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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
20 April 1983

MINUTES OF MEETING

Held in the Centre William Rappard on 20 April 1983

Chairman: Mr. H.V. Ewerlöf (Sweden)

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1. Committee on Balance-of-Payments Restrictions

(a) Consultation with Hungary (BOP/R/131)

Mr. Feij (Netherlands), Chairman of the Committee on Balance-of-Payments Restrictions, said that the Committee had recognized Hungary's serious balance-of-payments problems, which had led to the invocation of Article XII. The Committee had noted, however, that in responding to these problems, Hungary had introduced measures interfering with imports of particular products settled in convertible currencies, and had regretted that Hungary did not rely solely on measures and policies of a more general nature. The Committee had welcomed the temporary nature of the restrictive import measures taken and their relaxation in early 1983, but it had regretted that Hungary did not consider it possible to announce a time schedule for the removal of the quotas and the surcharge, as provided for in paragraph 1(c) of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD, 26 S/205). The Committee had requested Hungary to pursue its adjustment effort, announce a time-table for the removal of the quotas and the surcharge as soon as possible, and gradually withdraw the restrictive import measures as the balance-of-payments situation improved.

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

(b) Note by the Committee (BOP/R/132)

Mr. Feij said that on 11 March 1983, the Committee had met to discuss other business, in particular the schedule of its further meetings. The note distributed in document BOP/R/132 was of particular interest for the contracting parties scheduled to consult in 1983.

The Council took note of document BOP/R/132.

2. United States - Agricultural Adjustment Act
- Twenty fifth annual report by the United States (L/5469)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32), the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under that Decision, on the basis of a report to be furnished by the United States. The twenty-fifth annual report had been circulated in document L/5469.

The representative of the United States said the report took into account concerns about certain questions raised in relation to the previous two annual reports. The United States would not object to setting up a working party to consider the report, but suggested that since the Council had completed its work on the preceding report only in March 1983, it might be less useful as well as adding to an already heavy workload to establish another working party at this time. He also noted that the broad question of agriculture, including both export subsidies and import restrictions, would be the subject of thorough discussion within the newly-established Committee on Trade in Agriculture.

The representative of New Zealand said his authorities considered that the most recent US report was a disappointing document which differed little from its predecessors. Many of the criticisms that his delegation had raised in the past remained valid and, despite the passage of some 28 years, little valid justification had been advanced for continued maintenance of the US agricultural support measures. By means of the waiver, the United States had effectively isolated itself from fundamental changes in the world dairy market; and present US policy was clearly not aimed at bringing about a change in the structure of domestic production that would make possible a move away from the protection of the waiver. While it was clear that the United States relied on resort to the waiver as a long-term instrument of government policy, the intent of the waiver had not been to grant the United States a permanent derogation from Article XI of the General Agreement. New Zealand welcomed the fact that the waiver would be considered by the Committee on Trade in Agriculture; but this would not in any way obviate examining the latest report in the normal manner. In terms of the Decision of 5 March 1955, the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the waiver.

The representative of Australia recalled that when the twenty-fourth annual report had been adopted at the Council meeting on 9 March 1983, Australia had foreseen that, given the importance of the waiver in the work of the Committee on Trade in Agriculture, the Council should continue to review the waiver's operation and that a new working party should be established to examine the twenty-fifth annual report.

Accordingly, Australia supported establishment of a working party, and regarded this review as being particularly important as the latest US report had again avoided addressing meaningful proposals to liberalize trade under the waiver. For instance, with respect to dairy production, the waiver had enabled the United States to provide protection on a continuing basis to its agricultural sector for more than 28 years, and had come to be viewed by the United States as a permanent derogation from its GATT obligations. This had not been the intention when the CONTRACTING PARTIES had agreed to the waiver in 1955 as a remedy to what they had been led to believe was a temporary problem of surplus agricultural production in the United States. Australia hoped that as a result of the review to be carried out by the working party, and of the work on this matter in the Committee on Trade in Agriculture, the United States would provide the CONTRACTING PARTIES with a clear commitment of its intentions to terminate the waiver.

The representative of Pakistan supported the request for a working party. He also asked the United States representative to provide more information on the payment-in-kind (PIK) programme since this affected cotton-exporting countries.

