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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
21 July 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 21 July 1982

Chairman: Mr. B.L. DAS (India)

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1. People's Republic of China
- Attendance at thirty-eighth session (L/5344)

The Chairman drew attention to a communication from the Permanent Mission of the People's Republic of China (L/5344), stating that the Government of that country took interest in sending its representatives to participate as observers in the thirty-eighth session of the CONTRACTING PARTIES in November 1982. In the communication it was stated that the request was without prejudice to the position of the Government of the People's Republic of China with regard to its legal status vis-à-vis the GATT.

A large number of representatives spoke in favour of approving the request.

The Council approved of the request.

2. United States tax legislation (DISC) - Follow-up on the report of the Panel
- Draft Decision proposed by the European Economic Community (C/M/157, C/W/384, C/W/389 and Suppl.1, C/W/391, C/W/392, L/4422, L/5271)

The Chairman recalled that at the meeting of the Council on 7 May 1982 the representative of the European Communities had proposed that the Council adopt the decision contained in document C/W/384.[1/] Following discussion on this matter the Council had agreed to revert to this item at its meeting on 29-30 June 1982. After further discussion at that meeting the Council had agreed to revert to this item at the present meeting.

The representative of the European Communities referred to his statement at the 29-30 June meeting of the Council[2/] in which he had explained why the DISC legislation was inconsistent with the provisions of Article XVI:4.

The representative of the United States referred to his statement at the 29-30 June meeting of the Council[3/] in which he had explained why the DISC system was not inconsistent with the General Agreement. He referred to each paragraph of the conclusions of the Panel report on the DISC (L/4422, paragraphs 67-74) and explained how these were qualified by the Council Decision of December 1981 (L/5271).

[1/] Cf. C/M/157, page 16

[2/] Cf. C/W/391

[3/] Cf. C/W/389 and Suppl.1

He said that the Panel which had examined the DISC and the tax practices of Belgium, France and the Netherlands had taken the view that Article XVI:4 required contracting parties to tax export income on the basis of a purely global system. The Panel had thus found territorial tax systems, such as maintained by those European countries, to be inconsistent with GATT. The Panel also found DISC to be GATT-inconsistent, because DISC was a derogation from the global system of taxation in the United States.

However, the Council Decision of December 1981 adopting the four Panel reports provided that it was not necessary to tax export income beyond what would be required under a territorial tax system. He presented a bargraph showing that the U.S. global tax system, even as modified for DISC, resulted in overall taxation of export income at a level higher than would be imposed under a territorial system. Since the December 1981 Decision of the Council meant that taxation under the territorial system was consistent with GATT, the higher level of taxation under DISC was also consistent with GATT.

Under these circumstances, the Panel's conclusions no longer held after the December 1981 Decision of the Council, since each of the Panel's conclusions was based on the erroneous assumption that taxation under a purely global system was required by GATT.

He said that the United States would be willing to bring the DISC legislation into conformity with the GATT if first it could be pointed out to him how the DISC was not in conformity with the General Agreement, in the light of the December 1981 Decision.

The representative of Argentina said that the statements of the representative of the United States at the present meeting and at the 29-30 June meeting had been very long, extremely complex and highly technical in nature. He appealed to delegations generally to distribute communications of this nature well in advance so that they could be sent to capitals for examination. In the absence of proper instructions, his delegation found it impossible to take a position on this matter. He could not accept the argument of the representative of the United States that the Council had not accepted parts of the conclusions of the DISC Panel. He also said that the CONTRACTING PARTIES had the right to be informed about the 1979 bilateral agreement between the EEC and the United States, to which reference had been made by those representatives and in document C/W/391. In respect of the matter under discussion, he considered that the adopted conclusions of a panel became an obligation on the part of a contracting party to take the necessary steps involved, and that the Council should not be used to re-open discussions on technical matters for which it was not suited and which had already been examined by a panel.

The representative of the European Communities agreed that the Council was not the place to re-open, on a technical level, a matter on which it had already taken a decision. He said that the Council should now move to

ensure compliance with that earlier decision. Turning to the 1979 bilateral agreement between the United States and the EEC, mentioned in document C/W/391, he said that the text would be made available by his delegation to any delegation asking for it. He stressed that it was an agreement of procedural nature, which had been made to facilitate the United States' adherance to the Subsidies and Countervailing Measures Code. It affected the timing of action by the EEC in relation to DISC, but did not comit any other contracting party. In his view the text of the agreement was important because the United States had admitted therein that the DISC system was not in conformity with the General Agreement. The bilateral agreement had later been repudiated by the United States.

He then referred to the United States argument, which he considered irrelevant, that the level of taxation in the United States was not lower than that under a territorial system. Neither the Panel nor the Council had ever addressed this particular point. Relevant in his view was the fact that Article XVI:4 did not permit the level of taxation on exported goods to be lower than that applied to domestic goods. He stressed that this was the crux of Article XVI, and was the only point at issue before the Council. His delegation was, therefore, determined to pursue this matter to a conclusion.

In his view the statements made by the representative of the United States contained a number of factual errors and did not contain any new arguments or elements in support of the contention that the DISC was consistent with the General Agreement. In the light of the discussions thus far, the EEC had decided to withdraw the draft decision in document C/W/384 and to introduce at the present meeting a new draft decision contained in document C/W/392, which proposed that the Council recognize the serious circumstances present in this case and authorize the EEC to proceed with appropriate compensatory measures.

His delegation recognized that there was only one precedent for such an action, in 1952, but for a number of reasons it considered that the circumstances of the present case were particularly serious.

He then called attention to the economic importance of the subsidy to United States' exports under the DISC system, and pointed out that 55-60 per cent of all exports benefitted from DISC advantages. In terms of U.S. exports to the EEC a volume of US$30 billion annually was concerned. According to U.S. figures (C/W/389/Suppl.1) the DISC system deferred taxes on about 17 per cent of profits; but, in terms of the amount of revenue foregone by the United States Treasury over the lifetime of the DISC since 1972, total taxation amounting to US$10 billion had been deferred (including a sum of US$2.3 billion on exports to the EEC) and there existed no provision for reimbursement. In his view, this should be considered as a grant by the United States to its exporters. He added that the amount had increased by about US$1.5 billion annually in recent years.

