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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
15/16 May 1984

MINUTES OF MEETING

Held in the Centre William Rappard on 15/16 May 1984

Chairman: Mr. F. Jaramillo (Colombia)

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1. Costa Rica - Request for observer status (L/5644)

The Chairman drew attention to document L/5644, containing a request by Costa Rica for observer status at Council meetings. He noted the reference in the document to Costa Rica's interest in the possibility of becoming a contracting party, and proposed accordingly that the Council agree to grant Costa Rica observer status for Council meetings.

The Council so agreed.

Following a proposal by the representative of the European Communities, the Council requested the Secretariat to prepare a note summarizing existing practice with respect to admission of non-contracting parties as observers at meetings of the Council and its subsidiary bodies.

2. Japan - Measures on imports of leather

- Report of the Panel (L/5623)

The Chairman recalled that in April 1983 the Council had established a panel to examine the complaint by the United States. On 13 March 1984, the Council had considered the Panel's report (L/5623), and at the request of Japan had agreed to revert to this item at its next meeting.

The representative of Japan said that his delegation wanted to underline the points made in paragraph 43 of the report. Bearing in mind that paragraph, and at the same time attaching much importance to

the credibility of GATT's dispute settlement procedures, Japan was prepared to accept the report in its totality. If the whole report were to be adopted, Japan would make efforts progressively to liberalize import restrictions on leather in the direction of eventual conformity with GATT provisions. This process would need a certain amount of time. As a first step, Japan would take the following measures with a view to the expansion of leather trade. First, Japanese tanners, as end-users, would be able to import as much wet-blue-chrome as they needed, and quotas would be allocated at any time, beginning in the second half of the 1984 financial year; this meant that the quota system would become the effective equivalent of automatic import licensing. Second, Japan would publicize the sizes of the quotas on leathers. Third, the Government would take necessary steps to reduce the tariff rate with respect to wet-blue-chrome grain from 15 per cent to zero as from April 1985. Furthermore, his delegation would inform the Council periodically about the actions taken by the Government.

The representative of the United States welcomed Japan's willingness to have the report adopted by the Council. According to customary GATT practice, the United States agreed that Japan should be given reasonable time to conform with GATT provisions. The Panel had correctly suggested in paragraph 59 of the report that Japan should eliminate its restrictions and thus conform with GATT provisions. It was clear that conformity with the GATT required eventual elimination of the restrictions. The United States was pleased to see Japan taking an initial step toward compliance, and strongly urged it to complete quickly the process of eliminating the GATT-inconsistent practices. However, the first step which Japan intended to take towards that end was inadequate to restore the GATT benefits which had been nullified and impaired by the restrictions, particularly as concerned US exports of finished leather. The United States would be waiting to learn of further progress on this matter from the Japanese delegation. His delegation wanted again to stress that the Panel had considered that special historical, cultural and socio-economic circumstances could not be used as a justification for import restrictions or even be considered by a panel in applying the relevant GATT provisions. It followed also that such circumstances could not be used to justify taking more than a reasonable period of time to eliminate those restrictions. Nothing in the report should be interpreted as a departure from that conclusion.

The representative of Australia supported adoption of the report on the understanding that the sole legal finding of the Panel was set out in paragraph 59. The paragraphs which reflected on special factors affecting the manner in which Japan operated its quantitative restrictions on certain leathers could not modify other contracting parties' rights or Japan's obligations under the General Agreement. He reiterated his concern that the Japanese Government should take into account not only its own sensitivities peculiar to the leather processing industry in Japan, but also the domestic sensitivities of other countries which had to respond to legitimate pressures for improved access to the Japanese leather market. The first step towards the liberalization of Japanese import restrictions fell short of Australia's expectation of what might have been possible; for example,

there was no liberalization on semi-processed or processed leather. Australia would closely monitor how Japan implemented future trade liberalization on leather imports, and how soon it would report to the Council on progress in this sector.

The representative of Canada supported adoption of the report and welcomed Japan's willingness to accept such action. Canada was willing to allow reasonable time for the elimination of all Japanese quantitative restrictions on leather, but did not see that time period as open-ended. His delegation therefore urged Japan to inform the Council as soon as possible about further steps to ensure that its trade measures on all leather imports conformed fully with GATT disciplines.

The representative of the United Kingdom, on behalf of Hong Kong, recalled that he had made Hong Kong's view on this subject clear at the Council meeting on 13 March 1984. He did not intend to create any special difficulties for any particular party, but was concerned with the principle that once a panel had reported clear findings and conclusions on the question of conformity with the General Agreement, it should be expected that any recommendations adopted by the CONTRACTING PARTIES should be acted upon without delay and within a reasonable period of time. Any party to a dispute could always find reasons to argue that its circumstances were unique and required special consideration. If such arguments were once recognized as justifying delay, then the effectiveness of the GATT dispute settlement mechanism could be seriously prejudiced. He asked that his remarks on this item at the preceding Council meeting should be fully noted in the context of the discussion at the present meeting.

The representative of Pakistan welcomed Japan's willingness to accept adoption of the report and said his delegation could agree to Japan being given a certain amount of time to align its trade régime with GATT provisions. Pakistan hoped that Japan would consult with all interested parties on this matter and report periodically to the Council on further liberalization measures.

The representative of New Zealand supported adoption of the report and said the measures announced by Japan marked a first step in the right direction. His delegation had noted the particularly delicate social and political circumstances experienced by Japan in regard to its domestic leather industry and the Dowa population, but it was conscious also of the obligation of contracting parties to conform with the General Agreement. New Zealand believed that the CONTRACTING PARTIES should have the reasonable expectation that, consistent with the finding in paragraph 59 of the Panel's report, Japan would take prompt, positive and progressive steps to make its measures conform with General Agreement.

The representative of the European Communities shared the views expressed by the representative of Australia. He noted that Japan was at last going to comply with its obligations under the Agreement on Import Licensing (26S/154).

The representative of Chile endorsed the statement by the representative of the United Kingdom on behalf of Hong Kong. He also recalled the reservations expressed by his delegation at the preceding Council meeting concerning paragraph 60 of the report; adoption of the report by the Council would not mean that the Council was taking action on the recommendation in that paragraph. If such a recommendation were to be acted upon, it would have to be done on the basis of the provisions of the General Agreement itself, i.e., through a waiver under Article XXV. Chile believed that the measures announced by Japan were a first step in the right direction and expected that in the near future other steps would be taken. His delegation also had reservations about the choice of words in paragraph 43 of the report, which said that leather and leather footwear were the only manufactured items subject to residual restrictions in Japan, giving the impression that such restrictions were justified or less prejudicial than restrictions applied by Japan to agricultural products.

The representative of India welcomed Japan's willingness to adopt the report. India would agree to the report's adoption on the clear understanding that the sole legal finding of the Panel was contained in paragraph 59. His delegation continued to have serious doubts over the language used by the Panel in paragraph 60 of the report. India would agree to Japan being given a reasonable period of time for reporting compliance with the recommendation in paragraph 59, and would continue to reserve its GATT rights in respect of the findings in that paragraph. However, his delegation was concerned to hear that Japan would report on "eventual" compliance with the recommendation. India agreed with previous speakers who had said that socio-economic reasons could not be a justification for continuance of measures which were found to be illegal under the GATT. India also wanted to point out that its own leather processing industry was in the hands of communities which were socially under-privileged. The first steps towards liberalization announced by the representative of Japan were modest and disappointing; some of them did not address the concerns voiced by delegations to the Panel, and others related to measures which would have been taken anyway, as was the case for publication of leather quotas.

The representative of Finland, on behalf of the Nordic countries, welcomed Japan's willingness to have the report adopted, and hoped that this constructive approach would be reflected in Japan's implementation of the recommendation in the report. They noted with satisfaction the information given by the representative of Japan on first steps to be taken towards liberalizing leather imports.

The representative of Argentina welcomed Japan's willingness to adopt the report and its announcement of first steps to be taken to liberalize leather imports. His delegation could agree to the report being adopted on the understanding that Japan's obligations were fully reflected in paragraph 59, in respect of elimination of import

restrictions. The suggestion in paragraph 60 went beyond the Panel's terms of reference. Argentina also regretted that the report did not contain any findings in respect of Articles II, X:1 and 3, and XIII:1 and 3.

The Council took note of the statements and adopted the Panel report (L/5623).

