GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/211
8 July 1987

Limited Distribution

COUNCIL
17 June 1987

MINUTES OF MEETING

Held in the Centre William Rappard
on 17 June 1987

Chairman: Mr. A. Oxley (Australia)

		Page
Subjects discussed: 1.	International Trade Centre - Report of the Joint Advisory Group	2
2.	Accession and provisional accession (a) Request by Algeria for accession (b) Request by Costa Rica for accession (c) Request by Guatemala for provisional accession	5
3.	Thailand - Business and excise taxes - Request for extension of time-limit	10
4.	Measures affecting the world market for copper ores and concentrates - Report of the Group of Governmental Experts	11
5.	Implementation of Generalized System of Preferences (GSP) shemes	12
6.	Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) - Biennial report	12
7.	United States - Taxes on petroleum and certain imported substances - Panel report	13
8.	United States - Section 337 of the Tariff Act of 1930 - Recourse to Article XXIII:1 by the European Economic Community	17
9.	Harmonized System - Transposition by the United States	18
10.	Uruguay - Import surcharges - Request for extension of waiver	19
11.	United States - Unilateral measures on imports of certain Japanese products - Recourse to Article XXIII:1 by Japan	19
12.	European Economic Community - Decision related to semi-conductor trade	20

		Page
13.	India - Import restrictions on almonds - Recourse to Article XXIII:1 by the United States	21
14.	China's status as a contracting party - Presiding arrangements	21
15.	Third Lomé Convention - Working Party Chairman	22
16.	Japan - Trade in semi-conductors - Panel composition	22

The Chairman, on behalf of the Council, welcomed Morocco as the 94th contracting party and as a member of the Council.

1. International Trade Centre
- Report of the Joint Advisory Group (ITC/AG(XX)/108)

Ms. Odmark (Sweden), rapporteur at the meeting of the Joint Advisory Group, introduced the report on behalf of Mr. de Lanerolle (Sri Lanka), Chairman of the Group. She said that the twentieth session of the Joint Advisory Group on the International Trade Centre UNCTAD/GATT, held from 6 to 10 April 1987, had reviewed the ITC's activities during 1986 and had formulated recommendations to the governing bodies of UNCTAD and GATT. The Executive Director of the ITC, Mr. Engblom, had referred to the 40 per cent increase in value of ITC technical co-operation activities in 1986 and had indicated that the ITC's work program had in recent years been characterized both by the strengthening of traditional activities, e.g., commodity-related programs, and by the development of new responses to technical co-operation requirements, e.g., participation of small and medium-sized enterprises in export trade, export-orientated joint ventures, trade in consulting services and legal aspects of foreign trade. The Group had noted with satisfaction the increase in the resources available to the ITC in 1986 and had called on the ITC to redouble its attempts to co-ordinate its efforts to the fullest extent possible with those of related international and bilateral assistance sources. A number of areas of the ITC program had received special attention by the Group.

Regarding institutional infrastructure for trade promotion at the national level, the Group had recommended that the ITC continue to assign importance to providing technical co-operation for the development and strengthening of sound national institutional infrastructure in developing countries, with developed countries' trade promotion organizations and other trade-related institutions. The Group had endorsed the ITC's focus on result-orientated product and export market development support to enterprises, particularly small and medium-sized, and had recommended that

this support continue to be provided in close liaison with developed countries' trade promotion organizations and import promotion offices. It had noted the interest of developing countries in consolidating the market penetration gains that a number of their non-traditional products had made in recent years and, while reiterating the obvious importance of commodity exports, had considered vital the continued promotion of exports of new products. The Group had also urged the ITC to give increased attention to the problems of international physical distribution of goods in its technical co-operation programs.

The Group had considered that increased attention and resources should be devoted by the ITC to human resource development with emphasis on practical, as opposed to academic, training. The Group had expressed satisfaction with the increased technical co-operation resources that the ITC had been able to channel to the least-developed countries and had recommended that in 1987 the ITC should maintain, and if possible increase, the level of resources devoted to assisting these countries; such assistance in 1986 had represented 30 per cent of the total ITC program.

Regarding program evaluation, the Group had addressed itself to trade information services and had decided that in 1987 the thematic evaluation of supply and demand projects be carried out, and discussed at its twenty-first session. The Group had agreed to hold a technical meeting in October 1987 to review the ITC section of the United Nations Medium-Term Plan 1990-1995, prior to its submission to the United Nations later in 1987 and its consideration by the Group in 1988.

The representative of Uruguay recalled the history and evolution of the ITC and expressed satisfaction with the reported large increase in resources for its ever-increasing co-operation program as indicated in paragraph 110 of the report. For Latin America, 13 national projects, along with various regional and one international projects would be implemented. His delegation stressed the importance for the region of the program for commercial information and foreign trade assistance to Latin America and the Caribbean (PLACIEX) which had been agreed between the ITC and the Latin American Economic System (SELA) (paragraph 49). He also stressed the importance of the ITC in the expansion of developing countries' exports in the context of a difficult international economic situation.

