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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
5-6 November 1986

MINUTES OF MEETING

Held in the Centre William Rappard
on 5-6 November 1986

Chairman: Mr. K. Chiba (Japan)[1]

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[1]Mr. Chiba, Chairman of the CONTRACTING PARTIES, presided in place of the Chairman of the Council, Mr. K. Park (Korea).

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1. Deputy Director-General post

The Director-General noted that the tenure of Mr. William B. Kelly's appointment as Deputy Director-General was due to expire on 31 December 1986. During Mr. Kelly's six-year term in that office, the Secretariat and the GATT system had both benefitted greatly from his experience and dedication.

The Director-General said that he had carried out extensive consultations with a large number of contracting parties regarding Mr. Kelly's successor, and informed the Council of his decision to appoint Ambassador Charles Carlisle, currently the Chief Textile Negotiator in the Office of the United States Trade Representative in Washington. He said that Ambassador Carlisle, who would take up office on 5 January 1987, had a rich and varied international experience which made him highly suitable for the duties he would be called upon to perform in the Secretariat.

The representative of Brazil asked whether the Council was being informed of this appointment or being asked to approve it. He also asked what responsibilities the Director-General intended to entrust to the new Deputy Director-General.

The Director-General said that the distribution of responsibilities between the two Deputy Directors-General was up to the Director-General. He was not presently in a position to give any information on this matter since he had not been able to consult with the two individuals concerned. Contracting parties would be given this information as soon as it was available.

The representative of Brazil recalled that in April 1980 Mr. Kelly's appointment had been formally agreed by the Council. In his view, the same procedure should be followed for the case at hand.

The Director-General said there were different precedents for the Council's action on such appointments and that either one would be appropriate.

The representative of Malaysia asked if the Council had been given information and prior notice of this matter on which it was to take action.

The Chairman suggested that the Council take note of the statements and agree to the appointment of Ambassador Charles Carlisle to the post of Deputy Director-General.

The Council so agreed.

2. Tunisia

(a) Accession (L/6047, L/6075 and Add.1)

The Chairman drew attention to Tunisia's communication in L/6047, and said that the Secretariat had received from Tunisia the materials listed in document L/6075. The replies referred to in the footnote to that document would be circulated shortly in L/6075/Add.1. He recalled that at their Thirty-Seventh Session in November 1981, the CONTRACTING PARTIES had established the Working Party to examine Tunisia's application for full accession (SR.37/2, page 18).

The representative of Tunisia recalled that his Government had very recently confirmed its earlier intentions regarding accession to GATT and had stated its firm resolve to cooperate with contracting parties so as to speed up that process. The decision taken by Tunisia was part of a broad economic redevelopment program designed to liberalize Tunisia's trade and revitalize its economy. He described the various elements in that trade liberalization effort, and said his Government hoped that contracting parties would show understanding for Tunisia's program, which would bring its trade policy closer to GATT's philosophy and objectives. He said that the terms of Tunisia's accession would doubtless take account of the general economic difficulties it faced. He invited contracting parties wanting to exchange concessions with Tunisia to indicate this; his Government wanted to conclude tariff negotiations as quickly as possible, and would make available all the necessary information. He recalled that Tunisia was a member of the Agreement on Technical Barriers to Trade and of the Arrangement on Bovine Meat. His Government would study the possibility of acceeding to other Codes and Arrangements, and would examine ways of strengthening the Protocol relating to Trade Negotiations among Developing Countries (BISD 18S/11) of which it was a member. His Government would uphold the principles of Part IV and the Enabling Clause (BISD 26S/203).

The Council took note of the statement and that this matter would be referred to the Working Party on the Accession of Tunisia for appropriate action.

(b) Provisional accession
- Request for extension of time limit (C/W/505, L/6069)

The Chairman recalled that the Declaration of 12 November 1959 on the Provisional Accession of Tunisia, as extended by the Seventeenth Procès-Verbal of 6 November 1985 (BISD 32S/3), and the Decision of the CONTRACTING PARTIES which provides for Tunisia's participation in the work of the CONTRACTING PARTIES (BISD 32S/10), were due to expire on 31 December 1986. Tunisia's request for an extension of these arrangements had been circulated in L/6069.

The representative of Tunisia asked for the support of the Council members in accepting the requested extension.

The Council took note of the statement, approved the text of the Eighteenth Procès-Verbal Extending the Declaration to 31 December 1987 (C/W/505, Annex 1), and agreed that the Procès-Verbal be opened for acceptance by the parties to the Declaration.

The Council also approved the text of the draft Decision (C/W/505, Annex 2) extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES to 31 December 1987, and recommended its adoption by the CONTRACTING PARTIES at their Forty-Second Session.

3. Provisional Accession of Costa Rica
- Memorandum from Costa Rica (L/6050)

The Chairman drew attention to the Memorandum from Costa Rica in L/6050 and recalled that in July 1985 the Council had established the Working Party to examine Costa Rica's application for provisional accession.

The representative of Costa Rica, speaking as an observer, reaffirmed his Government's decision to respect all the procedures necessary for its provisional accession, and expressed Costa Rica's willingness to assist the Working Party examining that matter and its request to participate in the Uruguay Round negotiations.

The representative of Nicaragua fully supported Costa Rica's participation in GATT.

The Chairman proposed that contracting parties wanting to submit questions in writing to Costa Rica be invited to submit them to the Secretariat as soon as possible but not later than 15 December 1986. Costa Rica would be requested to submit replies to these questions not

later than 30 days after receiving a consolidated list of them from the Secretariat. The Working Party would meet to examine this matter as soon as possible thereafter, and would be convened by airgram in the usual manner.

The Council took note of the statements and so agreed.

4. Textiles and Clothing
- Report by the Working Party Chairman (L/6071)

The Chairman recalled that at their Forty-First Session in November 1985, the CONTRACTING PARTIES had agreed to extend the mandate of the Working Party on Textiles and Clothing and that the Working Party would report to the CONTRACTING PARTIES at their 1986 Session.

Mr. Mathur, Deputy Director-General, Chairman of the Working Party, introduced his report (L/6071) saying that the Working Party had considered that its work could be terminated, as the Punta del Este Declaration had created a new context in which to pursue efforts to formulate modalities aimed at the eventual integration of the textiles and clothing sector into the GATT. He hoped that the Working Party's work on elaborating techniques for achieving a transition from an MFA-type régime to a GATT-type régime, and the problems involved, could be taken into account in further work in pursuance of the Punta del Este Declaration.

The Council took note of the report (L/6071) and of the statement and agreed to forward the report to the CONTRACTING PARTIES for consideration and any appropriate action at their Forty-Second Session.

5. CARIBCAN

The Chairman recalled that the Working Party examining Canada's request for a waiver in connection with CARIBCAN had met three times. Working Party members had begun consideration of the text of a draft report, which included a draft waiver. It was hoped that the Working Party would conclude its examination of this matter in time to send its report directly to the CONTRACTING PARTIES at their November 1986 session.

The Council took note of this information.

6. United States - Trade measures affecting Nicaragua - Panel report (C/W/506, L/6053)

In October 1985, the Council had established a panel to examine the complaint by Nicaragua and had authorized the Council Chairman, in consultation with the parties concerned, to decide on appropriate terms of reference and to designate the Panel's members. In March 1986, the Council had been informed of the Panel's terms of reference, and in April, of its composition.

The Chairman drew attention to the Panel's report (L/6053), and to document C/W/506 containing a communication from Nicaragua.

Mr. Huslid, Chairman of the Panel, introduced its report. He recalled the succession of events regarding the establishment of the Panel, which had begun its work in May 1986 and had submitted its report to the parties on 9 September. The report was now before contracting parties, as well as a communication from Nicaragua (C/W/506) putting forward comments and views on it. The Panel had realized the difficulty of dealing with this case within GATT's dispute settlement procedures, given the dearth of guidelines or precedents from previous similar cases, and had recognized the seriousness of this case, which involved a total cessation of trade between two contracting parties. The Panel had been given a rather special mandate. It was, on the one hand, very restrictive in that the Panel had not been allowed to examine or judge the validity of, or the motivation for, the US invocation of Article XXI:(b)(iii); on the other hand, it had been given the somewhat broader task of making findings which would assist the CONTRACTING PARTIES in further action in the matter. In keeping with its mandate, the Panel had neither examined nor taken a position on the US invocation of Article XXI, but the report did contain certain considerations and suggestions that were broader than those usually made by panels. The report represented the considered and unanimous view of all Panel members. He emphasized, however, that it had to be read in the light of the special, and on the whole very restrictive, mandate given to the Panel. The Panel had concluded that it was restricted to examining the case "in the light of the relevant GATT provisions", although, "they may be inadequate and incomplete for the purpose" (paragraph 5.15). In spite of those constraints, it was hoped that the considerations and findings would be valuable and would assist the Council and the CONTRACTING PARTIES in further action in this matter.

