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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
6-8 and 20 November 1984

MINUTES OF MEETING

Held in the Centre William Rappard on 6-8 and 20 November 1984

Chairman Mr. F. Jaramillo (Colombia)

		Page
Subjects discussed: 1.	Observer Status in GATT	3
	(a) Request by the People's Republic of China	3
	(b) Progress report by the Chairman on informal consultations	6
2.	Ministerial Work Program	8
	(a) General considerations	8
	(b) Safeguards - Report by the Chairman	12
	(c) Dispute Settlement Procedures - Panel procedures	13
	(d) Trade in Agriculture	19
	(e) Quantitative Restrictions and Other Non-Tariff Measures	22
	(f) Tariffs	23
	(g) MTN Agreements and Arrangements	24
	(h) Structural Adjustment and Trade Policy - Report of the Working Party - Proposal by Canada	26
	(i) Trade in Counterfeit Goods - Report by the Chairman on informal consultations	29
	(j) Export of Domestically Prohibited Goods	36
	(k) Textiles and Clothing - Progress report of the Working Party	36
	(l) Problems of Trade in Certain Natural Resource Products - Progress report by the Chairman of the Working Party	39
	(m) Exchange Rate Fluctuations and their Effect on Trade - Statement by the Chairman	40
	(n) Services - Request for establishment of a working party	41

84-2435

See bound volume for 1985 of this series for Corr. 1 to this document.

		Page
	(o) Aspects of Trade in High-Technology Goods - Communication from the United States	46
3.	Consultative Group of Eighteen - Report by the Chairman of the Group	49
4.	Trade in Textiles (a) Reports of the Textiles Committee (b) Annual Report of the Textiles Surveillance Body	52
5.	Provisional Accession of Tunisia - Request for extension of time-limit	53
6.	Philippines - Rates of certain sales and specific taxes - Review under Paragraph 3 of the Protocol of Accession	54
7.	Japan - Measures affecting the world market for copper ores and concentrates - Request by the European Economic Community for a working party	55
8.	United States - Caribbean Basin Economic Recovery Act - Report of the Working Party	57
9.	Japan - Measures on imports of leather - Follow-up on the report of the Panel	62
10.	United States - Imports of sugar from Nicaragua - Follow-up on the report of the Panel	64
11.	United States - Agricultural Adjustment Act - Report of the Working Party	66
12.	European Economic Community - Operation of Beef and Veal Régime - Request by Australia for consultations under Article XXIII:1	68
13.	Committee on Balance-of-Payments Restrictions - Statement by the Chairman of the Committee	69
14.	Canada - Measures affecting the sale of gold coins - Recourse by South Africa to Article XXIII:2	73
15.	Pakistan - Renegotiation of Schedule - Request for extension of waiver	74

		Page
16.	Committee on Tariff Concessions - Report by the Chairman of the Committee	74
17.	United States Fiscal Legislation (DISC-FSCA) - Communication from the European Economic Community	75
18.	European Economic Community - Imports of Newsprint from Canada - Report of the Panel	78
19.	Consultation on Trade with Romania - Establishment of a working party	82
20.	Training activities	82
21.	Administrative and financial questions - Report of the Committee on Budget, Finance and Administration	84
22.	United States - Trade and Tariff Act of 1984	89
23.	Poland - Suspension of most-favoured-nation tariff treatment by the United States	90
24.	Documents	91
25.	Brazil - Treatment of electronic data processing equipment	91
26.	European Economic Community - Sales of butter at below minimum prices	92
27.	European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong - Follow-up on the report of the Panel	93
28.	New Zealand - Imports of electrical transformers from Finland - Terms of reference and composition of the Panel	93
29.	Conference rooms - Smoking	94
30.	Report of the Council	94

1. Observer status in GATT

(a) Request by the People's Republic of China (L/5712)

The Chairman drew attention to document L/5712, containing a request from the People's Republic of China to attend meetings of the Council and its subordinate bodies pursuant to the existing procedures of the Council. He noted that in the request it was stated that the possibility of attending such meetings would facilitate a decision by the People's Republic of China on membership in GATT. He proposed that in accordance with its normal practice the Council agree to grant China

observer status for Council meetings, and he emphasized that the Council's decision would be without prejudice to the position of any government regarding the legal status of the People's Republic of China vis-à-vis GATT.

The Council so agreed.

After being invited to enter the meeting room, the representative of China, speaking as an observer, expressed his delegation's appreciation to delegations for their supporting China's attendance at meetings of the Council and its subordinate bodies, pursuant to the existing procedures of the Council, and accepted the Council decision on this matter. China's attendance at such meetings would further its understanding of GATT activities and would therefore facilitate a decision by the Chinese Government on membership in GATT. In its future work, the Chinese delegation would strengthen its co-operation and consultation with the participating delegates, and would try to push forward an effective handling of issues in international trade.

The representatives of the European Communities, Australia, India, United States, Canada, Argentina, Japan, Austria, Sweden on behalf of the Nordic countries, Korea, New Zealand, Switzerland, Yugoslavia, Egypt, Hungary, Philippines on behalf of the ASEAN countries, Spain, Pakistan, Portugal, Nigeria, Turkey, Sri Lanka, Colombia, Peru, Czechoslovakia, Brazil, Romania, Poland, United Kingdom on behalf of Hong Kong, Cuba, Chile, Trinidad and Tobago, and Jamaica welcomed the Council's decision to grant China observer status for Council meetings, in accordance with its normal practice.

Many representatives noted the statement by the representative of China that his delegation's attendance at meetings of the Council and its subordinate bodies, pursuant to the existing procedures of the Council, would further its understanding of GATT activities and would therefore facilitate a decision by the Chinese Government on membership in GATT; they noted also the statement by the Chairman that the Council decision would be without prejudice to the position of any government regarding the legal status of the People's Republic of China vis-à-vis GATT.

The representative of the European Communities said China's presence in the Council was a symbolic act of faith in the multilateral trading system at a time when the Council was examining the functioning, strengths and weaknesses of that system. His delegation was sure that through the Chinese delegation to GATT, the authorities in Beijing would be in a position to prepare for the discussions and negotiations which hopefully would begin in order to decide on China's membership in GATT. He noted that, for the Community, complaisance and weakness would have no place in such negotiations, since they would be unworthy of China's status. The Community hoped that China's presence would be a positive element in the multilateral trading system.

The representative of Australia said his delegation would do everything possible to encourage China towards full membership in GATT.

The representative of the United States said that the Council's decision to accord China observer status would provide China with an opportunity to study further the operation of the General Agreement and to prepare for the obligations and benefits of GATT membership. His delegation concurred with the Chairman's introductory statement; this concurrence was without prejudice to the position of the United States with regard to the legal status of the People's Republic of China vis-à-vis GATT.

The representative of Canada said that his delegation would welcome the opportunity to examine in the near future any proposal concerning China's membership in GATT, in conjunction with other contracting parties.

The representative of Argentina said his delegation was sure that China's presence would enrich GATT's work and he hoped that this participation would increase with time.

The representative of Sweden, on behalf of the Nordic countries, trusted that the Council's decision to grant China observer status would make it possible for China to take an early decision with regard to its membership in GATT.

The representative of Korea hoped that China, in its capacity as an observer, would participate positively in GATT activities and co-operate closely with other contracting parties in pursuing GATT objectives.

The representative of Switzerland hoped that the Council's decision would help China to take a decision concerning the modalities of its adherence to the General Agreement.

The representatives of Yugoslavia, Romania and Colombia welcomed the Council's decision to grant China observer status as a step towards its full membership in GATT.

The representative of Hungary said his delegation presumed China had requested observer status in order to be able to see the contracting parties acting in full accordance with the spirit and letter of the General Agreement, respecting scrupulously the rights and obligations stemming from that Agreement, resisting protectionist temptations and rolling back protectionist measures already in force.

The representative of Spain said that China's eventual membership in GATT would give the organization new blood, in view of China's wisdom.

The representatives of Nigeria and Brazil said China's presence as an observer would contribute to GATT's universality.

The Chairman welcomed the delegation of China and said he was sure that its presence in the Council would be very constructive.

The representative of China thanked Council members for their welcoming statements.

The Council took note of the statements.

(b) Progress report by the Chairman on informal consultations

The Chairman recalled that at its meeting on 11 July 1984, the Council had decided that he should hold informal consultations on the question of observer status in GATT. The consultations would focus on how the Council should deal with requests by non-contracting party governments and by international organizations for observer status at Council meetings.

During the informal consultations held so far, in July and October 1984, a number of issues had been raised in respect of requests by governments for observer status. While a view already appeared to be emerging that the aim of observer status should be to facilitate action by the government concerned towards eventual accession (that is, there should be some linkage between observer status and future accession), a number of issues required further examination, such as:

(i) a possible time limit on observer status;

(ii) the degree and form of participation by observers at meetings;

(iii) observers' attendance at meetings of subsidiary bodies;

(iv) transparency, i.e., whether observers should be asked to provide information on their trade policies and régimes, including any action towards bringing them more into line with the General Agreement;

(v) the possibility of a financial contribution by observers to cover costs of GATT facilities and services; and

(vi) the benefits in general to the GATT system from the presence of observers.

He added that it appeared to be generally accepted that there should be a single category of observers. Any additional rules or guidelines which might eventually be established would apply to all observers; that is, old and new observers would be on an equal footing.