The representative of Chile referred to the ITC's good work regarding developing countries' export development and the new joint tasks just decided upon, which would require the ITC to be flexible. As resources were scarce, Chile asked developed countries to increase as much as possible their assistance to the ITC, either financially or through technical assistance.

The representative of Indonesia, speaking on behalf of the ASEAN contracting parties, said that the uncertainties of the current world economic situation had hampered developing countries' performance in world trade; their share of exports had continued to fall in 1986. In response, some developing countries, including the ASEAN contracting parties, had embarked upon a major program of trade and industrial policy reforms, to develop a more dynamic and competitive manufacturing sector, which could contribute to job creation and to the development process. Against this background, the rôle of the ITC was becoming increasingly important, particularly in fostering the diversification and growth of developing countries' exports. He noted with satisfaction the increase in the resources available to the ITC in 1986 to finance its growing technical co-operation program, and called for the continuation and expansion of financial support from the ITC's traditional donors and from all other countries. The ASEAN contracting parties also called on the ITC to strengthen the coordination of its efforts with those of related international and bilateral assistance sources, as this would help to prevent overlapping of activities and waste of resources.

The representative of Nicaragua said his delegation supported the views expressed by Uruguay.

The representative of Peru said that for 20 years the ITC had played a very useful rôle for the developing countries and was doing dynamic work. Her delegation appreciated the industrial countries' contributions to this work.

The representative of Norway, speaking on behalf of the Nordic countries, said that the ITC had proved its ability to do useful work in the increasingly large field of export promotion and diversification. He referred to the Nordic countries' substantial evaluation of the ITC's work and prospects at the Group's meeting. He underlined the positive result concerning reintroduction of more specific recommendations in the report, which would guide the ITC in its further work and put delegations in a better position to follow it. As a result, transparency in the work of the organization would increase. The Nordic countries also welcomed the proposal to hold an informal session of the Group in the autumn of 1987 to discuss the program for the next planning period. They hoped that the ITC's activities could be increased in volume and made even more efficient, but enlarging activities would mean enlarged needs for resources. The Nordic countries had been the most faithful contributors, and renewed their appeal to all countries in a position to do so to contribute or increase their contribution to the ITC's operational activities.

The representative of Cuba said that the ITC's work was most useful and important in providing, at such a crucial time, technical assistance to developing countries to diversify their exports.

The representative of India expressed appreciation for the ITC's support of developing countries' efforts. His delegation hoped that the ITC would continue and grow from strength to strength.

The representative of Israel said the report was well balanced. The ITC should search for any innovative idea that could enhance its work and exploit all expertise in both the developed and developing countries. Israel would be ready to contribute in this respect.

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

2. Accession and provisional accession

(a) Request by Algeria for accession (L/6182)

The Chairman drew attention to document L/6182 containing a request from Algeria for accession to the General Agreement.

The representative of Algeria, speaking as observer, recalled that at the May meeting, his Government had informed the Council of its intention to accede to GATT and of its wish to participate in the Uruguay Round in conformity with Section F of the Punta del Este Declaration. Algeria intended to participate actively in the fulfillment of the objectives of the General Agreement and sought to develop its trade relations in a multilateral framework. Since its independence, Algeria had participated regularly in GATT's activities and had applied its provisions de facto. Algeria's interest in earlier GATT trade negotiations justified his Government's intention to negotiate its accession to the General Agreement during the Uruguay Round. Algeria would welcome such negotiations under Article XXXIII with interested contracting parties.

The representative of the European Communities said that the Community and its member States unconditionally supported Algeria's request, which represented a logical follow-up to the various decisions and positions taken in the past. He referred to the numerous, increasingly important long-standing links, including those relating to trade, between the Community and Algeria. The nature of Algeria's request was in line with its history since the sixteenth century and its restauration of independence, and was dignified, highly responsible and showed great vision for the future.

The representative of India welcomed Algeria's initiative as a logical consequence of its involvement in the multilateral trading system. India had always maintained good relations with Algeria and supported its request.

The representative of Hungary said his delegation welcomed the request and believed that both Algeria and the contracting parties would mutually benefit from this future membership.

The representative of Turkey said his delegation welcomed the request and believed that Algeria's accession would strengthen GATT.

The representative of Yugoslavia welcomed and supported Algeria's request to join in the multilateral trade negotiations and the GATT.

The representative of the United States said his delegation welcomed Algeria's request for full accession and noted that it was the third Maghreb country to do so in a short while. This was a healthy and positive sign of economic development in that region. His delegation supported the establishment of a working party with standard terms of reference to examine Algeria's accession .

The representative of Nicaragua said his delegation congratulated Algeria for its initiative, which would contribute to the universality of GATT. Algeria played a prime rôle in the economy of the Maghreb and indeed of the Mediterranean region.

The representative of Canada said that his delegation supported the establishment of a working party to examine Algeria's request and looked forward to active participation in it.

The representative of Zaïre welcomed Algeria's request for full GATT membership. As an African country, Zaïre knew of the rôle that Algeria played in strengthening economic cooperation among developing countries.

The representative of the Côte d'Ivoire said her delegation supported Algeria's request, in particular because of the special relations between the two countries.