3. United States - Manufacturing clause

- Report of the Panel (L/5609)

The Chairman recalled that in April 1983 the Council had established a panel to examine the complaint by the European Communities. On 13 March 1984, the Council had considered the Panel's report (L/5609), and at the request of the United States had agreed to revert to this item at its next meeting.

The representative of the United States noted that the Manufacturing Clause had been part of US copyright law for 93 years; its elimination would be a difficult issue, requiring legislative action. Implementation of the Panel's recommendation would thus take time. The United States had often stressed its belief that the dispute settlement process was vital to GATT's effectiveness. Therefore, it accepted adoption of the Panel's report and intended to make every effort to make its practice conform with GATT provisions.

The representative of the European Communities said that the Panel's report was clear, and his delegation supported the concise conclusions in paragraphs 42 and 43. The Community welcomed the statement by the representative of the United States and hoped that satisfactory action on this matter would be taken very shortly.

The representative of Hungary supported the Panel's conclusions. His delegation was also pleased to see the Community's position, as reflected in paragraph 23 of the report, defending the integrity of Article XIII.

The Council took note of the statements and adopted the Panel report (L/5609).

4. European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong

- Follow-up on the report of the Panel (L/5511, L/5645)

The Chairman recalled that at its meeting in July 1983, the Council had adopted the Panel report (L/5511) on the complaint by the United Kingdom on behalf of Hong Kong. The Council had discussed this matter further at its meetings in October and November 1983 and on 7 February 1984. The item had been put on the agenda of the present meeting at the request of the delegation of the United Kingdom on behalf of Hong Kong.

The representative of the United Kingdom, on behalf of Hong Kong, said that the communication from the European Communities in document L/5645 (notifying Article XIX action on quartz watches) had caused both disappointment and concern to Hong Kong. In so far as the Community had replaced a national action that had been found to contravene the General Agreement, with a Community action that claimed to conform with Article XIX, the Community had to be congratulated for taking a helpful step in the direction of conformity with GATT and acceptance of the MFN principle. However, there were a number of unsatisfactory elements in the new situation which should not be overlooked. Hong Kong was far from convinced of the justification for this new emergency action because the new quota was restricted to digital quartz watches while the alleged damage had occurred in production of mechanical watches. France appeared to have had no digital quartz watch production whatsoever until March 1984. It had been producing analogue quartz watches but its production of those had increased 10-fold over four years from 0.3 million pieces in 1979 to 3.5 million pieces in 1983, during which time it had benefited from restraint in contravention of the GATT on imports from Hong Kong. The decline in market share and production of mechanical watches was a world wide trend that could be attributed primarily to the development of new technology and to change in fashion. Had the mechanical watch industry in France lost its market share solely to French production of quartz watches - and quartz watches could be produced much more cheaply than mechanical watches, whether in France or elsewhere - then it would, no doubt, have been regarded as no more than a natural reaction to the trend of the market. However, import sources had been more successful in developing the market for the products of new technology and fashion than had the French infant quartz watch industry. To enable that infant quartz watch industry to be established and to catch up with the new technology and new fashion was perhaps the true reason for this safeguard measure. The question now was whether French mechanical watch production would recover behind this protection or whether, as seemed more likely, it would continue to be adversely affected by the growing domestic production of very much cheaper quartz watches established and fostered by protective measures taken initially in contravention of the GATT and now to be extended under the cover of Article XIX. Whether this situation could be justified in terms of Article XIX was a question on which Hong Kong had serious reservations. Moreover, it was noteworthy that the three-year duration of the new measure, together with two and one-half years of restraint maintained in contravention of the General Agreement, would amount to a minimum of five and one-half years of restraint altogether. The justification for a further three years restraint against the background of what had gone before was very hard to see. He hoped the statement in document L/5645 that these measures were "subject to possible review in the course of their application" meant that the duration might be reduced but would certainly not exceed three years. Otherwise, there might be a suspicion that at the end of three years the Council would be faced with another similar communication extending the measures for a further three years. Such an event would see this infant French industry well into its old age. Hong Kong would be reflecting on these questions of justification

and duration and would consider how best to pursue them in the light of the provisions of Article XIX. Finally, he drew attention to the fact that quota restrictions continued to be maintained by France, in contravention of the GATT, on a number of other products including radios, toys and umbrellas. These restrictions had been in existence for many years and Hong Kong had repeatedly pressed for their removal. He called on the Community to indicate what action France would take to comply fully, within a reasonable time, with the recommendation of the CONTRACTING PARTIES in this respect. He reserved his delegation's right to revert to this matter in the Council at a future time.

The representative of Singapore noted that the new safeguard action taken by the Community was on an MFN basis. This reaffirmed the basic principle that Article XIX safeguard action had to be non-discriminatory and MFN in nature, and was an important step in the evolution of a comprehensive safeguards system. Singapore continued to consider that safeguard action should be taken only in exceptional circumstances and then only in full conformity with the requirements specified in Article XIX.

The representative of the European Communities said that the representative of the United Kingdom, on behalf of Hong Kong, would find the answers to most of his questions concerning the new measure affecting quartz watches in Official Journal No. L/106 of 19 April 1984. He stressed that the Community was willing to hold consultations with any interested contracting party on this matter. To put the Community's action into perspective, he recapitulated the measures taken by the Community as follow-up to the recommendation of the CONTRACTING PARTIES: imports of knitwear, clothing and microscopes had been liberalized since November 1983; quotas had been increased for umbrellas and radios, despite the fact that the market for these products was declining; radio parts, pleasure boats and some toys were now subject to a régime without quantitative limitations and were only under surveillance.

The representative of Canada noted that ten months had passed since the Council had adopted the Panel's report. During that time, some steps had been taken to remove restrictions on certain items representing a limited amount of trade, and imports of certain quartz watches had been brought under cover of Article XIX. Some flexibility had been introduced in respect of other items, and the Community had confirmed that it would conform to the CONTRACTING PARTIES' recommendations. Canada considered that the Community had enjoyed the "reasonable period of time" referred to in paragraph 22 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), and his delegation urged the Community to inform the Council as soon as possible of the further steps it would take to implement fully the CONTRACTING PARTIES' recommendation on this matter.

The representative of Korea endorsed the statement by the representative of the United Kingdom, on behalf of Hong Kong, concerning document L/5645, and reserved his Government's GATT rights on this matter.

The representative of Japan reserved his Government's GATT rights with respect to the Community's Article XIX action on quartz watches.

The representative of the European Communities said he had taken note of the comments by previous speakers, and he recalled the saying that "the best is often the enemy of the good".

The Council took note of the statements.

5. Trade in Textiles

(a) Reports of the Textiles Committee (COM.TEX/35 and 36)

(b) Annual Report of the Textiles Surveillance Body (COM.TEX/SB/900 and Corr.1)

The Chairman recalled that on 13 March 1984 the Council had discussed the Reports of the Textiles Committee and the Annual Report of the Textiles Surveillance Body, and had agreed to revert to these sub-items at its next meeting.

The representative of Pakistan, speaking on behalf of developing countries exporters of textiles and clothing, said that since the special meeting of the Textiles Committee in January 1984, the number of consultation calls issued by the United States had risen to 84. These calls covered a large number of developing countries and a wide range of textiles and clothing products. The developing exporting countries were increasingly concerned at this trend and had analysed the factors of market disruption, as referred to in Annex A of the MFA[1], as they applied to the current textile situation in the US market. After a prolonged period of sluggishness, US consumer demand for textiles and clothing had picked up strongly as from the second quarter of 1983. The strength of demand for end-use products had led not only to a recovery in domestic production of these industries, but also to a vigorous upturn in the production of yarns and fabrics. The downward trend in employment in the textiles and clothing industries had also been reversed as from the beginning of 1983. In line with the strong recovery in output, the rate of capacity utilization had improved markedly, and the improvement in demand and production had also had a beneficial effect on profits. The foreign trade situation in textiles and clothing of the United States had been largely shaped in 1983 by two outstanding factors: (i) the remarkable strength of domestic demand for both textiles and clothing and (ii) the steady and sharp appreciation of the US dollar. Although the rates of US import increase

[1]Arrangement Regarding International Trade in Textiles (BISD 21S/3)

from both developing MFA and developed suppliers in relative terms were quite impressive, it had to be emphasized that the overwhelming part of consumption was still accounted for by domestic production, and that the proportion of total US imports represented by imports from developing MFA suppliers had declined in 1983 for the fourth consecutive year. Against this background, the developing countries wished to reiterate their concern at the continuing increase in the number of consultation calls issued by the United States.