He stated that the EEC preferred that the United States recognize its obligations in respect of DISC and undertake to modify or eliminate this legislation in order to make it consistent with the General Agreement. If assurances to this effect were not forthcoming, however, he hoped that the Council would take a decision of principle in relation to the compensating action requested in document C/W/392. If such a decision were taken, the EEC did not intend to take any measures against the United States immediately but was ready to discuss the figures involved and the precise measures to be taken before they were imposed. He felt that this would give the United States and the CONTRACTING PARTIES sufficient safeguards that the proposed action would not be abusive.

The representative of Canada said that Canada was primarily affected by the United States DISC legislation and had consistently taken the view that the United States should bring that legislation into conformity with its GATT obligations. He recalled that specific provision had been made in the Subsidies and Countervailing Measures Code to give the United States a reasonable period of time to make whatever changes were necessary to the DISC legislation in order to abide by its international obligations. Since that time the Panel reports on DISC and the European tax practices had been adopted and, contrary to the current position of the United States authorities, the Decision (L/5271) accompanying the adoption of the reports did not alter the obligation on the United States to amend its DISC legislation.

He said that his authorities had examined in detail the United States statement at the 29-30 June Council meeting (C/W/389 and Suppl.1) and were of the view that it did not substantiate the contention that the qualification which accompanied the Council adoption of the four panel reports exonerated the DISC from being an export subsidy practice contrary to the provisions of Article XVI:4 of the General Agreement. Nor could his delegation accept the United States argument that Article XVI:4 rules require that the level of taxation to be assessed upon export activities be at least equal to the level which would be applied if a territorial system of taxation were in effect.

He then pointed out that an overwhelming number of delegations had expressed the opinion that the United States should amend or eliminate the DISC legislation in order to bring it into conformity with its GATT obligations, and indicate whether, and if so, when it would take the necessary steps in this regard. He stated that it was not GATT practice to allow a contracting party maintaining an offending measure to block a Council recommendation addressed to it.

As to the new proposal made by the European Communities (C/W/392) for an authorization, in principle, to make compensatory withdrawals against the United States, he said that this matter raised a number of questions which contracting parties would need time to examine. One of these questions was whether other contracting parties affected by the DISC should also be permitted to make compensatory withdrawals.

The representative of Brazil recalled that his delegation had always held the view that, the DISC having been found to be illegal under the General Agreement, the Council was entitled to know what the United States would do to conform the DISC legislation to the GATT rules. As to the statement by the representative of the United States that the December 1981 understanding modified substantially the conclusions arrived at by the DISC Panel, he recalled that his delegation had expressed its reservations on that issue because it could not accept that the understanding derogated from the conclusions of the Panel contained in document L/4422 or, for that matter, from the adoption of that report by the Council.

He expressed the strong hope that the United States would take action to bring the DISC legislation into line with the provisions of the General Agreement. If it refused to do so, however, his authorities could ask the following questions: (1) Did the United States feel that they could go on insisting on strict conformity to the GATT disciplines on subsidies by other contracting parties while they themselves did not abide by them? (2) Would the United States be prepared to accept, for instance, that the cost of the financing of production for export by other contracting parties be reduced, in order to make this burden equivalent to that prevailing in the territory of other contracting parties where conditions in the financial market were more favourable? (3) Would the United States be prepared to accept that other contracting parties applied subsidies if these contracting parties unilaterally chose to deny, in the face of all evidence, the illegality of their subsidies? He stressed that there could not be any double standards in these matters. He said that his delegation would have supported the draft decision contained in document C/W/384 but preferred that the United States bring its DISC legislation into conformity with the General Agreement.

The representative of Colombia asked that the text of the 1979 bilateral agreement on DISC between the United States and the EEC, mentioned in document C/W/391, be distributed to contracting parties. He noted that this had facilitated United States' adherence to the Subsidies and Countervailing Measures Code, and regretted that entry to an MTN Code had been made easier for some countries while others such as Colombia had not had such an advantage. In the view of his delegation, this was a double standard which should not be permitted.

The representative of the United States reiterated that the December 1981 Decision applied to the DISC Panel report just as much as it applied to the reports on the tax legislation of France, Belgium and the Netherlands. He said that no delegation appeared to be willing to enter into a discussion of the substance of the matter before the Council. As for the 1979 bilateral agreement mentioned in document C/W/391, he said that this was an agreement which had been entered into by the previous administration but had been disavowed in 1980 by that same administration. He noted that in footnote No. 2 of the Subsidies and Countervailing Measures Code the signatories had further recognized that nothing in that text prejudged the disposition by the CONTRACTING PARTIES of the specific issues raised in the DISC Panel report. The matter had thus been reserved by the United States at that time and in subsequent discussions.

The representative of Switzerland said that his Government expected that the United States would bring the DISC system into conformity with the provisions of the General Agreement. He said that his delegation was not in a position to comment on the new draft decision in document C/W/392.

The representative of the European Communities put the following questions to the United States: (1) Did the United States delegation admit that the level of taxation on exports was less than that on domestically sold goods as a consequence of the DISC system? (2) In respect of the understanding adopted by the Council in December 1981, did the United States maintain that the DISC system applied to export activities outside the United States, and if so, how was it being applied? In his view, this was not the case, and the qualification, therefore, applied differently to the DISC than to the other tax practices examined by the Panels.

He then said that his delegation had withdrawn its previous proposal (C/W/384) and substituted it by a new one (C/W/392) in order to underline the seriousness of the situation and to facilitate a rethinking in respect of this issue on the part of the United States, which was blocking a GATT decision. In his view, delegations were free to discuss either one of the proposals; and if the United States felt that the draft decision in C/W/384 was acceptable, his delegation would go along with that draft decision.

The representative of Canada said that the Council had been tolerant in listening to the United States position. He stressed that the Council was not the place to debate the detailed technical points raised by the representative of the United States. Furthermore, it was irrelevant under this item to discuss the three other Panel reports. According to GATT practice the time had come for the United States to tell the Council what it intended to do in this matter.

The representative of New Zealand felt that the Council had been placed in a difficult position. He said that the United States should take appropriate action with a minimum of delay to bring the DISC system into conformity with the General Agreement. His delegation preferred the first draft decision (C/W/384) since the second draft decision (C/W/392) raised some fundamental political points and points of principle which required more time for consideration.