The Chairman proposed that the Council take note of the statements and agree to establish a working party with the following terms of reference and composition:

Terms of reference

To examine the application of the Government of Algeria 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 would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Algeria.

The Council so agreed.

The Chairman invited the representative of Algeria to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party.

(b) Request by Costa Rica for accession (L/6180)

The Chairman recalled that in July 1985 the Council had established a Working Party to examine Costa Rica's application for provisional accession. Contracting parties had recently received document L/6180 containing a communication from Costa Rica, in which that Government had asked for full accession.

The representative of Costa Rica, speaking as an observer, recalled that his country, in subscribing to the Havana Charter in 1948, had agreed to undertake progessively the necessary steps toward its association with GATT; years later it had come closer by becoming an observer. Cumulative experience had led to its request in 1985 for provisional accession. Since then, contracting parties had been able to examine Costa Rica's Memorandum on its trade régime; its reply to the related questionnaire had now been completed. His delegation was particularly pleased to convey his country's intention to contribute to the strengthening of the multilateral trading system by requesting full accession under Article XXXIII and its wish to contribute to the success of the Uruguay Round by participating fully in these negotiations. Costa Rica looked forward to tariff negotiations as soon as possible in the hope that favourable consideration would be given shortly to the Working Party's report.

The representative of Argentina said that the Latin American contracting parties supported Costa Rica's application, which would bring it closer to GATT.

The representative of Nicaragua supported Argentina's statement. His country shared a common history as well as lengthy and friendly relations with Costa Rica, and fully supported its request.

The representative of the European Communities associated his delegation with the statement by Argentina. Moreover, it considered the request as a logical follow-up to the contacts Costa Rica had had with the Community in Punta del Este.

The representative of the Côte d'Ivoire said her delegation supported Costa Rica's request.

The Chairman proposed that the Council take note of the statements and agree to change the terms of reference of the Working Party previously established to examine Costa Rica's earlier request for provisional accession, as follows:

Modified terms of reference

To examine the application of the Government of Costa Rica to accede to the General Agreement under Article XXXIII, and to submit to the Council recommendations which may include a draft Protocol of Accession.

The Council so agreed.

The Chairman suggested that the Council agree also that membership in the Working Party continue to be open to all contracting parties indicating their wish to serve on the Working Party, and further agree that Mr. Lacarte-Muró (Uruguay) continue to serve as its Chairman.

The Council so agreed.

The Chairman invited the representative of Costa Rica to consult with the Secretariat as to further procedures to be considered by the Working Party.

(c) Request by Guatemala for provisional accession (L/6173)

The Chairman drew attention to document L/6173 containing a request from Guatemala for provisional accession to the General Agreement.

The representative of Guatemala, speaking as an observer, said his country was requesting provisional accession to GATT in accordance with Section F(a)(v) of the Punta del Este Declaration, as a first step towards its full accession. This request had been considered in the framework of Central American economic integration, and although it had been ready for some time, could not be submitted before 30 April 1987 because of a civil service strike which had lasted from 20 April to 11 May. Guatemala hoped to receive special and more favourable treatment as a developing country, and believed that its request should be seen not in isolation but in relation to the sub-regional economy to which his country historically belonged. International cooperation in this sense could greatly benefit Guatemala itself as well as the entire Central American Common Market, contributing to the dynamism necessary for the region's economic development and to the stability needed for its trade relations. Guatemala also hoped that it could participate in the Uruguay Round under the same conditions as the other Central American countries.

The representative of Argentina said that the Latin American contracting parties supported Guatemala's request for provisional accession and the establishment of a working party to examine it. These countries also supported Guatemala's request to participate in the Uruguay Round and strongly hoped that any obstacles linked to the deadline of 30 April 1987 would be avoided.

The representative of Nicaragua said that because of its historical links to Guatemala, his country wanted to add its support to that already expressed by Argentina. Guatemala's and other Central American countries' membership in GATT would give an additional trade impetus to the Central American Common Market.

The representative of Canada welcomed Guatemala's initiative and supported the establishment of a working party to examine its request. The question of Guatemala's participation in the Uruguay Round should be examined in another forum.

The representative of the European Communities said that Argentina had also expressed the Community's sentiments regarding Guatemala's request for provisional accession. Guatemala's participation in the Uruguay Round should be discussed in another forum.

The representative of the Côte d'Ivoire said her delegation supported Guatemala's request for provisional accession.

The representative of the United States said his delegation supported Guatemala's request and the establishement of a working party with standard terms of reference, and agreed that the question of participation in the Uruguay Round should be addressed in another forum.

The Chairman proposed that the Council take note of the statements, including those relating to participation in the Uruguay Round, and agree to establish a working party with the following terms of reference:

Terms of reference

To examine the request of the Government of Guatemala to accede provisionally to the General Agreement and to submit recommendations to the Council.

Membership

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

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Guatemala.

The Council so agreed.

The Chairman invited the representative of Guatemala to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the Working Party.