The representative of Nicaragua said that his delegation's initial comments on the Panel's report were contained in document C/W/506. Nicaragua considered that both the report's contributions and its limitations -- which were mainly due to the Panel's restrictive terms of reference -- were of value in helping contracting parties to understand the legal and institutional deficiencies of GATT in connection with Article XXI and other related Articles. A solution to the present case would involve the following elements which the report had brought out:

the embargo had paralyzed trade between two contracting parties and had had a serious impact on the economy of a less-developed contracting party, and the measure constituted a nullification or impairment of Nicaragua's trade opportunities, although it had not been determined whether such nullification or impairment was within the meaning of Article XXIII:1(b). Other elements in the report had to be considered. He quoted from paragraph 5.16 in which the Panel had concluded that embargoes such as the one imposed by the United States, independent of its justification or not under Article XXI, ran counter to GATT's basic aims, and that each contracting party invoking Article XXI should carefully weigh its security needs against the need to maintain stable trade relations. The Panel had emphasized that Nicaragua had a right to submit directly to the CONTRACTING PARTIES a proposal for an Article XXV waiver, and that the Panel's decision not to make a recommendation on that request was based on procedural reasons only and should in no way prejudge a decision by the CONTRACTING PARTIES on it. The Panel had noted the grave consequences of the embargo for Nicaragua's trade and economy and the serious changes it had caused in the competitive relationship between products subject to the embargo and other products competing directly with them (paragraph 5.6). The Panel had also raised questions of a more general nature. He quoted from paragraph 5.17 in which the Panel had referred to the implications of interpreting Article XXI in such a way that its interpretation was reserved entirely to the contracting party invoking it; the Panel had noted that, by preventing a panel from examining the justification of recourse to that Article, the CONTRACTING PARTIES were limiting the right of the injured party to have its claim examined in conformity with Article XXIII:2. The Panel had also questioned whether the powers given under Article XXIII were sufficient to provide redress to contracting parties subjected to a two-way trade embargo. Unfortunately, the report did not answer these fundamental questions. Similarly, the report had neither determined the level of nullification or impairment of Nicaragua's rights under the General Agreement, nor made any specific recommendations. The Panel had not considered whether Article XXI prevented it from examining the validity of the US recourse to that Article, because it had concluded that, being prevented by its terms of reference from examining the US justification for invoking Article XXI, it could make no finding on whether the United States had or had not discharged its obligations under the General Agreement (paragraph 5.3). Similarly, the Panel had considered that its mandate did not enable it to consider the ruling of the International Court of Justice (ICJ) of 27 June 1986. The Council, however, had no limitations of mandate, and Nicaragua asked that in making recommendations, the Council give consideration to the ICJ's ruling as proof that the conditions necessary for invoking Article XXI had not been met. The ICJ had found the measures imposed by the United States on 1 May 1985 to be violations of international law, and the US obligation under that law obliged it to repair the damage caused to Nicaragua. The Court had also reminded the two parties of their obligation to seek a peaceful solution to their differences in accordance with international law. On 3 November 1986, the UN General Assembly had

adopted a Resolution calling for total and immediate application of the ICJ's findings. He said it remained clear that the United States had imposed the embargo not for reasons of security, but for political coercion. GATT had never before considered a case involving such clear misuse of Article XXI. The US position ran the risk of placing GATT outside the sphere of international law, at a time when a new round of negotiations had begun under its auspices. Nicaragua was ready to look for a satisfactory solution, with the United States and with other contracting parties concerned about strengthening GATT. It was up to the Council to make the necessary recommendations to find a satisfactory solution to this problem. Consequently, Nicaragua asked that the Council recommend the following: first, the immediate removal of the embargo; second, the authorization of special support measures for Nicaragua so that countries wanting to do so could grant trade preferences aimed at re-establishing a balance in Nicaragua's pre-embargo global trade relations and at compensating Nicaragua for the damage caused by the embargo; and third, the preparation of an interpretative note on Article XXI of the General Agreement which would reflect the elements in this case.

The representative of the United States said his delegation thought that the Panel had reached sound conclusions in a difficult situation, and believed that the Council should adopt the Panel's report and move this matter off its agenda. The United States continued to believe that this dispute should never have been brought to GATT. There were and had been many instances of trade sanctions imposed by various contracting parties for reasons, it could be surmised, of national security. Rarely had those situations even been raised in GATT, and never before had a party insisted on a panel, because contracting parties, including those against whom sanctions had been imposed, had tacitly recognized that GATT, by its traditions, its competence, and the terms of Article XXI, could not help resolve such matters, and that pressing the issue would only weaken GATT's intended trade rôle. GATT was not a forum for examining or judging national security disputes. When a party judged trade sanctions to be essential to its security interests, it should be self-evident that such sanctions would be modified or lifted in accordance with those security considerations. The United States had made this clear from the outset of Nicaragua's complaint. The ultimate sanction under Article XXIII:2 was authorization for the affected party to suspend concessions or other obligations, which even Nicaragua recognized was a meaningless step in the face of a two-way trade embargo. His delegation would not present in the Council all the arguments that had been fully presented to the Panel and which the Panel had carefully weighed in its deliberations. The United States recognized that Nicaragua, not finding the Panel's sound conclusions acceptable, had submitted document C/W/506 in an attempt to re-argue its case in the Council, but his delegation did not believe it would be helpful or appropriate to engage in a debate which had already been held before the Panel. He noted, however, that, having taken the unprecedented step of insisting on a GATT panel to examine a dispute whose essence was outside

GATT competence, Nicaragua now objected that the Panel had reached the conclusions dictated by its terms of reference and by GATT's rules and traditions. The Panel could not examine the national security justification for the US actions. A recommendation to modify sanctions that had not been found inconsistent with GATT would have been futile and improper. Authorization of retaliatory measures by Nicaragua would have been meaningless, given that the US action effectively cut off all bilateral trade with that country. Noting these points, the Panel had thus faced a situation in which a finding on the novel and delicate question of nullification or impairment in a situation of Article XXI trade sanctions would have no practical value for resolution of the dispute. Nicaragua maintained that the Panel should have decided the question of nullification or impairment even if such a decision would not help to settle this dispute. The United States did not agree. Nullification or impairment when no GATT violation had been found was a delicate issue, linked to the question of "reasonable expectations". It was not simply a question of trade damage, since no one doubted the existence of trade damage. Applying the concept of "reasonable expectations" to a case of trade sanctions motivated by national security considerations would be particularly perilous, since at a broader level those security considerations would nevertheless enter into expectations. The United States thought the Panel had acted wisely in refraining from a decision that could create a precedent of much wider ramifications for the scope of GATT rights and obligations but which would serve no useful purpose in the particular matter before the Panel. The Panel report should simply be adopted and contracting parties should dispose of a matter that never belonged before a panel in the first place. The Panel had posed some theoretical questions in paragraph 5.17 of its report that could launch an interminable political debate in GATT. The Panel's Chairman had noted that such considerations were broader than those usually made by panels. It certainly was not necessary to answer those questions to dispose of the Panel report, and it was obvious that to take them up would not produce a resolution of the underlying dispute between the parties. His delegation considerably doubted the wisdom, at this time, of considering a greater rôle for GATT in issues of trade sanctions imposed for national security reasons. To amend the General Agreement in an effort to limit a party's national security rights or enable GATT to examine any party's national security justification for trade sanctions would constitute a radical change that could severely undermine the value and even threaten the existence of GATT as a multilateral trade agreement and a trade organization. The United States believed that each contracting party should therefore reflect carefully on the implications of a broader GATT rôle in national security matters, not only for its own sovereign rights but for the functioning of the GATT. For all its faults, GATT had been one of the most successful international arrangements for nearly 40 years. Though many trade sanctions had been applied in that time, there was no evidence that such actions were becoming a common protectionist device, nor was there any reason to believe that a greater GATT rôle would have helped resolve matters not

motivated by trade protectionism. The inability of GATT to help resolve a national security dispute for which GATT was never intended should not lead contracting parties to intemperate conclusions about the proper GATT rôle in areas involving the essential security interests of sovereign states. The Council should simply adopt the Panel's report, decline to accept the Panel's recommendation in paragraph 5.17 to take up those theoretical questions, and take this matter off its agenda.

The representatives of Uruguay, Nigeria, Argentina, Colombia, Cuba, Peru, Hungary, Trinidad and Tobago, Czechoslovakia, Yugoslavia, Romania, Poland, India, Mexico and Tanzania speaking as a contracting party observer called for the immediate lifting of the US embargo against Nicaragua or asked the Council to request the United States to do so.

The representatives of Uruguay, Argentina, Colombia, Cuba, Peru, Hungary, Czechoslovakia, Yugoslavia and Romania supported Nicaragua's request that the Council authorize contracting parties wanting to do so, to take measures to compensate Nicaragua for the damage caused by the US embargo.

The representatives of Uruguay, Nigeria, Argentina, Colombia, Czechoslovakia, Yugoslavia and Romania said that Article XXI should be examined in-depth in the Uruguay Round negotiations in order to establish a clearer definition of its provisions.

The representative of Chile said his delegation understood that every contracting party had the right to invoke Article XXI. However, his Government had often stated its opposition to the use of restrictive trade measures for non-economic reasons. He quoted from paragraph 5.16 of the report, and said that this type of measure created insecurity in trade relations and negatively affected the will of governments to apply open trading systems. Regardless of whether or not such measures were justified, they were contrary to the basic objectives of the General Agreement. Article XXI should be invoked only when absolutely necessary to protect national security interests, and not to punish another contracting party. In Chile's view, the nature of this dispute was not within the competence of the CONTRACTING PARTIES, and the Panel's report did not, and could not have been expected to, contribute to its resolution.

