had not yet been dealt with in the specific case at hand. Referring to the status of several of the agricultural trade disputes brought against the Community by the United States in recent years, he said that his delegation was skeptical about the EFTA proposal leading to any practical solution.

The representative of the European Communities said that this case involved the Community's responsibility and respect for negotiated commitments. The Council should not ignore the political and legal security obtained from the framework of the Community's Agreements with the Mediterranean countries. There was nothing in the dispute settlement procedures that stipulated automatic adoption of a panel report; time was necessary for sufficient reflection on the decision to be taken. Also, a panel's conclusions and recommendations were not undisputed facts, and mistakes were possible. He asked the Secretariat whether there were any precedents for the Council's rejection of a panel report, as the Community did not exclude such an outcome. As for the proposal by the EFTA countries, it would be helpful to know what specific proposals they intended to make. Regarding continued discussions between the United States and the Community, he said that these had never stopped, with the aim of arriving at a mutually

satisfactory solution. Due to the considerable impact that this matter might have, the Community was prepared to consider participating in all the suggestions made in the EFTA proposal, on the condition that all contracting parties contributed.

The representative of the United States, referring again to three other panel reports which the Community had not accepted, said this was not an isolated case. He did not see how consultations with the Community on this issue could continue when they had never even begun. On the one hand, the Community had claimed it was acting in the interest of its preference countries, while on the other, it was telling the United States that it was futile to pursue this case. In fact, his delegation was trying to avoid more drastic action, while conscious of the growing view in the United States that the GATT dispute settlement process vis-à-vis the Community was no longer credible. He emphasized that there were other remedies available in the United States.

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

9. Committee on Budget, Finance and Administration

(a) Membership

(b) Designation of new Chairman

The Council agreed to revert to this item at its next meeting to permit more time for consultations.

10. Improvement of world trade relations through the implementation of the GATT Work Program

The representative of India, speaking under "Other Business" on behalf of developing contracting parties, said they wanted to reiterate the statement (L/5744) made on their behalf at the CONTRACTING PARTIES' session in November 1984. He noted that this statement had been submitted for consideration by the Consultative Group of Eighteen at its meeting in February 1985, but that unfortunately there had been no full discussion of the issues raised. Events subsequent to the November session had confirmed the developing contracting parties' conviction that those issues remained equally valid at present. He also recalled that the communiqué of the Ministers of the Intergovernmental Group of Twenty-Four, issued on 16 April 1985 in Washington, had restated the position as contained in L/5744. At a time when various solutions were being suggested in different bodies to tackle the problems confronting the multilateral trading system, it was pertinent to recall L/5744 which contained both a diagnosis of and a prescription for these problems. The statement clearly expressed the perceptions of developing countries on the question of improvement of world trade relations, the nature and pace of implemention of the 1982 Ministerial Work Program and the need for genuine implementation of past commitments, including those undertaken by contracting parties at the 1982 Ministerial meeting.

The representative of the European Communities welcomed the reference by the representative of India to L/5744 and the opportunity to discuss this document. This would initiate the process of discussion on a new round of multilateral trade negotiations in the appropriate GATT forum. He said, however, that there could be no group negotiation in GATT: rights and obligations were accepted by, and trade concessions and benefits were exchanged by, individual contracting parties, except in the case of the Community, which was an organic institutional entity. Paragraph 5 of L/5744 contained a number of considerations which could well be the Community's own. The achievement of genuine trade liberalization was a collective task which had to be carried out by all contracting parties, and was not a North-South issue. He recalled that the resolution of the Community's Council of Ministers on 19 March 1985 had clearly set out the Community's position on holding a new round of multilateral trade negotiations. The central theme of that resolution was that a new round should help to promote world economic recovery and growth, and would reinforce GATT's multilateral structures and disciplines. The Community was ready to participate in launching such a round, subject to reaching an adequate degree of prior international consensus on objectives, participation and timing. The resolution had enumerated a number of collective moves needed within the GATT framework in order to make preparations for a new round credible, for example, to halt protectionism effectively, to progressively dismantle trade restrictions as economic recovery proceeded, and to continue implementing the 1982 Ministerial Work Program. Since many present problems had their roots in financial, monetary and even social factors, it would be dangerous to have the illusion that trade liberalization alone could be a panacea for all economic ills. Therefore, there was an objective need for improvement in financial areas as well as in the international monetary system; otherwise, trade concessions would be meaningless. Among the subjects which could be negotiated in a new round, there would certainly be many traditional ones such as agriculture (on the understanding that no contracting party would negotiate a renunciation of its own policies), as well as new subjects. But there was something more fundamental than the negotiation of trade concessions. In the present malaise, the spirit of GATT was violated within the letter of the law: the delicate balance between rights and obligations had over the years become distorted; so too had the balance of advantages gained from the GATT system. If a new balance was to be established, so as to contain trade tension, the burden of adjustment would have to be shared by all. The case of Japan merited special attention; Japan had benefited more than most countries from the open trading system but still maintained an extremely low propensity to import goods, especially manufactured goods. This imbalance would have to be redressed if future negotiations were to succeed. Turning to the participation of developing countries, the Community recognized the severe problems which they faced, such as indebtedness, high interest rates and reduced financial movements to the third world. He mentioned the special case of India in relation to its recent efforts towards trade liberalization and the subsequent growth of its trade deficit. It