The representative of the Netherlands noted that the representative of the United States had made repeated references to his country's tax practices, and pointed out that similar systems were applied by a number of other contracting parties. While the view that any contracting party had the right to raise points about the Netherlands tax practices could not be disputed, he would advise those who might contemplate such action to give prior consideration to the Council's understanding of December 1981, which had a direct bearing on territorial tax systems.

The representative of the United States asked delegations to explain to him why they felt that the DISC was in violation of the General Agreement. In response to the questions raised by the representative of the European Communities, he quoted from the conclusions reached by the Panel on Belgian tax practices concerning lower Belgian taxation on exports than on domestic sales income. He said that what applied to the Belgian system applied also to the DISC. As to the question of whether the DISC applied to export activities outside the United States, he said that in economic terms the effect of the DISC legislation was to immunize part of the income on export transactions which was attributable to foreign source earnings, i.e., export activities outside the United States. He then said that at the time the four Panel reports were adopted, as qualified, his delegation had stated that it was the view of his Government that the rules applicable in cases involving Article XVI:4 required that the level of taxation to be assessed on exported products be at least equal to that level which would apply in the event that a territorial system of taxation were adopted by the country in question. He recalled that he had also stated in other meetings at the GATT that the qualification had exonerated the DISC.

The representative of the European Communities pointed out that the conclusions of the three other Panels referred specifically to export activities outside the country, while this was not the case in the DISC report. He considered what was relevant was that the qualifications applied only to the other conclusions and not to the DISC.

The representative of India recalled his delegation's expectation that the United States would soon take the action necessary to bring the provisions of the DISC into conformity with GATT rules. His delegation could not accept the view that the qualification had altered the DISC as an export subsidy, and supported the draft decision in document C/W/384.

The representative of the United States said in respect of the statement by the representative of the European Communities that he saw no substantial difference between the language in the DISC Panel's and the three other Panels' reports.

The Chairman said that this subject had been on the agenda of the Council for a long time, and he had noted the urgency expressed by many delegations that the Council should conclude it quickly. He suggested that informal consultations take place before continuing discussion on this issue.

The representative of the European Communities said that action by the Council could not be further delayed without putting into question the credibility of the organization and its willingness or ability to police the GATT rules. In this context he found very wise the earlier statement by the representative of Canada that in GATT practice it was not usual that one contracting party should block a Council recommendation calling for it to come into line with the provisions of the General Agreement.

Following consultations among the delegations principally concerned, the Chairman said that it was the opinion of the majority of the Council members that the United States should take appropriate action to ensure that the DISC legislation was brought into conformity with the provisions of the General Agreement. He also noted that the United States was of the opinion that, against the background of the Panel report (L/4422) and the Council understanding of 7 December 1981 (L/5271) the DISC legislation was in conformity with the General Agreement. He understood that it was the intention of a large number of contracting parties to pursue this matter further in the Council.

The Council agreed to revert to this matter at its next meeting.

The representative of the European Communities expressed regret that the consultations had not reached an agreement and that the Council was unable to take a decision, not even along the lines of the original proposal contained in document C/W/384, despite near unanimity during the discussions. In his view the United States had not introduced any new arguments; and it was clear that the DISC system taxed exports less heavily than products sold in the domestic market, which was contrary to the provisions of Article XVI:4.

The representative of Nigeria expressed concern that this and similar problems created within the GATT touched on its credibility, and such actions affected the other contracting parties.

The Council took note of the statements.

3. Trade in Textiles
   - Reports of the Textiles Committee (COM.TEX/26, COM.TEX/28) and Annual Report of the Textiles Surveillance Body (COM.TEX/SB/742 and Add.1)

The Director-General, Chairman of the Textiles Committee, said that at its meeting in November and December 1981 the Textiles Committee had adopted the Protocol extending the Arrangement Regarding International Trade in Textiles (MFA) for a period of four years and seven months, from 1 January 1982 to 31 July 1986 (L/5276). The report of that meeting was contained in document COM.TEX/26. The report prepared by the Textiles Surveillance Body for the purpose of the Committee's discussion was contained in document COM.TEX/SB/742 and Add.1.

He mentioned that the Textiles Committee had met again in May 1982 to appoint Ambassador Marcelo Raffaelli to the post of Chairman of the Textiles Surveillance Body. The report of that meeting was contained in document COM.TEX/28.

He said that the Sub-Committee on Adjustment, established under paragraph 15 of the 1981 Protocol extending the MFA, had held its first meeting in July 1982, and had decided to set up a technical sub-group entrusted with the task of securing information relevant to its work and the analysis of such information in the light of the mandate given to the Sub-Committee (COM.TEX/W/132).

The Chairman welcomed Ambassador Raffaelli as the new Chairman of the Textiles Surveillance Body and expressed his thanks to Ambassador Wurth for his long service in this Body.

The representative of Egypt supported the adoption of the reports and appealed to importing countries to adhere to the basic principles contained in the MFA and the Protocol of extension when entering into bilateral agreements.

The representative of the United Kingdom speaking for Hong Kong, in supporting the appeal made by the representative of Egypt, recalled that in the Preparatory Committee a large number of delegations had asked that the subject of textiles be addressed by the Ministers in the forthcoming Ministerial meeting. He added that his delegation took no particular satisfaction from the conclusion of the Protocol extending the MFA, and considered that any assessment thereof could only be made on the basis of the implementation of the MFA through bilateral negotiations.

The representative of the European Communities said that his delegation had taken note of the appeals.

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

4. United States - Imports of certain automotive spring assemblies - Report of the Panel (L/5333)

The Chairman recalled that in December 1981 the Council had established a panel to examine the complaint by Canada. The Panel had submitted its report (L/5333) to the Council at its meeting on 29-30 June 1982. At that meeting the Council had agreed to revert to this item at the present meeting.

The representative of the United States said that the Council should adopt the report, which had been circulated the previous month, and which contained no stunning new interpretation of the General Agreement. He said that the Panel had found, quite properly, that the exclusion order issued against patent infringing spring assemblies under the provisions and procedures of Section 337 fell within Article XX(d). Since Article XX was an exception from other GATT obligations, it was hardly surprising that the Panel had not provided any opinion on the Article III arguments made by the Canadian delegation. While the United States would have wished for a blanket finding that actions under Section 337 were in conformity with the General Agreement, just as Canada would have wished for a blanket

condemnation of any such action, the Panel had rendered an opinion on the specific case before it and had left open the GATT question with respect to the application of the law in question in other circumstances.