The representative of Uruguay said the Panel's task had been very difficult given the complicated legal questions, the limited terms of reference and a political context involving more than just the strict application of the General Agreement. Uruguay had always felt that a solution to this dispute could only be found within that larger political context.

The representative of Nigeria said that in his delegation's view, Article XXI could be invoked only in cases of a state of war or emergency; neither was the case regarding the US embargo. The ICJ had

found no evidence that Nicaragua's policies threatened the United States and thus had found no justification for the embargo. Any action which clearly undermined the United Nations Charter had to be seen as a gross abuse of rights conferred by the General Agreement. Nigeria regretted that the Panel, due to its restrictive terms of reference, had been unable to make a recommendation in line with customary GATT practice. The continuing credibility of GATT and its dispute settlement procedures were at stake. He appealed to the United States to resume forthwith the dialogue with Nicaragua with a view to resolving their bilateral problems. Nigeria hoped that contracting parties would do all they could to help alleviate the hardship which the embargo had caused Nicaragua, without awaiting a recommendation from the Council to take such action.

The representative of Argentina said that since the Panel's report was inconclusive due to its restrictive terms of reference, it was absolutely necessary that the Council study in depth the questions raised in the Panel. The matter could not, as the United States had suggested, be set aside, as to do so would weaken the very essence of the General Agreement. He referred to the findings of the ICJ and the UN General Assembly on this matter and said it was clear for the international community at large that Article XXI had been improperly invoked by the United States. Paragraph 7(iii) of the 1982 Ministerial Declaration (BISD 29S/9) was very clear on the use of restrictive trade measures, not consistent with the General Agreement, for reasons of a non-economic nature. The ICJ had confirmed the interpretation that the US embargo was not compatible with GATT.

The representative of Brazil said that his country had consistently defended the need for peaceful and negotiated solutions based on the principles of international law and, in particular, of the United Nations Charter. In Brazil's view, the Contadora Group's proposals provided the best means for solving the problems faced by Central American countries. Strict observance of the right to self-determination and of the principles of non-intervention were necessary components in the search for satisfactory and lasting solutions. Brazil had consistently deplored the use of unilateral economic measures which, besides creating obstacles to negotiated solutions, negatively affected a developing contracting party's economic and social development. Brazil was sympathetic to the idea that contracting parties consider the possibility of extending economic assistance to help Nicaragua surmount the economic difficulties it faced.

The representative of Sweden said that in his country's view, the Panel had fulfilled its mandate, and Sweden could accept its findings and conclusions. The tight restrictions on the Panel's mandate warranted comment on the broader question of what principles should guide the formulation of such mandates. The 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210) stated that panels should make an objective evaluation of

the measures in dispute and should give an opinion on their conformity with the General Agreement. The 1982 Ministerial Declaration stated that panels should be given the opportunity to make clear statements on any measure which constituted a breach of the General Agreement. Against this background, it seemed that panels should be able to examine all relevant GATT Articles, including Article XXI. While it was clearly the sole prerogative of the individual contracting party to determine whether or not to invoke Article XXI, Sweden had on many occasions urged that such invocation be exercised with great restraint. To restrict a panel's examination of measures taken in the context of Article XXI was to risk an erosion of faith in GATT's rules. Consequently, it was important that the present mandate not prejudice the formulation of future panel mandates.

The representative of Austria quoted his delegation's statement at the May 1985 Council meeting (C/M/188, page 9) and recalled that Austria had welcomed the Panel's establishment in October 1985. His delegation was prepared to adopt the Panel's report but had not had sufficient time to study C/W/506. Regarding the question of Article XXV measures mentioned in the report, he said that Austria, under its GSP treatment, levied no duties on Nicaragua's main exports. Questions regarding the interpretation of Article XXI might be taken up within the review of existing GATT Articles provided for in the Punta del Este Ministerial Declaration. Regarding the political aspect of this matter, he referred to Austria's positive attitude vis-à-vis the UN General Assembly's resolutions on the embargo.

The representative of Colombia reiterated his country's opposition to the use of trade measures for political reasons and to embargoes of this kind unless approved by the UN Security Council. His delegation suggested that this matter be kept on the Council's agenda and that the Council Chairman continue the necessary consultations so that a solution satisfactory to all parties could be reached soon.

The representatives of Peru, Mexico, India, Nicaragua and China (speaking as an observer) supported Colombia's suggestion that the Council Chairman continue consultations on this matter.

The representative of Cuba agreed with the Panel's conclusion that trade embargoes ran counter to the basic objectives of the General Agreement, and that the US embargo had had a grave impact on the economy of a developing contracting party. The ICJ had found the embargo not to be necessary to safeguard US security interests; similarly, the UN General Assembly had urged that the embargo be lifted. Consequently, Cuba could not understand how, without any legal justification, the United States could maintain the embargo. GATT would have to make an urgent study of the application of Article XXI which had repeatedly been used arbitrarily to the detriment of certain developing contracting parties. She said that the US measure was of a punitive and entirely political nature, and that the use of Article XXI by one contracting

party to punish another should not be acceptable. A decision in favour of Nicaragua would help to strengthen the international trading system, which was the prime objective of all contracting parties. Cuba would support any decision which would help to solve this problem to Nicaragua's benefit, and which would compensate it for the damage sustained.

The representative of Peru said that the Panel's report showed there had been trade damage to Nicaragua. He recalled that his Government rejected the use of trade measures for political coercion unless such action was approved by the UN Security Council; such was not the case here. In fact, the UN General Assembly had deplored the embargo. Given the serious nature and possible repercussions of this matter, Peru considered that the Panel report could not be adopted at the present meeting.

The representative of Hungary reiterated his delegation's position that trade-restrictive measures were an inappropriate means to reach political aims. The national security provision in Article XXI provided discretionary power to contracting parties to judge whether circumstances warranted its invocation. He said that due to the very nature of Article XXI, contracting parties should exercise extreme caution and moderation in invoking it, and the most powerful trading nations should demonstrate the greatest self-restraint in this respect. Hungary fully shared the Panel's opinion that "embargoes such as the one imposed by the United States, independent of whether or not they were justified under Article XXI, ran counter to basic aims of the GATT, namely, to foster non-discriminatory and open trade policies, to further the development of the less-developed contracting parties and to reduce uncertainty in trade relations" (paragraph 5.16). The US measure in question was damaging GATT in one of its key rôles, that of providing protection to weaker trading partners.

The representative of Trinidad and Tobago said that his delegation was keenly interested in seeing this matter come to a satisfactory conclusion, given its concern over any action that weakened the GATT system. Trinidad and Tobago accepted the ICJ's finding in this case, and joined in the view that the embargo was unwarranted and contrary to the letter and spirit of GATT. In view of the fact that the Panel had reached no decision on the substantive issues of this dispute, Trinidad and Tobago supported the proposal that the Council address those issues with a view to taking such a decision.

The representative of Mexico repeated the appeal that his delegation, and others, had made at the May 1985 Council meeting for the United States to lift its embargo against Nicaragua and to restore normal trade relations immediately.

The representative of Czechoslovakia said the Panel's conclusions made it evident that the US embargo, whether or not justified under Article XXI, ran counter to GATT's basic aims. The conclusions also confirmed that if interpretation of Article XXl were reserved entirely to the contracting party invoking it, that Article would often be used for purposes other than those for which it was intended. In Czechoslovakia's view, the US embargo did not conform with the provisions of Article XXI; this Article could be invoked only if specific conditions were met, which, as the ICJ and the UN General Assembly had found, was not the case here. The US embargo constituted a prima facie nullification or impairment of Nicaragua's benefits under GATT. He said that this case confirmed that GATT's dispute settlement procedure was impaired by limitation of the Panel's terms of reference regarding questions such as the justification under the General Agreement for restrictive trade measures.

The representative of Poland said his delegation had repeatedly stressed that every action taken under Article XXI should be carefully considered, since such action, regardless of the reasons cited, was contrary to the basic aim of the General Agreement to promote trade among contracting parties. His country had opposed, in various fora including GATT, the introduction of politically motivated actions into the area of economic cooperation. Poland regretted that the Panel's terms of reference had precluded its reaching clear conclusions.

The representative of Yugoslavia said that her Government supported the Contadora Group's efforts to find a solution to this serious and delicate problem. Yugoslavia shared the views on the Panel's report expressed by the members of that Group.

The representative of Romania said that his delegation deplored the use of unilateral measures such as those applied to Nicaragua.

The representative of India said his delegation maintained its concern, expressed at the June 1985 Council meeting, regarding the US measures. India had stated at that time that a contracting party having recourse to Article XXI should be able to demonstrate a genuine nexus between its security interests and the trade action taken; in India's view, such a nexus had not been established by the United States, whose action was therefore not in conformity with the General Agreement. India had taken note of the points raised by Nicaragua in C/W/506, and felt that mere adoption of the Panel report was not likely to resolve this dispute.