The representative of the United Kingdom, on behalf of Hong Kong, endorsed the statement by the representative of Pakistan. He said it should be noted that a number of exporters had challenged the justification of individual calls affecting them and had taken their complaints to the Textiles Surveillance Body (TSB), which had been able to deal with these cases quickly and effectively. This demonstrated that the TSB was an appropriate forum for pursuing concerns on this subject, auguring well for the special review of the operation of the consultation call mechanism which the TSB was to conduct as part of the current year's major review of the MFA's operation.

The representative of India supported the statement by the representative of Pakistan. The facts outlined in that statement contradicted the assurances given by the United States as contained in paragraph 48(f) of COM.TEX/36. The TSB had found that in some cases which had been brought before it, market disruption had not been demonstrated.

The representative of the United States said that his delegation understood the concerns expressed by the representative of Pakistan, but did not share the opinion that recent US measures undermined the MFA or signalled a more sharply protectionist policy. The United States had made clear in the Textiles Committee and in the Council that any request for consultations would be made in accordance with the provisions of the MFA and of relevant bilateral agreements. It had also made clear that the criteria adopted by the United States for its internal review process, and the requests for consultations which had since been made, were designed to deal with a very real problem. US textile and apparel imports had increased in 1983 by 24.9 per cent over the previous year and by 50 per cent over 1980; this trend had continued in 1984. An analysis of these figures would show that imports from developing countries had accounted for about 70 per cent of this increase. This rate of growth in imports was not the sign of a strongly protectionist policy, but did pose problems which the United States had to address within the framework of the MFA and the relevant bilateral agreements.

The representative of Argentina endorsed the statement by the representative of Pakistan. His delegation wanted the decision of the Textiles Committee, as contained in paragraph 49 of COM.TEX/36, to be carried out, so that the TSB could present to the Committee a review of the way in which the consultation provisions of agreements concluded under the 1981 Protocol of Extension (BISD 28S/3) had been applied.

The representative of Turkey endorsed the statement made by the representative of Pakistan, and voiced increasing concern over developments in world textiles trade, particularly over departures from the MFA system. Implementation of the MFA had become increasingly rigid, and importing countries had imposed stricter restrictions on exports from developing countries. Turkey, which until recently exported textiles only to a limited number of markets, had suddenly been prevented by unilateral restrictions from expanding into the markets of two of its important trading partners, Sweden and the United States. Turkey called on importing countries to adopt policies more in line with the requirements of North-South interdependence, and not to remove from textile producers the possibility of increasing their sales of these products. He added that quantitative restrictions constituted the principal obstacle to trade between developed and developing countries, particularly in the field of textiles.

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

(c) Secretariat Study on "Textiles and Clothing in the World Economy" (C/W/440,Spec(84)24 and Addenda)

- Establishment of a working party

Mr. Mathur, Deputy Director-General introduced the Secretariat's background Study on "Textiles and Clothing in the World Economy" (Spec(84)24 and Addenda), and noted that it responded to the Council's request of 26 January 1983 (C/M/165, page 7). Because of the complexities of the developments and policies in the textile and clothing area, it had required some time to prepare a reasonably detailed description and analysis of the situation in those two industries. The Study was not simply of the textile and clothing industries by themselves, but of those two industries as parts of each country's overall economy. The Study was intended to encourage examination of issues in the textiles and clothing area, bearing in mind the ramifications on the rest of the economy. While the analysis and conclusions in the Study remained the Secretariat's responsibility, the factual information was subject to further check for errors or omissions, and the Secretariat would be grateful to delegations for bringing to its attention any inaccuracies or gaps in information so that they could be suitably corrected.

The Chairman said that following his informal consultations with a number of contracting parties, he now proposed that the Council establish a working party with the terms of reference and membership as provided in document C/W/440. It was his understanding that the Working Party would be free also to take account of any relevant materials bearing on the subject submitted to it by participants in the Working Party. It was understood that the participation as observer in the Working Party of any government which was not a contracting party but

which was a party to the MFA, would be without prejudice to that government's position with regard to its legal status vis-à-vis the GATT. The Council would authorize him to designate the Chairman of the Working Party, in consultation with delegations.

The Council so agreed.

The representative of the European Communities said that the Study was a valuable basis for further work and reflection on this subject. He felt that the process leading up to the establishment of the Working Party constituted a good omen for future work. It was now necessary to break the vicious circle in which the textiles and clothing problem had been locked too long and, in a climate free from suspicion, prejudice and bad precedents, to re-establish mutual confidence. The Community did not rule out the possibility that in its conclusions the Working Party might collectively make recommendations to the Council.

The representative of the United States said that the terms of reference in document C/W/440 provided the basis for a substantive report which should make a major contribution to identifying and assessing possible modalities for further trade liberalization in textiles and clothing. The United States believed that the Working Party, in formulating its conclusions, should aim at advancing both an understanding of what different modalities would involve for the countries concerned, and the steps which could be taken to implement any one of the conclusions. The focus and direction of the Working Party should be on operative solutions to problems in textiles trade.

The representative of Canada endorsed the statements by the representatives of the European Communities and the United States. Canada looked forward to work getting under way expeditiously and constructively so that findings and conclusions, including recommendations where appropriate, could be made with respect to further trade liberalization in textiles and clothing.

The representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, welcomed the Secretariat Study and appreciated the spirit in which it had been possible to work out the terms of reference for the Working Party. He particularly welcomed the statements by the representatives of the European Communities, the United States and Canada. The best way of building confidence would be for all contracting parties to fully implement paragraph 7(viii) of the 1982 Ministerial Decision relating to textiles (BISD 29S/20). The parameters of the discussions, conclusions or recommendations of the Working Party could only be drawn in terms of the respective rights and obligations of the contracting parties in the GATT.

The representatives of Thailand, the United Kingdom on behalf of Hong Kong, Egypt, Philippines, Brazil, Indonesia and Mexico (speaking as an observer) welcomed the establishment of the Working Party and endorsed the statement by the representative of Pakistan. They expressed appreciation for the statements by the developed country importers of textiles that they would work constructively towards achieving a positive outcome for the work of the Working Party.

The representative of Japan said that his delegation supported the general thrust of the comments made by both developing and developed countries. His Government wanted the Working Party to complete its work as soon as possible and that all participants should strive in the same direction.

The representative of Switzerland welcomed the Secretariat Study and establishment of the Working Party. Switzerland hoped that efforts towards greater liberalization of trade in this sector would be successful. It would be difficult to extend the MFA once again without at the same time easing its restrictive character and extending it to other trade policy instruments such as tariffs, non-tariff barriers and protection of industrial property. Indeed, that would be the only way to find a better balance of rights and obligations in the event that full application of the provisions of the General Agreement proved difficult or even impossible for textile importing or exporting countries.

The representative of Austria agreed with statements by representatives who had not excluded that the Working Party could make recommendations to the Council.

The representative of Poland stated his delegation's commitment to the terms of reference of the Working Party.

The representative of India expressed appreciation for the statements by representatives from importing countries and said that the operative thrust of these statements was to provide that the possibility of recommendations being made by the Working Party was not precluded. India hoped that the Working Party would in fact make such recommendations.

The Council took note of the statements.

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

The Chairman recalled that on 13 March 1984 the Council had considered the request by the European Economic Community contained in document L/5627, and had agreed to revert to this item at the present meeting. The Community had proposed terms of reference for a working party in document C/W/439, and had also presented a document containing supplementary technical information (L/5654).

The representative of the European Communities maintained his delegation's request for a working party to be set up as soon as possible and to report to the Council. The Community reiterated that it was not prejudging the results of such a working party and it was not seeking a condemnation of Japan. The Community had responded to the requests at the preceding Council meeting for more information on this matter by asking the Secretariat to circulate document L/5654, and it was prepared to discuss the terms of reference proposed in document C/W/439.

The representative of Japan said that his delegation's position on this problem had not changed since the most recent Council meeting on 13 March. Japan believed that the problems of copper pricing and purchase by Japanese companies were to be seen purely on a commercial basis, and the present Japanese tariff rates were lower than the final concession rates agreed in the Tokyo Round. If the Community continued to insist that this problem belonged within the GATT then, for reasons already stated, Japan believed that the Working Party on Trade in Certain Natural Resource Products was the most appropriate forum for discussing it. Since document L/5654 had been circulated only one day before the present meeting, his delegation was not yet in a position to discuss it.