The representative of Brazil said that exceptional circumstances in 1955 might have justified the waiver granted to the United States, but he wondered whether it was still justified 28 years later. He then referred to results of Article XXII bilateral consultations on sugar held between Brazil and the United States in September 1982, and said that following a detailed examination of restrictive measures applied by the United States and their adverse effects on Brazilian sugar exports, Brazil had decided to reserve its rights under the General Agreement.

The representative of the European Communities said that the waiver granted to the United States constituted a senile derogation from the General Agreement. He agreed with the substance of the statements made by the representatives of New Zealand and Australia. Turning to procedure, he said that past working parties had led to minimal results at most. The Community was not against setting up a working party, but preferred to review the problem in the Committee on Trade in Agriculture.

The representative of Chile supported the request for a working party to be set up as soon as possible to review the latest US report. This would be an important step to prepare for work in the Committee on Trade in Agriculture, which would have to discuss the US waiver in a wider context.

The representative of Canada supported the request for a working party.

The representative of Nigeria supported the request for a working party, and joined in asking for further information on the US payment-in-kind (PIK) programme.

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

Terms of reference: "To examine the Twenty-Fifth Annual Report (L/5469) submitted by the Government of the United States under the Decision of 5 March 1955, and to report to the Council."

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

Chairman: The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

3. GATT Concessions under the Harmonized Commodity Description and Coding System (L/5470)

The Chairman said that at its meeting on 28 February 1983, the Committee on Tariff Concessions had adopted a document containing procedures for the rectification and re-negotiation of GATT schedules which would become necessary in connexion with the introduction of the Harmonized Commodity Description and Coding System presently being elaborated in the Customs Co-operation Council. The Committee had also decided to submit the document containing the procedures to the GATT Council for approval (Annex to document L/5470). He pointed out that there had been full agreement in the Committee that the adoption of the procedures could not in any way prejudice the position of contracting parties in respect of their ultimate decision on the adoption of the Harmonized System.

It was the Chairman's understanding that some delegations wished to reflect further on this matter. He therefore proposed that the Council agree to revert to this item at a future meeting.

It was so agreed.

4. Poland - Suspension of most-favoured-nation treatment by the United States (C/W/401)

The Chairman recalled that Poland had raised this matter at the Council meeting on 2 November 1982, at which time Poland had submitted a draft decision in document C/W/401 for consideration by the Council.

The matter had then been raised at the CONTRACTING PARTIES' thirty-eighth session, and again at the Council meeting on 26 January 1983, at which it was agreed to revert to this matter at a future meeting.

The representative of Poland noted that six months had passed since the United States had suspended most-favoured-nation tariff treatment to Poland. He referred to his delegation's earlier arguments on this case and reiterated its major conclusion: that the US action against Poland, unprecedented in the GATT, had failed to meet the legal and procedural standards established by the GATT system for protection of the legitimate commercial interests of its contracting parties. The fact that the origins of the US measure were quite distant from the realm of economics and trade was disturbing and potentially disruptive of GATT principles and solemnly stated objectives. If GATT ideals, such as those incorporated in the General Agreement and reaffirmed in the November 1982 Ministerial Declaration, were to be taken at their face value, this type of politically motivated discrimination should not be disguised in the mantle of GATT law, and contracting parties should not be oblivious to the destructive ramifications of such a situation for bilateral trading relationships and for the wider context of international relations. In the absence of a major positive development, Poland would want to revert to this item at subsequent Council meetings, and reserved the right to avail itself of the dispute settlement procedure established under the General Agreement.

The representative of the United States said that his delegation had made its position clear on this matter in previous Council discussions. The United States had acted within its rights under Poland's GATT Protocol of Accession; and there had been no fundamental change in the situation. The President of the United States had decided to exempt certain imports from Poland from the effect of the US measure where those imports had been contracted for before the President's October 1982 decision. However, this administrative adjustment did not alter the basic action, nor did it affect the interests of other contracting parties.

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

5. Problems of trade in certain natural resource products (C/W/410/Rev.1, C/W/411/Rev.1, C/W/412/Rev.1, L/5424)

The Chairman recalled that at its meeting on 9 March 1983, the Council had been informed that informal consultations were still in progress, and had agreed to revert to this item at the present meeting.