3. Thailand - Business and excise taxes
- Request for extension of time limit (C/W/518/Rev.1, L/6176)

The Chairman recalled that in paragraph 3 of Thailand's Protocol of Accession it was stated that Thailand intended to bring into line with Article III of the General Agreement, the business and excise taxes with respect to items on which the incidence of these taxes varied according to whether the items were locally produced or imported, and would endeavour to do so as soon as possible in the light of the provisions of Part IV, and in particular Thailand's development, financial and trade needs, and that if by 30 June 1987, the incidence of the above-mentioned taxes still varied as between locally produced and imported items, the matter would be reviewed by the CONTRACTING PARTIES (BISD 29S/3). He drew attention to document L/6176 containing a request by the Government of Thailand for an extension of the time limit, and to the draft Decision in document C/W/518/Rev.1.

The representative of Thailand said it had not been possible for her Government to accomplish the highly complicated task of harmonising the tax rates in question. As to the excise tax, the uniform rates for most of the items in question had already been established (L/6176, Annex); a few remaining items were currently under consideration. The business tax was more complicated than the excise tax and thus required more time than had been envisaged for harmonizing the rates. She said that under certain circumstances, the locally produced goods practically faced double or even triple taxation as the tax was levied at all stages of production. The burden for these goods was therefore higher than that for the similar imported items. Her Government wished to reaffirm its intention to fulfil GATT obligations, and thus had begun the process of introducing the value added tax system (VAT) which would, in effect, set uniform rates for locally produced and imported items. The introduction of the VAT had been one of the major policies of her government, but the process of transposition of tax systems was complicated, and politically and economically sensitive. Accordingly, and in the light of Part IV of the General Agreement and, particularly, of Thailand's development, financial and trade needs, her Government requested an extension of the period until 30 June 1990, to enable it to undertake the necessary steps for ensuring a smooth transition into the new tax system, which would eliminate the differences in tax rates applied to domestically produced and imported items. The list of the items on which different tax rates would still be applied would be made available to the Secretariat shortly.

The representative of Malaysia, speaking on behalf of the other ASEAN contracting parties, said that they understood the complexities involved in Thailand's bringing its tax structure into line with Article III of the General Agreement, as provided for in its Protocol of Accession. They strongly felt that in the light of Part IV and of Thailand's economic, financial and trade needs, that country needed the additional time to fulfil its commitments, and they supported the request for the three-year extension.

The representative of Canada said his delegation had noted that the Thai representative had reaffirmed her Government's intention to fulfil its obligations under its Protocol of Accession. Canada expected Thailand to be able to make the necessary adjustments in the course of the three-year period envisaged, and on that basis, could agree to the request.

The representative of the European Communities said his delegation had noted that moves had already been made by Thailand to bring the tax into line with Article III, and had also noted the information on the intent to introduce VAT to remove anomalies in the tax structure. The Community recognized that these changes could not be made overnight, and was prepared to accept Thailand's request. The Community had also noted that Thailand would furnish the Secretariat with information on the remaining items subject to a different tax rate. The Community looked forward, before June 1990, to an announcement to GATT by Thailand that it had successfully completed the introduction of VAT.

The representative of the United States said that his delegation appreciated Thailand's willingness to provide information on the scope and level of taxes currently applied, since those were the only remaining taxes covered by the draft Decision. The United States looked forward to being informed by Thailand when the tax structure had been brought into conformity with Article III.

The Council took note of the statements and agreed to extend the time-limit until 30 June 1990 (L/6190).

4. Measures affecting the world market for copper ores and concentrates - Report of the Group of Governmental Experts (L/6167)

The Chairman recalled that in July 1986, the Council had agreed to establish a Group of Governmental Experts to examine this matter.

Mr. Cartland (Hong Kong), Chairman of the Group, introduced the report (L/6167). He recalled that the Group had been established following the request by the European Economic Community for a working party. The task of the Group had been "to examine problems falling under the competence of the General Agreement relating to current trends in world trade in copper, including the supply and demand situation for copper concentrates and refined copper, and to report to the Council". The Group had agreed to focus its discussion on: (i) production and consumption structure of the world copper industry, (ii) supply and demand situation, (iii) pricing policies, and (iv) trends in world trade, including protective measures. It had concluded (paragraph 16) that world trade in copper had been negatively affected by various factors relating to production policies, structural changes, decline in and changing patterns of consumption, and trade policy measures maintained by some countries. Members of the Group had expressed the hope that further liberalization of copper trade would be

achieved through the Uruguay Round negotiations. The Group had been unable to agree on whether certain pricing and trade practices discussed in the Group constituted a distortion in the supply and demand of copper concentrates, with an aggravating impact on world trade conditions.

The representative of Japan said that Japan, as a country which had taken part in the Group's work, welcomed and supported adoption of the report on this long-standing issue.

The Chairman said that he had received a request from a delegation particularly interested in this issue to defer consideration of the report to the next meeting. Without precluding discussion at the present meeting, he would propose that the Council take note of the statements and agree to revert to this item at its next meeting.

The Council so agreed.