Concerning requests from international organizations, questions had been raised as to (1) whether the GATT had observer status in those organizations which had such status for GATT meetings; and (2) whether international organizations should have the same type of observer status as countries.

The informal consultations on this matter would continue and the Council would be kept informed of developments.

The representative of Jamaica, referring to the Note by the Secretariat on Observer Status in GATT (C/129/Suppl.1), said that the Council's decision to grant China observer status had brought to 61 the number of countries having such status for sessions of the CONTRACTING PARTIES. He emphasized that GATT was an institution where contracting parties accepted certain obligations and disciplines. He hoped that the informal consultations would be expedited, because there would be a problem of accommodating very many more observers. There should be a clear idea of whither the process of accepting observers was heading, in the context of the evolution of the GATT system.

The representative of Mexico, speaking as an observer, recalled that for many years his country had participated in GATT as an observer in order to be able to contribute, in so far as that status allowed, to the functioning of the multilateral trading system. Mexico had participated actively in the Tokyo Round and had negotiated terms for accession to the General Agreement, but -- for purely domestic reasons -- had not acceded. Mexico did not deny the CONTRACTING PARTIES' right to examine and eventually to draw up new criteria for observers. However, Mexico saw its participation as an observer as governed by its having signed the Havana Charter; it was also a member of the Interim Committee of the International Trade Organization (ICITO). Thus it would be difficult for his country to accept new criteria to be applied to its own observer status. Concerning possible new obligations for observers, Mexico's trade policy and practices were already published and therefore transparent. As for a possible financial contribution by observers, such an obligation would be inappropriate and unjust, since observers had no rights. Mexico had to use all its foreign exchange for debt servicing, so it would be difficult for his country to make any financial contribution to cover its observer status. Furthermore, his delegation considered that observers should be invited to participate in future informal consultations on observer status, since they were directly affected.

The representative of the United States said his delegation had always considered that observer status was designed to lead to a better understanding of GATT and therefore to joining GATT. He wondered if the statement by the representative of Mexico could be taken as a sign of renewed interest in proceeding towards accession.

The representative of Mexico, speaking as an observer, said that it would be inappropriate to establish any link between observer status and eventual accession. Mexico was not now, and would not in the near future be, in a position to give any indication as to its accession to the General Agreement. It was inappropriate to force a decision on this point. The observers were present as such and would continue to participate in a constructive manner.

The representative of the United States said the reply by the representative of Mexico was interesting and gave contracting parties something to think about at their next informal consultation.

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

2. Ministerial Work Program

The Chairman pointed out that under this heading, the Proposed Agenda (C/W/455) listed a number of elements in the Ministerial Work Program on which a report was to be made to the Council or on which a decision was to be taken, in addition to those listed at the request of delegations. While other elements had not been specifically listed, including some matters being dealt with by the Committee on Trade and Development, it was open to the Council to consider any of them as well as the Work Program generally. He invited representatives to introduce for discussion any of the other elements in the Work Program on which they wished to express views or on which they considered Council action might be appropriate.

(a) General considerations

The representative of Chile said that a number of issues of interest to developing countries had been excluded from the Proposed Agenda (C/W/455), for example, provisions and activities regarding developing countries, tropical products, export credits for capital goods, prospects for expanding trade between developed and developing countries, and tariff escalation. In keeping with the spirit of the statement on implementation of the Ministerial Work Program made on behalf of the developing contracting parties at the Council meeting in May 1984 (L/5647), particular attention should be given to those areas that would allow rapid improvement of market access for developing countries. The Director-General had repeatedly emphasized that the Program covered all fundamental aspects of international trade and in practice constituted in itself a framework for a possible new round of negotiations. The Program was not negotiable; it had already been negotiated at the 1982 Ministerial meeting as to its content, scope and priorities. Similarly, the fundamental obligation of paragraph 7(i) could not be re-negotiated; accordingly, the oft-heard contention that there was a package for negotiation was inappropriate. Any such package had already been negotiated and approved by the Ministers. He added that there was a possibility that in some sectors, agriculture for example, if recommendations discussed in the relevant Committee were to develop into a consensus, this could be formalized through negotiations that could be separate from any overall new round.

The representative of the United States said that his delegation took the entire Work Program very seriously and would do its best to move forward on the Program as a whole. Such an approach had been agreed by Ministers in 1982. The agenda for the present meeting had been open for all contracting parties for some time, so that they could

have included any items in the Program that were important to them. It was unfortunate for everyone that only certain items had been proposed for the agenda, because his delegation, for example, had instructions only on those which had been included.

The representative of Australia referred to a number of statements, particularly by the representative of the United States, which had put forward the proposition that certain linkages in the Program needed to be taken into account in moving the work forward as a package. This was an unfortunate and negative development. The Ministerial Declaration provided a good indication of the priorities to be attached to indivdual items in the Program; for example, through setting up working groups or committees in some cases. Some elements of the Program were fundamental, affecting many contracting parties and forming the very basis of the trading system; others were of a more exploratory nature to ascertain their relevance to GATT. On safeguards, for example, his delegation was not discouraged that it had not yet been possible to achieve a comprehensive solution. The attainment of such a settlement was of fundamental importance in improving the unity, consistency and functioning of the GATT system. Australia considered that so-called new items or areas should not be advanced at the risk of stalling progress on long-standing unresolved issues. Work should be pushed forward on each item as far as possible, without contracting parties constantly looking over their shoulders at progress in other areas. The second approach would not be the way to achieve genuine consensus or to preserve a multilateral approach to continuing work. His delegation considered that a positive approach, embodying a genuine attempt at building a broad-based consensus -- whether as part of a continuing work program or as a preparatory process in a movement towards trade liberalization -- should be adopted.

The representatives of Malaysia and Peru supported the statement by the representative of Australia.

The representative of Austria noted that some delegations had stressed their special interest in specific items in the Work Program and their reluctance to proceed with others, and had tried to establish a linkage. It had been argued that the Minsterial Declaration was a well-balanced package. Austria, too, had more interest in some points than in others, but considered that all contracting parties should act in the light of the common interest in implementing the entire Ministerial Declaration. They should try to advance work as far as possible on the different items without, at this stage, linking the progress of work on one item to progress on others, for example trade in counterfeit goods or textiles. The time had not yet come to tie up a package; this question could arise when there was a better idea of possible substantial results under the different items.

The representative of the European Communities said that the Work Program had been agreed by Ministers as a plan for the whole period of the 1980s. It was important to conduct the forthcoming fortieth session in a credible way, and it would be a mistake to expect any spectacular

accomplishments. But if credible results were to be achieved, all contracting parties had to find something positive for themselves. Referring to the United States, he noted that the bilateral approaches which they had been trying to explore, even though they might be carried out in good faith, were a reflection of frustration at lack of progress in the multilateral system. Unless care were taken, such approaches could have unfortunate effects on the rest of the world and on the multilateral system. In an attempt to address the concerns and needs of all contracting parties, the Community wished to propose a method of approaching the Work Program. Perhaps it was not a good idea to speak of a package; nevertheless, work had to be carried out in a balanced way. Accordingly, an effort should be made to classify the various Work Program items into three categories or baskets, as follows: (1) items on which something concrete could be decided and completed at the fortieth session; (2) items which were well in hand; and (3) items for which there existed a future; for example, he wondered whether the Working Party on Trade in Certain Natural Resource Products would complete its work by 1990. This would be an organized but flexible approach in which items could be moved from one basket to another, depending on progress, and which would enable a shared overall vision of how to deal with the various issues. He appealed to the Community's partners to have a global vision of what remained to be done, and to examine what efforts and concessions each could make so that the fortieth session would have a credible result and not constitute a failure, either for governments or for the people they represented.

The representative of Egypt supported the statements by the representatives of Chile and Australia and reiterated his delegation's view that each item in the Ministerial Declaration should be treated individually and according to its specific mandate, whatever inter-relationships there might be. He recalled that paragraph 8 of the 1973 Tokyo Declaration (BISD 20S/22) had stipulated that "the negotiations shall be considered as one undertaking, the various elements of which shall move forward together"; there had been no such phrase in the 1982 Ministerial Declaration.

The representative of Hungary noted that his delegation had at no point in the present meeting opposed the continued examination of any Work Program item, even those for which GATT's competence was highly debatable. Every contracting party had the right to have its own priorities and to pursue them, even in new areas. However, Hungary was more interested in GATT's traditional field of trade in goods, for example the total lack of discipline in agricultural trade, the continued existence of quantitative restrictions not conforming with the General Agreement and the proliferation of grey-area measures. His delegation shared Australia's view on the question of linkage, and considered that efforts in new areas should not be made at the expense of unresolved, fundamental issues which were indisputably within GATT's competence.

The representative of Chile endorsed the interpretation of the Ministerial Declaration by the representative of Egypt.

The representative of Sweden, on behalf of the Nordic countries, said that the question as to whether the mandate given by Ministers had been fulfilled or not was rather hypothetical, its answer being contingent on subjective expectations rather than objective criteria. It was more important to assess to what extent it would be possible to complete or follow up work already undertaken without first reaching an understanding at the fortieth session. Such an understanding would accelerate and coordinate future work so as to safeguard the balance between the various issues. The Nordic countries were attracted by the Community proposal on methodology. With such an impetus, considerably more progress could be made in various fields. These opportunities should be seized, and for both political and economic reasons the Nordic countries thought this could and should be done in 1985. To add to the pressure for such a development, they would not exclude that the CONTRACTING PARTIES decide upon an early assessment of continued work.