He said that the further informal consultations between the secretariat and interested delegations had resulted in revised proposals concerning terms of reference for the studies on problems of trade in non-ferrous metals and minerals, forestry products and fish and fishery products (C/W/410/Rev.1, C/W/411/Rev.1 and C/W/412/Rev.1).

The representative of Turkey said that during discussions on problems of trade in fish and fisheries products before, during and after the November 1982 Ministerial Meeting, his delegation had made clear that it could not accept the concept of economic zones as a factor for consideration within the activities of GATT. Such a concept implied legal and political considerations outside the GATT context. It was on the basis of this interpretation and reservation that Turkey could approve the draft decision in document C/W/412/Rev.1. Turkey also considered that the background study mentioned in that document should be factual and carried out on the responsibility of the secretariat.

The Council took note of the statement and adopted the draft decisions.[1]

The Chairman said that as the Ministerial decision indicated (L/5424, page 13), the substance of the studies would be limited to trade problems falling under the competence of the General Agreement, and to the terms of reference of the decisions that the Council had just adopted. With regard to procedures, it was his personal understanding that the normal procedure for the examination of such studies by the Council was the establishment of working parties.

The representative of the European Communities said it was not possible at this juncture to prejudge the conclusions of the background studies to be carried out by the secretariat or the consequences that might be drawn from them. It might transpire that the establishment of one or more working parties might not be required.

The representative of Canada welcomed the adoption of the draft decisions, but said these represented only the first step in fulfilling a clear Ministerial mandate to examine problems of trade in natural resource products. His delegation looked forward to further Council discussion on this matter.

The Council took note of the Chairman's statement and of the statements made by representatives.

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[1] Subsequently circulated in documents L/5483, L/5484 and L/5485.

6. MTN Agreements and Arrangements (L/5424)

The Chairman recalled that at the Ministerial Meeting in November 1982, the CONTRACTING PARTIES had decided to review the operation of the MTN Agreements and Arrangements, taking into account reports from the Committee or Councils concerned, with a view to determining what action if any was called for, in terms of their decision of November 1979 (BISD 26S/201). The CONTRACTING PARTIES had further agreed that the review should focus on the adequacy and effectiveness of these Agreements and Arrangements, and on the obstacles to the acceptance of them by interested parties (L/5424, page 11).

He recalled that at its meeting on 26 January 1983, the Council had taken note of the Ministers' decision, and had agreed that he should hold informal consultations with delegations on how the review could most effectively be carried out. Following those consultations, he had proposed at the Council's meeting on 9 March 1983 that the Council invite the MTN Committees and Councils to take account of this Ministerial decision in their annual reports, and to transmit these reports to the Council, so that the Council could assist the CONTRACTING PARTIES in the review called for in that decision, in the light of these reports and of observations by delegations. The Council would report to the CONTRACTING PARTIES at their thirty-ninth session on the results of its discussions. For this purpose, these reports by the MTN Committees and Councils would need to be in circulation and available to members of the Council not later than 10 October 1983, that is, well in advance of the Council's meeting on 1 November 1983 at which the Council would discuss the matter. After he had made his proposal, the Council had agreed that the text would be circulated so that representatives could reflect further on this matter. He understood from informal consultations held with a number of delegations since the last Council meeting that this proposal was acceptable.

The Council agreed to the Chairman's proposal.

The representative of New Zealand said it was the understanding of his delegation that the option for continued review beyond the 1983 CONTRACTING PARTIES session was not foreclosed in any way by the action which the Council had just taken.

The Council agreed that in preparing their reports, the MTN Committees and Councils might wish to take note of the statement made by New Zealand.

7. Japan - Nullification or impairment of benefits accruing to the European Economic Community under the General Agreement and impediment to the attainment of GATT objectives
- Recourse to Article XXIII:2 by the European Economic Community (L/5479)

The Chairman drew attention to document L/5479 containing a communication from the Commission of the European Communities.

The representative of the European Communities said he did not intend to outline the substance of the Community's request, which had already been circulated in document L/5479. However, the Community was determined to make it clearly known that the step it had taken, in bringing this matter before the Council, should be considered as an act of faith and confidence in the multilateral trading system. The Community did not want this system to be unduly undermined by bilateral differences, and it considered that its request was proof of its desire to further reinforce the GATT system. He added that it would be premature and presumptuous on the Community's part to prejudge the outcome of the initiative which it had taken, and reiterated that the Community had taken account of various recent measures taken by the Japanese government, which went in the right direction.