5. Implementation of Generalized System of Preferences (GSP) schemes (L/6166)

The Chairman recalled that at the May Council meeting, it had been agreed to revert to this item at the present meeting. It had also been noted that he would consult with interested delegations about this matter. He informed the Council that he had held such consultations during which it had been suggested that the Council itself would be an appropriate forum for a discussion on the points raised at the May meeting and possibly for making recommendations in this area. In the consultations it had been noted that consideration in the Council would not prevent this matter being raised in other fora and would not prejudge its treatment there. Some delegations had requested that the matter be placed on the Agenda for a future meeting, since it was considered that additional time would be needed to prepare for a substantive discussion. Accordingly, he suggested that the Council agree to revert to this item at a future meeting.

The Council so agreed.

6. Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- Biennial report (L/6168)

The Chairman drew attention to document L/6168 containing information given by the parties to the Agreement referred to in that biennial report. He informed the Council that a number of delegations had requested to defer consideration of the report to the next Council meeting. He therefore proposed that the Council agree to revert to this item at its next meeting, when the representative of New Zealand would introduce the report.

The Council so agreed.

7. United States - Taxes on petroleum and certain imported substances - Panel report (L/6175)

The Chairman recalled that at its meeting in February the Council had established a panel to examine the complaints by Canada, the European Economic Community and Mexico and had authorized him to designate the Chairman and members of the Panel in consultation with the parties concerned. In February, contracting parties had been informed of the composition of the Panel (C/146). The Panel had concluded its work and its report was now before the Council (L/6175).

Mr. Cartland, Chairman of the Panel, introduced the report. The Panel had held its first meeting with the parties on 2 March 1987 and had submitted its report to them on 27 May 1987. The report had been circulated on 5 June 1987 as document L/6175. The Panel had thus been able to complete its work within three months. As to the tax on petroleum, the Panel had found that it was inconsistent with Article III:2, first sentence, and consequently constituted a prima facie case of nullification and impairment, and that an evaluation of the trade impact of the tax was not relevant for this finding. The Panel therefore had suggested that the CONTRACTING PARTIES recommend that the United States bring the tax on petroleum into conformity with its obligations under the General Agreement. As to the tax on certain imported substances, the Panel had found that it constituted a tax adjustment corresponding to the tax on certain chemicals that was, in principle, consistent with Article III:2, first sentence, and that the existence of the penalty rate provisions as such did not constitute an infringement of Article III:2, first sentence, since the tax authorities had regulatory power to eliminate the need for the imposition of the penalty rate. The Panel had recommended that the CONTRACTING PARTIES take note of the statement by the United States to the Panel that the penalty rate would in all probability never be applied.

The representative of Canada expressed his authorities' appreciation for the cooperation of the principal and third parties to this dispute throughout the various stages of the process from the time the matter had been first raised in the Council in October 1986. That represented an important signal that the dispute settlement process could meet the provisions of Article XXIII:2. The Panel and the Secretariat had done their work; it remained now for the report to be adopted by the Council and the recommendations to be implemented as soon as possible. Canada considered the Panel report to be well reasoned; it had arrived at conclusions which his delegation could accept at the present meeting, even if a more favourable conclusion, from Canada's perspective, with respect to the tax on certain imported substances might have been reached. He drew attention to the sentence in paragraph 5.2.9 of the report which stated that "the imposition of a penalty tax on the basis of the appraised value of the imported substance would not conform with the national treatment requirement of Article III:2, first sentence, because the tax rate would in that case no longer be imposed in relation to the amount of chemicals used in their production but the value of the imported substance." His

delegation asked the US authorities, in the exercise of their regulatory power, to bear this in mind, as well as the Panel's recommendation that the CONTRACTING PARTIES take note of the statement by the United States that the penalty rate would in all probability never be applied. His delegation was also taking note of the Panel's conclusion in paragraph 5.1.11 with respect to synthetic petroleum, and the fact that Canada's rights in this matter were in no way affected by the report. His delegation nevertheless believed that the Panel's conclusion in paragraph 5.1.12 gave clear guidance on this matter, and welcomed this recommendation. Canada supported adoption of the Panel's report at the present meeting and hoped that the United States and the other parties to the dispute, including interested third parties, would do the same so that the Council could take appropriate action.

The representative of Mexico said that the Panel's conclusion had great importance for his country as it was the first time that Mexico, as a contracting party, had submitted a dispute to GATT. He said that apart from the result, which satisfied Mexico, the manner in which the Panel had considered this case deserved attention. First, the Panel had managed to respect the calendar and had been able to submit its report to the Council in record time. Moreover, its conclusions and recommendations were clear and precise. During the Panel's meetings, arguments similar to Mexico's had been advanced by Canada and the Community, as well as by Australia, Indonesia, Kuwait, Malaysia, Nigeria and Norway. His delegation was confident that the US Administration would take appropriate action to implement the Panel's recommendation.

