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# GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
29 June 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 29 June 1982

Chairman Mr. B.L. DAS (India)

Subject discussed: Notification, Consultation, Dispute Settlement and Surveillance

## Notification, Consultation, Dispute Settlement and Surveillance

The Chairman recalled that at their thirty-fifth session in November 1979 the CONTRACTING PARTIES had adopted the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance drawn up in the Multilateral Trade Negotiations (BISD 26S/210). In March 1980 the Council had adopted a proposal (BISD 27S/20) which provided inter alia, for reviews in respect of developments in the trading system to be conducted by the Council at sessions specially held for that purpose. The Council had held three special meetings to review this matter in November 1980, May 1981 and November 1981. He said that there had been informal consultations with delegations in preparation for this fourth special meeting, and drew attention to the updated factual note by the secretariat (C/W/385) and to a communication from Canada (C/W/385/Add.1).

He stated that in addition to carrying out the periodic review of developments in the trading system, the Council might consider what could be placed before Ministers at the forthcoming CONTRACTING PARTIES' session at ministerial level. In this context, he said that since the third special meeting of the Council in November 1981 there had been a number of meetings of the Preparatory Committee at which delegations had raised matters related to the subject presently before the Council. For example, it had been stated that the GATT rules must be honoured, both in letter and in spirit, that GATT must continue to provide a permanent negotiating forum in which an appropriate balance of rights and obligations can be maintained, and that, where necessary, existing rules and procedures must be improved. It had also been said in the Preparatory Committee that the GATT Work Programme adopted in 1979 (BISD 26S/219) must be fully implemented. He said that the Council might wish to consider the extent to which these goals were being met. He also recalled the references which he had made at the March 1982 Council meeting to the importance of reviewing recent GATT experience with the functioning of the dispute settlement mechanism, particularly since a number of disputes had come before the Council over the preceding year.

The representative of the European Communities agreed that the Council should examine the subject matter both in the context of its periodic review and in that of the preparations for the Ministerial meeting. It was the view of his delegation that it was too early to consider possible improvement of the Understanding because to date that instrument had not been well utilized by contracting parties. This was particularly so in cases where governments followed the letter rather than the spirit of the Understanding and then went on to do as they wished. Moreover, the process of conciliation had been overlooked. He said that this aspect of the Understanding could be applied, albeit subject to a certain quasi-legal discipline. He also cautioned against arriving at exaggeratedly legal interpretation of the rules, and in this context he wondered whether the Understanding was not being used for purposes other than those intended.

The representative of Canada said that in a meeting of the Preparatory Committee his delegation had urged that this matter be examined at the highest level. He drew attention to the communication from his delegation in document C/W/385/Add.1 and enquired whether other delegations faced similar questions. He said that the text of the Understanding highlighted the great importance of the dispute settlement mechanism to some contracting parties, including Canada, and added that following the letter of the rules was of vital importance to smaller trading nations in disputes with their larger partners. He stated that doubts could arise at the political level about the functioning of GATT generally if the dispute settlement mechanism was not perceived to be operating properly. He then asked for other representatives' reactions and views in respect of the following points: (1) The timeliness of panel proceedings, which in recent cases had gone well beyond the guidelines contained in the Understanding; (2) the composition of panels and whether full use was being made of senior trade policy experts in capitals, who could bring certain authoritative views to bear on disputed issues; (3) whether the balance between conciliation and adjudication was being maintained in the panel process; (4) the need for making the most effective use of expertise in the secretariat so that the appropriate international legal principles would be brought to bear on the disputes and so that there would be clear views with respect to the relevant GATT provisions when panel reports are before the Council; and (5) the treatment of panel reports to be accorded by the Council, and the follow-up thereafter.

The representative of Switzerland said that his authorities were concerned about making the dispute settlement system even more efficient and more credible. To this end, he proposed two improvements, as follows: (1) the reinforcement and formalization of the conciliation process during the phase preceding a request for the establishment of a panel; and (2) the introduction of a new procedural step between the adoption of a panel report and a decision concerning further action, in which the contracting party concerned would inform the Council of the measures by which it intended to comply with the panel's conclusions, thus permitting the Council to formulate recommendations with full knowledge of the situation.