The representative of Canada said that he could not agree with a number of elements in the statement by the representative of the United States. In his view, the Panel had not ruled on the question put to it, i.e., whether the use of a special adjudication process for imports under Section 337, regardless of whether it resulted in an exclusion order or not, was consistent with the General Agreement. The Canadian complaint was not against the exclusion order issued under Section 337. Moreover, Canada saw some indications that the use of Section 337 was increasing. He said that the unusually short period since the most recent Council meeting had not allowed for sufficient time to undertake important consultations in various capitals. In view of this, he requested that consideration of the Panel report be deferred until the next meeting of the Council.

The representative of the United States said that he was willing to allow the matter to be carried over until the next meeting of the Council. At that meeting, however, the United States would expect the Council to take definitive action on the matter.

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

5. Accession of Thailand
- Report of the Working Party (L/5314)

The Chairman recalled that in February 1982 the Council had established a working party to examine the application of the Government of Thailand to accede to the General Agreement under Article XXXIII. The Working Party had carried out its examination and had submitted its report in document L/5314.

Ambassador O'Brien (New Zealand), Chairman of the Working Party, said that the Working Party had carried out an examination of the foreign trade régime of Thailand and its compatibility with GATT. Particular attention had been given to the Thai Investment Promotion Act of 1977 and to the use of special import fees, import and export restrictions in force in Thailand, the criteria for the allocation and distribution of import licences, customs valuation procedures, the temporary import surcharge of 0.5 per cent introduced in February 1982, and internal taxes. With regard to the latter, the Working Party had noted the intention of Thailand in reviewing its internal tax system consistently with its development, financial and trade needs, to ensure that the system was in line with the provisions of the General Agreement. He stated that after the examination of the foreign trade régime of Thailand and in the light of the explanations and assurances given by the Thai representatives, the Working Party had reached the conclusion that, subject to the satisfactory conclusion of the relevant tariff negotiations, Thailand should be invited

to accede to the General Agreement. For this purpose the Working Party had prepared the draft Decision and Protocol of Accession appended to the report. He pointed out that the tariff negotiations between Thailand and contracting parties in connection with the accession were not yet completed. When these were concluded, the resulting Schedule of Thailand and the concessions granted by other contracting parties as a result of negotiations would be annexed to the Protocol and circulated to the contracting parties. In this respect he recalled that the representative of Thailand in the Working Party had stressed the wish of his Government to participate as a contracting party in the forthcoming Ministerial session of the CONTRACTING PARTIES, and also the undertaking given by many members of the Working Party to co-operate fully with a view to realizing this aim. He therefore urged those contracting parties still engaged in negotiations with Thailand to make every effort to complete them as expeditiously as possible.

The representative of Thailand expressed his delegation's appreciation for the work performed by the Working Party and for the expressions of full support by the contracting parties and their undertaking to co-operate fully with the view to finalize the accession process as expeditiously as possible so that Thailand could be able to participate in the forthcoming Ministerial Meeting as a full contracting party. He said that due to the late notification of certain tariff requests, Thailand was still in the process of preparing for the tariff negotiations, which should take place in September. He said that Thailand attached great importance to its participation as a full member in the Ministerial meeting.

The representative of Turkey, Romania, European Communities, Korea, Japan, Singapore, Colombia, Philippines, Sri Lanka, Switzerland, Australia, United States, Norway speaking for the Nordic countries, Egypt, India, Brazil and the United Kingdom speaking for Hong Kong supported the adoption of the report and expressed the hope that Thailand would be able to participate at the Ministerial meeting as a full member.

The Council approved the text of the draft Protocol of Accession, with the understanding that the Schedule LXXIX - Thailand would be circulated as soon as possible as an addendum to the Working Party's report and would be annexed to the Protocol of Accession.

The Council also approved the text of the draft Decision and agreed that the Decision should be submitted to a vote by postal ballot when the Thailand Schedule had been circulated.

The Council adopted the report of the Working Party.

6. Preparations for the Ministerial meeting
- Progress report of the Preparatory Committee

Ambassador McPhail (Canada), Chairman of the Preparatory Committee, said that since his last report to the Council there had been intensive informal consultations on substantive issues considered for inclusion in the second and third parts of the Minsterial document, on the basis of all proposals made by delegations. Any contracting party could join in these consultations. He expected to present to the Committee at its next meeting a first draft of the Ministerial document. The purpose of this draft was to present a tableau or structure of the document as it might eventually emerge. It also served as a snapshot of the various issues under discussion. As well, the document provided a basis on which negotiations could proceed. As such it constituted a first shot at a negotiating text. He said that no delegation would be bound by the language of the first draft, but that it would provide a basis on which delegations could reflect. The next meeting of the Preparatroy Committee would take place in September 1982; and intensive negotiations would take place in September and October.

The representative of Brazil, after expressing his delegation's appreciation for the work performed by the Chairman of the Committee, said that it wold be necessary at the end of the exercise that all views be properly shown. He expressed concern about the difficulty of reflecting those views in a preliminary text and of accommodating those delegations which did not want to have any text whatsoever on certain items. He also expressed concern that texts emerging from informal, restricted consultations might acquire a status that the preliminary talks and consultations would not justify.

The representative of Colombia said that while this text would be very preliminary it should nevertheless contain an appropriate balance of interests.

The representative of Romania said that as there was not much time left until November, it was necessary to step up the work and to show more co-operation among contracting parties.

The representative of India expressed appreciation for the efforts made and associated his delegation with the concern expressed by the representative of Brazil. While recognising the difficulty of reconciling diverging views, he said that even an interim paper should ensure a balance of interests and that it was of crucial importance that certain delegations' reservations on a certain text found appropriate mention therein. Similarly, if some delegations had repeatedly expressed an interest in a certain subject this subject should be reflected in the document.

The representative of the Philippines associated his delegation with the remarks made by the representative of India.

The representative of the United States said that his delegation reserved its judgment until the interim document had appeared.

The representative of Turkey appreciated the work done so far but pointed out that its successful conclusion depended not only on the delegations but also on further work to be done in capitals. It was therefore time to prepare public opinion and the governments for the Ministerial meeting.