The representative of Japan recalled that his government, on its own initiative and without seeking reciprocity, had taken a series of liberalization measures to strengthen the GATT system and to help its trading partners, including the European Economic Community. On 1 April 1983, the government had reduced tariff rates on 328 items covering both agricultural and industrial products; these included items of trade interest to the developing as well as developed countries including the EEC. On standards and certification systems, the government had decided to present to the current session of the Diet omnibus legislation covering the related 16 laws. The government would do its best to expedite approval of this draft legislation, which would aim to ensure there would be no discrimination between nationals and non-nationals in Japan's certification procedures. In addition to these goals, Japan's main objective was to work out specific policies and measures to ensure transparency, to bring about greater conformity of Japanese standards with international standards, to promote acceptance of foreign test data, and generally to simplify certification procedures so that Japanese systems could be made more open in substantive terms. The government of Japan was determined to pursue liberal trade policies, consistent with its belief in supporting GATT principles. The GATT system was under heavy strain, particularly the dispute settlement procedure. It was time for all contracting parties to devote themselves to effective implementation of the November 1982 Ministerial decisions, instead of piling up additional bilateral disputes. Japan was willing

to continue the dialogue with the European Community, including the suitable procedure to handle this matter. Japan retained its position on the content of document L/5479, including the appropriateness of this action, and reserved all rights to react to the document at a later stage.

The representative of Chile said that his delegation believed, as a matter of principle, that when a contracting party asked for a panel or a working party to be set up, such requests should be honoured promptly. However, as presented by the EEC, this complaint was too general and open-ended and seemed to be different from the traditional type of recourse in GATT. For example, he questioned whether a working party as proposed could examine whether EEC industry was competitive enough to penetrate the Japanese market. He also noticed that the EEC did not base its case on particular provisions of the General Agreement but instead referred to one of its objectives. This was unprecedented, and he wondered, for example, whether his delegation, using the same rationale, could then ask for a working party to examine the EEC's Common Agricultural Policy in the light of the objectives of the GATT. Such problems and precedents could arise if such loose terms for a working party were accepted. He therefore urged extreme caution, and reiterated that while not opposing the setting up of a working party he would first like to know from the EEC what specific measures and policies it was asking to be examined.

The Council agreed to revert to this matter at one of its following meetings.

8. Agreement between the EFTA countries and Spain
- Biennial report (L/5465)

The Chairman drew attention to document L/5465 containing information given by the parties to the Agreement between the EFTA countries and Spain.

The representative of the United States said his government was disappointed that the parties to the Agreement had failed to submit a detailed report on the workings of the Agreement since its inception in 1980. Document L/5465 did not answer the question of whether Article 3:2 of the Agreement (the "dynamic" clause) had resulted in progress towards total elimination of obstacles to substantially all trade. There were also a number of questions that the US delegation would like to have answered. First, whether the coverage and the depth of the Agreement had been increased as intitally envisioned. Second, whether plans had been implemented to eliminate remaining duties and barriers on substantially all trade covered by the Agreement; in particular, whether there were specific plans to eliminate remaining

Spanish duties and quotas. Third, whether the Agreement had been extended to cover a greater percentage of agricultural trade, or was still a series of product-specific bilateral arrangements. And fourth, when full liberalization of trade between Spain and Portugal was to be anticipated. He reiterated his government's concern over what it saw as the incompatibility of the Agreement with GATT, and urged the parties to the Agreement to submit more detailed reports in future so that a request for a working party to examine the matter could be avoided.

The representative of Australia also expressed dissatisfaction with the information that had been provided by parties to the Agreement on earlier occasions, and recalled that Australia had disagreed with certain aspects of the 1980 Working Party report (BISD 27S/127). Australia reserved its rights on the possibility of requesting a working party to examine the Agreement.