The representative of Chile said that his delegation had always considered that a contracting party had the right to have a working party set up under Article XXII if it so requested; however, such a working party should examine questions falling within the GATT. The representative of Japan had stated that copper pricing and purchasing practices were the competence of private industry and that there was no intervention by the Government. If that was so, then it was difficult to see how the CONTRACTING PARTIES could review the question. As for document L/5654, instead of clarifying the situation, it had led to more confusion. Chile therefore suggested that the Chairman, with the assistance of the Secretariat, hold informal consultations so as to clarify this question. Referring to the discussion at the Council

meeting on 13 March, concerning GATT provisions referring to the behaviour of private firms, he considered that the Decision of 1960 concerning restrictive trade practices (BISD 9S/28) was not a good example, because it was a decision of the CONTRACTING PARTIES and not a provision of the General Agreement.

The representatives of the Philippines and of Norway, on behalf of the Nordic countries, supported Chile's proposal that the Chairman organize informal consultations among interested parties in order to clarify this matter.

The representative of the European Communities reiterated his delegation's objection to it being left to the Working Party on Trade in Certain Natural Resource Products to discuss this matter. The Community did not want to block work on a whole sector of the world economy because of one specific case. His delegation could agree to the proposal for informal consultations organized by the Chairman, on which the Secretariat would report to the Council.

The representatives of Argentina and Peru said that their delegations would want to take part in the consultations.

The Council took note of the statements and agreed that the Chairman would, with the help of the Secretariat, organize informal consultations among interested delegations in order to help find an appropriate solution to this problem.

7. Implementation of the GATT Work Program (L/5647)

The Chairman drew the Council's attention to a communication from the delegation of Uruguay, on behalf of developing countries contracting parties to the GATT, which had been circulated in document L/5647.

The representative of Uruguay read out the full text of document L/5647, and asked for a reaction to it from developed contracting parties.

The representative of the European Communities said his delegation welcomed the joint statement by developing contracting parties on implementation of the work program set out in the 1982 Ministerial Declaration (BISD 29S/9) and on prospects for a new round of multilateral trade negotiations. The Community fully understood the concerns expressed in document L/5647. His delegation wanted to emphasize that the work program was designed for the whole of the 1980s; its implementation should be a continuous rather than piecemeal process, to be carried out in a balanced and orderly fashion, and the 1984 CONTRACTING PARTIES session was merely the first rendez-vous in this process. The Community was highly dependent on free trade for its prosperity and therefore hoped to stimulate international commerce in both goods and services. For this reason, it could not but support any concrete and specific proposals leading to a reinforcement of an open

world trade system in the course of the 1980s. The first priority should be to resist protectionist pressures, to roll back restrictive actions and to implement the 1982 work program. Only then would the launching of a possible new round be credible. A number of preliminary elements would have to be in place before any new round of negotiations could be launched. There should first be confirmation of definite and generalized economic recovery; also there would have to be an improvement in the operation of the international monetary and financial system. Finally, prior consultation would have to lead to as wide a consensus as possible on the objectives, participation and timetable of any such new round. He cautioned against viewing the situation in North-South terms. All should move together step-by-step towards greater liberalization of trade in goods and services.

The representative of the United States said his delegation shared the concern that progress in implementing the Ministerial work program in certain key areas had been disappointing and extremely slow. In some areas, the studies required as background for further discussion had required more time than envisaged, and interest in other areas seemed to have lagged since the Ministerial meeting. It was significant that no delegation believed that progress had been too fast or even sufficient in most areas. The United States urged all contracting parties to intensify efforts to make progress in implementing the work program so as to meet the deadlines set by Ministers.

The representative of Switzerland said that developments in the international trading system over the past six months, and in particular the growing number of measures taken in the "grey area", left his delegation perplexed concerning implementation of paragraph 7(i) of the Ministerial Declaration; this lapse into the irrationality of semi-clandestine bilateralization had occurred notwithstanding the commitments in that Declaration. Switzerland had recently decided to reduce as from 1 July 1984 duties which, according to the Tokyo Round schedule, were to have been lowered on 1 July 1985; it had also reduced its GSP rates applicable to products originating in developing countries to the extent that there were still some tariff headings in the scheme that did not receive duty-free treatment. In taking these actions, Switzerland was contributing to improvement of trade relations through the implementation of the GATT work program. Recovery could not be secured solely by checking protectionist trends; both developed and developing contracting parties should try to lower restrictive barriers hampering imports into their countries of products from developing countries. For their part, developing contracting parties had an important rôle to play in sustaining the recovery that was now taking shape. Accordingly, it was important not to introduce any new differentiation by country and by type of obligation in the implementation of commitments taken on jointly in the Ministerial Declaration. While in the short term one could not ask for major trade concessions from developing contracting parties whose financial situation in some cases was still precarious, the compartmentalization of their markets was nevertheless a matter for concern. It was also

important that developing countries create or maintain a climate conducive to investment that could supplement financial flows from foreign loans, and that they stabilize and improve the transparency of their trade systems and apply progressively all the rights and obligations of the GATT. Switzerland shared the view expressed in document L/5647 that the main task now before the international trading community was the completion of the 1982 work program. In a certain sense the coming round of multilateral trade negotiations began with the 1982 Ministerial Declaration; preparing for that new round meant implementing the work program. It was nonetheless clear that certain problems in the program might be resolved only in the framework of new multilateral negotiations. Switzerland was interested in a new round to the extent that it was supported by a representative number of contracting parties and that it offered a realistic chance of consolidating the multilateral system by intruments of public international law clearly indicating the rights and obligations for all contracting parties, and this in well-defined fields of application. Implementation of the roll-back of measures inconsistent with GATT constituted the politcal pre-condition for discussions. In order to succeed, contracting parties would have to restore confidence among themselves by behaving towards each other as they themselves would like to be treated.

The representative of Sweden, on behalf of the Nordic countries, said that they shared the concern of the developing countries for improving the world economic environment and for dealing with the grave problems affecting these countries. Referring to the call on individual developed contracting parties for some specific measures mentioned in document L/5647, the Nordic countries would do their utmost to avoid trade actions that harmed developing countries, and considered that serious efforts should be made to implement those aspects of the 1982 work program of particular interest to developing contracting parties. However, it was difficult to single out such aspects for priority attention, as there was an urgent need to make progress on the work program as a whole, thereby also creating the basis required for launching a new round of negotiations in GATT.

The representative of Canada said that his delegation had noted the concerns expressed by developing countries in document L/5647. The main task now was for the international trading community to complete the Ministerial work program; this was the basis on which to approach further trade liberalization, and Canada regretted that implementation of the work program was not proceeding more quickly.

The representative of Australia said there was increasing compartmentalization of the world trading system both by sectors and by the proliferation of bilateral and plurilateral restraint agreements. Consequently, it was not surprising that the developing countries felt increasingly alienated from the system. Australia supported the concerns expressed in document L/5647 about the lack of progress in the

1982 work program and the need to implement it fully and expeditiously. ASEAN Ministers at their recent meeting in Jakarta had stressed the need for all countries to pursue concerted economic policies to liberalize trade, and Australia endorsed that view. Australia agreed that implementation of the work program was a continuous process which was fundamental to the process of further trade liberalization and to setting the stage for any new negotiations. Such a new round would have to be truly global and address the broadest possible range of issues. Improved access to the markets of the major developed countries would be a fundamental consideration in examining the acceptability and attractiveness of a new round. A major way in which GATT could be strengthened would be by returning to the fundamental MFN principle; progressive departures from that principle had placed beyond GATT disciplines significant sector of world trade which were of vital importance to the trade interests of developing countries and of many smaller trading countries such as Australia. One of the first major efforts should be to roll back these newly introduced selective protectionist measures which had eroded the MFN principle.

The representative of Austria said that his Government well understood the concerns expressed by the developing countries in document L/5647, and believed that the 1982 work program should be implemented before any new negotiating round was launched.

The representative of Japan said that his Government shared the views of the developing countries on the necessity to complete the 1982 work program successfully. The idea of a new negotiating round and the faithful implementation of the Ministerial Declaration were mutually reinforcing. Japan would make every effort to bring all the items in the work program to a satisfactory conclusion, as time was running short. His delegation endorsed the comments by the representative of Switzerland concerning the MFN principle.

The representative of Poland said that his delegation shared the concerns expressed in document L/5647. A number of recent events and statements had created the impression that discussion on initiatives for a new round might become a substitute for an undivided effort to complete the Ministerial work program. Depending on the results of the work between the present meeting and the session in November 1984, the CONTRACTING PARTIES would be in a position then to assess new initiatives and determine further action.