The representative of the European Communities said that the Panel had probably set a record for expeditious work -- only four months between its establishment and submission of the report. That showed that the dispute settlement mechanism could work effectively if parties cooperated. The case had been complicated by the fact that there were three complaining parties; this had obviously not affected the Panel proceedings negatively. The Community fully agreed with the Panel's conclusions on the tax on petroleum, in particular with the finding that the tax was inconsistent with Article III:2, first sentence, and constituted a prima facie case of nullification and impairment, and that an evaluation of the trade impact of the tax was not relevant to this finding. The rationale of Article III:2 was indeed not merely to protect expectations on export volumes, but also those on the competitive relationship between imported and domestic products. The Community was somewhat disappointed with the Panel's conclusions on the tax on certain imported substances. In the Community's view, the imposition of this tax, which applied only to imported chemical derivatives, was not justified. The finding that this tax constituted a border tax adjustment that was in principle consistent with Article III:2 was based on a broad interpretation of the concept of eligibility of taxes for adjustment. He asked if it was justified to consider any internal tax to be eligible for border adjustment merely on the basis that it was levied directly on products. Such an interpretation could clearly lead to abuses causing unjustified trade distortions. In the Community's view, it

would not have been unreasonable to take into account the underlying rationale of the tax, which was to finance measures to eliminate pollution caused by domestic production. The Community continued to believe that the imposition of this tax on imported derivative products produced outside the United States was inconsistent with this rationale and with the widely accepted "polluter pays" principle. The US tax therefore could lead to double taxation and trade distortions. The Community nevertheless accepted that the Panel had been faced with a difficult question of interpretation, for which there were no easy answers based on existing texts or precedents. It therefore would agree to the adoption of the Panel report at the present meeting on the understanding that the issue of the trade policy aspects of environmental measures needed further examination and clarification. The Community noted that the Panel had considered that the imposition of a penalty tax on the basis of the appraised value of the imported substance would not conform with the national treatment requirement of Article III:2, first sentence, and that the United States had stated that the penalty rate would in all probability never be applied. The Community reserved its right to raise this issue again should this rate be applied after the tax came into force.

The representative of the United States said that the process in this dispute had been exemplary: it had been efficient, expeditious, and a result of cooperation from all parties concerned. He hoped other panels would follow this example as a model of procedure. In his delegation's view, the Panel's report was clear and reflected accurately the positions presented by the parties to the dispute. Therefore, the United States was prepared to accept adoption of the report by the Council, but in doing so, wanted to make certain points clear. First, the Panel had discussed at some length the nature of the prima facie case and the presumption of nullification or impairment that arose when there was an infringement of obligations under the General Agreement (paras. 5.1.3-5.1.9). In the US view, that was still a rebuttable presumption, despite the Panel's conclusion, in paragraph 5.1.7, that in past cases it had operated as an irrefutable presumption. Fortunately, the Panel had been careful in this dispute not to render judgement on that question -- his delegation believed it was a legal debate that properly belonged in the Uruguay Round negotiations on dispute settlement. In paragraph 5.1.9, the Panel had concluded that a change in the competitive relationship between imported and domestic products resulting from a measure inconsistent with Article III:2 should be regarded ipso facto as a nullification or impairment of benefits under the General Agreement. Second, concerning the Panel's conclusions in paragraph 5.2.12 with respect to the tax on certain chemical substances, the United States welcomed the Panel's finding that this tax did not contravene Article III:2, and intended to apply the tax in a manner consistent with its GATT obligations. His authorities were carefully examining the Panel's report in the light of its implications for the United States, but that would not prevent adoption of the report or of the recommendations therein.

The representative of Jamaica said that the report was clear, incisive and concise, and that the Panel's work had been done speedily; nevertheless, his delegation would have preferred the report's having been produced in sufficient time for it to be referred to capitals so that their opinion could have been obtained. He noted that the Panel had used the word "substance" in lieu of "product", and wondered whether it had been the Panel's intention merely to reproduce the language in the US legislation or whether it had taken this formulation as distinct but falling nevertheless within the meaning of Article III.

Mr. Roessler, Counsellor, said that the tax on imported substances had been described as such in the report because these terms had been used in the US legislation; in fact, the tax covered products which were listed in the annex to the report. Therefore, adoption of the report would not imply that Article III would apply to anything other than products. No other significance could be attached to the use of the word "substance" in the report.

The representative of Jamaica thanked the Secretariat for this clarification. His delegation endorsed previous speakers' views that the report should be adopted by the Council and fully implemented by the party concerned.

The representative of Nicaragua said his delegation fully supported the Panel's conclusions and recommendations and hoped that the Council would adopt the report. He congratulated the Panel as well as the parties for the quick work. It was not enough to adopt the report; the recommendation had to be followed. There had been a negative experience with some panels' recommendations, e.g., the Panel on US Imports of Sugar from Nicaragua (L/5607). In that case, the US response to the recommendation had been a total embargo on imports from his country, which the International Court of Justice had found to be illegal. This cast doubt on the fate of the present Panel's recommendation.

The representative of Venezuela, speaking as an observer, said that his country, although only an observer in the Council, attached great importance to this issue and supported the positions of Mexico and other oil-exporting countries. He hoped that the United States would fulfil the Panel's recommendation contained in paragraph 5.1.12.

The representative of Australia said his country was an interested party in the dispute and had made a submission to the Panel. Australia agreed with the Panel's recommendation that the United States should bring its legislation into conformity with the General Agreement. Like Jamaica, his delegation would have preferred to have had more time to study the report, but would not wish to block a trend toward consensus for adoption.