was now in India's interest to actively participate in work towards a new round as further import liberalization would depend on growth of exports through greater access to world markets. The Community had noticed a reticence among the developing countries to begin a new round, and wanted to convince them, in part through visits by Community officials, that it would be to their benefit to hold such a round, which would have to have as its essential aims the strengthening of the multilateral trading system, expansion of international trade and more open world markets.

The representative of Brazil supported the statement by India and quoted several paragraphs concerning trade from the communiqué of the Intergovernmental Group of Twenty-Four. He added that the position held by developing contracting parties in L/5744, which had been reiterated by their Ministers of Finance in the Group of Twenty-Four, was clearly one of taking the initiative of proposing trade liberalization through negotiations on matters which fell within the purview of the General Agreement. The examination of any other proposal for negotiations that might be presented in GATT would have to be carried out together with, and in the light of, what the developing countries had taken the lead to suggest. Furthermore, in so far as such proposals might contain matters not foreseen in the General Agreement, careful consideration would be required beforehand regarding their legal implications and the rights and obligations of all contracting parties.

The representative of Austria considered that an important subject such as a new round of multilateral trade negotiations should be discussed not only in other organizations, but principally in GATT, and as a full item on the Council agenda rather than under "Other Business". His delegation therefore proposed that the agenda for the next Council meeting include an item dealing with recent developments in international trade and their consequences for GATT.

The representative of the United States wondered how helpful it was to refer to documents and decisions adopted outside GATT. There had been a useful discussion on the prospects for a new round at the meeting of the Consultative Group of Eighteen in February 1985, and the time had now come to talk about the objectives, modalities and timetable of a new round. This was why the United States had proposed a high-level meeting of senior officials in July 1985 so that each contracting party could examine the issues to be included in a new round. He supported the suggestion by Austria concerning the agenda for the next Council meeting.

The representative of Japan supported the statement by Austria. Japan continued to believe that a new round should be launched as soon as possible, aimed at re-establishing the multilateral trading system, improving the trade environment of developing countries, and adapting GATT to changing economic and trade structures. In view of increasing protectionist pressures, Japan considered that a high-level

meeting should be held, if possible, in July 1985, and that the negotiations should begin in early 1986. A maximum number of developed and developing countries should participate in the new round, and the items to be negotiated should be agreed by consensus during the preparatory process. This process would include actively promoting the 1982 Ministerial Work Program. For its part, Japan was prepared to bear its responsibilities in strengthening the open trading system. Referring to the statement by the European Communities, he said Japan considered that a balance between contracting parties had been achieved in past rounds of multilateral trade negotiations. However, following those rounds, differing levels of structural adjustment had led to differing competitive relationships between the trading partners.

The representative of Egypt supported the statements by India and Brazil. His delegation considered it would be premature to talk of a new round so long as the 1982 Work Program and the unfinished business from the Tokyo Round were not completed.

The representative of Switzerland said a major theme common to all the statements made on this subject, and under Item 2 (the report of the Study Group), was that world trade relations had to be improved. He supported the proposal by the representative of Austria.

The representative of Jamaica supported the statements by India and Austria. He considered it was useful to refer to decisions taken on trade matters by other organizations, and quoted from the communiqué of the OECD Ministerial meeting adopted on 12 April 1985, which he said included some confidence-building steps as called for by developing countries. He added that Jamaica, along with some other contracting parties, continued to believe that trade liberalization did not offer the only solutions to problems faced by developing countries, and that parallel action was required in the monetary and financial fields. His delegation considered that a session of the CONTRACTING PARTIES would be necessary to lauch a new round, which would have to be based on consensus among all the contracting parties.