The representative of Norway, speaking for the country which presently held the EFTA chairmanship, said he was suprised by the comments made by the US delegation. In his view, the report contained considerable information on developments which had taken place since the Agreement had come into force in May 1980. The report made clear that there had been progress towards trade liberalization; and the parties to the Agreement still considered that it was fully consistent with the requirements of Article XXIV. Articles 1 and 3:2 of the Agreement contained a binding commitment to eliminate obstacles to substantially all trade, as well as binding provisions for a necessary procedure in order to achieve the fulfillment of this commitment. The Agreement could be said to cover substantially all trade, since about 81 per cent of EFTA countries' imports from Spain as well as about 97 per cent of their exports to Spain were covered by the Agreement.

The representative of Switzerland recalled that the Agreement was a multilateral interim instrument leading to the full integration of Spain in the European free-trade system, and should be seen in the context of Spain's accession to the European Community. In his view, there was a partial causal link between this accession and the dynamic nature of the Agreement in question.

The Council took note of the report (L/5465) and of the statements.

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

The Chairman recalled that at its meeting on 9 March 1983, the Council had agreed to revert to this item at the present meeting, while noting that consultations would be carried out in the meantime. He drew the Council's attention to a revision of the proposal by the United States, which had been circulated in document C/W/409/Rev.1.

The representative of the United States said his delegation believed that the revised proposal met the concerns expressed by some delegations and that it should be acceptable to the Council. The United States continued to believe that trade in high technology goods was an important and dynamic aspect of world trade, and that it was essential for the GATT to examine this matter as part of its work programme.

The representative of New Zealand said his delegation could accept the revised proposal, although it did not consider this matter to be a priority in GATT's work programme. Also, New Zealand would prefer the date for the Council's report to the CONTRACTING PARTIES on its review of the secretariat study to be 1985 rather than 1984.

The representative of Canada fully supported the revised proposal.

The representative of Spain had no objection of substance to the revised proposal, although the product coverage remained to be determined. He recalled that this matter had not been included in the November 1982 Ministerial Declaration, but had been referred to only in the statement by the Ministerial Chairman (SR.38/9). In the case of problems of trade in certain natural resource products, it had been decided at the present meeting (item 5) that once a study was carried out by the secretariat, the Council would consider it with a view to suggesting solutions within a certain time-table, nothing more. Accordingly, he suggested that paragraphs C and D of the revised proposal (C/W/408/Rev.1) should be drafted along the same lines as paragraph 3 of the three documents concerning natural resource products (L/5483, L/5484 and L/5485).

The representative of Argentina said that this delegation wanted more time to reflect on the matter before taking a decision, and shared the view that this was not a high priority question.

The representative of the European Communities said his delegation was reflecting on this matter and at this stage did not want to pronounce itself for or against the revised proposal.

The representative of Brazil said his delegation considered that the revised proposal could still be much improved. There was a vague reference to "problems, if any, that may be identified"; but no delegation had ever indicated what these problems were. Barriers of all kinds still existed to trade in low-technology goods, and now there was a proposal to jump to high-technology goods which had not even been identified. He said that Brazil also had difficulties with paragraph A of the revised proposal, which was too vague. He shared the criticisms concerning the procedural steps to be taken. His delegation considered the proposal would have to be considerably revised before it was presented again to the Council.

The representative of the United States noted that while there was some concern over the drafting of the revised proposal, and over what exact sectors might be covered, there had been no opposition to it. His delegation would undertake further consultations so that the Council could take a decision on this matter at its next meeting.

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

10. United States - Imports of certain automotive spring assemblies - Report of the Panel (C/W/396, C/W/400, L/5333)

The Chairman recalled that in December 1981, the Council had established a panel to examine the complaint by Canada. The Panel had submitted its report in document L/5333, which had been before the Council at its meetings in June, July, October and November 1982 and again on 26 January 1983. At the meeting on 26 January, the Council had agreed that the Chairman should consult informally with the two parties and other interested delegations with a view to seeing how this matter could be resolved at one of the next meetings of the Council. The Chairman informed the Council that such consultations had been held, but he was not yet in a position to make a proposal to the Council. With the assistance of the Secretariat, he proposed to continue informal consultations with the two parties and other interested delegations.