He concluded by stating that what was essential, however, was that the CONTRACTING PARTIES should reaffirm their firm political will to comply with the panel's results once they have been accepted by the Council.[1]

The representative of Japan said that his Government's general position was that the effective functioning of the dispute settlement mechanism had a bearing on the credibility of the GATT system. The increasingly heavy workloads and the stress on the mechanism endangered its proper functioning, a problem which should be dealt with at the Ministerial meeting. He made three suggestions for improving the efficacy of the mechanism, as follows: (1) Every effort should be made to find equitable, reasonable and mutually acceptable solutions through bilateral consultations under Articles XXII:1 and XXIII:1 as well as in preliminary discussions thereto. At these stages, both parties should always consider seriously whether referring a dispute to the CONTRACTING PARTIES would overload the mechanism, and they should make a thoroughly objective assessment of the compatibility of the dispute with the GATT's jurisdiction and of the balance between the relief sought by one party and the GATT rights and obligations of the other. In any event, contracting parties must avoid arbitrary recourse to the dispute settlement mechanism, either from purely domestic considerations or in diverting one's own responsibility to overcome general economic difficulties. (2) He urged that the GATT continue to seek practical solutions for trade problems, a practice which had contributed to its effectiveness in spite of tremendous changes in world economic and trade relations. In this context, he suggested that greater emphasis be attached to conciliation throughout the entire dispute settlement process. In particular, it would be worthwhile to study how to organize a formal conciliation phase to be carried out by a small group, for example, the Chairman of the Council and a few representatives, who would make a concrete report of the proceedings and the result, for the sake of transparency. (3) In the event that the conciliation failed, there could be recourse to a panel or working party, whose rôle would be to assist the CONTRACTING PARTIES but not to substitute for them. In this connection, he said that it had to be reaffirmed that the responsibility for dispute settlement was entrusted to the CONTRACTING PARTIES or the Council itself. Moreover, their conclusion, based on a panel or working party report, should be realistic, taking into account all the relevant factors such as whether equity was maintained between a weaker party and a stronger party, whether the recommended measures were practicable to the parties concerned, and the time period within which they could be implemented. He said that rather than trying to introduce a rigid legal formulation, such as giving a binding force to the conclusion, reliance on the collective wisdom of the CONTRACTING PARTIES would be a more pragmatic and fruitful approach.

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[1] See document C/W/393

The representative of Korea affirmed that his Government attached great importance to the effective functioning of the dispute settlement mechanism, but despite all the CONTRACTING PARTIES' efforts, the new procedures had not been fully effective. From past experience, his delegation felt that there were two aspects to the problem, namely the will of contracting parties to abide by the established GATT rules, and the procedural improvement of the Understanding. An overall solution would be more desirable than a piecemeal method. To this end he proposed that in November the Ministers first commit themselves to full compliance with the mechanism and the CONTRACTING PARTIES' decisions taken pursuant to the rules, and then decide to establish a special group of experts to examine the problem areas. Particular attention should be devoted to introducing reasonable time limits for the different stages in the dispute settlement process, to ensuring that panel reports were adopted by the Council without procrastination, and to providing appropriate enforcement procedures so that the contracting parties concerned would observe the panel findings as adopted by the Council. He expressed the wish that all former panel members would participate in the activities of the special group, and also supported the Canadian proposal that greater use be made of experts in capitals.

The representative of Hungary said that although adherence to the GATT rules should, in general, be voluntary, there was no doubt that an effectively functioning dispute settlement mechanism deterred action in contradiction to those rules. The substantive rules should not be overlooked, however, in an examination of that mechanism because clear-cut trade rules made it easier to identify and solve trade disputes. There was no doubt that an improvement in the system should be taken up in the context of the Ministerial meeting, in the light of trade and trade policy developments of the past few years. He said that the maintenance of an effective multilateral GATT system was indispensable for all countries and in the interest of all contracting parties. He expressed the view that more account should be taken of the fact that individual disputes are not just bilateral affairs over the material rights of two contracting parties, because they affect the GATT system as a whole; and the way in which disputes were solved affected the future behaviour of other contracting parties. If disputes were swept under the carpet there was the danger of a mushrooming of practices not in conformity with the rules, which was against the long-term interests of even those who had initiated them. He said that the dispute settlement procedures should be more transparent and precise, with better surveillance and control by the CONTRACTING PARTIES over all stages of the process, including the follow-up of disputes, and prevention of bilateral settlements in contradiction with the agreed rules. In his view, past experience showed that individual rights and obligations and the maintenance of a coherent GATT system were inseparable from one another, which was why the CONTRACTING PARTIES, while considering concrete disputes, should always take into account the overall interest of the system as well.