The representative of Jamaica recalled having suggested at the Council meeting on 13 March that the Secretariat might prepare a short document reviewing the status of the work program. After detailing the progress, or lack of progress, in implementing the various areas of the Ministerial work program, he emphasized that the assumptions and economic environment of the 1980s were very different from those prevailing during the earlier rounds of GATT multilateral trade negotiations. Any new round could not be based on a United

States/EEC/Japan tri-partite arrangement; it would have to take account of many smaller trading partners and of the developing countries, and would have to reflect the equity that all contracting parties wanted from the GATT system. Furthermore, the international monetary and financial system had changed radically over the past 40 years; the link between trade and finance (particularly the difficulties faced by developing countries in attracting the necessary financing for their imports and their development) would have to be given careful attention in any new trade round. His delegation remained to be convinced that the present GATT work program could be rolled into a new round; some important conceptual re-thinking would have to be done before that could be envisaged.

The representative of Nicaragua recalled the provisions of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) and of the 1982 Ministerial Declaration, particularly its paragraphs 7(i) and (iii). He said that in contradiction of that Understanding and that Declaration, Nicaragua's quota for sugar exports to the United States for the current fiscal year had been cut by 90 per cent. He also recalled that at its meeting in March 1984, the Council had adopted the Panel report (L/5607) on the complaint by Nicaragua against the United States. He then quoted from an exchange of letters between the General Secretariat of SIECA, on behalf of member countries of the Central American Common Market, (asking for that regional grouping to be recognized as a single country for purposes of cumulative origin under the generalized scheme of preferences of the United States), and the US Secretary of Commerce (rejecting that request). He then recalled that in May 1984, the International Court of Justice had called on the United States to terminate immediately any action that had the effect of restricting, blocking or making dangerous entry into and departure from Nicaraguan ports, in particular mine-laying, and to abstain henceforth from any similar action. He said the damage caused to Nicaragua's trade and economy by mining of its ports was substantial. His delegation wished to point out that all the measures complained of in his statement were in breach of both the spirit and the letter of the General Agreement. All the measures had the common denominator of discrimination based on non-economic factors. Nicaragua considered these measures to be extremely serious since they nullified the efforts made over past decades by the international community to improve the situation of peripheral countries by promoting their economic development and increasing their participation in international trade.

The representative of the United States said that he would discuss the Panel report on sugar under that agenda item (no. 10). In his view, the statement by the representative of Nicaragua was inappropriate under this item and within the forum of GATT, and should not be reflected in the Minutes.

The representative of Uruguay, speaking on behalf of developing contracting parties, welcomed the positive statements that had been made and suggested that the Council discuss this item further at its next meeting.

The representative of Cuba said that implementation of the 1982 work program was indeed a continuous process, but one of continuous frustration for developing countries, which were only asking that international commitments be fully respected. It was important to stress that there had been a deterioration of the terms of trade for developing countries. The Council should also consider recent acts of military and economic aggression against developing countries, which were relevant to the discussion on this item.

The representative of Czechoslovakia said his delegation shared the concerns of the developing countries expressed in document L/5647. Czechoslovakia was not against a new round of multilateral trade negotiations, but considered that the Ministerial work program should be completed first.

The representative of India said that his delegation fully endorsed the statement by the representative of Uruguay in document L/5647. He thanked delegations of developed contracting parties for their statements which contained a number of positive elements. The developing countries found themselves in an extremely adverse economic situation after several rounds of trade negotiations in GATT; since the completion of the Tokyo Round, there had been a further intensification of restrictive trade measures against their exports. Given this background, it was necessary for developed contracting parties to honour their commitments under Article XXXVII and the further commitments undertaken by them in the 1982 Ministerial Declaration. Urgent and undivided attention should be given to implementing the 1982 work program; unless and until that program was implemented in the manner outlined in document L/5647, any initiative such as a new round of negotiations would be lacking in credibility and devoid of relevance, particularly for developing countries. The work program was no more than a modest elaboration of the unfinished work of the Tokyo Round and of the work program set by the CONTRACTING PARTIES at their thirty-fifth session in 1979. The areas of interest to developing countries revolving around commitments already undertaken by developed contracting parties did not in fact require the initiation of a new round for their implementation. If the developed contracting parties honoured their commitments over a sustained period of time, the extremely adverse international economic environment confronting the developing countries might be mitigated and a minimal degree of fairness in multilateral trading relations could be achieved. This would not only preserve the credibility of the GATT system but also ensure its strengthening by keeping out new themes which were alien to the letter and spirit of the GATT and outside its purview and jurisdiction.

The representative of Korea said that his delegation endorsed the statement by the representative of Uruguay in document L/5647. Korea would actively participate in completing the work program.

The representative of Nicaragua said that the earlier statement by her delegation related to paragraphs 7(i) and (iii) of the Ministerial Declaration as well as to the General Agreement itself, in particular Article XIII:5 and Part IV. Her delegation intended to make a separate statement later in the meeting in connexion with the follow-up on the Panel report (item no. 10).

The representative of the United States reiterated that the statement by Nicaragua was inappropriate and should not appear in the Minutes.

The Council took note of the statements and agreed to revert to this item at its next meeting. The Chairman said that Minutes of Council meetings reflected all the statements.

8. Exchange rate fluctuations and their effect on trade - Study on "Exchange Rate Volatility and World Trade" (L/5626)

The Chairman recalled that on 13 March 1984 the Council had discussed the Study on "Exchange Rate Volatility and World Trade" issued with document L/5626, in which it was noted that the Study had been done in response to the Decision by GATT Ministers in 1982 (BISD 29S/21). The Council had agreed to revert to this item at its next meeting. He recalled that the Ministerial Decision requested the Director-General to forward the Study "to the Council so that it may consider any implications for the General Agreement".

The representative of the European Communities said that his authorities regarded this matter as an integral part of the Ministerial work program. His authorities were still examining the Study and he did not exclude the possibility of a contribution by the Community to the analysis contained in the Study. He quoted from a resolution adopted by the European Parliament on 29 March 1984 concerning the Community's external trade and the problem of world monetary instability. The resolution illustrated the interest taken by an important Community institution in the effect of monetary instability on world trade. He felt that the Study did not go adequately into some aspects of the problem: at the time when the Havana Charter was being negotiated, a certain number of hypotheses operated concerning exchange rates, which were no longer valid. Perhaps it was now time to examine the effect of these changed circumstances on certain provisions of the General Agreement which might be influenced by important exchange rate fluctuations. The Community requested the Director-General to ask the International Monetary Fund to supplement the Study with an examination of the medium- and long-term perspectives of erratic exchange rate fluctuations. When such a supplementary study had been completed, his delegation might suggest the conclusions that could be drawn from it on the possible impact of such fluctuations on international trade and on protectionism.

The representative of Jamaica suggested that before the Director-General was asked to consult with the Fund, the GATT Secretariat might be requested to present to the CONTRACTING PARTIES its own evaluation of the relationship between erratic exchange rate fluctuations and the General Agreement. This could be initiated through informal consultations.

The representative of the United States said his Government believed that the Study issued with document L/5626 was thorough and had fulfilled the mandate given by Ministers in 1982. It had examined the relevant economic literature on the question of exchange rate variability; and additional original research had been conducted. The Study pointed out the difficulty of isolating exchange rate fluctuations from other relevant factors, but nevertheless came to a conclusion with which the United States fully agreed: that it could not be proven that erratic fluctuations in the exchange rates of the currencies of the major industrial countries discouraged either international trade or international investment. The United States doubted that the Study could be carried much further, if at all. Perhaps it would be useful to ask the Secretariat to look at the relationship between exchange rate fluctuations and the General Agreement.

The Director-General suggested that as the Council was now faced with different proposals, perhaps it would be a good idea to hold informal consultations to clarify what further action could be taken.

The representative of the European Communities emphasized that management and decision-making in the private sector could be severely affected by the effect of erratic exchange rate fluctuations on international trade, and this was why the Community wanted to know if these effects could be quantified. It would be regrettable if such an analysis were not made; this was a problem common to all contracting parties, and was one aspect of the work program where not enough progress had been made. Failure to demystify the situation would provide a continued alibi for protectionist measures.