The Chairman concluded that further consultations were needed if specific conclusions were to be forwarded to the fortieth session. He appealed to contracting parties to do their utmost so that the conclusions forwarded to the session were credible, not only to world public opinion, but also to governments and representatives in Geneva.

After consideration of other items and following informal consultations, the Council reverted to this matter at its resumed meeting.

The representative of Japan drew attention to the immediate problems facing the CONTRACTING PARTIES and offered an overview of GATT's future work. Regarding progress on the Work Program, he said that three points should be kept in mind: GATT was a multilateral trade organization composed of a large number of diverse countries; GATT decisions had always been, and should continue to be, made by consensus; and the interests of all the contracting parties should be taken into account in efforts to develop trade, which was not a zero-sum game where concessions automatically meant losses. The Ministerial Declaration and the Work Program had put together all the themes of interest to all the contracting parties, and out of these, the main points had acquired the status of GATT priorities. Work had been continuing on many fronts in an effort to solve the various problems confronting the GATT system. In this regard, there was danger in contracting parties pursuing only their own individual interests, which might have a negative impact on GATT's traditional system of decision by consensus. At risk was not only progress on the Work Program, but the development of a nefarious influence on the system as a whole. Japan's priorities had at their centre the dynamic expansion of trade, and included two main elements: to bring new viewpoints to traditional items, and to grapple with new problems. The most important goal was to maintain and develop the GATT system. A spirit of mutual concessions should be fostered. He expressed appreciation for the efforts of all contracting parties towards advancing the Work Program items and noted especially the progress on trade in agriculture. His delegation wanted to use the days remaining before the CONTRACTING PARTIES session to make further efforts at progress on other Work Program items such as safeguards. In

conclusion, he said that progress must be made in what might be described as a multiple and closely related advance on all fronts; Japan would do its best to co-operate with other delegations to achieve shared goals.

The Council took note of the statements.

(b) Safeguards
- Report by the Chairman

The Chairman said that he had been conducting informal consultations since the beginning of 1984 to explore how progress could be made under the mandate given by the CONTRACTING PARTIES in 1983, which was "to conclude the work of drawing up a comprehensive understanding on safeguards as called for by Ministers within such a time-frame that it would be placed for adoption by the CONTRACTING PARTIES at their 1984 Session" (SR.39/1). He had indicated in July 1984 to the Council that the consultations had concentrated on each of the elements mentioned in the Ministerial Decision (BISD 29S/12), on the application of paragraph 7(i) of the Ministerial Declaration (BISD 29S/11), and on what might be done about the so-called "grey" area. At that time he had emphasized that it was necessary for the work to be based on concrete proposals for a comprehensive understanding on safeguards, or at least on a set of guidelines concerning the main elements that would have to be covered in such an understanding. Since July, various delegations had continued to exchange views informally on this matter. There was no major breakthrough to announce on the substantive issues, but the informal consultations had recently been intensified on all the elements in this area with an informal paper, put forward by the Director-General, serving as a reference document.[1] Delegations were, of course, not committed to this paper and might have their own views on particular elements in it. All those involved in the informal consultations had agreed that they should continue between the present meeting and the fortieth session of the CONTRACTING PARTIES, with the aim of making progress towards agreement on a comprehensive understanding. He would make a further statement on developments in this area when presenting the Council's report to the fortieth session.

The representative of the European Communities noted that agreement had not been reached on the informal paper put forward by the Director-General; it was still being examined by his authorities.

The representative of Spain said that the informal paper could not be considered as a document acceptable to all contracting parties. His delegation had not been invited to participate in the informal consultations on this matter, and had serious misgivings about some elements in that paper. Spain would reserve further comment until a further report on safeguards was presented.

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[1] Copies of the paper (dated 15 October 1984) were distributed to representatives in the meeting room.

The Council took note of the report by the Chairman and of the statements and agreed that informal consultations should continue. The Council agreed to revert to this matter at a resumption of the meeting after consideration of other items.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

(c) Dispute Settlement Procedures
- Panel procedures (L/5718 and Rev.1, L/5720, L/5731)

The Chairman recalled that in the 1982 Ministerial Declaration the CONTRACTING PARTIES had agreed that the 1979 Understanding on Notification, Consultation, Surveillance and Dispute Settlement negotiated during the Tokyo Round (BISD 26S/210) "provides the essential framework for the settlement of disputes among contracting parties", but that "there is scope for more effective use of the existing mechanism and for specific improvements in procedures to this end" (BISD 29S/13). The Council had discussed this matter at several meetings in 1983 and 1984, and had considered problems in the dispute settlement process and ways in which it might be improved. In this context, he drew the Council's attention to a proposal (L/5718) by a number of delegations relating to improvements in existing procedures for appointment of panels. The Consultative Group of Eighteen had discussed the proposal at its meeting in October 1984 and, as indicated in the Group's report to the Council (L/5721), had agreed that the proposal should be forwarded to the Council by the Director-General.

Before introducing the proposal in document L/5718, the Director-General made a full report on the state of work of panels presently in operation, covering panels established by the Council and by the MTN Committees.

He then turned to the proposal in L/5718, saying that informal consultations among a number of delegations on dispute settlement had focused on the difficulty experienced in reaching agreement on panel membership. This was basically a procedural matter, but important nonetheless. Delay in panel formation could seriously impede the speedy resolution of disputes; such delay could entail injustice, and it certainly eroded respect for the authority and efficiency of the dispute settlement process. The proposal in L/5718 aimed to prevent such delays and to improve the efficiency and effectiveness of panel procedures. The essential point of the proposal was that a short list of non-governmental panelists should be approved by the CONTRACTING PARTIES, and that in case of difficulty in reaching agreement on

membership of a panel, the Director-General would be authorized to complete it, at the request of either party to the dispute, by appointing panelists from the roster. He stressed that adoption of the proposal would in no way change the Council's rôle in the dispute settlement process. The proposal would clearly not resolve all problems in the field of dispute settlement, but was intended as a modest first step forward in improving dispute settlement procedures. He shared the hope of delegations which had co-operated in drawing up the proposal that the Council would agree to recommend it to the fortieth session of the CONTRACTING PARTIES for adoption, so that it could be brought into effect in 1985.

The representative of Jamaica supported the thrust of the proposal in L/5718, but he did not see that either that proposal or the proposal by Canada (L/5720) introduced any substantially new elements in view of the agreement by Ministers in 1982 on "more effective use of the existing mechanism and for specific improvements in procedures to this end", and the specific agreements on how such improvements would be made. The basic problem in the dispute settlement process appeared to be not of procedure, but rather of individual contracting parties seeking, in various ways, to pre-determine or even veto the outcome of panels. No improvements in procedure would change that problem, which should be acted upon by the Council in a clear and responsible manner. His delegation was also concerned that the improvements suggested in document L/5718 might lead to a quasi-judicial system in GATT, rather like the system of circuit-court judges who passed judgments on disputes but who had no means of enforcing them. The strength of the GATT system was that the contracting parties accepted to implement panel recommendations because they also accepted their GATT rights and obligations and the balance of benefits that they derived from the system. If a roster of independent panel experts were to be established, it would be necessary to have some description of the experts and of their representativeness. The Council should be clear about transferring its responsibility in the dispute settlement process to the Director-General. There were also budgetary implications in the proposal (L/5718) which had to be considered, given the fact that outside experts would be used for panels established both by the Council and by the MTN bodies. As for Canada's proposal in L/5720, this was much too modest and cautious, and merely reaffirmed what should already be existing practice. Furthermore, when the Director-General presented his twice-yearly reports on the status of work in panels, the Council should address the issues and take decisions, instead of merely taking note. He proposed further informal consultations on this subject.

The representative of Chile said that it would be useful to continue informal consultations on the proposal in L/5718, which even though constructive did not cover all the problems described in the first paragraphs of that document. The Canadian proposal in L/5720 appeared to be a useful contribution to facilitating the Council's

dispute surveillance obligation and to improving the follow-up procedure on panel reports in paragraph (vii) of the Ministerial decision (BISD 29S/15). Chile considered that provisions for conciliation had not been sufficiently used so far, and that it might be productive to broaden the process of consultations. He mentioned as an example that currently there was a problem of great concern to countries importing and exporting copper, and he appreciated that the delegation of the United States had initiated consultations to which it was not constrained under the General Agreement, concerning that problem. Perhaps an analysis of the possibility of pre-arbitral procedures would be useful.

The representative of Canada stressed that his delegation's proposal in L/5720, intended for information purposes only at this stage, was aimed at a major problem: follow-up action on panel reports, and the extent to which such reports were taken seriously. Turning to the proposal in L/5718, Canada would readily accept the suggestion that it needed to be discussed and perhaps improved in further consultations, although his delegation hoped not too much time would be spent on this, since it was widely recognized that a speedy and effective dispute settlement process was vital. The proposal was indeed procedural, but the nature of the procedures suggested could have an important impact in the view of many delegations on how the whole process worked, and even on the extent to which panel recommendations were taken seriously. A standing roster of experts, set up only for a limited period on a trial basis, would provide contracting parties with ready access to known experts whom they could either call upon or not, as they judged fit; they could still proceed under the present system if they chose. Furthermore, the problem of adequate geographic representation could be met by this process better than by the present system; it was expected that all contracting parties would consider putting forward nominations. The aim was to have some degree of automaticity, coupled with necessary flexibility. The flexibility in the present system almost dictated the kind of delays and difficulties which had occurred. As for the leading rôle of the Council, Canada would readily change the wording in paragraph 3 of L/5718 to "the Director-General, in consultation with the Chairman of the Council", or a similar phrase. There might be budgetary implications in the proposal, but given the importance of the dispute settlement process, these would be well worth incurring. He agreed that further informal consultations would be useful.