The representative of Brazil believed that the Understanding would be useful if applied in the correct spirit, but that both it and the General Agreement were not always being applied in this manner. While the procedures under Article XXIII were sometimes well used, at other times they might have been invoked in desperation. He agreed that it would be helpful to reinforce the conciliation procedures, and in this context he pointed out that paragraph 8 of the Understanding already provided for recourse to the good offices of the Director-General. Turning to the operation of panels, the Annex to the Understanding contained the basic rules for the terms of reference, and paragraph 11 dealt with the composition of panels, although some problems had occurred in this latter respect. In some cases legal assistance was needed, in addition to the technical assistance on economics provided by the secretariat, in order to have clear-cut conclusions in the panels' reports. As for action by the Council, he felt that it was not mandatory for the Council to adopt the panels' reports and that these should only serve as the basis on which the CONTRACTING PARTIES would take a final decision, which would be either a recommendation or a ruling. He said that the procedures on follow-up in paragraphs 21, 22 and 24 of the Understanding should be further developed. While there existed a rule that the matter should be kept on the agenda of the Council, it was perhaps necessary to set a period of time for the contracting party concerned to correct the matter. Such delays could be 60 or 90 days or even a year, depending upon the complexity and nature of the measures to be taken by a particular country, following which the Council could re-examine the situation. He recognized that Article XXIII:2 provided for retaliation in the form of withdrawal of concessions. He also raised the question whether it was at all possible for a developing country to retaliate against an important industrialized country or group of countries which supplied the sophisticated technological products, plants and equipment necessary for its economic development, because this would work against its own development plans. He suggested that the contracting party which had violated the rules of the General Agreement and did not comply with the decision might be precluded from using the dispute settlement procedures until it had complied with the decision of the CONTRACTING PARTIES by adopting measures to correct the situation. He considered that such a solution would not be more violent than retaliation. Referring to the communication from Canada (C/W/385/Add.1), he said that there could be a flood of notifications but no transparency whatsoever because in many cases the information was not clear enough, particularly for developing countries with their limited specialized manpower. He felt that this type of information should be processed by the GATT secretariat and presented in the form of clear resumés.

The representative of Czechoslovakia said that the dispute settlement process remained the cornerstone of the GATT enforcement procedures, whose continued improvement was important to the credibility of GATT and as a

factor in internal government decision making. He believed that the existing procedures could be enhanced by giving the dispute settlement process a more institutional character and by upgrading the prestige and independence of the panel members. Adequate operation of panels should be assured, without any undue delay and obstruction, and links between a panel report, Council action and the final resolution of the matter should be further explored. He stated that the dispute settlement procedures should not discount the formal legal status of GATT, and that they should assume that there was sufficient pressure on a party to comply with the substantive GATT rules. He believed that if the procedures remained limited to a process of consultation and conciliation, this would lead to "one-sided justice" to the detriment of smaller contracting parties.