The Chairman of the Preparatory Committee assured delegations that their various positions would be taken into account in the draft text, e.g., by means of a cover note, square brackets and an overall statement to the effect that there was no commitment at that stage. At the present stage no attempt was being made to formalize the texts. He said that individual subjects were not all at the same stage of consideration and that this would, of course, be reflected. He said that every attempt was being made to ensure balance in all respects in the texts, considering the limited time available to complete this work.

The Council took note of the statements.

7. United States - Import duty on vitamin B12 - Report of the Panel (L/5331)

The Chairman recalled that in June 1981 the Council had established a panel to examine the complaint by the European Economic Community. The Panel had submitted its report in document L/5331, which had been before the Council at the meeting on 29-30 June 1982. At that meeting the Council had agreed to revert to this item at the present meeting.

The representative of the European Communities recalled that at the 29-30 June Council meeting his delegation had drawn attention to the danger of using a weighted average of tariffs for certain headings in a process of tariff modification in cases of renegotiations under Article XXVIII, and had asked whether the United States was ready to accept the Panel report as a whole, including the recommendation to accelerate the staging of tariff reductions. He said that his delegation would need an answer to this question before taking a position on the Panel report as a whole.

The representative of the United States noted that the Panel had found that the United States had not infringed its GATT obligations. The report had been framed narrowly and carefully to meet the particular and rather peculiar matter that the EEC had brought before the Panel. His delegation saw no bad precedent in the Panel's findings; and any precedent established would be very narrow.

In response to the question regarding accelerated staging, he noted that any change in this duty, including acceleration of staging, would require new legislation. He also pointed out that, based on the import data available to the United States, the EEC seemed largely to have resumed its former position in the U.S. market for the product in question. He added that the U.S. duty on vitamin B12 continued to be reduced pursuant to the agreed staging of the MTN concession on this product. He stated that the United States would be willing to discuss any proposals the EEC might make for the negotiation of a further acceleration of the staging of the concession on this item, with the understanding that any agreement that might be reached would be subject on the United States side to obtaining implementing legislation from the Congress.

The representative of the European Communites interpreted the statement by the representative of the United States as a negative answer to his question. In his view, the two conditions, that the EEC would offer compensation to obtain an accelerated staging and the United States Congress would pass implementing legislation, were virtually impossible to meet. Referring to the conclusion in paragraph (d) of the Panel report relating to the bilateral American Selling Price (ASP) Understanding, he said that it was surprising that the Panel had not given some thought to the rights, analogous to those under Article XXVIII, which the EEC could exercise when no mutually acceptable solution could be found to specific cases raised by the EEC under that Understanding. In the EEC view, rights equivalent to those in Article XXVIII are appropriate in such a case. The EEC had also been surprised by the conclusions in paragraphs (e), (f) and (g) of the Panel report, where the method used by the United States for the conversion of the previous common bound rate had been qualified as "neutral" and "in principle fair and equitable", in spite of the Panel finding in the same paragraphs that this method had resulted in excessively negative effects for the suppliers of feedgrade quality vitamins and that Community exports of feedgrade vitamin B12 to the United States had virtually ceased after the abolition of the ASP valuation system. These contradictions in the Panel conclusions were virtually inadmissible to the EEC and only served to explain the Panel's final conclusion that the United States had not infringed its commitments but nevertheless should be invited to make good the damage it had caused. His delegation would find it difficult to accept such conclusions, and hoped that the Council would not adopt them.

He said that the Panel report also raised a matter of principle. The Panel had started its work on the hypothesis that the utilization of a system of weighted averages in the renegotiation of tariff duties would give results which the Panel had qualified as neutral, fair and equitable. If future tariff negotiations under Article XXVIII and, in particular, the conversion of all bound tariffs from the present tariff schedules to the new harmonized nomenclature system in the coming years, were to be based on such a principle and, in specific cases like the present one, were to lead

to the doubling of tariff rates, this would revise a good part of the results of the Tokyo Round as well as of earlier tariff rounds. He reiterated that the EEC wanted to draw attention to the dangers involved in such a precedent, and had also raised this matter in the Committee on Tariff Concessions. His delegation believed that the method which the Panel had considered to be "fair and equitable" in the vitamin B12 case should not be retained, and invited all members of the Council to give very careful thought to the report and to give the EEC the benefit of their assessments before such a report could be adopted.

The representative of Switzerland said that he understood that the tariff conversion undertaken by the United States on the basis of weighted averages did not in any way prejudge the method which would apply in the implementation of the Harmonized System. He asked the representative of the United States to confirm that this understanding was correct.

The representative of the United States said that the relatively small item under dispute had been part of a very large negotiated package which had been overwhelmingly favourable to the EEC. He noted that the EEC was not calling into question all the items on which it had a favourable balance in this negotiated package. With reference to the concern expressed that the Panel had endorsed a technique of trade-weighted averages, he pointed out that the EEC had accepted this technique for the ASP conversions with ample reasons to be pleased with the results. In response to the question put by the representative of Switzerland, he confirmed that this did not in any way prejudge the system the United States would use in adopting the Harmonized System.

The representative of the European Communites said that the EEC exports to the United States market had increased for exchange rate reasons which had made it possible to overcome the handicap of the customs duty which had doubled since 1979. With regard to the question of precedent, he said that the statement of the representative of the United States did not contain any commitment and assurance that the conversion method applied for vitamin B12 would not also be used for the Harmonized System. Since the United States rejected a part of the Panel's conclusions which would satisfy the EEC, his delegation also had to reserve its rights and could not agree to the adoption of the Panel report at the present meeting.

The representative of the United States said that the argument of exchange rates cut both ways and was irrelevant to the issue at hand. It had not been the rôle of the Panel or of the United States to give assurances as to what tariff conversion techniques the United States would use in the future. As regards tariff conversion, the EEC was trying to turn around the whole sense of the Panel report. He stated categorically that the United States was willing at the present meeting to accept the Panel report in its entirety and he urged other contracting parties to adopt the Panel report. He said that as regards the Panel's invitation to

the United States to advance the implementation of the Tokyo Round concession rate on feedgrade vitamin B12 to such an extent that imported vitamins could again attain their traditional position in the United States market, his earlier reference to the fact that the exporters from the EEC had meanwhile regained their share in the United States market was relevant.