The representative of Malaysia noted that the dispute settlement process would not end until the report had been adopted and the recommendation acted upon. His delegation also would have wished more time to consider the report but would not stand in the way of a consensus. Malaysia accepted the conclusion (page 24) regarding the inconsistency of the oil tax with Article III:2 and hoped that the United States would bring its legislation into conformity with the General Agreement. As to the second conclusion on page 28, his delegation shared the Community's views and noted the US statement to the effect that the penalty would in all probability never be applied.

The Chairman noted that many delegations had expressed satisfaction with the manner in which this dispute had been processed.

The Council took note of the statements, including the US statement to the Panel that the penalty rate would in all probability never be applied, and adopted the Panel report (L/6175).

8. United States - Section 337 of the Tariff Act of 1930
- Recourse to Article XXIII:1 by the European Economic Community (L/6160)

The representative of the European Communities, speaking under "Other Business", said that on 22 April 1987 the Community had requested Article XXIII:1 consultations with the United States concerning Section 337 of the US Tariff Act of 1930, particularly with regard to certain aramid fibres (L/6160). In May 1987, the Community had stressed the importance of this long-standing issue and, at a high level, had asked the United States to ensure that consultations would begin at the earliest possible date. No formal reaction to these requests had yet been received. In the Community's view, the United States had not lived up to its commitment under paragraph 4 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/21). It was incumbent on the United States to move rapidly on this issue. The Community reserved its rights to request the establishment of a panel at the next Council meeting if no satisfactory solution was found in the meantime.

The representative of the United States said his authorities regretted that the Community had felt it necessary to raise this matter at the present meeting, since dates for consultations had been discussed bilaterally. His delegation had been disappointed to learn, only at the present meeting, that the proposed date was not acceptable to the Community. New dates would have to be found; however, his delegation considered it premature to talk of a panel.

The Council took note of the statements.

9. Harmonized System - Transposition by the United States

The representative of the European Communities, speaking under "Other Business", said that the Community was dissatisfied with and concerned at the way in which the United States had transposed its tariffs under the Harmonized System, in particular with regard to textiles and clothing. In a large number of cases, including textiles, the United States had not respected the basic principles reflected in L/5470/Rev.1 and emphasized in TAR/M/19, paragraphs 2.2, 2.15 and 2.20, which aimed at a neutral and mechanical result in terms of existing bindings. The tariff increases had led to great difficulties for the Community and had impaired its rights under the General Agreement. He said that the compensation offered was far from meeting all of the Community's interests, and cited statistics to illustrate this point. His delegation wanted to alert all contracting parties, as well as to reserve the Community's GATT rights, including those to make corresponding adjustments under Article XXVIII.

The representative of the United States said that this issue was better suited for discussion in other fora. As a result of the Article XXVIII negotiations, US conversion was globally neutral, and vis-à-vis the Community, the United States had restored the overall balance of concessions. There would be no net change, measured to the one one-hundredth of a percentage point. In actual dollar terms, it was estimated that the duties would increase by US$5 million on a total duty collection base of nearly US$8 billion, equivalent to an increase of approximately 0.07 percent. Sectorally, the changes were also minimal; in most cases, there was no measurable net change in the average ad valorem tariff rate. The largest change, accounting for virtually the entire net overall change, was in textiles and apparel, where the conversion resulted in a net increase in the average rate of duty of 0.06 per cent or an increase in duties collected of approximately US$5.4 million on ornamented and non-ornamented cotton apparel. Not only was the conversion neutral on the whole, but the United States was also in the process of removing, without direct compensation, what the Community and other contracting parties had notified as a non-tariff measure, i.e., the classification of the current US tariff schedules. Perhaps the Community might follow this example and begin to dismantle non-tariff measures of its own without seeking direct compensation. Finally, the United States had substantive reservations about the Community's own conversion. Not only was there an alarming pattern of systematic net duty increases in a sector in which the United States was competitive (scientific instruments), but the Community was unwilling even to deliver on promises made in the Tokyo Round on a particular and very sensitive US export item, kraft paper. His delegation believed that the United States had more than lived up to its own GATT obligations in its conversion; to the extent that other trading partners had questions, it would address them in other, more appropriate, fora.

The representative of the European Communities said that the US and the Community's convictions seemed to be diametrically opposed on this question. The US transposition, instead of being a purely mechanical operation, had led to unacceptably high duties; the United States had implicitly recognized this by offering compensation. It had been agreed that the mechanical transposition should not distort the trade flows of particular products and that, as a general rule, it would be better to establish tariff sub-positions. The United States, however, had refused to do so. As to the US claim concerning Community duties on kraft paper, the Community had scrupulously stuck to its commitment. He concluded by noting that, while the Community's transposition had led to an increase of more than five percentage points on only 19 tariff positions, the US transposition had led to a similar increase on 280 positions. Vital interests on both sides were affected and the Council should note this.

The Council took note of the statements.

10. Uruguay - Import surcharges
- Request for extension of waiver

The representative of Uruguay, speaking under "Other Business", recalled the Decision of 18 July 1986 (L/6029) concerning the extension until 30 June 1987 of the waiver for Uruguay's import surcharge, and said his delegation would be submitting a request for a further extension before the expiry date in the hope that it would be dealt with at the Council's July meeting.