The representative of Norway, speaking on behalf of the Nordic countries, said that the dispute settlement procedure was an essential part of GATT's work. The Nordic countries shared the view that a well working procedure was important for an efficient application of the GATT rules and was of interest especially to small contracting parties with limited bargaining power. The present procedures laid down in the Understanding had served well, but might need some improvements as the demand on the panel procedure tended to grow. It was clearly desirable to speed up the work of panels. In this connection, experience had shown that it could be difficult to find qualified persons acceptable to the parties to serve on the panels, and that panels had to carry out their work while taking account of the other commitments of panel members and of the representatives of the parties. One possible solution to these problems would be to draw on outside expertise to a larger degree. He considered it essential that all panel members have up-to-date knowledge of the functioning of GATT. Furthermore, the Nordic countries attached importance to the assistance and advice given to panels by the secretariat, although the responsibility for findings and conclusions clearly fell on the panel members. With the growing number of panels, he believed that there was a need for strengthening the secretariat's possibilities of giving adequate expert support to panels. The Nordic delegations found the Swiss ideas interesting, especially the proposal for instituting a more regular conciliation procedure before panels were established. He found it natural that the Council Chairman and/or the Director-General and his colleagues should be the mediator or mediators rather than permanent representatives and other members of delegations. The CONTRACTING PARTIES should not establish successive panels for one and the same case. Turning to panel reports, he thought that the system could be strengthened if panels were to submit recommendations to the Council on how to act on their conclusions. Further thought should be given to the question of adoption versus noting the reports by the Council, and to requesting the parties to a dispute to conform to the panel conclusions. If the parties failed to comply with panel reports and Council recommendations, there was the possibility of recourse to the measures specified in Article XXIII:2, but "sanctions" would probably require amendments to the General Agreement. Finally, he said that the Nordic countries believed that the panel conclusions and Council recommendations should be given adequate publicity.

The representative of Spain said that the time had come to improve the dispute settlement aspect of the Understanding and perhaps to focus it somewhat differently, especially by using all possibilities for conciliation. This could be done by using the good offices of the Director-General or other persons. Furthermore, the parties to a dispute should present to the CONTRACTING PARTIES a comprehensive report on their consultations so that the other contracting parties would know how they were conducted. He also believed that greater use should be made of working parties, since often the dispute in question was of interest to a large number of contracting parties. The recommendations of panels should be adopted by the CONTRACTING PARTIES since this was a guarantee that the entire GATT membership was in agreement. He noted, however, that the solutions emerging from a panel were often difficult to understand and that the contracting parties were frequently required to decide within a very short time on a complicated subject which often had political implications. His delegation believed that surveillance had to be reinforced. Overall, he felt that the Understanding was a good one, but that it should be implemented in all its stages and parts.

The representative of Yugoslavia said that the number of dispute settlement cases had increased, and with it requests for working parties and panels. In his view, recourse to a panel did not always reflect a particular trade problem which had arisen between the parties as much as a real problem with the functioning of GATT. The creation of panels and working parties was often the consequence of the larger contracting parties' searching for solutions for their own interests and neglecting those of the developing countries. Since in his view the dispute settlement system did not function properly, his delegation suggested that the secretariat make an analysis of the dispute settlement procedures.

The representative of Australia said there was a need to improve both the quantity and the quality of notification, which could be achieved largely by a commitment by contracting parties to honour their current notification obligations, rather than through the development of any new ones. He said that Australia's major concerns in this field related to safeguards and subsidies. Beyond this, Australia was ready to follow a pragmatic approach, relying on paragraph 3 of the Understanding to the effect that any contracting party would have the right to question another contracting party on matters which had not been notified. He said that Australia regarded dispute settlement as a priority issue for the ministerial session. In recent years the GATT had failed to resolve satisfactorily a number of important disputes and to achieve equitable settlements between contracting parties of different economic strengths. Thus, any reaffirmation of the rules of the General Agreement should include a commitment to a more effective and expeditious dispute settlement framework. In Australia's view the main shortcomings in the functioning of the dispute settlement procedures were:

(i) the undue time it took to pursue a complaint through the dispute settlement procedures under Articles XXII and XXIII, including:

- the scope for a contracting party to delay the referral to a panel of a complaint against it,
- the undue time it could take to establish a panel and for a panel to report to the CONTRACTING PARTIES, and
- the undue time it could take for the CONTRACTING PARTIES to take decisions on panel reports;

(ii) the fact that some panels were not reaching conclusions or recommendations which would assist the CONTRACTING PARTIES to make findings or give rulings, as provided for under Article XXIII:2. In particular, most panels neither dealt effectively with the question of nullification or impairment nor went beyond concluding prima facie nullification or impairment, which could leave open the basis for rectification of the matter;

(iii) the fact that in many cases the CONTRACTING PARTIES did not provide a definitive ruling on a dispute and did not face up to the need for effective rectification in accordance with a contracting party's rights under the General Agreement;

(iv) the scope for a party to a dispute to block the consensus adoption, by the CONTRACTING PARTIES, of a definitive decision with which it could not agree; and

(v) the refusal, in some cases, of contracting parties to take early action to rectify matters on which the CONTRACTING PARTIES had made clear findings.