The representative of Poland said his delegation was disappointed by the lack of consistency between the first part of the Study, which contained bold assumptions concerning the potential implications of exchange rate fluctuations on trade, and the rather timid, inconclusive final section where attention seemed to be concentrated on proving that such fluctuations were not the most significant impediment to trade. Also, the Study seemed to be written from the perspective of government policy makers who had a wide choice of economic policy instruments to offset the negative effects of erratic fluctuations, rather than from the viewpoint of individual traders whose reactions often set the stage for certain departures from GATT rules. Moreover, the Study made no reference to the international debt exposure of a number of countries. Depending on the currency structure of debt, on the maturity schedule and on the proportion between short- and long-term debt commitments, the need to cope with fluctuating exchange rates might prompt some countries to take measures which had clear ramifications for commercial policy.

The representative of Jamaica suggested that the informal consultations should focus on two points: the impact of erratic exchange rate fluctuations on world trade, and the implications of this for the General Agreement.

The representative of the United States agreed with this suggestion.

The representative of Argentina said his Government considered that the Study had not arrived at final conclusions on the trade aspects of exchange rate fluctuations. Consequently, it was difficult to comply with the last part of the Ministerial Decision and consider any implications for the General Agreement. Since this opinion seemed to be shared by a number of other delegations, informal consultations would perhaps be useful. Such consultations should include one aspect which had been ignored in the Study, namely the plight of developing countries confronted by sudden changes in exchange rates.

The representative of Norway, on behalf of the Nordic countries, supported the proposal to hold informal consultations on this matter.

The representative of Israel said that for exporters in his country the effect of exchange rate fluctuations was often more important than many other barriers to trade. His delegation supported the proposal to hold informal consultations.

The representative of the Philippines supported the statement by the representative of Argentina.

The representative of Hungary supported the statements by the representatives of Poland and the European Communities, particularly the proposal to examine the implication of exchange rate fluctuations on the General Agreement.

The Council took note of the statements, agreed that informal consultations should be held, and agreed to revert to this item at its next meeting.

9. Committee on Balance-of-Payments Restrictions

(a) Consultation with Nigeria (BOP/R/139)

Mr. Feij (Netherlands), Chairman of the Committee on Balance-of-Payments Restrictions, said that at the consultation with Nigeria in March 1984, the Committee had recognized that Nigeria faced a serious balance-of-payments problem and that the measures taken during the period 1982-84 had been introduced in view of the extreme urgency of the situation. Efforts had been made to make the existing system more efficient; however, there was still considerable scope for further simplification of the measures and greater transparency in the

implementation of the system. The Committee, bearing in mind the provisions of paragraph 1(c) of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205), had welcomed the statement by Nigeria that the measures were temporary, and had encouraged the Nigerian authorities to pursue policies of economic stabilization and diversification of production and exports, which would lead to a sounder external position and permit the progressive elimination of the measures. He noted that Nigeria provided another example of a country trying to reduce its trade deficit through import contraction, thus confirming a tendency to be found in many of the heavily-indebted countries, most of which had not so far benefited from the upturn in world exports.

The representative of Nigeria said that protectionist tendencies and measures, the decrease in Nigeria's foreign exchange earnings and falling commodity prices were only a few of the factors which had resulted in his country's balance-of-payments problems. Nigeria had not, at this stage, invoked paragraph 12 of the 1979 Declaration, but it did not exclude the possibility of doing so in future should the need arise. Details of new trade measures being taken by Nigeria would soon be made available to the Secretariat. The current economic stabilization measures being taken by his Government represented forward movement in Nigeria's efforts to meet its GATT obligations.

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

(b) Statement by the Chairman of the Committee (C/125)

The Chairman recalled that at the Council meeting on 13 March 1984, Mr. Feij had drawn attention to the main points of a statement, subsequently circulated in document C/125, concerning the trading environment and balance-of-payments consultations. At that meeting, the Council had agreed to revert to this item at its next meeting.

Mr. Feij said that as he had already introduced document C/125, he only wanted to draw attention once again to the fact that a number of heavily-indebted countries were resorting to import contraction in order to reduce their trade deficits.

The representative of the Philippines said that his delegation fully endorsed the statement in document C/125 and supported its recommendation that the Committee should examine in depth not only the measures taken for balance-of-payments purposes by consulting countries, but also the external trading environment confronting them, in an effort to alleviate their trading problems in accordance with the multilateral principles embodied in the General Agreement. The suggestions regarding specific possibilities in a number of areas for helping individual consulting countries to deal with their trade and finance problems were a step in the right direction.

The representative of the United States said his delegation agreed that the CONTRACTING PARTIES needed to consider ways of improving the balance-of-payments consultative process so as to make it more effective and more relevant to the efforts of consulting countries to alleviate their balance-of-payments difficulties. However, in considering the external trading environment, the United States was concerned that the net be not cast too widely; recent increases in protection on products of particular interest to a consulting country seemed to be relevant to the balance-of-payments review; previously existing measures appeared to be less so. The primary focus of the Committee's consultations should continue to be on the responsibility of the consulting country to obtain balance-of-payments stability through adjustments in its own domestic policies. The United States was willing to examine the various suggested actions that contracting parties might take to remove impediments to export expansion by consulting countries. However, he cautioned against raising unrealistic expectations. Some of the measures identified by the Committee, such as anti-dumping and countervailing duties, were not protective measures but were actions taken to remedy unfair trade practices by other countries. Modification of these measures would not be possible. Certain other measures were taken for similar legitimate reasons, and their modification would encounter considerable opposition. The United States was also concerned that focusing too sharply on individual countries might lead contracting parties to depart from the principles of multilateralism and non-discriminatory treatment.

The representative of the European Communities said that his delegation fully endorsed the well-balanced and comprehensive statement in document C/125. It carried the message that contracting parties should not be lured into a bilateral, discriminatory approach to trade; developing countries needed access to markets, and if the developed and more advanced developing countries opened their markets as much as possible, such an effort would, on a cumulative basis rather than by specific spectacular actions, assist in relieving the severe difficulties faced by heavily-indebted nations.

The representative of Jamaica said that the GATT was concerned with individual products traded by individual countries or groups of countries, and therefore it was essential in the Committee to focus on single countries. In his view, major developed nations such as the United States and the member States of the European Communities had not dealt with their trade deficit problems exclusively by internal adjustment; for instance, they had focused much effort on trying to solve their trade problems bilaterally with Japan. On the other hand, developing countries had to beat on the doors of their developed trading partners for better access, while carrying out stringent domestic stabilization and adjustment measures at home. In recent years, the developing countries had been forced into the most rigorous domestic measures, and they had little room for further adjustment and stabilization. In respect of measures to assist individual countries in

balance-of-payments difficulties, he would want these to be consistent with the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203).

The representative of Argentina said that some countries could not adjust their economies more than they were already doing. Also, as far as anti-dumping and countervailing duties were concerned, very much depended on how investigations to determine injury were carried out in those cases, whether there were injury tests, and how the duties were applied.

The representative of Brazil expressed his delegation's support for the statement by the Chairman of the Committee (C/125) and proposed that the Council approve this major document, which suggested precise and effective procedures for the Committee to implement the provisions of the 1979 Declaration. The adjustment process was mainly the responsibility of the consulting country, but without proper consideration of the external factors, that process could not only become very difficult but perhaps even impossible. The Committee had recognized that it had to look into the question of how the international trading community could co-operate with a consulting country in alleviating its problems. This was a question which could be placed at the level of a certain obligation which surplus countries had towards deficit countries.

The representative of the European Communities, referring to paragraph 4 of document C/125, said that it would be a mistake to see the problem of developing countries' debt as an exclusively North/South problem. There were some areas, such as safeguards and anti-dumping, where special treatment for developing countries would be inappropriate; in others, such as the dismantling of quantitative restrictions, priority for developing countries was both feasible and appropriate. The international trading community should help indebted countries through an accumulation of acts of solidarity. There was no problem in a bilateral approach to trade problems so long as the results of such agreements were transparent and were profitable to all contracting parties.

Mr. Feij, in response to a question by the representative of Jamaica, said that the words "in paragraph 14" should perhaps have been added for clarification at the end of paragraph 16. Referring to the statement by the representative of the United States concerning anti-dumping and countervailing duty actions, he said that document C/125 did not imply any call on contracting parties to renounce their GATT rights; however, paragraph 17(b) called for great caution in launching such new actions concerning products for which a consulting country was a principal or substantial supplier.

The Council took note of the statements and approved the statement by the Chairman of the Committee (C/125).