The Council took note of the statement.

11. United States - Unilateral measures on imports of certain Japanese products
- Recourse to Article XXIII:1 by Japan (L/6153)

The representative of Japan, speaking under "Other Business", recalled that on 17 April the United States had imposed prohibitive tariffs on US$300 million of goods imported from Japan, in violation of Articles I and II and nullifying and impairing Japan's benefits. Japan had requested consultations with the United States under Article XXIII:1, but the United States had yet to respond to this request. Japan repeated its request and was certain that the United States would take a forthcoming attitude in the light of its position on dispute settlement in the Uruguay Round and its statement at the April Council meeting that it would treat this request seriously.

The representative of the United States said that his Government had never refused or rejected Japan's request for Article XXIII:1 consultations; rather, it had conveyed to Japan its willingness to discuss this issue. In recent high-level meetings, the United States had asked Japan to make proposals for suitable dates, in the hope of scheduling the consultations.

The representative of Japan said his delegation had not been informed that the United States was willing to discuss this issue, and was encouraged by this statement.

The representative of the United States said that note should be taken of his Government's willingness to discuss this issue and to move forward.

The representative of Jamaica said that this exchange demonstrated that progress could be made not only in bilateral discussions outside the GATT but also in the Council, where information came out loud and clear.

The Council took note of the statements.

12. European Economic Community - Decision related to semi-conductor trade

The representative of Japan, speaking under "Other Business", said that the Council of the European Communities had decided on 26 May 1987 to ask the Commission to submit, as a matter of urgency, a proposal for a regulation introducing 100 percent duties on imports from Japan if unilateral US measures against Japan concerning semi-conductor trade caused or threatened to cause serious prejudice to Community producers. Japan considered the US measures in question to be inconsistent with GATT.[1] The EC Council's decision stated that any resulting action taken by the Commission should comply with GATT provisions; Japan hoped that this would be the case if such action were taken.

The representative of the European Communities said that his delegation had taken note of Japan's statement and would transmit it to his authorities. The proposed EC Council regulation was a precautionary procedure with no substantive effect on trade as yet; it had resulted from another dispute and was perhaps a logical response to illegal measures arising from an illegal agreement.

The Council took note of the statements.

---

[1] See item 11.

13. India - Import restrictions on almonds
- Recourse to Article XXIII:1 by the United States

The representative of the United States, speaking under "Other Business", said that at his delegation's request the United States and India had agreed to hold consultations on 19 June to discuss what the United States believed was nullification and impairment of its GATT benefits as a result of India's licensing régime as applied to imports of almonds. The discussions would be held under Article XXIII:1 of the General Agreement and under Article 4.2 of the Agreement on Import Licensing Procedures (BISD 26S/159). These problems had been the subject of bilateral discussions for six years. The United States looked forward to early resolution of outstanding differences, but reserved its right to raise the matter again at an appropriate meeting of the Council should this not prove to be the case.

The representative of India said that his delegation had replied promptly to the US request. In his authorities' view, however, there had been no nullification or impairment of US benefits. India's action was fully consistent with GATT, in particular the balance-of-payments provisions of Article XVIII. His delegation did not think that the reference to the Licensing Code was pertinent to Article XXIII:1, but was willing to participate in such consultations.

The Council took note of the statements.

14. China's status as a contracting party
- Presiding arrangements

The Chairman, speaking under "Other Business", recalled that in March, the Council had agreed to establish a Working Party and had authorized him to conduct consultations with interested parties on presiding arrangements, the terms of reference of the Working Party and any other matters related to the decision which the Council had then taken. At its May meeting, the Council had adopted the terms of reference of this Working Party. As a result of his further consultations, he could now inform the Council that consensus had been reached on Mr. Girard (Switzerland) as Chairman of the Working Party. Mr. Girard had indicated his willingness to serve in this capacity.

The representative of China said his delegation was glad that agreement had finally been reached and hoped that satisfactory conclusions could be reached as soon as possible; China would offer its fullest cooperation in this respect.

The Council took note of this information from the Chair and of China's statement.

15. Third Lomé Convention
- Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had established a Working Party to examine the Third Lomé Convention and had authorized him to designate the Chairman of the Working Party in consultation with interested delegations. Regrettably, the consultations had not yet finished, having been complicated by the fact that the Convention comprised a large number of parties. When he had concluded his consultations, he would inform representatives of the results either by a document[1] or by an announcement at the next Council meeting.

The Council took note of this information.

16. Japan - Trade in semi-conductors
- Panel composition

The Chairman, speaking under "Other Business", recalled that at its April meeting, the Council had established a panel to examine this matter and had authorized him, in consultation with the two parties concerned, to designate the Chairman and members of the Panel. His consultations were not yet finished. When he had concluded them, he would inform representatives of the results either by a document[2] or by an announcement at the next Council meeting.

The Council took note of this information.

---

[1] See L/6195, dated 6 July 1987.

[2] See C/149, dated 24 June 1987.