The representative of Switzerland recalled the position his delegation had taken when this case had first come before the Council. His authorities could adopt the Panel's report. Despite its restrictive terms of reference, the Panel had clarified important aspects such as economic impact and certain legal issues. In Switzerland's view, the Panel had legitimately raised a number of questions, deserving common

reflection in GATT, which went beyond the particular case at hand. His delegation was not, a priori, against those questions being examined in future so that answers might be given, bearing in mind that the General Agreement was an emanation, in the trade area, of the general principles of international law.

The representative of Japan said that while the Panel, due to its very limited terms of reference, had been unable to make a recommendation, his delegation could agree to adopt its report. The Panel's report had raised certain questions of a more general nature which should be examined in GATT in future and outside the context of the present case. No contracting party should be denied the right to raise problems or submit complaints to the Council or to the CONTRACTING PARTIES. He said that the roots of the dispute under consideration were perhaps too deep to be addressed in the context of the General Agreement. Japan felt that a solution to this matter should be sought within the wider framework of international politics.

The representative of Jamaica said that the Panel's report raised important questions -- some of which might be beyond GATT's purview -- for which answers had not been given. As his authorities needed further time to study the report, C/W/506 and the statements made in Council meetings on this matter, his delegation took no position on the issues raised in the Panel report and could not at this time support its adoption. Regarding the Panel's terms of reference, he quoted from Jamaica's statement at the October 1985 Council meeting (C/M/192, page 6), and said that his delegation had been concerned that terms of reference had been agreed without contracting parties being allowed to examine them. That concern was justified in the light of the many statements made at the present meeting regarding the limited mandate given to the Panel. Jamaica hoped it was clear that in future, a panel's proposed terms of reference should be prepared and circulated for consideration so as to be an integral part of the dispute settlement process.

The representative of Canada said that his authorities wanted to reflect fully on the report and to examine the matters raised in C/W/506, which had only recently been received, before taking a more definitive position on the questions raised. His Government had made known its views on the broader aspects of this issue in another international forum.

The representative of the European Communities recalled that at the July 1985 Council meeting, the Community had already foreseen the present situation. While a contracting party's request for a panel could not have been opposed, it had been clear that a panel could not do very much, since Article XXI was not subject to interpretation and the US had already acknowledged the trade effects of its action. As a result, the Council now found itself in an embarassing position, regarding which the

Community wanted to make three points. First, it understood the position adopted and defended by the United States regarding the invocation of Article XXI. National security was not a matter to be publicly examined or placed in doubt by the parties concerned. The United States alone had the sovereign right to determine its national security interests. Article XXI was a safety valve essential to all contracting parties, and the Community did not want it to be the subject of interpretation, discussion or negotiation either in the Council or in the new round. However, the discretionary right inherent in Article XXI should not be arbitrarily invoked, as the Panel had stated in paragraph 5.16 of its report. Second, the Community had sympathy for the difficulties that Nicaragua, as a developing contracting party, faced on account of the embargo -- sympathy which also extended, however, to the higher level of the collective interest of the multilateral trading system. It was up to the United States to appreciate those larger interests and to weigh carefully its national security concerns against its interests in maintaining the stability of international trade relations incarnated by GATT. Third, the Panel had raised three questions in paragraph 5.17 which needed appropriate consideration. It was, however, very difficult to conciliate the interests of a contracting party invoking national security concerns with the interests of the trading system. This was a question for the future. There was at this stage no absolute impasse, and time might help contracting parties to find a solution, which should not be approached simplistically or precipitately.

The representative of Tanzania, speaking as a contracting party observer, said that this matter, and how it was handled, involved serious implications for the trading system and particularly for developing contracting parties, whose trade interests were recognized in the General Agreement and in its Part IV as needing specific protection. He said that a great power like the United States had the capacity and responsibility to put its weight behind the stabilization of development in a peaceful atmosphere. He applauded Nicaragua's contribution -- in its efforts to deal with this question within the framework of its legal rights and obligations as a contracting party -- to the strengthening of the GATT system in areas where the system was weak.

The representative of China, speaking as an observer, said that his delegation had always heard that disputes between states should be solved through peaceful negotiations on an equal footing, according to the basic norms of international relations.

The Chairman of the Panel said that criticism and differences of view on the Panel's report were inevitable in a delicate case such as this. It was important to bear in mind that the report should, and had to be, read in conjunction with the relevant GATT Articles which, as all contracting parties were aware, were somewhat sketchy and incomplete. There had been no question of the Panel trying to transform itself into a kind of security council or court of justice. He hoped that the report,

and the debate on it in the Council, would contribute both to resolving this dispute and to strengthening the GATT framework and system, thereby consolidating and strengthening the rights of every contracting party.

The representative of Nicaragua thanked representatives for their support. Her delegation could not support the adoption of the report, because there was no consensus on this and because it could only be adopted once the Council was in a position to make recommendations. The report raised fundamental questions to which the Council and the CONTRACTING PARTIES should reply by way of interpreting provisions of the General Agreement. GATT's dispute settlement provisions were very clear on the CONTRACTING PARTIES' responsibility to make appropriate recommendations which would provide a satisfactory solution. If there were no political will to reach a satisfactory solution through the proposed consultations by the Council Chairman, Nicaragua would have to insist on its rights. Her delegation had agreed to a restrictive mandate for the Panel in the hope that this might facilitate a satisfactory solution to the dispute. As this had not been the case, the only avenue open to Nicaragua was to such a broadening of the Panel's mandate as would enable the Panel to fulfil the functions prescribed in GATT's dispute settlement provisions. As this dispute involved a developing contracting party, the consultations should begin immediately and should reach rapid, satisfactory conclusions.

The representative of the United States said it should be clear that the terms of reference were the proper and only ones a panel could have in a case such as this. His delegation did not accept any inference to the contrary. A solution to this dispute depended on a resolution of the underlying security situation; therefore, his delegation did not believe that the proposed consultations were necessary, nor would the United States participate in a prolongation of the debate. Moreover, the same terms of reference applied to the CONTRACTING PARTIES themselves: they could not examine or judge the validity of or motivation for invocation of Article XXI. That was a matter of law.

The Chairman observed that the Council had had a fairly full discussion on this item. There had been proposals on how the Council should proceed on this matter, and it had been suggested that the Council Chairman could conduct consultations on the issues raised at the present meeting. It had also been noted that the recent communication from Nicaragua in C/W/506 was still under study by some delegations. In any case, the Council did not appear to be ready to adopt the Panel's report at the present meeting. Under these circumstances, he suggested that the Council take note of the statements, request the Council Chairman to discuss informally with delegations as to how the Council might deal with the Panel's report, and agree to keep this matter on its agenda.

The Council so agreed.

The representative of Nicaragua asked that those consultations be concluded, at the latest, before the next CONTRACTING PARTIES Session, in order to be taken up there or at a Council meeting preceding it.

The Council took note of the statement.

7. Committee on Balance-of-Payments Restrictions
- Consultations with India, Korea, Nigeria and Yugoslavia (BOP/R/163)

Mr. Girard (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, said that at its meeting on 15 October 1986, the Committee had decided to recommend to the Council that full consultations be held with India and Korea, for the reasons stated in paragraphs four and five of its report (BOP/R/163). For Nigeria, the Committee had felt that more time was needed to assess that country's statement (BOP/268), and would therefore take a decision at its next meeting. For Yugoslavia, the Committee considered that full consultations were not necessary and had decided to recommend to the Council that Yugoslavia be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1986. The full consultations with the Philippines which the Committee had agreed to in October 1985 had again been postponed, for technical reasons, and were foreseen for 10 December 1986. The simplified consultations with Nigeria would also be completed at that meeting.

The Council took note of the statement and agreed to the Committee's recommendations that full consultations be held with India and Korea, and took note that the Committee would revert to the question of whether full consultations should be held with Nigeria. The Council also agreed that Yugoslavia be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1986.

8. Pakistan - Renegotiation of Schedule
- Request for extension of waiver (C/W/503, L/6065)

The Chairman drew attention to the request by Pakistan (L/6065) for a further extension of the CONTRACTING PARTIES' Decision of 29 November 1977 (BISD 24S/15) granting a waiver from the provisions of Article II of the General Agreement, and to the draft Decision in C/W/503.

The representative of Pakistan said his country was grateful for the understanding shown by the contracting parties in agreeing to repeated extensions of the waiver since 1979. Completion of the negotiations on Schedule XV before the present time limit of 31 December 1986 would not be possible. Pakistan was therefore asking that the time limit be extended until 31 December 1987.

The Council took note of the statement, approved the text of the draft Decision extending the waiver until 31 December 1987 (C/W/503) and recommended its adoption by the CONTRACTING PARTIES by a vote at their Forty-Second Session.

9. Committee on Tariff Concessions
- Report by the Committee Chairman (TAR/132)

The Chairman recalled that in January 1980, the Council had agreed to establish the Committee on Tariff Concessions, with a mandate to supervise the task of keeping the GATT Schedules up to date, to supervise the staging of tariff reductions, and to provide a forum for discussing tariff questions.