10. United States - Imports of sugar from Nicaragua

- Follow-up on the report of the Panel (L/5607)

The Chairman recalled that at its meeting on 13 March 1984 the Council had adopted the Panel's report (L/5607) on the complaint by Nicaragua. This item had been put on the agenda of the present meeting at the request of Nicaragua.

The representative of Nicaragua said that the support given to his country at the preceding Council meeting, together with the clear conclusions in the Panel's report, had led his delegation to believe that a solution in this case could be reached in a relatively short time. If his authorities were correctly informed, the United States had recently increased its total sugar import quota for the current fiscal year by about 100,000 short tons, giving it an opportunity to comply with the CONTRACTING PARTIES' recommendation to promptly allocate to Nicaragua a sugar import quota consistent with the criteria set out in Article XIII:2. However, Nicaragua had not received any share of the increased US quota. His delegation asked the United States to inform the Council, with the priority which this case deserved, of its intention regarding the CONTRACTING PARTIES' recommendation, and in particular how the total US sugar import quota was to be allocated for the fiscal year beginning on 1 October 1984.

The representative of the United States recalled that his delegation had consistently maintained that the US measure which was the subject of Nicaragua's complaint had been taken for broader reasons than trade considerations; and that to lift the measure would first require a resolution of the broader dispute. The United States had been straightforward with its position in this case; it had not obstructed Nicaragua's resort to the GATT dispute settlement process, and recognized that Nicaragua had certain rights under Article XXIII which it had preserved and could continue to exercise.

The representative of Cuba said it was evident that the United States was challenging the CONTRACTING PARTIES' recommendation by not reintroducing Nicaragua's sugar import quota. This should concern all contracting parties because none of them could have confidence in the future of GATT if one contracting party decided to flout the rules of the General Agreement for political convenience. The United States had furthermore taken other measures which hampered Nicaragua's trade and economic development, such as mining its harbours and exercising other means of military and economic pressure.

The representative of the United States said that the representative of Cuba had exceeded the extent of comments necessary under this item. In paragraph 4.1 of its report, the Panel had noted that in accordance with its terms of reference, it had examined the US measures solely in the light of the relevant GATT provisions, concerning itself only with the trade issue under dispute. The Council should do likewise, and any enlargement of the discussion on the follow-up to the Panel's report was out of order.

The representative of Argentina recalled his delegation's position on this case as reflected on page 9 of document C/M/176. Argentina still believed that the United States should implement the CONTRACTING PARTIES' recommendation, and it seemed reasonable that Nicaragua had requested specific information on when and how the United States intended to do this. Once this information was received, the contracting parties would be able to evaluate the situation and to determine the extent of US compliance with the CONTRACTING PARTIES' recommendation. In the light of such an assessment, the Council might be in a position to take an appropriate decision.

The representative of Nicaragua said that her Government was fully aware of its GATT rights in this matter. Nicaragua maintained its request to the United States for information on US intentions regarding the CONTRACTING PARTIES' recommendation. Once the Council had received this information, the CONTRACTING PARTIES would be in a position to take an appropriate decision.

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

11. Consultation on trade with Hungary

- Report of the Working Party (L/5635)

The Chairman recalled that in July 1983 the Council had established the Working Party to carry out the fifth consultation with the Government of Hungary, as provided for in the Protocol of Accession (BISD 20S/3), and to report to the Council. The report of the Working Party had been circulated in document L/5635.

Mr. Greenfield (New Zealand) introduced the report on behalf of Mr. Peren (New Zealand), Chairman of the Working Party. He said the Working Party had noted that discriminatory quantitative restrictions inconsistent with Article XIII of the General Agreement were still maintained against Hungarian exports by the European Economic Community and Norway. The Working Party had discussed at length the desirability of removing the remaining restrictions, as required under paragraph 4(a) of the Protocol of Accession, and had expressed concern at the slow progress made over recent years. The Working Party had then examined Hungarian imports in general and had noted that while total imports had increased, imports from contracting parties had declined. Specific points had been raised concerning the rate of exchange of the forint with convertible currencies, the impact of quantitative restrictions and import surcharges imposed by Hungary for balance-of-payments reasons, and countertrade. Matters relating to the publication of the lists appended to bilateral trade agreements had also been discussed. The Working Party had welcomed the statement by Hungary that it intended to continue to trade with contracting parties on the basis of non-discrimination.

The representative of Hungary said that in respect of the statements made by the Community in paragraph 24 and by Hungary in paragraph 27 of the report, his delegation noted with concern that there was no clear indication by the Community that any agreement sought by the Community bilaterally with Hungary would be in full conformity with the GATT obligations existing between Hungary and the Community. He drew attention to the Community's view that it was in no position to confirm or deny that it would seek an agreement with Hungary in strict observation of its GATT obligations. Hungary confirmed again that any such agreement could only be based on the most-favoured-nation principle and non-discrimination. Furthermore, no such agreement could call for a counterpart to be paid for the fulfilment of obligations under the Protocol of Accession nor could it legalize discriminatory practices. Hungary had confirmed its position more explicitly in a paper handed to the Community summarizing Hungary's views on the subject, and had said that it could not accept any legalization of discriminatory measures and practices maintained by the Community or by its member States on trade with Hungary. Consequently, a bilateral agreement should either establish that the Community and its member States had eliminated all quantitative restrictions inconsistent with Article XIII, or should provide a schedule for the implementation of Article 4 in the Protocol. Measures to this effect could not be regarded as concessions made by the Community or its member States to be reciprocated in any manner by Hungary. In order to safeguard the legitimate interest of domestic Community producers against the possible harmful effects of increased Hungarian exports as a result of such measures, paragraph 5 of the Protocol contained a selective safeguard mechanism and price clause. There would be no justification for any new safeguard measures. Hungary also considered it indispensable that the conclusion of a bilateral agreement should be justified by substantial improvement in the conditions affecting Hungarian exports of agricultural and industrial products to the Community market. Finally, Hungary took specific exception to the term "effective reciprocity" because experience showed that in practice this amounted to bilateral sectoral import commitments towards the Community, which was not in Hungary's interest and would lead to bilateralism.

The representative of the European Communities said that his delegation subscribed fully to the Community position as set out in the report, and that he did not agree with the statement by the representative of Hungary.

The representative of Australia supported adoption of the report and expressed his delegation's concern that a number of quantitative restrictions continued to be maintained against Hungary despite paragraph 4(a) of the Protocol of Accession.

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

12. European Economic Community - Imports of newsprint from Canada

- Recourse to Article XXIII:2 by Canada (C/M/176)

The Chairman recalled that on 13 March 1984 the Council had established a panel to examine the complaint by Canada, and had authorized the Chairman of the Council to draw up the Panel's terms of reference and to designate its Chairman and members, in consultation with the parties concerned. This item had been put on the agenda of the present meeting at the request of Canada.

The representative of Canada asked if the Director-General would make a statement concerning this item under paragraph (ii) of the 1982 Ministerial Decision on Dispute Settlement Procedures (BISD 29S/13).

The Director-General said that terms of reference for the Panel had been agreed on 6 April 1984, but there had so far been no agreement on its membership. He recalled that paragraph 11 of the 1979 Understanding on Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) provided that panels should be constituted as promptly as possible and normally not later than 30 days from the CONTRACTING PARTIES' decision to establish them. In the present case, this time limit had been substantially exceeded. There had been many informal consultations between the parties to this case, during which the Secretariat had proposed nearly twenty people as possible members or chairmen of the Panel. It had so far been impossible to find a membership acceptable to both parties, notwithstanding the requirement in paragraph 12 of the Understanding that nominations should not be opposed except for compelling reasons. The choice of panel members was always difficult, and he was aware that the parties to this dispute regarded it as having particularly important implications. Nevertheless, he felt bound to say that he knew of nothing in the special circumstances of this case which explained the failure over a period of two months to reach agreement on the membership of a panel of three people. It seemed to him that with goodwill and with due regard for the procedures, and particularly the spirit of the 1979 Understanding and the 1982 Ministerial Decision, it should have been possible to reach agreement.

The representative of Canada said that his delegation was most concerned about the length of time being taken to reach agreement on composition of the Panel. Despite Canada's request that the matter be treated on an urgent basis in accordance with paragraph 20 of the Understanding, and although more than two months had passed since the Council had established the Panel, no agreement had been reached. The undertakings in paragraphs 11 and 12 of the Understanding, particularly with respect of timing, had not been met. Meanwhile, the impact of the measure about which Canada had complained was continuing to affect Canadian exporters and Community importers of newsprint. Canada thought

that the Ministerial Decision would have helped put an end to this kind of problem, and viewed with concern the serious deficiencies in the dispute settlement system which the current case revealed. His delegation asked members of the Council to reflect on the implications of this case for GATT's dispute settlement process.