The representative of the United States expressed his appreciation for the Chairman's efforts to find an acceptable solution to this dispute, and stated his delegation's willingness to cooperate with further efforts to achieve a solution, so long as these efforts proceeded expeditiously. The United States believed that it was unhealthy, particularly after the November 1982 Ministerial Declaration, for this matter to remain unresolved, and that the report should be adopted in accordance with customary practice. Adoption of the report would not give "carte blanche" to any action that the United States might take under Section 337, or immunize the United States from any further GATT challenge. If no solution could be reached through the the further consultations proposed by the Chairman, then the United States believed that members of the Council would have to be prepared to present their views on the substance of the matter. He added that the United States expected that this report would be acted upon at the next meeting of the Council.

The representative of Canada also expressed appreciation for the Chairman's efforts on this matter. Canada's concerns with the report were primarily substantive in nature, not only procedural; and his authorities believed that these concerns were shared by a number of other contracting parties. His delegation looked forward to continuing the informal consultations and to this matter being disposed of in one way or another.

The representative of Singapore said that without strict implementation of, and rigid compliance with, the dispute settlement process, the multilateral trading system could not function effectively. His delegation strongly believed that once this process was initiated, it was the responsibility of all contracting parties, and of the Council in particular, to ensure that the process was brought to its natural conclusion and not left pending. It was in this spirit that Singapore has firmly supported the Ministerial decision on dispute settlement, which had declared that reports of panels should be given prompt consideration. Holding of panel reports in abeyance, as in this case, had an adverse implication for the efficiency and integrity of the dispute settlement process, and would bring into question the confidence of contracting parties in this process. He added that his statement was made without prejudice to his delegation's position on the subject of this particular panel report.

The representative of Brazil reiterated that his delegation's concerns in this matter were substantive rather than procedural. Panel reports were intended to assist the Council in taking a decision. If the Council did not take such a decision, then there would be no effective dispute settlement system. One had to distinguish carefully between the parts of a panel report that could be adopted by the Council and those that should be rejected. The Council was not obliged to approve or adopt a report simply because it had been presented. Also, it was not the opinion of the Brazilian government that what was contained in this particular report was the right solution to this problem. One solution would be to reject the report. Another solution, which would reflect the will of the contracting parties to improve the dispute settlement system, would be for the Council to write its own decision, assisted by the Panel's report.

The Chairman said he fully shared the concern voiced by a number of representatives with regard to fulfilling the Council's responsibilities in the field of dispute settlement.

The Council took note of the statements and agreed that the Chairman should continue the process of informal consultations with the two parties and other interested delegations.

11. United States - Copyright legislation, manufacturing clause - Recourse to Article XXIII:2 by the European Economic Community (L/5467)

The Chairman drew attention to the communication from the European Communities in document L/5467, concerning section 601 of the US Copyright Act (the "manufacturing clause").

The representative of the European Communities said that the US measure in question effectively prohibited imports to the United States of certain literary material by an American author unless the material had been manufactured in the United States or Canada. The measure was contrary to Article XI. Furthermore, it was contrary to Article XIII because it was applied in a discriminatory manner. Since re-enactment of the US legislation, the Community and the United States had held several rounds of consultations under Articles XXII and XXIII which had concentrated on the question of prejudice caused by the legislation, but without a satisfactory result, perhaps because the US Administration had no power to submit to the Community a formal offer of compensation. Therefore, under the provisions of Article XXIII, the Community asked the Council to establish a panel to examine the US measure and in particular to concentrate on the amount of prejudice involved and on the amount of compensation which would be appropriate.

The representative of the United States said that his delegation had held consultations with the Community under Article XXIII:1 on the extension of the so-called manufacturing clause, in a spirit of co-operation aimed at reaching a mutually satisfactory solution, but without prejudice to the legal position of either party concerning any aspect of this matter. During those consultations the trade effect of the United States measure had been examined. His delegation would not block establishment of a panel, but could not accept the terms of reference suggested by the Community, which assumed that the manufacturing clause was contrary to the General Agreement. If a panel were to be set up, it should be along the lines followed in the past, i.e., to determine if an action was consistent or not with the Articles of the General Agreement. Any question of compensation or retaliation should be taken up at a later stage in the proceedings.

The representative of Argentina asked that his delegation be consulted on the panel's terms of reference.

The Council agreed to establish a panel to examine the complaint by the European Communites, and authorized the Chairman, in consultation with the two parties concerned and with other contracting parties which had expressed an interest, to decide on appropriate terms of reference, and in consultation with the two parties concerned, to designate the members of the Panel.