Mr. Woo (Hong Kong), Vice-Chairman of the Committee, made the report in the absence of Mr. Satuli (Finland), Chairman of the Committee. He noted that the Committee had held a great number of meetings during the year both formally and informally. These meetings had concerned mainly the introduction of the Harmonized System and the Article XXVIII negotiations to be carried out therewith. Contracting parties had concluded that 1 January 1988 rather than 1987 was a more realistic date for bringing the Harmonized System into force. They had also recognized that the necessary Article XXVIII negotiations had to be carried out expeditiously in order to allow time for national ratification. Eleven contracting parties had submitted the required documentation. Intensive negotiations were underway, and some countries were expected to conclude their negotiations before the end of 1986. The Committee had continued to discuss the common data base which had been established for the Article XXVIII negotiations and which was now being used by participating delegations, and by the Secretariat to help developing countries assess the effects of tariff conversion on products of interest to them. The Committee had also discussed the future development of the data base in the context of the forthcoming multilateral trade negotiations, and had felt that contracting parties should try to participate in both the data base and the Tariff Study files. Delegations considered that the information so recorded should cover non-tariff as well as tariff measures.

He said that there was now a consensus on the use of the Protocol approach for publishing the results of the Harmonized System negotiations, and that the Committee had made substantive progress in examining a preliminary text of the Protocol. Discussions were continuing on the definition of suppliers' rights and the problem of initial negotiating rights.

Regarding one contracting party's request under Article XXVIII:4 to renegotiate its schedule in view of the introduction of the Harmonized System, the Committee had examined the suggestion that a general decision be taken to allow countries which had not reserved their rights under

Article XXVIII:5 to renegotiate their schedules. The Committee had concluded that there was no need for a general decision because countries were always free to make such requests to the Council.

Regarding the Council's Decision of 26 March 1980 on the introduction of a loose-leaf system for the schedules of tariff concessions (BISD 27S/22), he recalled that paragraph 8 of that Decision provided that earlier schedules and negotiating records would remain proper sources for interpreting tariff concessions until 1 January 1987. However, the submission and subsequent certification of loose-leaf schedules had taken substantially more time than originally anticipated. In view of this and the complexity of the negotiations under Article XXVIII in connection with the introduction of the System, the Committee had agreed at its meeting in October to ask the Council to change the wording "until 1 January 1987" in paragraph 8 to "until a date to be established by the Council". In concluding, he said that the Committee had reviewed progress in the Sixth Certification of Changes to Schedules which was expected to be finalized in the spring of 1987.

The Committee would no doubt have an equally busy year in 1987 due to the need to implement the Harmonized System on 1 January 1988.

The representative of the United States said that regarding the reference by the Vice-Chairman of the Committee to its preparatory work for Uruguay Round tariff negotiations, his delegation believed that the success of such work, and eventually of the negotiations themselves, would depend in part on developing a comprehensive data base for the countries covered and the information included. This meant that more countries would have to participate in the data base by submitting the necessary information, and that the work of integrating the data bases currently maintained by the Secretariat had to begin as soon as possible, in order to make them more useful for the negotiations.

The Council took note of the report[1] and of the statements, and decided to change the wording of paragraph 8 of its Decision of 26 March 1980 (BISD 27S/22) from "until 1 January 1987" to "until a date to be established by the Council".

10. Consultation on Trade with Romania - Establishment of Working Party

The Chairman recalled that the Protocol for the Accession of Romania (BISD 18S/5) provides for biennial consultations to be held between Romania and the CONTRACTING PARTIES in a working party to be established for this purpose, in order to review the development of reciprocal trade and measures taken under the terms of the Protocol.

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[1] Subsequently issued in TAR/132.

The Council agreed to establish a working party as follows:

Terms of reference

"To conduct, on behalf of the CONTRACTING PARTIES, the sixth consultation with the Government of Romania provided for in the Protocol of Accession, and to report to the Council."

Membership

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

Chairman

The Council authorized its Chairman to designate the Chairman of the Working Party in consultation with interested parties.

11. Japan - Restrictions on imports of herring, pollock and surimi - Recourse to Article XXIII:2 by the United States (L/6070)

The representative of the United States noted that his delegation had circulated a request (L/6070) for a panel under Article XXIII:2 to examine Japanese import restrictions on herring, pollock and surimi. In the US view, those restrictions, which severely affected US exports, were maintained contrary to the provisions of the General Agreement, in particular to the Article XI prohibition of import restrictions. The United States and Japan had held bilateral consultations on this matter in September and October, but had been unable to reach a mutually satisfactory resolution. The United States was therefore exercising its right under Article XXIII:2 to request a panel. His delegation trusted that the Council would, at the present meeting, establish a panel with standard terms of reference, and urged that the panel be composed quickly so as to begin its work expeditiously.

The representative of Japan said that in his country's view, there had been only one consultation with the United States under Article XXIII:1, at which time Japan had reserved its right to respond to the US and to present its comprehensive views on this matter. Japan was presently considering possible proposals for resolving this matter and was willing to resume the consultations as soon as it had worked out concrete proposals. His delegation was confident that a mutually acceptable and practical solution could be reached through such consultations. He said that in view of these circumstances, it was premature to review this matter under Article XXIII:2.

The representatives of Canada and the European Communities supported the US request for a panel.

The representatives of Canada, the European Communities, Norway and Chile reserved their delegations' rights to make a submission to a panel.

The representative of Canada said that his Government had consistently maintained the view that Japan's quantitative restrictions on fish were inconsistent with the General Agreement. In 1984, Canada was the third largest exporter of herring to Japan, accounting for 7.5 per cent of that country's herring imports; in 1985, that figure had slipped to 4.3 per cent, putting Canada in fourth place.

The representative of the European Communities said that the Community's interest in fish and fisheries products was well known. The Community, whose interests were similar in nature to those of the United States, had had bilateral contacts with Japan on this issue on many occasions.

The representative of the United States outlined the history of the consultations on this matter between the United States and Japan under Article XXIII:1, and said that none of those meetings had yielded a basis for agreement. Given that history, his delegation had doubts as to the efficiency of the consultation process in this case. The United States regretted Japan's unwillingness to establish a panel at the present meeting and insisted that this matter be placed on the agenda for the next Council meeting.

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

12. Training activities (L/6067)

The Director-General introduced his report (L/6067) on the trade policy courses organized by GATT. He recalled that in his most recent report, he had mentioned a number of problems, and was pleased to report that for the time being, the two major problems of accommodation and office space for the trainees had been solved. At Punta del Este, Ministers had agreed that technical support by the Secretariat, adequately strengthened, should be available to the developing countries participating in the Uruguay Round. He would examine whether and to what extent this would require that GATT's training activities be strengthened, and he intended to recommence consultations on the training courses in the near future. He commended the Canadian Government on its generosity in receiving the participants of the current English-speaking course during their study tour of Canada and for Canada's continuing support for the training activities. He thanked the Swiss Government for its unilateral contributions which had enabled a special workshop on trade negotiation techniques to be added to the training program. Switzerland had also continued each year to invite participants in the courses to take part in a short study tour in that country. He also thanked the Spanish Government for its cooperation in receiving the

Spanish-speaking trainees during their study tour of Spain in 1986. He expressed gratitude to the United Nations Development Programme for its help in the processing of applications. Finally, he thanked those members of delegations and representatives of other international orgnaizations who had given their time to discuss various questions with the participants in the courses.

The representatives of Chile, Uruguay, India, and Malaysia on behalf of the ASEAN contracting parties expressed appreciation for the courses and for the Secretariat's efforts to maintain and strengthen the training program.

The representative of Uruguay shared the Director-General's remarks regarding the understanding reached at Punta del Este on the need to strengthen and, if possible, improve the technical support given to developing countries, of which Uruguay understood training activities to be a part.

The representative of Malaysia, speaking on behalf of the ASEAN contracting parties, said they would appreciate any technical assistance to be given in connection with the new round of negotiations.

The Council took note of the Director-General's report (L/6067) and of the statements.

13. Administrative and financial matters
- Report of the Committee on Budget, Finance and Administration (L/6055)

Mr. Hill (Jamaica), Chairman of the Committee on Budget, Finance and Administration, introduced the Committee's report (L/6055) and drew attention to the paragraphs containing recommendations for action by the Council, as well as to paragraphs 13 and 78. He noted that the Committee's meetings to examine the 1987 budget estimates had taken place only shortly after the Punta Del Este meeting and before decisions could be reached on organizing the Uruguay Round. Thus, the Director-General had not been in a position to make budget proposals for the Round, nor had the Committee been able to assess in any detail the financial implications of the 1986 Ministerial Declaration. Therefore, a lump-sum of Sw F 1,500,000 to meet the 1987 cost of the Uruguay Round had been included in the budget under Part VII, Section 16 of the report. This amount was based on estimates of the cost of servicing the negotiations, and the provision would be frozen until specific proposals for its use had been submitted by the Director-General, examined by the Budget Committee and approved by the Council. This would avoid the need to ask contracting parties for supplementary contributions in 1987.

Turning to the 1987 budget, he pointed out (paragraph 65) that reductions of Sw F 2,931,700 had been possible due to the drop in the value of the US dollar against the Swiss franc, and to a lowering of both the expected inflation factor and the provision for salaries of professional staff based on the first month's experience of implementing the Remuneration Correction Factor (paragraph 87). Other reductions had been made, including in the provisions for dispute settlement panels, for acquisition of permanent equipment and for unforeseen expenditure. The reduction in the number of regradings had resulted in savings of Sw F 30,000, and the Committee's decision not to increase the level of the Working Capital Fund, in a reduction of Sw F 1,000,000.