He said that Australia did not see a need to renegotiate the Understanding, but saw this question more in the light of the political will of the contracting parties to ensure proper observance of the current procedures. A solution to these problems would, however, be the reinforcement of the procedures so as to ensure their observance. A most important contribution in this respect would be for contracting parties to seek a conciliation of their differences on the basis of a clear decision on their GATT rights and obligations in respect of the matter in question. Australia had never claimed that the CONTRACTING PARTIES, acting on the recommendations of a panel, could force a contracting party to change its policies. They had, however, both the right and the obligation to make recommendations as to how a contracting party could rectify a measure found to have caused nullification or impairment of the rights of another contracting party.

The representative of Poland said that his delegation attached great importance to the notification and surveillance procedures. Notification was the very important first step towards the full implementation of all GATT rules. If the initial objectives of the notification procedures had not been achieved, this was because some contracting parties for various reasons did not conform to the pertinent provisions. He suggested that all notification requirements be listed in order to simplify them. Furthermore, it would be useful to introduce a uniform questionnaire, whenever possible, and to examine the frequency of notifications. He also suggested that the MTN Councils and Committees examine and analyze the notifications, even those from non-parties to the Arrangements and Agreements. As for panel procedures, he said that the panel members' qualifications should be more clearly defined and that reasonable time limits should be set for their work. New rules should not be created, but the existing rules could be improved. What was most important in this connection was the goodwill of the contracting parties who used the procedures. He then referred to document C/W/385 and said that as of 1 January 1982 his Government had undertaken an in-depth reform of the management of the economy in order to improve the efficiency of production, to reduce costs for a better participation of Poland in international trade, and to adapt to GATT rules. The new regulations had been published according to the provisions of Article X of the General Agreement and the proper notifications would be made. He said that Poland had introduced import and export permits as a temporary measure. Most permits were automatic; but individual permits were also foreseen. The measures had not yet been formally notified because the system had not yet been fully defined and was provisional. He concluded by stating that it was the firm intention of his authorities to introduce a transparent system which would be in conformity with Poland's GATT obligations.

The representative of Chile said that one of the most important factors in dispute settlement was the political will to respect the obligations undertaken by contracting parties and the decisions and recommendations made by the Council. He felt that the declaration to be approved by the Ministers should refer to this matter and should reaffirm the political will of the contracting parties to comply with the procedures, obligations and conclusions resulting from the dispute settlement process once the conclusions had been adopted or decided upon by the Council. He felt that the dispute settlement procedures could be improved. The Understanding was a good one, but should be fully applied, in a flexible manner, in order to take specific problems into account. As for greater use of conciliation, he considered that a dispute which could not be resolved during a series of bilateral meetings in capitals might not be easy to resolve under a conciliation process. Nevertheless, he believed that the process could be improved by calling on the good offices of the Director-General or of other high ranking officers such as the Chairman of the CONTRACTING PARTIES or of the Council. Since this could lead to delays, he wondered whether a special conciliation officer could make a report to the Council, giving a factual description of the case. If the

case were not solved during the conciliatory phase, the conciliation officer would be charged with drawing up questions for which answers should be found by a panel. As to the suggestion that better use should be made of experts from capitals, he pointed out that this possibility already existed in the Understanding and should be explored further. He considered that a cooling-off period between the time when the report was presented to the Council and the decision was taken by the Council would permit the party concerned to explain how it intended to comply with the recommendations that had been made by the panel. His delegation was of the opinion that the Council was not obliged to adopt panel reports automatically. Turning to notification and referring to document C/W/385/Add.1, he said that this matter could be included in a decision by the Ministers. Furthermore, a working party could be set up to examine the notification requirements and how the procedures could be improved and simplified in order to increase transparency.

The representative of Switzerland referred to some earlier statements to the effect that the Understanding already provided for the use of good offices with a view to the conciliation of outstanding differences between the parties to a dispute, and said that his delegation had in mind an obligatory procedure that would be triggered by the Council and not by the two contracting parties concerned.