The representative of Yugoslavia supported the statement by India, and proposed adding the status of implementation of the Ministerial Work Program to the the item suggested by Austria for the next Council meeting.

The representative of Sweden, on behalf of the Nordic countries, endorsed the statement by the representative of Austria.

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

11. Further opening of the Japanese market (L/5795)

The representative of Japan, speaking under "Other Business", informed the Council of the external economic measures announced by his Government on 9 April 1985 (L/5795); these consisted of the preparation of the Medium-term Action Program, and immediate measures and policy programs. He said that Japan had already implemented unilaterally a series of economic measures which had made the openness of the Japanese market comparable to that of any other country. The recent import promotion measures had been taken so that Japan could play a more active rôle in maintaining and strengthening the free trading system. He outlined some of the salient features of the external economic measures, which were aimed at promoting harmonious external economic relations and at revitalizing the world economy. Such measures, coupled with corresponding efforts on the part of exporting partners, would be conducive to tangible results which would benefit countries all over the world.

Many representatives welcomed the measures announced by the representative of Japan.

The representative of the European Communities said that although the effects of the Japanese measures were as yet uncertain, these announcements were encouraging. He called on the Government of Japan to continue its efforts since there was still a long way to go.

The representative of the United States hoped that the contracting parties could build upon the Japanese measures and make a better system for global trade. His delegation recognized the difficulty involved in taking such measures; however, the problem had not disappeared. The United States was prepared to continue negotiations with a view to achieving concrete results.

The representative of Yugoslavia reminded Japan of her delegation's proposal in its Part IV consultations with Japan and said that her country awaited a positive response to that proposal.

The representative of Jamaica said that L/5795 was an improvement in the transparent approach in the trading system and would be studied closely in his capital. The unilateral trade liberalization measures announced by Japan demonstrated that a round of multilateral negotiations was not necessary for major developed countries to take unilateral measures to improve the developing countries' economies. He asked for clarification of the measures to be taken in the electronics sector. Regarding the link between trade and finance referred to in L/5795, he recalled that export credits for capital goods being examined in GATT were included in the 1982 Ministerial Work Program.

The representative of Korea said that trade liberalization should not be the result of pressure from a particular country on specific products. He asked Japan to see what could be done for Korea's and other countries' exports. Korea and Japan were neighbours, and as such it was important that they have more balanced trade relations.

The representative of Malaysia hoped that the Japanese efforts to liberalize imports would also benefit developing countries, and recalled that his delegation had urged Japan, at the most recent meeting of the Committee on Trade and Development, to take further measures to help these countries.

The representative of the Philippines hoped that any further announcements by Japan regarding trade liberalizaion would also be responsive to the interests of its neighbours to the south.

The representative of the European Communities, referring to the statement by Jamaica, said that measures taken autonomously by the large trading partners could not, in fact, replace multilateral trade negotiations, and he gave examples, such as tariff bindings, of the benefits accruing from participation in such negotiations. In this context, he drew attention to the relevance of the Study Group's Recommendation 13 for a new round of multilateral trade negotiations.[1]

The representative of Thailand supported the statements by Yugoslavia, Korea, Malaysia and the Philippines.

The representative of Indonesia supported the statements by the ASEAN countries, Korea and Yugoslavia, asking Japan to take account of developing country trade problems when considering future trade liberalization measures. He expressed satisfaction that the measures announced by Japan had included hardwood and softwood.

The representative of Jamaica said that autonomous trade liberalization did not rule out multilateral trade negotiations for the same purpose. He saw a link, rather than a contradiction, between completion of the Work Program and a new round of negotiations.

The Council took note of the statements.

12. Agreement between Israel and the United States

The representative of Israel, speaking under "Other Business", said that on 22 April 1985 his country and the United States had signed an agreement establishing a free-trade area between them. The Agreement would enter into force subject to completion of domestic legal procedures by the two signatories. The US Administration had submitted the Agreement to Congress for ratification. Israel had approved the Agreement on 21 April 1985. He recalled that by their Decision of 25 October 1972 (BISD 19S/13), the CONTRACTING PARTIES required parties

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[1] See Item 2.

signing such agreements -- which complied with the provisions of Article XXIV -- to inscribe them on the Council agenda as soon as possible. The United States and Israel intended to do this at a future Council meeting when they would provide details of this Agreement.