The representative of Romania said that his delegation could accept any proposal which aimed to improve existing procedures and practice. His authorities were currently studying L/5718, and he would reserve comment until the result of this consideration in the near future. For the time being, his delegation sought clarification on the meaning of "compelling reasons" in paragraph 2.

The representative of the United Kingdom, on behalf of Hong Kong, said that in the light of recent experience with panels, including Hong

Kong's own experience, it was appropriate and timely that the dispute settlement procedures be examined and improved. The Canadian proposal in L/5720 was particularly welcome. The purpose of resorting to the GATT dispute settlement mechanism could be completely negated if, following the adoption of a clear-cut panel finding, there was still no satisfactory adjustment of the problem within a reasonable time. The proposal in L/5720 was the minimum that could and should be done pursuant to the Ministerial decision to keep panel findings under regular review, and thereby to try to prevent the frustration of the dispute settlement mechanism by undue delay in acting on recommendations. His delegation believed that the Canadian proposal should be adopted by the Council at an early date, and he agreed with the representative of Jamaica to the extent that, when the Director-General's reports came before the Council, they should be actively examined and discussed, and not merely noted.

The representative of Norway, on behalf of the Nordic countries, emphasized the importance they continued to attach to an efficient functioning and possible strengthening of GATT's dispute settlement mechanism. A roster of non-governmental panelists might well speed up the panel formation process in cases of difficulty, but it was essential to choose people who followed closely GATT's day-to-day functioning, and only to use experts from the roster in the last resort. The accepted rule should remain that both parties to a dispute agreed on the composition of a panel. The Nordic countries supported the thrust of L/5718 and of the Canadian proposal, and would want to participate in further consultations concerning both of them. He agreed with the representative of Jamaica that the main problem in the dispute settlement process was very often contracting parties' lack of will to implement panels' recommendations.

The representative of Argentina said that his delegation would support any proposal which would reinforce GATT's dispute settlement procedures. In principle Argentina supported the proposals in L/5718 and L/5720, and would want to be involved in any further consultations concerning them.

The representative of Nicaragua supported the statements by the representatives of Jamaica, Chile and Canada. Some contracting parties had only taken panel recommendations seriously when it suited them; i.e., the real problem was the follow-up. Nicaragua would like to see the Canadian proposal adopted immediately, and wanted to give more detailed consideration to L/5718.

The representative of Uruguay supported both proposals, and said that the proposal in L/5720 should be adopted immediately. Concerning paragraph 3 of L/5718, contracting parties would have to trust the Director-General's discretion; it would be desirable to give him such authority because this would improve the dispute settlement procedures. Consultations on L/5718 should be concluded as soon as possible

The representative of Hungary said that an effective dispute settlement mechanism was indispensable to the GATT system. His delegation supported Canada's proposal in L/5720.

The representative of the Philippines sought some clarification with respect to the proposal in L/5720. He added that if action were deferred on the two proposals, representatives would wish to bear this in mind later in the present meeting when considering a related element in the proposed GATT budget for 1985 (L/5699, paragraph 39).

The representative of Poland said his delegation saw considerable merit in both proposals. Budgetary considerations were important, but the overriding objective was to strengthen the effectiveness of the dispute settlement system. His delegation wanted to participate in any informal consultations on this subject.

The representative of the United States supported adoption of L/5718, describing it as a modest proposal which would be carried out on a trial basis. The Director-General had reaffirmed that there would be no change in the Council's rôle. He hoped that the Council would adopt the proposal in the near future.

The representative of Colombia said that his delegation supported both proposals, which in no way would alter the Council's rôle in dispute settlement, and considered they could both be adopted at the present meeting.

The representative of the European Communities emphasized that when the dispute settlement process was blocked, it was not a result of procedural problems, but of problems of political will. Governments were often torn between national commitments and their international obligations, while at the same time welcoming the dissuasive effect of the process on protectionist pressures. The Community supported adoption of the proposal in L/5718, which was in any case only for a trial period. The Council should not waste time discussing such a procedural proposal, which would not change the Council's leading rôle in dispute settlement. He asked for further time to reflect on L/5720.

The representative of Switzerland said that improvement of dispute settlement was one of GATT's most important tasks. His delegation supported the proposal in L/5718, which was an attempt to make modest improvements on a trial basis.

The representative of Pakistan supported the proposal in L/5718. He pointed to Pakistan's positive experience with the Textiles Surveillance Body: it was a great help to have such a standing body to which a delegation could present a complaint without encountering difficulties on the body's composition or terms of reference.

The representative of Nigeria said that both proposals formed a good basis for further consultation and eventual adoption.

The Director-General said he hoped that the Council's interest in both proposals had been prompted not by legal perfectionism but by a real awareness that behind the problems of dispute settlement were to be found industries, traders and people committed to international commerce, and that while a panel was being established and while it was deliberating, the problem which it was created to examine continued to exist, and the people concerned continued to look for justice. If this was the concern in the minds of Council members, then he agreed that it was important to look at the dispute settlement procedures in a spirit of detail and precision. It was because he had the feeling that a number of delegations were concerned by the problem of so much time being lost on formation of panels, that he had pushed ahead with the very modest proposal in L/5718. He wanted to make it absolutely clear that the Council remained sovereign in decisions regarding panel membership. Improvements to the text of the proposal could very easily be made; the vital thing was that the procedure should function. If any delegation had a problem with the text, it should contact the Council Chairman or the Secretariat so that any misgivings could be dispelled.

The representative of the United States said he hoped that the Council would agree to the proposal in L/5718 at its resumed meeting, and perhaps, if possible, the proposal in L/5720.

The representative of the European Communities fully endorsed the view put forward by the representative of the United States.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman drew attention to the revised text which had been circulated in L/5718/Rev.1.

The Council agreed to forward document L/5718/Rev.1 to the CONTRACTING PARTIES for consideration at their fortieth session.

The representative of Egypt asked whether the informal indicative list of governmental and non-governmental persons referred to in paragraph 13 of the 1979 Understanding was being maintained by the Secretariat. He also asked about the relationship between any new roster of non-governmental experts, as proposed in L/5718/Rev.1, and the 1979 Understanding taken together with the 1982 Ministerial decision on dispute settlement procedures.

The Director-General confirmed that the indicative list was being maintained by the Secretariat. He added that paragraph 13 of the 1979 Understanding referred to the first step in the selection of panel members; this first step would not be affected by the proposal in L/5718/Rev.1.

The representative of the European Communities said that his delegation provisionally agreed to the proposal in document L/5718/Rev.1; any final action on it could only be taken at the fortieth session of the CONTRACTING PARTIES. The Community understood that by adopting this document, the CONTRACTING PARTIES would neither directly nor indirectly be reopening either the 1979 Understanding or the 1982 Ministerial decision on dispute settlement procedures; they would only be improving those procedures.

The Chairman then turned to the Canadian proposal in L/5720, and said that during the informal consultations several delegations had supported the proposal, while others had not yet been able to take a final position. Some requests for further clarification had also been made. He therefore suggested that further consultations be undertaken after the fortieth session of the CONTRACTING PARTIES, with the aim of having a text ready for adoption at the next Council meeting. He added that Nicaragua had more recently put forward a proposal (L/5731) concerning implementation of panel reports; this document would also be considered in the further consultations, together with any other proposals that might be submitted by other delegations.

The representative of Nicaragua reiterated her delegation's support for the Canadian proposal, which Nicaragua understood should be considered in relation to paragraphs 22 and 23 of the 1979 Understanding and also to paragraph (viii) of the 1982 Ministerial decision on dispute settlement procedures. Her delegation considered that the time was now overdue for decisions of principle concerning dispute settlement procedures to be translated into action, and this was why Nicaragua had submitted its own proposal in L/5731.

The Council took note of the statements.

(d) Trade in Agriculture (L/5732, L/5733)

The Chairman recalled that according to the 1982 Ministerial decision, the Committee on Trade in Agriculture was to "report periodically on the results achieved and make appropriate recommendations to the Council and the CONTRACTING PARTIES for consideration not later than their 1984 session" (BISD 29S/17).