The Chairman emphasized the urgency for the Council to take conclusive action relating to panel reports submitted to it. He invited the interested delegations to engage in serious consultations on this matter and suggested that the Council revert to this matter at its next meeting with the hope of being able to resolve this issue conclusively.

The Council agreed to revert to this item at its next meeting.

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

The Chairman recalled that at its meeting on 29-30 June 1982 the Council had agreed to revert to this item at the present meeting.

The representative of the United States said that he wished to respond to certain points raised at the meeting of 29-30 June with regard to his Government's request for a panel to examine this matter. He said that for the past several years the objective of the United States was a reduction of barriers in the EEC market for United States citrus exports. During this period the EEC had repeatedly refused any concrete action, despite efforts at every level to achieve a bilateral settlement. He recalled that some delegations had argued at the 29-30 June meeting that the citrus preferences in question were legal under Article XXIV, and that some delegations had even seemed to suggest that because the CONTRACTING PARTIES had never formally disapproved these Agreements or made recommendations, the preferences on citrus products could not even be challenged in an Article XXIII proceeding. The United States did not agree with the EEC on these questions of interpretation of Article XXIV and the significance of past reviews of the Agreements. He said that the establishment of a panel did not imply any prior judgment by the Council on the merits of the position of either side to a dispute, and that the panel procedure enabled careful and objective examination of the merits of the arguments on both sides of an issue followed by a review by the CONTRACTING PARTIES. This was the orderly and proper GATT procedure confirmed by GATT practice and by the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). The alternative was international trade anarchy. He could not accept the apparent EEC view that the absence of recommendations after a working party review of an agreement somehow exempted any aspect or effect of such an agreement from all GATT

provisions, or that because there had been an inconclusive examination of an agreement by a GATT working party, contracting parties had somehow lost the right to challenge any aspect or effect of that agreement in an Article XXIII proceeding. He added that several contracting parties, including the United States, had reserved their GATT rights during the review of the agreements in question.

He reiterated that the United States' interest and objective were not to attack the principle of preferences for developing countries. He said, however, that many contracting parties had long held doubts about the conformity with the General Agreement of some EEC arrangements extending special preferences. The United States and others had none the less refrained from pursuing a position of GATT principle with regard to such arrangements, in recognition of the benefit of such arrangements for certain developing countries and with the expectation that any practical problems that might arise could be worked out. It was only because the EEC had refused a practical accommodation on this matter that the United States had brought this issue to the GATT at all. He recalled that one delegation had suggested at the 29-30 June meeting that this case did not involve injury, and that therefore the invocation of Article XXIII was improper. He said in response that requests for a panel seldom set out the injury alleged. He concluded by stating that the United States' concern was not a theoretical one and that his Government was asking for a panel on this matter only after exhausting bilateral means over a number of years.

The representative of Brazil said that, pursuant to the Understanding, the Council should establish the panel requested by the United States. As an exporter of citrus fruits and products, and therefore a party having an interest in the matter, Brazil reserved its rights to revert to this matter at the appropriate time.

The representative of Canada said that his delegation supported the request for a panel while not wishing to be associated with it. In the view of his authorities, the general right of a contracting party to a panel was recognized in the Understanding and should be respected in this case. He considered the EEC's contention that the earlier working parties had exhausted the subject to be untenable. In this context, he recalled that the reports on the Agreements between the EEC and Algeria, Morocco and Tunisia (BISD 24S/80-106) all referred to the concerns of some contracting parties with respect to the trade effects of the Agreements and contained the phrase that other members of the working parties held the view that it was doubtful that the Agreements were entirely compatible with the requirements of the General Agreement. He recalled further that working party examinations of the EEC's agreements with other Mediterranean countries all carried the indication that some contracing parties did not consider the agreements to be fully compatible with the provisions of Article XXIV. In the case of the Agreement with Malta (BISD 19S/90), members of the Working Party had reserved their rights under the General Agreement.

The representative of Australia said that it was his Government's understanding of GATT practice that, where any contracting party considered its rights had been nullified or impaired, it could request the establishment of a panel and that a panel would have to be established. He saw no way in which the Council could not accept the request by the United States for a panel. He agreed with the views expressed by the representative of Canada on the subject of Article XXIV agreements. The special preferences accorded by the EEC had not been found by the Working Parties or by the CONTRACTING PARTIES to be in conformity with Article XXIV. While the Framework Agreement providing for Differential and More Favourable Treatment of Developing Countries (BISD 26S/203) had been negotiated after the conclusion of many of the preferential agreements of the EEC, it requires that such treatment not be designed to raise barriers or create undue difficulties for the trade of any other contracting party.

The representative of Turkey said that while the United States was entitled to seek to increase its exports, that must not be done to the detriment of the interests of other countries, especially when those interests were supported by the provisions of the General Agreement. The United States was also entitled to follow the procedure envisaged in the General Agreement, but that procedure could not be utilized to contest the validity of arrangements that had been duly recognized and ratified. In the light of those considerations, should the Council decide to accede to the request of the United States, the terms of reference would have to be very carefully worded. Terms of reference which called into question, or were prejudicial to those rights and interests would not be acceptable to his delegation.

The representative of the European Communities said that, in this matter, the EEC was not defending its own interests but rather those of a certain number of developing countries. He recognized that there were inherent rights for each contracting party to request the establishment of a panel; but the Council could not establish panels automatically on a mechanical basis. In this particular case, quite apart from the citrus fruits concerned, there was also a question of principle with important political impact. The Council should, therefore, not adopt an automatic, preconditioned attitude and hastily establish a panel, but rather it should allow for in-depth consultations in order to measure the consequences of this matter.

He also wondered what a panel could realistically and responsibly do as the EEC, from a political point of view, would not be in a position to withdraw the concessions made to a number of the developing countries as these were linked to a balanced framework of commitments between the two sides. In this instance, the interest of the United States was in direct competition with the interests of a number of developing countries in and beyond the Mediterranean region. In addition, further liberalization of imports of citrus fruit and products could endanger the existence of producers within the Community and their capacity for structural adjustment.