With a view to limiting the cost of interpretation at GATT meetings, the Committee had requested the Secretariat to prepare a paper for discussion on establishing the program of meetings of GATT bodies and for the Uruguay Round.

It had been felt that the Director-General's proposal to increase the level of the Working Capital Fund by Sw F 1,000,000 in 1987 would not be properly addressed until the longstanding and extremely serious problem of contributions in arrears had been resolved. The Committee would take up both questions early in 1987. In this respect he drew particular attention to paragraphs 31 and 32 of the report, which urged governments to pay contributions promptly.

As a result of the reductions mentioned above and the addition of Sw F 1,500,000 for the Uruguay Round, the revised expenditure budget totalled Sw F 61,122,300. Taking into account that miscellaneous income of Sw F 1,022,300 was foreseen, an amount of Sw F 60,100,000 had been proposed to be assessed on contracting parties. He drew attention to the fact that one member of the Committee had been unable to join in the recommendation in paragraph 4 of the draft Resolution on the expenditure of the CONTRACTING PARTIES for 1987 and on the ways and means to meet that expenditure.

The preliminary estimated figures for GATT's 1986 financial situation indicated that budgetary savings of some Sw F 4 million could be expected, due largely to the strength of the Swiss franc against the US dollar. The Secretariat would propose that these savings be used to repay the Working Capital Fund for the withdrawals made to cover contributions in arrears, which were expected to amount to about Sw F 13.5 million by the end of 1986. The Committee would in due course examine the final accounts for 1986 and would make recommendations regarding the application of those savings.

The representative of Malaysia said that regarding the lump-sum provision for the 1987 costs of the Uruguay Round, technical assistance for the developing countries participating in the Round would be very important. Given the complexity of the negotiations, his delegation

would need more than the normal share of technical assistance, and asked that this be kept in mind when decisions were taken on the envisioned re-organization of the Secretariat.

The representative of Jamaica said that his was the delegation which had been unable to join in the recommendation of the Committee regarding the ways and means to meet GATT's expenditure budget for 1987. He said that between 1949 and 1967, GATT had used three different systems for assessing contracting parties' contributions, and that in 1968 it had reverted to a single minimum contribution of 0.12 per cent of the budget. This rate currently applied to 42 countries including Jamaica. His delegation would circulate a note on the historical background and method of calculating the GATT budget. He said that over the most recent 10 years alone, the budget had increased from SwF 36.3 million in 1977 to Sw F 59.6 million in 1986, or some 60 per cent. During that period, Jamaica's contribution had increased from Sw F 42,700 to Sw F 70,440, or roughly 65 per cent. The essential point was that the minimum contribution assessed on contracting parties was often way out of proportion to their share in trade. For 1987, the 42 countries previously cited would contribute 5.04 per cent of GATT's budget, while their cumulative share in total contracting parties' trade amounted to only 1.5 per cent. Based on actual trade figures for 1983-1985, Jamaica's share of the 1987 budget would be 0.0588 per cent; were its 1987 contribution to be assessed on the basis of actual trade share, the amount would be less than half the Sw F 72,120 Jamaica had been assessed for 1987 based on the 0.12 per cent minimum rate. As at 30 September 1986, contracting parties assessed at the minimum rate were responsible for 98 per cent of the contributions in arrears for the period 1973-82, and 66 per cent for 1985 alone; this had no doubt been due in part to the fact that their assessed contributions were often disproportionate to their trade share. In support of this point, Jamaica would circulate a set of tables on the impact on each contracting party of the use of actual trade-share basis to assess all contributions. His delegation proposed that the Council recommend that the scale of contributions to the GATT budget for 1987 and future years be assessed for all contracting parties on the basis of their actual share of total contracting parties' trade, using figures for the three most recent years available, thus eliminating the minimum contribution.

The Council asked the Budget Committee to examine the matter raised by Jamaica and to make recommendations for appropriate action by the Council.

The Council took note of the statements, approved the Committee's recommendations in paragraphs 18, 22, 31, 32, 71, 104 and 105, and agreed to submit the draft Resolution in paragraph 92 to the CONTRACTING PARTIES for consideration and approval at their Forty-Second Session.

With regard to paragraph 31, the Council recommended that the CONTRACTING PARTIES make a special plea to Governments to meet their financial obligations fully and promptly by settling pending

contributions immediately and by paying each year's contribution as soon as it became due, on 1 January, so as to avoid cash availability problems.

The Council approved the report (L/6055) and recommended that the CONTRACTING PARTIES adopt it at their Forty-Second Session, including its recommendations and the Resolution on the expenditure of the CONTRACTING PARTIES in 1987 and the ways and means to meet that expenditure.

14. Dispute settlement procedures
- Roster of non-governmental panelists (L/5752, L/5906)

The Chairman recalled that in November 1984 the CONTRACTING PARTIES had decided to establish, on a trial basis and for a period of one year, a roster of non-governmental panelists so as to facilitate the composition of panels in those cases in which the parties to the disputes were unable to agree on panelists (L/5752). In November 1985, the Council had approved a list of non-governmental panelists (L/5906). The initial trial period of one year had now therefore lapsed. He recalled that at the Council meeting on 27 October, he had proposed that representatives reflect on this matter so that the Council could consider at the present meeting whether to continue the roster procedure. He understood that a number of delegations considered that the Council should agree to extend the roster for an additional year.

The representative of Jamaica recalled that in previous discussions on this matter his delegation had said it was not convinced that the roster system would improve GATT's dispute settlement procedures. He understood that some of his delegation's fears had proven to be correct. He said that there was a discreet, informal practice involving a kind of understanding that panelists from less-developed contracting parties could not serve on panels for so-called sensitive matters. He knew of some instances when this had happened. His delegation considered that GATT should have a broad measure of experience and expertise at its disposal and that individuals from all contracting parties should be able to share in this experience by being able to serve on panels or chair working parties, notwithstanding the fact that they came from a particular region. The sketchy information which he had at his disposal suggested to him that the roster procedure had not worked well. He would not object to extending the list in L/5906 for another year; however, his delegation would like to have an objective evaluation of how the panelists worked and from what broad range of experience they were drawn, so that the Council could have an assessment of how the procedure had operated.

The Director-General noted that the roster had been constituted on the basis of nominations by contracting parties. The Secretariat remained open to any further nominations to increase the number of available panelists. He could not accept the comment by the

representative of Jamaica that there might be bias in the choice of panelists, and he emphasized that it was the Council which agreed finally to the composition of panels. The only approach in composing panels had been to choose people who were not only known for their competence but who were also available. He would be pleased to give the Council a list of the names of people who had served on panels during the past two years in order to substantiate the comments he had just made.

The representative of Chile shared the views expressed by Jamaica. He noted that the roster (L/5906) included no panelists from Latin America and he could not imagine how this could be possible. His delegation might revert to this matter at the Forty-Second Session of the CONTRACTING PARTIES.

The representative of Jamaica said that he knew whereof he spoke regarding the kind of discretionary way in which some panel members had been chosen. He was not laying the blame or the responsibility entirely on the Secretariat.

The representative of Peru supported the statement by Chile.

The Director-General said that in order to avoid any misunderstanding on this subject, he wanted to make clear that the roster had been established on the basis of nominations by governments. He urged Latin American contracting parties to give names of GATT specialists who would be available to serve on panels, adding that he knew several such qualified experts himself. He added that if at a certain time the Secretariat thought it useful to call on such people, even if they were not on the roster, this would be proposed. He said that recent panels had included experts from Argentina, Chile, Hong Kong, Indonesia, the Philippines, and Trinidad and Tobago. This showed the widespread support that a number of governments from around the world had given to sharing the difficult work of serving on panels.

The Chairman proposed that the Council agree to extend the list of non-governmental panelists in L/5906 for an additional year.

The Council so agreed.

The representative of Jamaica said that his delegation had not opposed the proposal by the Chairman but had a reservation on some of the names on the list in L/5906.

The Council took note of the statements.

15. Observer status in GATT

Mr. Mathur, Deputy Director-General, noted that Mr. Park, Chairman of the Council, before being called by his Government to other duties away from Geneva, had carried out informal consultations on the subject of observer status in GATT, so as to facilitate appropriate consideration and action by the Council on this matter. In the absence of Mr. Park, he had been asked to conduct the most recent consultation held with delegations evincing an interest in this matter, and to make a progress report to the Council at the present meeting. He noted that there had been eight consultations on this subject so far, during which a number of issues had emerged. Among these were the purpose of observer status; possible criteria for observer status, with consideration of requests on a case-by-case basis; duration of observer status; the nature of participation by observers at meetings; the question of equal treatment for existing and future observers; attendance by observers at meetings of sub-bodies of the Council and the Committee on Trade and Development; and the possibility of a financial contribution by observer governments to cover the costs of documents made available to them. At the most recent consultation on 22 October, participants had discussed two draft texts on observer status for Council meetings. These texts had been put together to focus attention on outstanding points requiring further reflection. One of the texts covered non-contracting party governments and the other dealt with international organizations. A number of the issues which he had mentioned had become reasonably clear during the course of the consultations, and informal discussion on them had reached an advanced stage. On a few issues, however, there was still need for some further clarification. At the most recent consultation, participants had agreed that further informal consultations should be held after the forthcoming CONTRACTING PARTIES' Session, with a view to facilitating the presentation of a draft text to the Council for consideration at its first meeting after the Session, so that the Council could establish an appropriate set of guidelines and understandings in this matter at that meeting.