Mr. Kelly, Deputy Director-General, said that the Chairman of the Committee on Trade in Agriculture, Mr. Aert de Zeeuw, the Netherlands Director-General of Agriculture, had asked that the following information be given to the Council:

The Committee had been established to carry out a comprehensive examination of measures affecting trade in agriculture and to make recommendations with a view to achieving greater liberalization in the trade of agricultural products. The examination phase of the Committee's work had been substantially completed in early 1984; this

had involved the trade measures of 51 participating countries, as well as an examination of the operation of the General Agreement in relation to subsidies affecting agriculture, including export subsidies and other forms of export assistance. A meeting of the Committee at senior policy level in April 1984 had considered the conclusions to be drawn from this exercise, and had commissioned the Secretariat to prepare the text of draft recommendations, in consultation with the Chairman. The Committee had considered the initial and revised versions of this text at its meetings in June and September 1984, respectively; an explanatory note by the Secretariat on the general approach embodied in the draft recommendations had also been prepared. At the Committee's meeting in September 1984, divergent views had emerged on several aspects of these draft recommendations; amendments proposed by certain delegations had then been presented in the form of an alternative version of the draft recommendations. Since that meeting, the Chairman had held consultations with a view to achieving an agreed text. A further meeting of the Committee at senior policy level would take place on 15 November 1984.

The Council took note of the statement and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman reported that the Committee on Trade in Agriculture had reached agreement on recommendations (L/5732) to be made to the Council and the CONTRACTING PARTIES. Furthermore, the Chairman of the Committee, on his own responsibility, had submitted a report (L/5733) to the Council.

The Council took note of L/5733 and adopted L/5732 and the recommendations therein.

The representative of Spain said that his delegation accepted L/5732, but wanted to make the following points: (1) Spain had accepted the document in a spirit of compromise and as a demonstration of goodwill, so that work in the sector of trade in agriculture could continue; (2) Spain hoped that, in carrying out future work, full account would be taken of the terms of reference in the Ministerial decision (BISD 29S/16) and therefore that all matters should be examined "in the light of the objectives, principles and relevant provisions of the General Agreement"; (3) Spain hoped that thorough account would be taken of the balance of rights and obligations of the contracting parties and "of specific characteristics and problems in agriculture", as laid down in the Ministerial decision. It was therefore hoped that account would be taken of the differences existing between the agricultural sectors of individual countries and that, as a result, the work would take into account "the effects of national agricultural policies" as stated in paragraph 1 of that decision; those effects could not be the same when policies must of necessity be different owing to differing factors in individual contracting parties' agricultural sectors; (4) Spain hoped that due attention would be given to security of supply, and to the avoidance of export prohibitions and other

practices that could create serious difficulties for small producers and large importers in sectors that were of the greatest importance to them; (5) Spain hoped that, in dealing with the problems of agriculture with a view to achieving greater liberalization in the trade of agricultural products, the work would proceed in a manner that ensured advantages for all contracting parties and prevented a situation in which some obtained net advantages while others were harmed. This is what had been stated in other terms in paragraph 1(i) of the decision; and (6) Spain believed that agreements should be obtained by consensus, as he said was indicated in paragraph 7(v) of the Ministerial Declaration, and not by imposition. Spain hoped that future work would be carried out in a true spirit of concord and mutual understanding, and in a genuine sense of realism, in order to seek a balance between the interests and objectives of the agricultural policies of individual countries, with a view to obtaining a collective advantage; in other words, so that the greater adaptation of trade in agricultural products to the rules of GATT would produce an advantage for all contracting parties and for the multilateral system.

The representative of Austria said that his delegation, while not opposing acceptance of the recommendations in L/5732, regretted the absence in the heading of that document of a reference to the "specific characteristics and problems in agriculture", as mentioned in paragraph 2 of the Ministerial decision, on the same level as the "special needs of developing countries". Under "specific characteristics and problems in agriculture" his Government understood to be the principles and legal obligations of national agricultural policies. For Austria, this meant that security of supply and social and regional objectives had to be taken into account. Furthermore, his Government doubted whether it was useful to deal with matters such as variable levies and unbound duties in the Committee. Austria had recently introduced essential changes in its agricultural policy leading to a significant adjustment of market possibilities, and reserved its right to revert to detailed problems in the Committee's further work.

The representative of Finland, on behalf of the Nordic countries, said that the recommendations in L/5732 provided a good basis for continuing the Committee's work. Referring to paragraph 6 of L/5733, the Nordic countries understood that the Secretariat's explanatory note (AG/W/9) was without any legal status as to the Committee's work and had not been accepted by the Committee; in no way did it prejudice the positions of delegations in future work. As small producers and small markets, the Nordic countries were not major actors in international agricultural trade, but they had vital and traditional interests at stake. They attached great importance to the Committee's work and considered it to be one important element of the Work Program. They wanted to support the GATT system and work for its improvement. He said that in the Committee's future work, it would be important to respect fully all elements of the Ministerial decision; attempts to break the

delicate balance of that mandate would only lead to complications. Accordingly, future work on approaches governing market access, export competition and sanitary and phytosanitary regulations would have to be based, among other things, on all elements listed in paragraph 2 of that decision.

The representative of the European Communities drew attention to and confirmed the statement by his delegation as reflected in paragraph 7 of L/5733, namely that the Ministerial Declaration covered a certain number of areas and that the Community made its definitive approval of the Committee's recommendations conditional on an overall assessment of the results achieved in these other areas. The Community re-emphasized that the Work Program had resulted from a general compromise, and that progress in implementing the Program should be made on all items of interest to all contracting parties in a well-balanced manner, within the framework of that compromise. At the fortieth session, the Community and its member States would review progress achieved in each area and in the Program as a whole.

The Council took note of the statements.

(e) Quantitative Restrictions and other Non-Tariff Measures (L/5713)

The Chairman recalled that, according to the Ministerial Decision on Quantitative Restrictions and Other Non-Tariff Measures (BISD 29S/18), the Group was to make progress reports to the Council and present its complete report, containing its findings and conclusions, for consideration by the CONTRACTING PARTIES at their 1984 session. The Council had agreed in January 1983 that the Group be constituted, open to all contracting parties, to carry out the task described in paragraph 1 of the decision and to report to the Council as prescribed in paragraph 2. The Group's report had been circulated in document L/5713.

Mr. Onkelinx (Belgium), Chairman of the Group, presented the report. He noted that for practical reasons, the report was divided into two main parts but that it should be considered as a whole, since work on quantitative restrictions and other non-tariff measures had proceeded in parallel. The report contained a complete and detailed account of the work done as well as specific recommendations, in paragraphs 44 and 65, for further work in this area. In the final paragraph of the report, the Group had recommended that the CONTRACTING PARTIES might wish to consider that the Group should continue its work, with a view to making further progress in pursuance of the mandate given to it by Ministers and to presenting a report containing its findings and conclusions for consideration by the CONTRACTING PARTIES at their

next session. He noted that despite differences of views, particularly regarding the justification of measures and their conformity with the General Agreement, there had been a will in the Group for work to progress towards their elimination and liberalization. The fact that the Group had approved the report unanimously was proof of that will. He hoped that the Group's work and recommendations had led to the stage where decisions could be taken that would lead to early and fruitful negotiations.

The representative of Argentina deplored that the Group had produced only paltry results. In his view, it had done no more than compile necessary information, particularly as the suggestions by its Chairman, in paragraphs 23 and 24 of the report, had not been accepted by certain contracting parties which had shown scant will to cooperate and which did not want to have any detailed examination of measures not conforming to the General Agreement. Argentina considered that the Group's conclusions covered restrictions in all sectors, including agricultural trade where the greatest number of quantitative restrictions existed.

The representative of Norway, on behalf of the Nordic countries, said they were pleased that the Group had been able to reach consensus on recomendations to the CONTRACTING PARTIES containing proposals aiming at an overall liberalization of quantitative restrictions and non-tariff measures, thus meeting the main objective laid down by Ministers. The Nordic countries accepted the report and would participate actively in carrying out its recommendations. They also welcomed the recommended multilateral review, which would include the grounds on which measures were maintained and their conformity with the General Agreement. However, any successor body to the Group should not pronounce on the legality of a specific measure. Only the CONTRACTING PARTIES could do that, and GATT had appropriate dispute settlement mechanisms which could be invoked. Continued work was required in order to make further progress in pursuance of the Ministerial mandate, but unnecessary duplication of work between GATT bodies dealing with this subject should be avoided. More attention should be devoted to non-tariff measures other than quantitative restrictions.

The Council took note of the report and of the statements, and agreed to forward the report to the CONTRACTING PARTIES, with the recommendation that the Group's mandate be extended to allow it to make a report, with its findings and conclusions, for consideration by the CONTRACTING PARTIES at their next session.

(f) Tariffs

The representative of Chile said that there were some negative areas that needed resolute action if the circumstances preceding a broad new round of multilateral negotiations, and the conditions prevailing

after it, were to yield a significant improvement of the trade environment. Such was the case of tariff escalation. As had been noted in COM.TD/W/369 and TAR/W/29, "effective protection is higher, often considerably so, than nominal tariff rates seem to indicate". Solution of this problem, or substantial progress on it, would mean that any new round of negotiations could improve industrial investment possibilities for developing countries. The Secretariat had expressed its readiness to prepare additional studies on this subject and to co-operate in any new proposal. Nevertheless, examination of tariff escalation had been limited so far to procedural aspects regarding its application in the agricultural sector, and to its formal identification as a major problem in the Working Party on Trade in Natural Resource Products. The Ministerial decision (BISD 29S/18) on this subject was not being fulfilled, and by postponing in-depth examination of this issue a situation was being perpetuated which had a negative impact on North-South trade relations and was hindering progress of the world economy toward a division of labour based on efficiency and comparative advantage. There was a need for the developing countries to identify the extent to which tariff escalation was affecting their development needs and plans. Such identification could be carried out in the Committee on Trade and Development, and could be included as a regular agenda item so that countries affected could report their experiences and assemble the necessary knowledge to be able to take up the matter on a practical and systematic basis.