The representative of Romania said that the position of his delegation in respect of dispute settlement was similar to that of Switzerland. Thus, the dispute settlement mechanism should be more efficient and credible. The consultation procedures should be strengthened and better used in order to settle questions before the stage of setting up a panel. Furthermore, the contracting parties concerned should be obliged to apply the recommendations of a panel when the report had been adopted by the Council and to inform the Council about the measures taken or to be taken in order to meet the recommendations. Finally, in order to reinforce the dispute settlement mechanism, it would be useful to have a commitment by Ministers on compliance by contracting parties with the conclusions and recommendations of panels.

The representative of India said that the periodic special sessions of the Council provided a useful opportunity to examine the functioning of the GATT trading system, to examine major trends and developments, to assess whether contracting parties were fulfilling their obligations in general, and to determine the specific areas in which the system of rights, obligations and provision for joint action required further attention. He said that the dismal record of notifications in some areas in document C/W/385 did not mean that notifications were required on too many subjects. He felt that there had been some hesitation amongst contracting parties to make notifications because of their so-called "self-incriminating" nature, e.g., under Article XVI:1. He stressed that all notifications required under the General Agreement were essential for transparency and that there should be more rather than fewer notifications. At the same time there

should be an improvement in their quality. He stated on the subject of surveillance that paragraph 24 of the Understanding was entirely supportive of the Decision by the CONTRACTING PARTIES in November 1979 regarding the unity and consistency of the GATT system (BISD 26S/201). A meeting like this made it possible to address questions such as whether the notification requirements under various GATT Articles were being met, whether the notifications provided an adequate scenario of developments or policy measures being taken by respective governments in areas covered by the General Agreement and whether adequate information was available regarding joint or multilateral action taken by CONTRACTING PARTIES in terms of Articles XII, XVIII, XIX, XXIII, XXV, XXXVII and XXXVIII. He agreed that a flood of notifications did not necessarily lead to transparency, the essential aspects of quality and presentation for quick assimilation being important in this context. He also supported the suggestion for a certain degree of processing of such notifications by the secretariat. He recalled that his delegation had repeatedly maintained that a more elaborate discussion should be undertaken on Part IV, with a view to examining notifications pertaining to commitments of developed contracting parties under the provisions of Article XXXVII:1. As no notification had been made under this Article, he wondered whether necessary measures were being undertaken by developed countries. He said that the dispute settlement machinery appeared to be characterized by a lack of adequate follow-up of panel reports, which was in the ultimate analysis a question of political will. He suggested that instead of adopting a panel report in a routine manner, the Council should take a concrete decision and decide upon a particular line of action to be followed in the case of each panel report. Council decisions in this regard should be periodically reviewed to determine the extent of implementation by the contracting parties concerned. He noted that the proposal by Switzerland would make conciliation mandatory and more institutionalized, which would require redrafting the Understanding. He felt that such a strengthening of conciliation should not dilute the dispute settlement mechanism so as to operate to the disadvantage of weaker trading partners, who lacked adequate retaliatory power.

The representative of the Philippines said that the CONTRACTING PARTIES should ensure confidence in the dispute settlement mechanism and improve its efficiency. Therefore, a "systems check", referred to in document C/W/385/Add.1, should be undertaken in respect of a number of specific issues such as procedures, follow-up and constitution of panels. He stressed that the efficiency of GATT for its weaker trading partners was based on the effectiveness of the dispute settlement mechanism. In the course of conciliation, the weaker trading partner was at a disadvantage. Therefore, it was necessary to resolve panel disputes on the basis of purely juridical merits. His delegation took note of the proposals made by Korea and of the suggestion made by Canada that trade policy expertise be mobilized in order to lend prestige and weight to the solution of disputes in GATT.

The representative of the United States said that his delegation had taken note of all the statements but was not yet in a position to offer specific suggestions at this point with regard to dispute settlement. He noted, however, that relatively little discussion had taken place on the matter of notification of trade measures, and wondered whether the secretariat might consider summarizing its experiences in this respect so as to provide background information and highlight the areas where further consideration could be useful. Ultimately, it would probably be necessary for a working party to conduct a more detailed examination of notification procedures and practices. His delegation supported the comments made in this regard by the representative of Chile and believed that this would give the Council a firm basis for taking any decisions which would be necessary as a result of that examination.