The representative of the United States supported the statement by Israel. He hoped that the intended compliance by Israel and his country with the 1972 Decision would remind other contracting parties of their own obligations in such matters.

The representative of the European Communities said that his delegation would look forward to receiving the relevant notifications.

The representative of Spain congratulated Israel and the United States on their Agreement.

The representative of Korea said that the world was being divided into various preferential groups, to none of which his country belonged. The terms of Article XIX:1(b) meant that Korea could stand to suffer from the type of agreement which the United States and Israel had concluded.

The representative of Israel said that the Agreement would not be notified as a preferential one, but as one specifically referred to in Article XXIV:8(b), which had no relevance to Article XIX:1(b).

The representative of Chile asked when, where and how the Agreement would be discussed in GATT.

The Director-General said that the two parties would have to notify the Agreement to the CONTRACTING PARTIES, after which the Council would consider the best way of dealing with the matter. Normally the Council established a working party, with terms of reference which were standard for Article XXIV agreements, and open to all interested contracting parties; such a working party would then report to the Council.

The representative of the United States noted that according to US law, ratification had to take place within 60 days from 22 April.

The Chairman said that the contracting parties were looking forward to receiving the notifications by Israel and the United States.

The Council took note of the statements.

13. Norway - Further liberalization of Norwegian GSP scheme

The representative of Norway, speaking under "Other Business", informed the Council that his country had carried out a further liberalization of its Generalized System of Preferences (GSP) scheme, including a number of substantial improvements which had been notified in document L/4242/Add.25. He said that 34 new tariff lines in the agricultural sector and 13 new tariff lines in the industrial field had been added to the scheme for full duty-free treatment with effect from 15 March 1985. These included products of special importance to developing countries such as honey, cut flowers, various vegetables and fruits, olive oil, chocolate and certain textile items. The liberalization was expected to lead to a substantial increase of Norway's GSP imports, and represented an effort by his Government to strengthen confidence in the international trading system. It should also be regarded as Norway's response to the Part IV consultations and to the consultations on tropical products.

The representatives of Colombia, and of Indonesia on behalf of the ASEAN countries, congratulated Norway for its move to further liberalize its GSP scheme.

The Council took note of the statements.

14. Enlargement of the European Economic Community

The representative of the European Communities, speaking under "Other Business", noted that on 29 March 1985 agreement had been reached on all major pending issues for the accession of Portugal and Spain to the European Economic Community. He stressed the importance of this event. As soon as certain formalities and the ratification process had been completed, the Community would notify the acts of accession to GATT so that contracting parties could assess their conformity with the General Agreement. The Community was convinced that its enlargement would reinforce the multilateral trading system.

The representatives of Spain and Portugal endorsed the statement by the European Communities. The accession of their countries to the Community was an event of great importance which would increase their trade not only with the present members of the Community but also with other contracting parties.

The representative of the United States said this issue was also important to his country, which would be looking for the maximum possible amount of information, as early as possible, concerning the accession agreements.

The representative of the European Communities said that his authorities would follow GATT's usual notification procedures as soon as possible.

The representative of Korea congratulated the European Economic Community, Portugal and Spain on the accession agreements. Korea would be looking at the effects of the accessions on its own trading interests in the light of GATT provisions.

The representative of Israel congratulated the European Economic Community, Portugal and Spain on the successful outcome to the accession negotiations. Israel realized that it would meet greater competition from the enlarged Community, but also expected that its trade with Spain and Portugal would improve as a result of their accession to the Community.

The Chairman said the Council would look forward to receiving the notifications mentioned by the representative of the European Communities.

The Council took note of the statements.

15. Problems of trade in certain natural resource products

The representative of Canada, speaking under "Other Business", noted that the activities of the Working Party on Trade in Certain Natural Resource Products was one of the major interests of his delegation in the 1982 Ministerial Work Program. For that reason, Canada was seriously concerned that work on forest products had not yet been able to deal with certain processed products which, as Food and Agriculture Organization (FAO) statistics showed, played an important rôle in world forest products trade. The lack of progress in this particular area, since the start of the sectoral studies in 1983, raised a number of questions of principle about the implementation of the Work Program and of the Ministerial Declaration, as well as questions about GATT operations more generally. His delegation considered that the question of the forest products study needed to be resolved quickly, and Canada might raise the question formally at the next Council meeting.