The Council took note of this information.

16. Accession of Bulgaria (L/6023 and Add.1)

The Chairman recalled that the Council had discussed this matter at its meeting on 27 October, and had agreed to revert to it at the present meeting. He understood that after that meeting, bilateral and multilateral consultations had led to positive results.

The representative of the United States said that his delegation's position, stated at the Council meeting on 27 October, had not changed. The United States believed that contracting parties should have an

opportunity to receive Bulgaria's Memorandum on its foreign trade régime before establishing a working party to consider Bulgaria's application. His delegation believed that this position was consistent with the action which the Council had taken on China's request[1] and was a good one in general. There was no need to establish a working party at the present meeting, since such a body would have no work to do and would not need to meet until the Memorandum had been circulated and questions from contracting parties concerning it had been answered. However, the United States would not stand in the way of a consensus on this matter.

The Council took note of the statement and agreed that the usual procedure for examining an accession request be followed and that a working party be established.

The representative of Bulgaria, speaking as an observer, said that in view of the fact that comprehensive economic and trade legislation was being prepared in his country and would enter into force on 1 January 1987, he expected that the Working Party would start operating when the Memorandum containing, inter alia, a description of the new legislation, had been made available.

The Council took note of the statement and noted that, in due course, it would consider the procedural aspects of the Working Party's establishment.

The representative of Bulgaria, speaking as an observer, thanked the Council and all delegations for having started the normal procedure to examine his country's application. He assured the Council that Bulgaria was conscious of its responsibilities to facilitate the task of the Working Party. His authorities would prepare Bulgaria's Memorandum in consultations with all interested delegations.

The Council took note of the statement.

17. Quantitative Restrictions and Other Non-Tariff Measures - Report of the Group (L/6073)

The Chairman recalled that the Council had agreed in January 1983 that the Group on Quantitative Restrictions and Other Non-Tariff Measures be constituted, open to all contracting parties, to carry out the task described in paragraph 1 of the CONTRACTING PARTIES' Decision of 29 November 1982 (BISD 29S/17) and to report to the Council as prescribed in paragraph 2. At the Forty-First Session in 1985, the CONTRACTING PARTIES had instructed the Group to oversee implementation of the 1982

[1] See C/M/201.

Ministerial Mandate and the recommendations of the Group, to keep the Council informed of progress made and to present a report containing its findings and conclusions to the CONTRACTING PARTIES at their 1986 Session (BISD 32S/12).

Mr. Huslid (Norway), Chairman of the Group, introducing its report (L/6073), recalled that at the Council meeting in July 1986 he had presented a progress report on the Group's activities. The Group had conducted two multilateral reviews in October 1986. The first had addressed the adequacy and accuracy of the documentation at the Group's disposal and the grounds and GATT conformity of the measures under examination. The second had examined progress achieved in eliminating quantitative restrictions which did not conform with the General Agreement, as well as progress in liberalizing other quantitative restrictions and non-tariff measures. The Group had noted that its basic documentation, and the analyses prepared by the Secretariat at its request, would be an indispensable tool for the new round of multilateral trade negotiations. The standstill and rollback commitments in the 1986 Ministerial Declaration had re-emphasized the importance of identifying measures inconsistent with the provisions of the General Agreement or with the instruments negotiated within the framework of the GATT or under its auspices. The Group had therefore recommended that the documentation and analyses be completed and kept up to date or enlarged so as to cover all participants in the new round. With regard to the second review, the Group had noted with some disappointment (paragraphs 34 and 43) the lack of progress in liberalizing or eliminating quantitative restrictions and other non-tariff measures. In paragraph 49, the Group had concluded that the best prospect for achieving the shared objective of reducing or eliminating such measures lay in implementing the Ministerial Declaration on the Uruguay Round. As for its future rôle (paragraphs 50 and 51), the Group had identified a number of options, not necessarily exhaustive, regarding the way in which future work in this field could be conducted. However, the Group had felt that further reflection was needed on these options, not all of which appeared to be acceptable to all its members. The Group had felt that a decision on this matter should be taken by the CONTRACTING PARTIES themselves.

The representative of Chile said that his country was disappointed that the Group had not fulfilled its mandate. Almost no substantive progress had been made towards eliminating quantitative restrictions and other non-tariff measures or towards bringing them into line with commitments which the CONTRACTING PARTIES had undertaken within the framework of the General Agreement. Chile felt that the report should have placed much greater stress on the unfairness and imbalance which had resulted from the fact that certain undertakings under the General Agreement, and certain commitments in the 1982 Ministerial Declaration, had not been met. His delegation reserved its right to comment on the report at the forthcoming session of the CONTRACTING PARTIES. Chile shared the view that the Uruguay Round offered some hope for solving the difficult problems in this area.

The Council took note of the report (L/6073) and in particular of the recommendations in paragraphs 28, 49 and 51 in which, inter alia, the Group had referred the question of its future rôle to the CONTRACTING PARTIES; took note of the statements; and agreed to forward the report and the statements to the CONTRACTING PARTIES for appropriate action at their Forty-Second Session.

18. Export of Domestically Prohibited Goods (L/6077)

The representative of Sri Lanka, speaking under "Other Business", said that the notification procedures established by Ministers in 1982 concerning the export of domestically prohibited goods (BISD 29S/19) had enabled useful information to be collected, particularly on the laws and regulations covering such exports. However, no group had been set up to deal with this issue, even though interested delegations had carried out a series of informal consultations. Sri Lanka considered that a further decision on this matter by the CONTRACTING PARTIES would be timely because the 1982 Ministerial Declaration needed to be supplemented further in the light of recent developments. There were two reasons for doing so. First, it was necessary to establish the track on which further work in this area should continue. Towards the end of the meetings of the Preparatory Committee there had been general agreement that this subject should be dealt with under the regular GATT Work Program and not within the framework of the Uruguay Round. There was already a broad consensus on the need for action, and the issue did not involve negotiations in the sense of an exchange of concessions. Although this subject had been referred to in the Chairman's statement at Punta del Este (MIN.DEC/Chair), it was necessary to dispel any doubts as to where further work in this area should be carried out. Second, although the 1984 Decision of the CONTRACTING PARTIES (BISD 31S/14) provided for appropriate action, there had been no progress on this front. Sri Lanka believed that guidelines for action should be at the centre of the next phase of work. His delegation was therefore submitting the proposal in L/6077 for consideration and comments by delegations.

The representative of the United States said his delegation appreciated Sri Lanka's initiative and generally supported the objective of making information available on relevant laws and regulations in this area. However, care should be taken that the reporting and information-sharing efforts in other bodies not be duplicated in GATT, and that the special expertise and technical capabilities embodied in other organizations dealing with trade in hazardous substances should not be overlooked in any GATT consultations of the type proposed. The United States considered that Sri Lanka's proposal had merit, and wanted more time to consider how it might be amended to take account of work by other bodies so as to avoid duplication in GATT.

The representative of Peru said that in the period since the 1982 Ministerial Declaration, many notifications and much information had been received on the export of domestically prohibited goods, but this was not enough. New information was continuously coming in on problems relating to health and the environment and on the fact that chemical industries were able to sell their surpluses to developing countries in particular. Sri Lanka's proposal was aimed at better control and stricter regulations of this type of sale, and Peru favoured a future work program for this area which could be adopted by the CONTRACTING PARTIES at the Session.

The representative of India associated his delegation with Sri Lanka's initiative and looked forward to further efforts on this matter.

The representative of the European Communities said his delegation was interested in Sri Lanka's proposal and viewed its basic intent favourably. The Community wanted to be associated with any further discussions which took place on the proposal.

The representative of Switzerland said his delegation was ready to explore the best possible ways to resolve, within the GATT framework, the real problems which existed in this field without leading to any duplication of work carried out by other organizations. Switzerland wanted to be associated with any further consultations on this matter.

The Council took note of the statements.

19. Japan - Customs duties, taxes and labelling practices on imported wines and alcoholic beverages
- Recourse to Article XXIII:2 by the European Economic Community (L/6078)

The representative of the European Communities, speaking under "Other Business", noted that in L/6078 the Community was asking for establishment of a panel under Article XXIII:2 to examine Japanese customs duties, taxes and labelling practices on imported wines and alcoholic beverages. The document detailed the Community's concerns in two areas: first, a discriminatory taxation system contrary to the provisions of Article III, and second, inadequate protection of labelling and marks of origin, which was not in line with Article IX:6. This issue had been the subject of many representations by the Community over the years to the Japanese authorities, culminating in formal consultations under Article XXII in early August 1986. Further high-level, bilateral consultations had not resulted in a satisfactory settlement. Consequently, the Community was invoking the provisions of paragraph 9 of the 1960 Procedures (BISD 9S/18-20) to ask for establishment of a panel under Article XXIII:2. The Community recognized that in procedural terms it was not normal for a request to be made under "Other Business" for establishment of a panel at the very same meeting. However, given the

magnitude of the injury sustained, the Community regarded this matter as urgent, and his delegation was asking the CONTRACTING PARTIES to apply the procedures in paragraph 20 of the 1979 Understanding by calling on the panel to deliver its findings within three months. This was the last scheduled Council meeting before the forthcoming Session of the CONTRACTING PARTIES, and perhaps the last Council meeting before early 1987. His delegation understood that the establishment of a panel at the present meeting might cause problems for some delegations so, as an alternative, the Community wanted action taken on this matter by the CONTRACTING PARTIES at the latest by the early part of the forthcoming Session. The Community was ready to consult with the Chairman as to the best way of achieving this goal.