The representative of the European Communities agreed that the process of agreeing to the Panel's composition had dragged on too long. But the fault was not only on one side; there had also not been the necessary goodwill on Canada's side to reach agreement. Canada had not advanced compelling reasons for rejecting certain of the names proposed. However, with goodwill it should be possible to reach agreement very soon. The Community disagreed with the statement by the representative of Canada that this delay was affecting Canadian exports. The Community had opened a provisional duty-free quota of 500,000 tonnes for newsprint which had not yet been exhausted. Furthermore, the Commission was submitting to the Council of the European Communities a proposal to increase this provisional quota; the proposed increase would largely cover export possibilities from Canada until the end of 1984. It was therefore incorrect to say that there had been any economic impact of this measure until now.

The Chairman joined the Director-General in appealing to the two parties to make maximum effort to reach a speedy solution to this problem.

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

13. Administrative and financial questions
- Final position of the 1983 Budget of the GATT (L/5633)

The Chairman drew attention to document L/5633 containing the final position of the 1983 Budget. As far as the Expenditure Budget was concerned, the financial year had closed with an unencumbered credit balance of slightly more than 1.8 million Swiss francs. This had to be used, however, to reduce the overall deficit on the Surplus Account due to the increase in the level of outstanding contributions, which had amounted to nearly 8 million Swiss francs at the end of 1983. Of this amount, payments totalling about 1.5 million Swiss francs had since been received from Argentina, Benin, Congo, Gabon, Hungary, Malaysia, Nicaragua, Peru, Poland, Spain, Tunisia, Turkey, Yugoslavia and Zambia. Nevertheless, the situation continued to be a matter of great concern, and, once again, governments were urged to assume their financial responsibilities by paying as promptly as possible their share of the expenses required to ensure the continued efficient running of the activities of the GATT Secretariat.

The representative of Jamaica said his delegation would have preferred paragraph 6 of document L/5633 to read "the higher than anticipated expenditure for meetings of other bodies than the Council", since the Council was the supreme body of GATT when the CONTRACTING PARTIES were not in session, and he did not believe that the increase in expenditure was due to additional Council meetings. The increase seemed to be due rather to the proliferation of meetings of the MTN Committees and Councils. He wished to stress once again that the operation of the MTN agreements and their financial implications had a significant impact on the coherence of GATT. It was clear that there had been an explosion in GATT's overall expenditure and in the contributions assessed on contracting parties. Part of this was due to the proliferation of activities following the Tokyo Round, but it was also due partly to the fact that in 1983, for instance, about 4 million Swiss Francs had not been collected. Every year that the CONTRACTING PARTIES carried a balance of outstanding contributions meant that individual contracting parties were being assessed at a higher figure, which they did not recover through refunds. Great care should be taken over the way in which the GATT budget was growing.

The Director-General emphasized that over the past 20 years or so there had been a change in the workload and type of activities undertaken by the Secretariat. The fact that outstanding contributions were being carried over from one year to the next was a serious problem, and the CONTRACTING PARTIES might one day have to depart from orthodoxy and take an appropriate decision in this respect. The relationship between the MTN agreements and GATT would also have to continue to be examined seriously, but he thought that the impact of the cost of the meetings of MTN Committees and Councils on total GATT expenditure was not as great as the representative of Jamaica seemed to be suggesting. The normal Committees and other GATT bodies, together with new bodies set up after the 1982 Ministerial meeting, met very often and were adding to the cost of meetings. In conclusion, he emphasized that the Secretariat would continue to follow a very strict budgetary policy.

The Council authorized the increase in the appropriations, approved the proposed financing as reflected in paragraph 7 of document L/5633 and took note of the statements.

14. Protectionism

The representative of Peru, speaking under "Other Business", said his delegation saw with deep concern that protectionist tendencies were proliferating, notwithstanding the commitments contained in the 1982 Ministerial Declaration (BISD 29S/9), and the wide recognition of the harmful effects of protectionist actions for both developing and industrialized countries. These actions were damaging still further the general economic situation of developing nations and were aggravating the particularly delicate problem of external indebtedness. Unfortunately, efforts made by Peru and other developing countries to

liberalize trade had not been reciprocated, particularly by the United States, where the Administration was being assailed by domestic forces that laid the burden of protectionism on US consumers, protecting inefficient industries, creating distortion in international markets and holding back the natural process of structural adjustment. He gave details of recent protectionist measures taken by the United States against two important sectors of Peru's economy; textiles and copper, and called for proliferation of such measures to be avoided and for full account to be taken of the special situation of developing countries in accordance with Part IV of the General Agreement. Meanwhile, as a matter of urgency, there should be no disproportionate and unilateral interpretation of the concept of market disruption. Furthermore, his delegation was concerned over possible restrictions that could be imposed on US imports of refined and blister copper following a complaint presented by a group of US copper producers to the United States International Trade Commission (USITC). Peru did not oppose the adoption of measures that defended an industry from unfair competition, but it rejected those aimed at covertly protecting obsolete industries, thereby penalizing efficiency. Actions of this type could operate only through an exaggerated and particular interpretation of Article XIX, in breach of the spirit and letter of the General Agreement and more particularly of Part IV, with the risk of weakening GATT disciplines and impairing the credibility of the system. Peru called on the United States to resist protectionist pressures and to lead an international crusade against this tendency which was causing further tensions and rigidities in the world trading system and which was hampering the economic recovery of developing countries.

The representative of Chile supported the views expressed by the representative of Peru. Major trading nations had a moral obligation to abide by the principles that they proclaimed, and that of free trade in particular. He referred to the statement by his delegation at the Council meeting on 13 March 1984 (C/M/176) concerning the case before the USITC, and said that copper-producing countries hoped that the decision would be compatible with the commitments to free trade made so often by the United States. The US copper producers, in their complaint, were arguing that a quota system could increase pressure on countries abroad to eliminate their subsidies on non-economic production, and could persuade less-developed countries to adapt their production to market demand. This philosophy was unfortunately spreading throughout the world and was doing much harm to North-South relations. Any new US protective measures would in fact amount to a subsidy of non-economic production in the United States.

The representative of the United States said he understood the concerns expressed by the representative of Peru, but he disagreed that the United States was protectionist, and referred to the statement by his delegation at the present meeting concerning textiles.[1] As for the

[1] See Item 5(a) and (b).

case on copper imports before the USITC, that body was responsible for determining whether or not injury or the threat of injury existed; only after its finding would the matter go to the Administration for a decision. As for the claims of increased US protectionism, he said that economic growth and trade were beginning to improve, due largely to US growth and to the fact that the United States had maintained a liberal trade régime in the face of increasing trade and current account deficits. There might be differences of opinion over the causes for this imbalance, but it could hardly be said that the high US deficits reflected a protectionist policy; it was also unlikely that such deficits could be sustained by any country for any extended period. It was incorrect to characterize individual industries pursuing their rights through transparent US processes as constituting increased protectionism on the part of the US Administration.

The Council took note of the statements.

15. United States - Caribbean Basin Economic Recovery Act

- Attendance by observers at the Working Party (L/5651)

The Chairman, speaking under "Other Business", noted that in a communication addressed to the Director-General and circulated in document L/5651, the delegation of the United States had suggested that it would seem appropriate, and in keeping with past GATT practice, for the Council to permit beneficiary countries of the Caribbean Basin Economic Recovery Act to attend meetings of the Working Party, if they so desired. Some of those countries did not have observer status in the Council. Accordingly, he proposed that the Council invite them to attend meetings of the Working Party as observers.

The Council agreed to invite to meetings of the Working Party as observers those beneficiary countries which did not have observer status in the Council.

16. Problems of Trade in Certain Natural Resource Products (C/126)

The Chairman, speaking under "Other Business", recalled that on 13 March 1984 the Council had established the Working Party on Trade in Certain Natural Resource Products, and had authorized him to draw up its terms of reference and to designate its Chairman in consultation with interested delegations, so that it could begin work without any need for ratification by the Council. Following such consultations, the Secretariat had circulated a communication in document C/126 concerning the chairmanship and terms of reference for the Working Party, which had held its first meeting on 3 May under the chairmanship of Mr. Cartland (United Kingdom - Hong Kong). It was understood that the work should progress as rapidly as possible, and not suffer undue delays.

The Council took note of this information.