The representative of the European Communities referred to suggestions that the dispute settlement procedures should be improved. He felt that the present meeting should not be used for challenging the Understanding but rather to clarify how better use could be made of it. He wondered whether the Understanding had been well used thus far, since it was still in a running-in period. He found the Swiss proposal interesting, but saw difficulties in transforming the conciliation process into an automatic obligation. He believed that panels had sometimes been used in a way that did not correspond to the spirit of the Understanding. In his view, the escalation of panels did not augure well, and he expressed concern as to the spirit in which "wise men" and special working parties might be used in resolving disputes. He said that in the context of conciliation the power of persuasion of the weaker contracting party should not be underestimated because the stronger trading partner had to keep in mind its long-term interests, particularly since there was a large number of smaller trading partners. In his view there could be no question of converting the CONTRACTING PARTIES into a court of justice where contracting parties could be found "guilty". The rôle of a panel was to assist in the search for a compromise, and in each case all possibilities should be exhausted in order to find a compromise in a spirit of conciliation. He believed that this was the meaning of dispute settlement, and that the follow-up to a compromise reached should be seen in this light.

The Chairman stated that the discussion had been both wide-ranging and intense, touching in many ways the core of the problem and pointing to some conclusions. He noted that while reference had been made to the Council's rôle in overseeing the working of the GATT system generally, the discussion had quite properly been intensely focussed on how the subject of dispute settlement should be brought to the forthcoming session of the CONTRACTING PARTIES at ministerial level and what might be the expectations therefrom.

It had been felt generally that the Understanding was comprehensive and that there should not be a massive modification of the present system, although there was room for some improvement as well as the need to apply it more effectively.

He noted that there had been elaborate discussion on the subject of conciliation, with emphasis put on the use of conciliation before a disputed matter went to a panel. Some representatives had referred to the ample scope for conciliation that already existed in the Understanding, while some others had suggested improvements that could be made. There had been one concrete suggestion to institutionalize formally the conciliatory mechanism and to entrust this work to a group of individuals, although there had been some expressions of concern as to the pitfalls of such formalization and as to the over-emphasis on conciliation. It appeared to him that such expressions of concern did not reflect lack of appreciation or the need for conciliation or of its importance as much as apprehension that giving undue weight to conciliation might make it difficult to maintain a proper balance of rights and obligations in all cases.

He said that, in any event, it had been felt generally that the two aspects of conciliation and adjudication had to be utilized in a balanced way, and that in the true spirit of GATT even the adjudication process involved that of conciliation to a great extent, as pragmatic solutions were found in GATT which were nevertheless fully in consonance with the rights and obligations envisaged in the General Agreement.

He noted that concrete suggestions had been made concerning the timeliness of various stages in the panel process, notably the establishment of a panel, the submission of its report, the Council's consideration of the report and the action taken by contracting parties thereafter. Statements had been made in respect of the efficacy of the panels' work and on their composition, with particular emphasis placed on their use of secretariat expertise on questions of GATT precedents and practice.

It had been suggested that in many instances, difficulties had been faced by panels in arriving at specific conclusions and by the Council in taking specific decisions because of problems regarding the interpretation of some GATT provisions.

There had been suggestions that panel reports should be adopted in full by the Council, as well as suggestions that it would be preferable for the Council to take a set of decisions based on their consideration of panel reports.

As for the issue of follow-up, it was generally felt that primarily the political will on the part of contracting parties was important. Certain more formal and legalistic suggestions had been made by some representatives regarding the obligation of contracting parties to act accordingly to implement Council decisions on panel reports.

He said that the points to which he referred were not exhaustive or comprehensive and that the Council looked forward to receiving written contributions from delegations on the subject under discussion.

In view of the importance of the matter and the very wide range of points which had been covered in the discussion, he considered it necessary that representatives reflect on them further, and said that, if the Council agreed, he intended to consult expeditiously on an informal basis with delegations in an effort to determine whether the Council was in a position to arrive at some broad conclusions which could be presented to Ministers at the forthcoming session in November.

The Council so agreed.