The representative of Japan confirmed that his country had held Article XXII consultations with the Community on this matter. Japan considered that its measures concerning alcoholic beverages were fully consistent with the relevant provisions of the General Agreement. For example, Japan's system of taxing such beverages gave equal and non-discriminatory treatment to both domestic and imported products in accordance with uniform and transparent criteria; the measures were thus consistent with Articles III, 1 and II. The customs duties resulted from previous tariff negotiations; furthermore, the rates actually applied were below the bound rates, because Japan had taken autonomous measures to reduce customs duties on alcoholic beverages. Japan had given sympathetic consideration to the views expressed by the Community and to its wish to find a practical solution to its complaint. His Government had taken steps to examine the ways in which the liquor tax could be reformed as part of overall tax reform; the results of this examination would become clear in December 1986. The process of tax reform in his country was politically delicate and difficult, involving political parties and special interest groups. Given these facts, his delegation believed that an examination under Article XXIII:2 would not help to produce a practical solution to this matter; on the contrary, there was considerable risk that such a move would be counterproductive. For these reasons, Japan could not accept the establishment of a panel, and appealed to the Community to be patient and to await the outcome of the tax reform examination in December 1986 before taking up the matter under Article XXIII:2.

The representative of the United States said this was a matter of interest to his delegation, which had participated in the Article XXII consultations. The United States reserved its GATT rights on this matter. As for procedure, the United States supported the Community's right to a panel, when requested, in accordance with customary GATT practice. However, since this matter had been raised under "Other Business, the United States believed that the Council could not establish a panel at the present meeting, nor could the Council take a decision at the present meeting as to what it might do about this matter at a future date.

The representative of Canada noted that his country had participated in the Article XXII consultations. Canada reserved its right to make a presentation to a panel, should the Council decide in due course to establish one.

The representative of Australia noted that his delegation had followed the Article XXII consultations and supported the Community's request for a panel. Australia reserved its right to participate in any panel proceedings on this matter.

The representative of Chile expressed his delegation's interest in participating in any panel set up to examine the Community's complaint.

The representative of Yugoslavia looked forward to receiving information on the results of the tax reform examination to which the representative of Japan had referred.

The representative of the European Communities said that there was sufficient divergence of opinion as the compatibility of the Japanese measures with the General Agreement to justify establishment of a panel. As for Japan's suggestion that this might be counterproductive, his delegation believed that the Community was the best judge of its own interests and did not share the feeling that it would be best to wait until December. The Community requested that this item be put on the agenda of the Forty-Second Session of the CONTRACTING PARTIES, and reserved the right to ask for a further meeting of the Council before the Session to deal with this issue.

The Chairman noted that this matter would automatically come before the CONTRACTING PARTIES at their Forty-Second Session when the Council's report was under consideration.

The Council took note of the statements.

20. Measures affecting the world market for copper ores and concentrates (L/6027/Rev.2)

The representative of Zaïre, speaking under "Other Business", noted that the Group of Governmental Experts on Measures Affecting the World Market for Copper Ores and Concentrates would meet on 5 December. The Intergovernmental Council of Copper Exporting Countries (CIPEC) had asked contracting party members of the Group to intervene in the Council so that CIPEC could take part at that meeting as an observer; he asked if the Chairman of the Group could continue his consultations so that a decision could be taken to that effect.

Mr. Cartland (Hong Kong), Chairman of the Group, confirmed that CIPEC had asked to attend the Group's meeting on 5 December as an observer. So far he had heard of no objection to that request but he would agree to consult on this matter with any interested contracting parties before the Group's meeting.

The Council took note of the statements.

21. Consultative Group of Eighteen

The Director-General, speaking under "Other Business", noted that the Consultative Group of Eighteen had not met during 1986 as a result of the heavy pressure of work on delegations and on senior officials in capitals, deriving from the preparations for the Ministerial meeting at Punta del Este. Consequently, he had not submitted a written report to the Council on the Group's activities in 1986. He recalled that in February 1986, the Council had agreed on an enlarged membership of the Group for 1986. Some delegations had then made the point that the enlarged composition should not necessarily be regarded as a permanent change, but he assumed that the CONTRACTING PARTIES would not want to make further changes before the enlarged Group had met. On this assumption it was his intention to propose to the CONTRACTING PARTIES at their November 1986 Session, the following membership of the Group for 1987: Argentina, Australia, Brazil, Canada, Colombia, Côte d'Ivoire, European Economic Community, Egypt, Hungary, India, Indonesia, Jamaica, Japan, Korea, Nigeria, Norway, Pakistan, Philippines, Switzerland, Turkey, United States and Zaïre. As alternate members he would propose: Austria, Czechoslovakia, New Zealand, Nicaragua, Romania, Sweden, Tanzania, Uruguay and Yugoslavia. He reminded the Council that it had been the intention of the CONTRACTING PARTIES that the Group should in principle consist of senior officials responsible for formulating trade policy in capitals, and that it should serve to foster better understanding of the common problems of policy makers in different countries. He attached high importance to this aspect of the Group and would consult delegations in the coming weeks as to its program of work for 1987.

The representative of Chile said that he wanted to express his delegation's feeling of frustration because informal groups proliferated in GATT and were not always transparent. Chile wanted to increase transparency and therefore asked the Director-General to make maximum efforts to ensure that such groups represented the interests of all contracting parties without exception. Chile reserved its right to speak about the composition and functions of the Consultative Group when this matter was raised at the Session.

The Council took note of the statements.

22. Brazil - Trade restrictions maintained in the informatics sector (L/5871, L/6082, L/6083)

The representative of Brazil, speaking under "Other Business", said that on his Government's instructions, he had requested the Director-General to inform the CONTRACTING PARTIES of a communication[1] in which Brazil referred to a communication from the United States (L/6082), concerning the intention of the US Administration to suspend the application of US tariff concessions to imports from Brazil so as to compensate for the alleged annual loss in US sales opportunities in Brazil due to Brazil's informatics policy. He said that the communication by the United States did not provide the necessary information on its alleged legal basis as well as on the precise nature of measures under consideration for adoption by the United States; it was also unclear whether the announced measures would be enforced without prior notification to the GATT and previous appropriate consideration of the matter by the CONTRACTING PARTIES. Further clarifications by the United States were due, to enable an adequate assessment of the implications of the US communication. Brazil recalled, at this juncture, its communication in document L/5871, of 27 September 1985, in respect of the initiation by the US Administration of an investigation of Brazil's informatics law and practices under Section 301 of the US Trade Act of 1974. In accordance with that document, Brazil wanted to reaffirm that it could not accept the claim by the United States to have a right to resort to unilateral actions, based on domestic legislation, as announced publicly by high US trade officials, without due regard to GATT rules and to the specific obligations assumed by the United States under such rules, thus nullifying or impairing benefits accruing to Brazil. His delegation stated that, in order to deal with the serious threat of injury to the rights and interests of Brazil created by the announced intentions of the US Administration, the Government of Brazil, reserving all its GATT rights, intended to invoke GATT's dispute settlement procedures, starting with a request for consultations under the relevant provisions of the General Agreement.

The representative of the United States said he was surprised at the statement by the representative of Brazil, who had alleged that the United States was going to act unilaterally in this matter, that it was going to act without due regard to US obligations under GATT rules, and that it was going to nullify or impair benefits due to Brazil, so that Brazil intended to invoke GATT's dispute settlement procedures. His delegation wanted to draw Brazil's attention to the communication in L/6082 in which the United States had said: first, that Brazil's informatics-related restrictions on trade were, in the US view,

[1] Subsequently circulated as L/6083.

inconsistent with GATT provisions; second, that those restrictions substantially affected US rights and interests which the United States believed to be protected by Article XVIII; third, that the United States had been consulting, and was continuing to consult, with Brazil; and fourth, that if a satisfactory resolution of this dispute could not be reached bilaterally, the United States would exercise its multilateral rights under Article XVIII to suspend concessions to Brazil. His delegation wanted to make clear that it was not speaking about acting unilaterally and in violation of GATT. He failed to see why Brazil should react by talking about dispute settlement procedures. Brazil would do better, in the US view, to concentrate on resolving its problem with the United States.

The Council took note of the statements.

23. Report of the Council (C/W/501)

The Secretariat had distributed in C/W/501 a draft of the Council's report to the CONTRACTING PARTIES on the matters considered and action taken by the Council since the Forty-First Session.

Some representatives proposed amendments to the draft, which were accepted.

The Chairman requested the Secretariat to insert the amendments proposed, as well as suitable additional entries regarding discussion and action taken at the Council meetings in October and November.

The Council agreed that the report, with these amendments and additions, should be distributed and presented to the CONTRACTING PARTIES at their Forty-Second Session.