The Council took note of the statement.

(g) MTN Agreements and Arrangements

The representative of Egypt endorsed the statement by the representative of Chile[1] on aspects of the Work Program not mentioned on the agenda of the present meeting. His delegation was particularly concerned at the small number of developing countries that had signed the MTN Agreements and Arrangements, and at the reasons for this. The Ministerial decision (BISD 29S/18) on this item provided that the CONTRACTING PARTIES should review their operation and that the review should focus on their adequacy and effectiveness, and on the obstacles to their acceptance by interested parties. The problem here was more than simply a lack of knowledge among certain developing countries concerning these instruments; the real problem was that there were certain obstacles which discouraged some developing countries from signing them, and which caused difficulties even for some of those few developing countries that had already signed. He reiterated his delegation's proposal at the thirty-ninth session (SR.39/2, page 4) for working parties to be established to examine this subject, and asked the Chairman to include this issue in the informal consultations to be conducted on various elements of the Work Program.

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[1] See page 8 under sub-item (a).

The representative of Colombia said his delegation was astonished that the subject of MTN Agreements and Arrangements had not been put on the agenda of the present meeting automatically, in view of the Ministerial decision on this subject. So far, that Ministerial mandate had only been followed in a very limited way, although the Committee on Subsidies and Countervailing Measures had held some informal consultations which might yet produce some satisfactory results for the parties concerned. Colombia considered that the basic reason why more developing countries had not signed the MTN instruments was because there had been a lack of transparency in the operation of the various bodies. Colombia therefore proposed that all the MTN bodies should include this issue as a priority at their next meetings, and should submit reports on their conclusions to the Council for consideration before a meeting of the CONTRACTING PARTIES in mid-1985. Also, while a study had been made of obstacles lying in the path of the developing countries to access to MTN bodies, nothing had been said about the effectiveness of the Agreements, as requested by Ministers. Therefore, Colombia proposed that the Secretariat make a report on this subject; it could be studied by a working party set up for that purpose, which should also report on its work in mid-1985.

The representative of Jamaica supported the proposal by the representative of Colombia and recalled that at the Council meeting on 13 March 1984, his delegation had called for an early substantial review on how to bring the MTN Agreements and Arrangements into line with the GATT framework. Such a review should be carried out in a serious manner, rather than included in marginal and not very transparent reports by the MTN bodies, or left to informal consultations. In his view, GATT was becoming too informal a body, with too many informal consultations and informal results; this was undermining formal GATT decision-making, rules and disciplines.

The representatives of Argentina and Yugoslavia supported the statements and proposals made by the representatives of Egypt, Colombia and Jamaica.

The representative of the United States said he had taken note of the views expressed on informal procedures, and recalled that he had made similar remarks on different issues. The United States did not want to hold back work on examining the MTN Agreements and Arrangements, which were an integral part of GATT. He would consult with his authorities on this issue.

The representatives of Malaysia and Peru supported the statement by the representative of Colombia.

The representative of the European Communities said that this was not a new issue, and wondered what new elements there might be to justify the establishment of a working party. He would seek appropriate instructions from his authorities to see what action could be taken.

The Council took note of the statements and agreed that informal consultations should continue.

Following the informal consultations, the Council reverted to this matter at its resumed meeting. The Chairman drew attention to document C/W/456 containing a draft agreement for consideration and adoption by the Council.

The Council approved the text of document C/W/456 and agreed to forward it to the CONTRACTING PARTIES for consideration at their fortieth session.

The representative of the European Communities emphasized that his delegation's agreement to approve the proposal in C/W/456 was provisional in the sense that treatment of this matter was to be seen as being within, and not additional to, the Ministerial Work Program.

The Chairman said that the point made by the representative of the European Communities was fully understood by the Council and had also been understood in the same way by delegations during the informal consultations.

The Council took note of the statements.

(h) Structural Adjustment and Trade Policy
- Report of the Working Party (L/5568)
- Proposal by Canada (C/W/454)

The Chairman recalled that the Council had considered the Working Party's report (L/5568) in November 1983 and February 1984. Previously, in June 1981, the Council had decided that future reports by the Working Party should be transmitted to the Committee on Trade and Development and to the Consultative Group of Eighteen before being submitted to the Council. Accordingly, this report had been discussed in the Committee on Trade and Development in November 1983, and subsequently in the Consultative Group of Eighteen in July 1984. He added that there appeared to be no difficulty in the Council's now adopting the report; by doing so, it would also adopt the recommendation in paragraph 47 that the Council ask "relevant GATT bodies to take into account the insights gained and conclusions reached in the Working Party". The Working Party had also considered that the GATT should continue to focus attention on the question of structural adjustment and its relation to trade, in the light of the conclusions in paragraphs 40-46 of the report, and had recommended that the Council decide how this might be undertaken. Some delegations had suggested that a special body be established to continue work in this area, and a specific proposal by Canada had been circulated in C/W/454.

The representatives of Canada, United States, Egypt, Norway on behalf of the Nordic countries, New Zealand, Switzerland, the European Communities and Chile supported adoption of the report, including its recommendations (1) that the Council ask relevant GATT bodies to take the Working Party's insights and conclusions into account, and (2) that GATT should continue to examine the relationship between structural adjustment and trade policy. However, there were differences of view on how and in exactly what forum such further examination should take place.

The representative of Canada said his delegation believed it was important that there be a place within GATT where the relationship between trade and structural adjustment could be kept under review, with attention focused on current problems; consequently, Canada had proposed in C/W/454 draft terms of reference for a revived working party. These terms would provide for a continuing analysis of how trade policy measures affect structural adjustment, and for an annual report to the Council; they would also encompass some essential groundwork for analysing the trade effects of structural adjustment policies. The draft terms of reference appeared to his delegation to meet the main priorities, identified in consultations over the past year, on the many possibilities for advancing work in this area; this was an objective which most contracting parties had supported.

The representative of India supported the proposal by Canada in C/W/454. Within these broad terms of reference, India believed that future work on this question should focus specifically on three aspects: (1) it should give priority attention to sectors such as textiles and clothing in which pressures for protective action had repeatedly been felt; (2) an analysis should be attempted of the reasons why governments had been unable to allow operation of the autonomous adjustment process; and (3) work should focus on how trade policy actions could achieve GATT objectives in the context of the operation of the autonomous adjustment process.

The representative of the United States said there appeared to be general agreement that structural adjustment was necessary if the liberal trading system, as it existed today, was to survive. However, there seemed to be a lack of precision in knowing exactly what structural adjustment really meant. It might be different for some countries than others, and the present discussion seemed premature. He noted that the adjustment exercise was also being examined as a component in the discussions on safeguards which would, in his delegation's view, be a more appropriate place for looking at this subject. In that forum, one could examine specific cases where an action was being taken, where and when protection was provided, and what efforts were being made to adjust in a specific industry.

The representative of Egypt supported adoption of the report and particularly its recommendation in paragraph 47 that work on structural adjustment should continue. He also supported Canada's proposal and the statement by the representative of India.

The representative of Norway, on behalf of the Nordic countries, said they considered it premature to set up a new working party at this stage. The question of a separate body for structural adjustment could be discussed later in the light of a broader implementation of the Work Program. Canada's proposed mandate for a new working party represented little or nothing new, and a body with those terms of reference would to a large extent only repeat work that had already been done; it also represented a sectoral approach that the Nordic countries did not find useful.

The representative of New Zealand said that structural adjustment was a concept which underlined GATT's free trade principles and which had implications and inter-linkages with all sectors. His delegation supported Canada's proposed terms of reference for a revived working party, and agreed with the suggestions made by the representative of India for more precision. New Zealand did not see such continued work as a substitute for discussing structural adjustment in other GATT bodies, such as the Committees on Safeguards and Trade in Agriculture. His delegation would not want to repeat the earlier country-submission exercise, nor would it want a reactivated working party to duplicate work done in other bodies.

The representative of Switzerland said that for his country, structural adjustment was a very real problem, involving many of GATT's activities, and it was therefore important not to adopt illusionary decisions on this subject or to treat it in isolation from other general questions which might arise in the framework of the General Agreement. In principle, Switzerland was not against an institutional mechanism of some kind to continue dealing with this problem. However, at this stage, it believed that the procedural proposals made by the representative of Canada and India required further reflection.

The representative of the European Communities said that structural adjustment was a permanent problem in many of GATT's activities; for example, the Textiles Committee had found it necessary to set up the Sub-Committee on Adjustment. It was not necessary to duplicate the work already entrusted to such bodies, and the Community shared the view expressed by the representative of the United States that it was premature to take a decision on Canada's proposal. This problem was linked to others under discussion in the Work Program, such as safeguards.

The representative of Canada said that his delegation wanted to maintain its proposal if the Council decided that it was not yet ripe for adoption. He agreed that structural adjustment problems were being discussed in the Committee on Safeguards, although that body had not spent much time so far dealing with the fundamental issues of structural adjustment; that practice would probably not change. This was a continuing problem, and it was necessary not merely to address the

symptoms, as was done for example in the Committee on Safeguards, but the nature of the illness itself, and to consider possible cures, even if contracting parties had to look uncomfortably close to home. Notwithstanding the excellence of the Working Party's report, it had become necessarily dated by the time it was submitted; the world was not standing still and future work had to be done on this permanently difficult issue. The proposal in C/W/454 might by some be considered premature, but in Canada's view it was long overdue.