12. Japan - Measures on imports of leather
- Recourse to Article XXIII:2 by the United States (L/5462)

The Chairman recalled that at the Council meeting on 9 March 1983, the representative of the United States had asked for a panel to examine the matter referred to in document L/5462. After discussion, the Council had agreed to revert to this item at the present meeting, and had requested the parties concerned to conduct further bilateral consultations in the meantime.

The representative of the United States said that the further consultations had not been successful either in reaching a solution or in moving significantly closer towards one. The United States considered there was no justification for further delay in establishing a panel, which would not preclude the possibility of a bilateral settlement before the panel might be ready to report to the Council.

The representative of Japan recalled that the leather problem had a long historical and social background and was extremely difficult to solve. Although Japan had proposed some measures, the United States had not agreed to them, and had given no concrete or detailed responses. Japan was still prepared to continue bilateral discussions with the United States, and believed that establishment of a panel was premature.

The representatives of Australia, Canada, the European Communities and New Zealand supported the request for a panel, and reserved their rights to submit their views to a panel in the event that it was established.

The representative of Spain reserved his delegation's right to make a presentation to a panel with respect to problems which might arise on this matter between Spain and Japan.

The representative of Japan said that if the majority of the Council favoured setting up a panel, then Japan reluctantly would go along with this. However, he stressed that his delegation should be fully consulted concerning the composition of the panel and its terms of reference. Until the panel was established and parallel with the panel proceedings, bilateral discussions between Japan and the United States would continue.

The Council took note of the statements, agreed to establish a panel, and authorized the Chairman to draw up its terms of reference and to designate its chairman and members in consultation with the parties concerned. The Council also took note of the Chairman's understanding that this did not preclude further bilateral consultations taking place.

13. Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) (L/5475)

The Chairman drew attention to the communication from New Zealand contained in document L/5475.

The representative of New Zealand said that the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERT) had come into effect on 1 January 1983, superseding the New Zealand-Australia Free-Trade Agreement (NAFTA) signed in 1965. The new Agreement was a fully comprehensive free-trade agreement with a plan and schedule covering all goods traded between the two countries, and was thus fully compatible with the relevant provisions of Article XXIV. The Agreement was an expression of the trade liberalization views of both governments in a world climate of increasing protectionism. He then gave a description of the Agreement's objectives and content, and added that it would not create an exclusive trading bloc between the two partners at the expense of third countries. The Agreement established neither a customs union nor an economic union, and both countries remained free to conduct their own independent policies on such matters as trade with third countries, finance, banking and exchange rates. He added that the Agreement should strengthen the capacity of both countries to contribute to the development, in particular, of the South Pacific and South East Asian Regions. The economies of both Australia and New Zealand should expand with benefits to all of their trading partners.

The representative of Australia said that the Agreement would result in further increasing freedom of trade by the development of closer integration between the economies of its two partners. It did not raise barriers to the trade of other countries.

The representative of the European Communities said that his delegation considered it would be appropriate, as in other cases concerning Article XXIV agreements, to establish a working party to examine this Agreement.

The representative of Canada reserved his delegation's right to comment on this matter at any future Council meeting.

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

Terms of reference: "To examine the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERT) concluded on 28 March 1983, in the light of the relevant provisions of the General Agreement, and to report to the Council."

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

Chairman: The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

The Council agreed that contracting parties wishing to submit questions in writing to the parties to the Agreement should be invited to send such questions not later than 1 July 1983, and that the parties to the Agreement should supply answers to these questions within six weeks after receipt of the written questions.

14. Trade in counterfeit goods
- Status of consultations with Director General of the World Intellectual Property Organization (W.I.P.O.) (L/5424)

The Chairman recalled that at its meeting on 26 January 1983, the Council had taken note of the intention of the Director-General to hold consultations with the Director General of W.I.P.O. in accordance with the November 1982 Ministerial decision on Trade in Counterfeit Goods (L/5424, page 11). He informed the Council that these consultations were underway and that the Director-General expected to be in a position to report on them at the next meeting of the Council.

The Council took note of this information.