The representative of Egypt recalled that at the 29-30 June meeting his delegation had asked that the Council not rush the formation of a panel. As this matter was of direct concern for Egypt as one of the preference-receiving countries, he requested that the delegations of the United States and European Communities inform his delegation of the points that had been raised in their bilateral consultations. He stated that no one wanted to deprive the United States of its right to the formation of a panel, but that the Council should not act hastily in this matter.

The representative of Norway said that this was a complicated matter of considerable interest and with possible implications in various directions. He therefore wondered whether a new effort at conciliation should not be made, which might involve the good offices of the Director-General.

The representative of Switzerland said that the establishment of a panel was conceivable, provided that there was a controversy over a disputable problem, but that it did not seem to be the appropriate method of convincing another contracting party to enter into negotiations. He expressed the view that this incident bore out the wisdom of the Swiss proposal in the Preparatory Committee[1] of introducing a formal conciliation procedure before the establishment of a panel. His delegation was not against the establishment of a panel in the present case, but considered it more desirable to obtain supplementary information to enable the Council to give the matter further thought.

The representative of Chile recalled his Government's interest in the matter, since Chile exported citrus fruits mainly to the EEC, although it did not enjoy any preferences in that market for these products. He stressed that any contracting party had a right to request the establishment of a panel to settle a given dispute. With regard to the substance of the present matter, his Government had a totally neutral position but recognized that the problem raised by the United States contained some complex and delicate aspects. He supported the suggestion of the representative of Norway to ask the Director-General to exercise his good offices so that contracting parties would be able to obtain more information on this matter before the next meeting of the Council.

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[1] See document C/W/393

The representative of Spain said that his country was among those most closely involved in this matter. Although citrus furits had a very important weight in Spain's exports, he was even more concerned by the way in which this matter was to be handled. A panel examination of the compatibility of the tariff preferences for citrus fruits with Article I of the General Agreement would also require an analysis of the conformity with the provisions of Article XXIV of certain agreements between the EEC and several European countries. Whereas Spain had been able to voice its opinion in the earlier working parties which had examined those agreements, he expressed concern that this might not be possible within a panel. He recalled that the Agreement between Spain and the EEC of 1970 was a first step towards the accession of Spain to the European Communities, which remained one of the cornerstones of Spain's foreign policy. He therefore supported the Norwegian proposal that an effort at conciliation be undertaken by use of the good offices of the Director-General before taking a final decision on the establishment of a panel.

The representative of Cyprus supported the statement of the representative of the European Communities and expressed the view that the Association Agreement of 1972 between Cyprus and the EEC was in full conformity with Article XXIV. The r!gime on citrus fruit established under that Agreement was of vital importance for the development of the trade of Cyprus. At a time when Cyprus and the EEC were preparing the ground for a customs union and in the light of the continuing trade deficit of his country, he requested the United States not to insist on its present request, which would have catastrophic effects on the economy of a developing country like Cyprus.

The representative of Tunisia supported the suggestion made by the representative of Switzerland and expressed the hope that there would be no haste in setting up a panel.

The representative of Morocco, speaking as an observer, voiced the concern of his country as an exporter of citrus products and appealed to the United States to withdraw its request for the establishment of a panel. He said that if a panel were to reach a conclusion favourable to the United States and oblige the EEC to revise the agreements with the Mediterranean countries, this could endanger the acquired rights of these developing countries and thus render even more difficult their position on the international market.

The representative of Malta associated his delegation with the concerns expressed by previous speakers. He appealed to the United States to withdraw its request and, perhaps through further consultations, to try to resolve this matter in the best manner possible for the benefit of all contracting parties and in particular the developing countries.

The representative of Israel recalled his statement at the 29-30 June Council meeting and welcomed any conciliation effort.

The representative of Portugal appealed to the United States delegation to follow the suggestion made by the representatives of Switzerland and Norway.

The representative of the European Communities said that, while some contracting parties had reserved their rights during the earlier working parties' examination of these different agreements, they had nevertheless, for political reasons, allowed them to be accepted by the GATT. This political situation continued to overhang the whole problem of citrus fruits. In his view, an overly hasty establishment of a panel therefore ran the risk of running into an impasse, as it was difficult to see how a panel could give a sufficiently nuanced assessment of this delicate problem. From a practical point of view, there seemed to be no other feasible solution to meet the United States' request than to modify the rights which had been granted to the Mediterranean countries for their citrus products, which could cause economic destabilization in these countries. While he recognized that the United States and other contracting parties had constantly reserved their rights in the examinations of the different agreements in the context of the GATT and that each contracting party had the right to request the establishment of a panel, he asked the United States to assess all the relevant circumstances, and not to do so mechanically. In the light of the possibly destabilizing effect of the United States' request on a great number of contracting parties, these countries would, in any case, have to take part in any consultations on this matter.

The representative of the United States said that no delegation appeared to have disagreed as to the right of a contracting party to have a panel established. He had also taken note of the several suggestions made in favour of conciliation and the use of the good offices of the Director-General. His delegation was prepared, if this were the wish of the Council, to enter into consultations and conciliation with the EEC under the Director-General's leadership. He stated, however, that if this did not result in a mutually acceptable solution, his delegation expected a panel to be established at the next meeting of the Council.

The Chairman noted that the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance was quite clear as regards requests for the establishment of a panel and the response to such requests. The Understanding also provided that the parties to a dispute could request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences. He expressed the hope that, in the light of the Council discussion, further consultations and, if possible, conciliation would be undertaken.

The Council agreed to revert to this item at its next meeting.

9. Trade restrictions affecting Argentina applied for non-economic reasons (C/M/157, L/5317, L/5319/Rev.1, L/5336)

The Chairman said that at the meeting of the Council on 29-30 June the Council had considered this matter, including a proposal by the representative of Argentina related to Article XXI of the General Agreement. The Council had agreed to revert to this item at the present meeting.

The representative of Argentina recalled that at the 29-30 June meeting of the Council he had proposed that a note be prepared interpreting Article XXI and covering four points related to this matter. He said that in view of the short time since that meeting the minutes reflecting this proposal had not yet been distributed. Accordingly, he asked that this matter be considered at the next meeting of the Council so that representatives would have time for reflection.

The Council agreed to revert to this item at its next meeting.

10. Committee on Balance-of-Payments Restrictions

The Chairman said that at its meeting in June 1982 the Committee on Balance-of-Payments Restrictions had carried out a consultation with Portugal and, under the simplified procedures, consultations with India and Pakistan.