The representatives of Chile, New Zealand and the Philippines supported the statement by Canada, and noted their strong interest in seeing work on forest products go forward. A solution had to be found to this problem promptly.

The representative of the European Communities said that unfortunately there had been an ambiguity in the 1982 Ministerial decision (BISD 29S/20) on this subject. During the meetings which led up to the Ministerial meeting, it had been clear to many contracting parties that the Community did not accept identifying the paper sector for inclusion in the decision, and thus a more vague term was used

("semi-processed and processed forestry products"), instead of "manufactured products". Subsequently, contracting parties had interpreted in different ways what had been agreed. He noted that work was progressing, with the Community's participation, on all other aspects of the Working Party's work and that there was no blockage in the Working Party.

The representative of the United States supported the Canadian position on this point.

The representative of Canada said that the statement by the European Communities was totally at variance with the facts as Canada understood them.

The representative of Sweden said his delegation had understood from the beginning that paper fell outside the work on natural resource products. Sweden did not consider the inclusion of paper as being necessary for the Group to complete its work, and such inclusion would certainly not be conducive to such completion without considerable delay.

The representative of Chile said that her Government understood the Ministerial decision on this subject to include paper.

The Director-General informed the Council that this question was being dealt with by the Chairman of the Working Party with the help of the Secretariat, and he suggested that those consultations continue.

The Council took note of the statements.

16. Tentative program of meetings

The representative of India, speaking under "Other Business", referred to the discussion at the Council meeting on 12 March concerning the tentative program of meetings. He suggested that the Secretariat consult with delegations on this matter as soon as possible.

The representative of Egypt supported the statement by India.

The representative of Argentina endorsed the statement by India and pointed to the problems faced by certain delegations, including his own, in receiving instructions from their authorities when documents were produced only a few days before meetings.

The representative of the United States said that everything possible should be done to accelerate implementation of the 1982 Ministerial Work Program. He considered that the Secretariat's consultations on future meeting dates with the Chairmen of the various bodies were adequate.

The representative of Australia supported the proposal for broader consultations, which would also involve delegations, to set future tentative dates for meetings. He noted that smaller delegations were finding it increasingly difficult to keep up with the increasing number of meetings.

The Director-General agreed that there should be consultations on future meetings, but pointed out that in itself this would increase the burden on delegations. The time had nevertheless come for both delegations and the Secretariat to evaluate how they could carry out their respective obligations at a time when their resources were being stretched to the limit. As far as circulation of documents was concerned, the Secretariat would investigate any difficulties brought to its attention by delegations.

The Council took note of the statements.

17. Consultative Group of Eighteen

The Director-General, speaking under "Other Business", said that following consultations among the ASEAN countries, it had been agreed that Malaysia should occupy, for the remainder of 1985, the seat occupied so far in the Consultative Group of Eighteen by Indonesia, and that Indonesia would take up the seat again in 1986.

The Council took note of this information.

18. Committee on Tariff Concessions

The Chairman recalled that in January 1980 the Council had agreed to establish the Committee on Tariff Concessions, and had authorized the Chairman of the Council to designate the Chairman and Vice-Chairman of the Committee in consultation with interested delegations.

He announced that following such consultation, there was a consensus in favour of designating Mr. Satuli (Finland) as Chairman of the Committee, to succeed Mr. Lavorel (United States), and Mr. van Meerbeke (Colombia) as Vice-Chairman, to succeed Mr. Bondad (Philippines).

The Council took note of this information.

19. Items under "Other Business"

The Chairman, speaking under "Other Business", said he was sure that representatives would agree it was difficult for the Council to carry out a proper discussion of substantive issues if these arose only very late during Council meetings. Items placed on the agenda under "Other Business" had normally been matters arising too late for inscription on the airgram, but considered by their sponsors to be too

urgent or too important to be held over until the next Council meeting. On such items, it was not normally expected that there would be substantive discussion in the Council under "Other Business". Accordingly, he encouraged those representatives who wanted to have a substantive debate on any issues to bring these to the notice of the Secretariat in sufficient time to have them placed on the airgram in the usual manner.

The Council took note of the statement.