The representative of Chile said that Canada's proposal was well-directed; maybe it could be perfected and used as the basis for eventual consensus. He stressed that the examination of structural adjustment was far from finished, and was enmeshed in all GATT's field of activity. It was true that this issue was closely linked with matters such as subsidies and safeguards, but a global perspective and examination of the relationship between structural adjustment and trade policy would continue to be required. The discussion at the Council's special meeting, just prior to the present meeting, would have benefitted from an up-dated version of the report in L/5568.

The representative of the European Communities said his delegation would continue to reflect on the statements at the present meeting. GATT should examine the impact of structural adjustment policy measures on trade, and not the policies themselves, which were a matter of national sovereignty. For example, it was useful to examine a safeguard measure which was accompanied by a measure in the field of structural adjustment. Similarly, the Textiles Committee had to deal with structural adjustment because structural adjustment measures had been adopted in the framework of the MFA. Elsewhere, one could not generalize the task, so the Community could not at this stage envisage a new working party whose only task would be to deal with structural adjustment.

The Council agreed (1) to adopt the report (L/5568), together with the recommendation contained in paragraph 47 asking relevant GATT bodies to take into account the insights gained and the conclusions reached in the Working Party; (2) that informal consultations should continue on the further work that might be done in this area and on the question of establishing a specific body for that purpose; (3) that the Canadian proposal in C/W/454, and any other proposals received, should be taken into account; and (4) that the Council would revert to this question after the fortieth session of the CONTRACTING PARTIES.

(i) Trade in Counterfeit Goods
- Report by the Chairman on informal consultations
- Request for establishment of a working party (C/W/451)

The Chairman recalled that the Ministerial Declaration called for the Council "to examine the question of counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework

and, if such joint action is found to be appropriate, the modalities for such action, having full regard to the competence of other international organizations" (BISD 29S/19). During the course of 1984, he had informed the Council on several occasions of developments in the informal consultations that he had been conducting to facilitate the decisions that the Council was required to take on this matter. His present report aimed to describe developments over the year as a whole in more detail.

On 7 February 1984, he had informed the Council that the Secretariat had been asked to put together a background paper designed to facilitate the further work, on the basis of information supplied by interested delegations and information available in the secretariat of relevant organizations, including the World Intellectual Property Organization (W.I.P.O.). He added that it had been agreed in the informal consultations that the paper would deal with a number of points which needed to be to examined in order to assist in the determination of the appropriateness of joint action in the GATT framework. The points were the following: what was meant by trade in counterfeit goods; what was the nature of the problem to be addressed; what was the size and significance of international trade in counterfeit goods; what international law dealing with such trade presently existed; what were the GATT provisions bearing on trade in counterfeit goods; what could be said about the application and use of existing international rules and procedures; what were the types of measures and procedures embodied in national legislation aimed at dealing with trade in counterfeit goods; what in general terms could be said about their adequacy in discouraging trade in counterfeit goods; what could be said about the need for provisions and procedures directed specifically towards dealing with counterfeit goods which are imported as opposed to goods which are produced or sold in the country; what special provisions and procedures might be involved; why did some governments consider present possibilities for action inadequate, and feel the need for additional multilateral action in this area; what considerations relevant to this matter, e.g. the need to ensure that new obstacles to legitimate trade or for unjustified discrimination were not created, would need to be taken into account in any action undertaken in the GATT framework? On 11 July 1984, he had informed the Council that the Secretariat had made a draft of the paper available to interested delegations in order to provide an opportunity to comment or to provide additional information. He had added that there would be further informal consultations with respect to examination of the points covered by the paper. On 2 October 1984, he had made a further report to the Council, indicating that the informal consultations were continuing and were focusing on the points dealt with in the Secretariat paper. In the course of these and the earlier consultations, a number of substantive comments had been made on issues dealt with in the Secretariat paper, and some suggestions had also been made for extending the analysis in

the paper. He said that the Secretariat would revise its paper in the light of these comments, as well as of comments and information transmitted directly to it by delegations. In addition, the Consultative Group of Eighteen had discussed the matter at its October 1984 meeting.

Addressing substantive questions in the course of these consultations and discussions, some delegations had repeated their view that, because problems of trade in counterfeit goods were important and growing, the GATT should do something about them urgently. There was widespread recognition that a problem existed and that GATT's concern was with the trade aspects; but to some delegations it remained a matter of low priority. Concern had been expressed about the danger that action to combat trade in counterfeit goods could lead to the creation of new, and perhaps discriminatory, obstacles to legitimate trade; the need to safeguard against such danger had been stressed. It had been noted that a number of countries had recently taken or were considering unilateral action against imports of counterfeit goods. The point had been made that any such action should be taken in conformity with obligations under the General Agreement. The question had been discussed of whether work in this area should look only at problems of counterfeiting related to the unauthorized use of trademarks or whether certain other types of intellectual property infringement, for example that of industrial designs, might also be covered, perhaps at a later stage. Views had been put forward on the adequacy of existing national and international law, in particular that of W.I.P.O., and on how and where such law might most appropriately be improved if it were found to be less than adequate in certain respects. Points had been made concerning the relationship between action against the domestic production of counterfeit goods and action specifically directed against imports of such goods, and also, in this connexion, to the respective rôles that the national judicial and administrative authorities should play. There was a general view that the above points, and possibly certain others, needed to be examined in greater detail before the Council could be expected to take the decisions required of it by the Ministerial Declaration.

As for procedure, i.e., how such further examination might be undertaken, some delegations in the informal consultations had urged the establishment of a working party. Others had favoured intensifying the present process of informal consultations. He then drew attention to the request by the United States (C/W/451) for establishment of a working party. He added that this proposal had been taken up in the informal consultations during the previous week, but that a number of delegations had expressed difficulty in addressing themselves to the US request, preferring that the matter be dealt with directly in the Council.

The representatives of the United States, India on behalf of developing contracting parties, Canada, Argentina, the European Communities, Finland on behalf of the Nordic countries, Korea, New Zealand, Japan, Switzerland, Brazil and Egypt thanked the Chairman for his detailed report. The Secretariat paper was commended by many delegations as useful. There was general agreement that a problem did exist in trade in counterfeit goods, but different views were expressed over GATT's responsibility and competence, and how further work should be carried out.

The representative of the United States said it was clear that there was little disagreement that trade in counterfeit goods could have an adverse impact on contracting parties, both in terms of economic disadvantage to producers of legitimate goods, and in terms of health and safety risks to consumers. In recognition of the growing seriousness of these problems, an increasing number of countries had stepped up their efforts to stem the flow of counterfeit goods through enactment and enforcement of more stringent anti-counterfeit laws. While these efforts were to be applauded, it was clear that on the whole they had been insufficient to deal with the problem. It was also clear that while a number of international mechanisms existed for discouraging commercial counterfeiting, these too had been inadequate in dealing with the problem. Additional action at the international level was therefore necessary. A legitimate concern existed that measures taken to combat trade in counterfeit goods not become barriers to legitimate trade. At the present time, there were few restrictions which circumscribed the range of actions contracting parties might take to enforce their trademark laws, provided those laws were GATT-consistent. The time had come for the Council to act. The most appropriate means to accomplish further work towards the decisions required of the Council by Ministers in 1982 was a working party with membership open to all interested contracting parties. He concluded by adding that trade in counterfeit goods had expanded into new and dangerous areas, and that GATT inaction would be difficult to justify in view of the danger to health and safety that could be involved.

The representative of India, speaking on behalf of developing contracting parties, said that even though the Chairman's informal consultations and the Secretariat paper had led to a deeper understanding of the trade aspects of commercial counterfeiting, some of the fundamental issues which confronted Ministers in 1982 still remained unclear. For instance, issues pertaining to the legal and institutional competence of other international organizations, specifically W.I.P.O., were still unresolved. Developing contracting parties were keen to ensure that the trade disruptive and inhibiting effects of commercial counterfeiting should be curbed. To that end, the Paris Convention for the Protection of Industrial Property provided for action to deal with counterfeit goods both at the border and at the point of production. Furthermore, there was no possibility that GATT could settle the essential question of what was counterfeit and what was not, a question

which could only be settled in the domain of industrial property. It seemed clear to the developing contracting parties that the Paris Convention contained all the basic rules to deal with this problem, both from the trade and the production angles, and was therefore a more effective instrument than GATT for the desired purpose. If it was felt that specific measures were required to ensure the effective application of such rules in national legislation, then governments should take action to draft and approve, in W.I.P.O., the necessary international regulations. The basic rules already contained in the Paris Convention did not need to be altered or revised for this purpose. If developed contracting parties so wished, the developing contracting parties that were also members of W.I.P.O. would be ready to initiate joint appropriate action in that forum. In this connexion, he noted that the Director General of W.I.P.O. had recently invited the member countries of that organization to communicate to him any activity they would wish to see included in the draft program and budget. The developing contracting parties were surprised that even though informal consultations were continuing, some delegations had seen fit to request establishment of a working party in GATT at this stage. Developing contracting parties did not rule out examination of the question of counterfeit goods in GATT; they believed, however, that this stage had not yet been reached, and it might well prove to be unnecessary.