Mr. Feij (Netherlands), Chairman of the Committee, introduced the Reports:

(a) Consultation with Portugal (BOP/R/125)

Mr. Feij said that the Committee had noted that Portugal's external position had deteriorated sharply in 1981 and that this had hindered further progress in the elimination of restrictive import measures. The Committee had encouraged Portugal to pursue monetary and fiscal policies which would foster an improvement in the current account and allow a gradual elimination of the measures. He also said that the Committee had noted with concern that certain surcharges and import quotas had now been applied for more than six years and that no time schedule for the removal of the measures had as yet been announced. Concerned that investors might expect the measures to be permanent and that this might render their eventual abolition more difficult, the Committee had reiterated the recommendation made in previous consultations that Portugal announce a time-table for the removal of the restrictive import measures in the near future.

The representative of Chile said that he wished to underline the importance for Portugal to establish a programme for the suppression of the import restrictive measures.

The representative of Portugal said that in the framework of negotiations with the European Communities, Portuguese trade policy would be fully revised. He expressed the hope that a time-table for the suppression of import restrictions would soon be submitted to the GATT.

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

(b) Consultations with India and Pakistan (BOP/R/132)

Mr. Feij referred to the report on the simplified consultations with India and Pakistan and said that the Committee had concluded with respect to both countries that a full consultation was not desirable, and had proposed that they be deemed to have fulfilled their obligations under Article XVIII:12(b) for 1982.

The Council adopted the report and agreed that India and Pakistan be deemed to have consulted with the CONTRACTING PARTIES and to have fulfilled their obligations under Article XVIII:12(b) for 1982.

11. De facto application of the General Agreement to newly-independent States (L/5345)

The Chairman recalled that in November 1967 the CONTRACTING PARTIES had adopted a Recommendation inviting contracting parties to continue to apply the General Agreement de facto in respect of newly-independent territories on a reciprocal basis. This Recommendation requested the Director-General to make a report after three years. The report distributed in document L/5345 was the fifth report made by the Director-General on the application of the Recommendation.

The Council took note of the report and invited the Director-General to remain in contact with the governments of the States concerned and to report again on the application of the Recommendation within three years.

12. United States - Copyright legislation, manufacturing clause

The representative of the European Communities, speaking under "Other Business", drew the attention of the Council to United States copyright and manufacturing clause legislation prohibiting imports of certain books in English written by United States citizens which were printed abroad. His delegation was of the opinion that such legislation was contrary to the provisions of Articles III:1, XI and XIII of the General Agreement. He stated that bilateral consultations had taken place with the United States and that verbal notes had been exchanged. The EEC reserved the right to revert to this matter at a future meeting of the Council.

The representative of the United States stated that the United States was willing to discuss this matter and that discussions had already taken place under the provisions of Article XXII. His delegation believed that any trade effects resulting from this legislation were slight and temporary.

The Council took note of the statements.

13. Canada - Foreign Investment Review Act (FIRA)
- Recourse to Article XXIII by the United States

The representative of the United States, speaking under "Other Business", recalled that at its meeting on 31 March 1982 the Council had agreed to establish a panel to examine the complaint by the United States. He said that since then, despite the efforts of the United States, it had not proved possible for the Canadian authorities to agree either to the composition of the Panel or to the compromise proposals made by the United States for the Panel's terms of reference. He stressed his hope that there would be no further delay in establishing the Panel.

The representative of Canada said that his Government attached great importance to this question and therefore wished to proceed with care in framing the terms of reference of the Panel. His delegation would be exchanging ideas with the United States delegation on this matter within the next few days.

The Council took note of the statements.

14. Conduct of Council business

The representative of the United States, speaking under "Other Business", said that his delegation had been considering ways in which the Council might improve its procedures, for instance by adopting a regular schedule ~~of meetings or~~ by having both a chairman and vice-chairman. His delegation might wish to submit a paper, not necessarily a formal proposal, for consideration by the Council at some future date.

The Council took note of the statement.

15. Relations between the United States and the European Economic Community

The representative of the European Communities, speaking under "Other Business", said that in the recent past there had been an outcrop of difficulties between the United States and the EEC, which could have serious consequences for the multilateral trading system. He pointed out that the EEC's trade balance with the United States had continuously deteriorated since 1978 to reach approximately US$17 billion. While this deficit could be managed through a harmonious multilateral trading system, he felt that this was no longer the case as a result of the deterioration of economic relations with the United States, and referred in this context to a number of disputed issues such as sugar, canned fruits, dried raisins, citrus fruit, and steel.

As a typical case of such harassment he referred to the misadventures of the Franco-Italian ATR 42 Commuter Plane, which was harassed by a U.S. company which had the intention of producing at some future date a commuter plane, the designs for which had not got beyond the drawing board; while it was true that the United States International Trade Commission had rejected the U.S. company's complaint, the European companies had nonetheless suffered serious damage as a result of this action of harassment.

While he recognized that these practices reflected the specific character of U.S. democracy, he pointed out that they had a devastating effect on the exports of United States' trade partners particularly at a time when international economic relations were dominated by uncertainty, instability and insecurity. These practices were being used excessively and in a mechanical, not to say systematic, way with barely concealed protectionist motives; it would be dangerous if the Administration failed to play its part as a moderator of such tendencies.

This harassment was creating more and more tension which would have serious consequences unless the situation could be defused. Trading partners who were not directly affected by these practices would inevitably receive some of the fall-out. The multilateral trading system would not survive such a situation: all CONTRACTING PARTIES must inevitably be seriously concerned by such a possibility.

The representative of the United States confirmed that his country and the EEC were passing through a period of well publicized trade conflicts, but he felt that the United States was not unilaterally responsible for such a development. He considered that while disagreements would naturally arise from time to time they should be kept under control and within the GATT approved channels. He said that the commuter aircraft case was evidence of the very open complaint system in his country, and noted that the Government agency in question had dealt with the complaint very rapidly and had dismissed it.

The Chairman recognized the serious issues raised in the statements by the representatives of the European Communities and the United States. He said that the problems between the two major trading partners could easily spill over to other trading partners, and he expressed the hope that such matters could be aired in GATT so that proper solutions could be found.

The Council took note of the statements.