15. European Economic Community - Imports of citrus fruit and products
- Recourse to Article XXIII:2 by the United States (L/5337, L/5339)

The Chairman recalled that on 2 November 1982, the Council had agreed to establish a panel to examine the US complaint. He had been authorized to decide on appropriate terms of reference for the panel, in consultation with the two parties concerned and with other contracting parties which had indicated an interest in the matter. On the basis of such consultations, he now wished to inform the Council that agreement had been reached on the following terms of reference:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States, relating to the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region (L/5337), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

The Chairman added that agreement on the above-mentioned terms of reference had been reached on the basis of the following understandings. The reference to relevant GATT provisions was understood to include also relevant interpretative material relating to such provisions. As regards product coverage, it was understood that the reference to document L/5337 meant a reference to the products indicated therein. Given the special nature of the matter, in that the tariff treatment which was to be examined by the panel was an element of Agreements entered into by the European Community with certain Mediterranean countries, it was expected that the Panel, in setting up its own working procedures, would provide adequate opportunities for these countries to participate in the work of the Panel as necessary and appropriate.

The representatives of Chile and Australia reserved their rights to submit their views to the Panel once it was set up.

The representative of Brazil said he could accept the terms of reference. However, referring to the Chairman's statement that "the reference to relevant GATT provisions was understood to include also relevant interpretative material relating to such provisions", he understood that there were three elements in such relevant material: the GATT articles themselves; interpretative notes to the General Agreement; and agreed interpretations that had been adopted by the Council or by the CONTRACTING PARTIES. One could also include commonly accepted interpretations that had appeared in usual GATT practice; but, in his view, one could not include interpretations that had been made individually by contracting parties or groups of contracting parties.

The representative of the European Communities said the point raised by the representative of Brazil could have far-reaching consequences, as there could be diverging interpretations of the relevant GATT provisions. He suggested that the Council take no decision on this matter at the present meeting, and that there should be further consultations.

The representative of the United States saw no need to delay movement on this matter. If there were diverging interpretations, one or other party to the dispute could put these before the Panel; and it would be up to the Panel to decide on its interpretation. He agreed that relevant interpretative material meant interpretations that had been agreed; if they had not been agreed or adopted by the Council, then they were not relevant, nor had they ever been considered so in the past.

The representative of the European Communities said this was a sensitive matter for the EEC and for a number of other countries which had links with the EEC. The suggestion made by the representative of the United States was, in his view, ambiguous; and it would be wise to allow more time for consultation.

The Chairman proposed that the Council take note of the statement which he himself had made, and of the statements made by representatives.

The representative of Brazil objected to this procedure, saying that "relevant GATT provisions" was a classical, uniform phrase in GATT. By including the additional words "are understood to include also relevant interpretative material relating to such provisions", a new element was being introduced into the GATT dispute settlement system, and there had been no discussion of such an innovation. He therefore suggested that the Council should decide on this matter at a later date.

The representative of the United States considered further delay unnecessary.

The Chairman said that if the representative of Brazil did not agree with the proposed procedure, there was no other possibility than to have further consultations. He agreed with the representative of the United States that there should be no further delay on this matter and assumed that this point would be taken into account during the consultations. He noted that the composition of the panel still remained to be settled.

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

16. European Economic Community - Import quota on softwood lumber products (L/5456)

The representative of Canada, speaking under "Other Business", recalled that at the Council meeting on 26 January 1983, his delegation had raised the matter of establishment by the European Economic Community of an import quota on softwood lumber products falling under tariff heading 44.05. Canada welcomed the Community's notification of this measure (L/5456), but noted that it did not make clear under which Article of the General Agreement the measure -- which in Canada's view contravened provisions of Article XI -- had been taken. He added that this was an important trade item for Canada, which would monitor the situation closely and would avail itself of its GATT rights if its trade was adversely affected.

The Council took note of the statement.

17. United States - Imports of certain motorcycles

The representative of Japan, speaking under "Other Business", said that the United States had recently taken a trade restrictive measure concerning the import of certain types of motorcycles. Japan was concerned that this measure did not conform to relevant provisions of the General Agreement, and had already made its view known to the US Government. Japan reserved all its GATT rights on this matter.

The representative of the United States said that the measure had been taken under Article XIX of the General Agreement, and the United States expected to notify GATT shortly of the specific action it had taken, which it believed to be consistent with the General Agreement.

The Council took note of the statements.