The representative of Canada supported the US request for a working party. The Secretariat paper showed that trade in counterfeit goods was an increasing problem in international commerce. Existing mechanisms were not perceived by some governments as adequate to deal with the issue, and there were clear signs that some major governments were intending to take steps, unilaterally if necessary, to address the problem. The best way to ensure that new non-tariff barriers to trade were not brought into force was to have a full airing of this issue multilaterally in GATT, which was where contracting parties, individually and collectively, could best protect their interests.

The representative of Argentina supported the statement by the representative of India. Competence to deal with this matter at a multilateral level lay with W.I.P.O., not GATT. There must be a combination of wills on the part of contracting parties to undertake any multilateral activity of this kind, and this would depend on a political decision which would take due account of the priorities established by every government involved. In any event, Argentina considered that the subject of counterfeit goods was better dealt with bilaterally. The US proposal presupposed an equal interest for all contracting parties in this matter, and this was something that could not at present be assumed. Consequently, Argentina supported continued informal consultations.

The representative of the European Communities supported the US request for a working party. There was a serious risk in letting this matter grow more and more complicated without the prospect of effective results. Trade in counterfeit goods had been estimated at between one and two per cent of trade in manufactured products, and if GATT showed itself incapable of at least bringing some discipline into this area, there would be trouble. In industrialized countries, if legitimate rights in design, creation and imagination were not properly protected, the people involved might become so discouraged that they would begin seeking autonomous protectionist measures. In his view, W.I.P.O. did not offer a viable alternative to GATT for taking effective action on the trade effects of commercial counterfeiting. If a contracting party had for years been trying fruitlessly in GATT to co-operate multilaterally on this problem, it would understandably feel frustrated and be tempted to take unilateral measures. He appealed to all contracting parties to face up to this problem.

The representative of Finland, on behalf of the Nordic countries, noted that they had not been among those countries strongly advocating further work in this field within GATT, largely because they felt that protection in the Nordic countries against trade in counterfeit goods had been satisfactory. For them, some other forms of violation of intellectual property rights, for instance unauthorized use of industrial designs, caused more problems than trademark infringements. However, they agreed that there was a need for further exploratory work, related to the trade aspect of commercial counterfeiting, to be done within GATT. This work would not exclude the examination, perhaps at a later stage, of other forms of intellectual property than trademarks, such as violation of industrial designs. They supported establishment of a working party with the mandate proposed in C/W/451.

The representative of Korea supported the statement by the representative of India, including his suggestion that further informal consultations should be held.

The representative of New Zealand said that preventive measures were preferable to taking legal action to enforce trademarks, particularly in light of the difficulties incurred in obtaining relief against foreign parties. An extension of multilateral disciplines might limit abuses in this area and deserved further examination. Therefore, New Zealand supported the US proposal in general terms; however, his delegation could accept that a decision be deferred pending further consultations.

The representative of Japan agreed there was a real danger that action to combat trade in counterfeit goods could lead to new and perhaps discriminatory obstacles to legitimate trade. A problem did exist; and GATT was competent to deal with it. He understood that a

number of countries had recently taken or were considering unilateral action against imports of counterfeit goods. Such action should be strictly limited and in conformity with GATT obligations. His delegation supported establishment of a working party as proposed in C/W/451.

The representative of Switzerland said that it was essential to distinguish between counterfeiting as such and the question of trade in counterfeit goods, where the competence of GATT was clear. Switzerland agreed that it would be appropriate to examine in a GATT body whether multilateral action in GATT on the trade aspects of counterfeiting should be taken. His delegation was open as to the procedures to be chosen, including the possibility of establishing a working party.

The representative of Brazil endorsed the statement by the representative of India. His delegation was concerned by the suggestion that if nothing were done multilaterally in GATT, then something would be done unilaterally and with no assurance that it would be consistent with GATT principles. His delegation could not accept this assumption. Contracting parties were bound to comply, in whatever actions they took, with their GATT obligations. Furthermore, Brazil considered that W.I.P.O. was an organization which went much further than simply passing resolutions; it negotiated treaties and conventions which had a binding force on countries prepared to accept, sign and ratify them.

The representative of the United States said that work in GATT on this issue would be complementary rather than contradictory to the work pursued in W.I.P.O. Work in GATT needed to continue, and in a formal working party, especially in view of complaints, including those by developing countries, that informal consultations were sometimes untransparent, exclusive and unsatisfactory.

The representative of Egypt endorsed the statements by the representatives of India and Brazil.

The Council took note of the Chairman's report and of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

(j) Export of Domestically Prohibited Goods (C/W/457)

The Chairman drew attention to a draft airgram (C/W/457), noting that it was the outcome of informal consultations held on this subject and that, if approved, it would be issued in early December. It was his understanding that in preparing the documentation referred to in paragraph 4 of the draft airgram, the Secretariat would consult with other international organizations, including the World Health Organization.

The representative of the European Communities said that his delegation did not oppose the Council's provisional approval of the draft airgram. However, the Community had a waiting reservation on this matter as there were certain ramifications which the Community had not yet been able to identify. His authorities were now consulting on this with the member States.

The Council took note of the statements, approved the text of C/W/457, and agreed to forward it to the CONTRACTING PARTIES for consideration at their fortieth session.

(k) Textiles and Clothing
- Progress report of the Working Party (L/5709)

The Chairman recalled that in May 1984 the Council had established a working party "to examine modalities of further trade liberalization in textiles and clothing ... and present its conclusions to the Council in time for the Council to submit the matter for consideration by the CONTRACTING PARTIES at their session in November 1984" (C/W/440).

Mr. Mathur, Deputy Director-General, Chairman of the Working Party, introduced the progress report. He recalled that the CONTRACTING PARTIES had decided in November 1982 (a) to carry out on a priority basis a study on textiles and clothing; (b) to examine expeditiously, taking into account the results of such a study, modalities of further trade liberalization in textiles and clothing, including the possibilities for bringing about the full application of GATT provisions to this sector of trade; and (c) that this work should be completed for consideration by the CONTRACTING PARTIES at their 1984 session (BISD 29S/20). Pursuant to these decisions, a background study entitled "Textiles and Clothing in the World Economy" had been prepared by the Secretariat and circulated in May 1984. Also in May 1984, the Council had agreed to set up the Working Party on Textiles and Clothing to fulfil the rest of the Ministerial decision in respect of textiles and clothing. The progress report before the Council in L/5709 described the Working Party's activities and its progress since establishment. The Working Party had agreed essentially on a procedure for carrying out the examination entrusted to it, and had begun discussing a number of

elements that needed to be explored, but the greatest part of its substantive work still lay ahead. It was evident that this work would need to be carried forward in a time-frame that took into account its place in the Ministerial Work Program and also permitted it to be related to other ongoing discussions on the future of policies governing trade in textiles and clothing. In the final paragraph of its report, the Working Party had noted that it was unable to complete its work in time for consideration by the CONTRACTING PARTIES at their 1984 session. Accordingly, the Council might want to consider extending the Working Party's mandate for such further period as would permit it to make a more complete report to the Council and the CONTRACTING PARTIES.

The representative of Pakistan, speaking on behalf of developing country exporters of textiles and clothing, suggested that the Council adopt the progress report. Unfortunately work on this issue, which was of considerable importance to many developing countries, was being undertaken in a trading environment which was not conducive to seeking modalities for trade liberalization. The developing countries hoped that this environment would improve and thus help a genuine search for trade liberalization in textiles and clothing.

The representative of the European Communities said he had the feeling that GATT was starting to change direction on textiles and clothing for the first time in many years. The Community supported extension of the Working Party's mandate and hoped its work would be finalized as soon as possible, say towards mid-1985. He stressed that all options mentioned in the report should be explored by the Working Party before its work was finalized. The Community favoured any solution directed towards setting up as liberal a régime as possible in due course. "Full application of GATT provisions" was a phrase which had to be examined very carefully, and liberalization might even go beyond the provisions of the General Agreement.

The representative of the United States said that there was a lot of pain in moving ahead with this work, and this was widely recognized. He said that the Ministerial Declaration had been agreed as a balanced package. The United States had not tried to block work on this area; in fact, his delegation had tried to work very constructively, which it was necessary for all participants to do if the work was going to move forward in a meaningful way. The United States would, however, want to look at the total package before agreeing on how this work should proceed.

The representative of Pakistan said that the developing countries had agreed to the Ministerial decision on textiles and clothing without any linkage to other elements in the Work Program. The developing countries saw this as an exercise at bringing textiles and clothing back into the fold of GATT, and the Working Party had rightly agreed to begin the examination by looking at what had been called the first option, i.e., the full application of GATT provisions to trade in this area.

The representative of the United States said it would be very difficult for his delegation to move forward only on textiles and clothing. He noted that informal consultations would continue on other items of the Work Program, trade in counterfeit goods for example, which would allow time for informal consultations on textiles and clothing, as on other items in the Work Program which required further reflection before agreement could be reached.

The representative of Pakistan said that each element in the Work Program had its own dynamics and should be allowed to proceed in a free atmosphere without being tied to other elements. In the case of the Working Party, it had just begun its work and would need to resume in 1985, which was why an extension of its mandate had been recommended.

The representative of the European Communities said that he could understand the point of view expressed by the representative of the United States. It had to be recognized, of course, that in this particular instance, the Working Party's mandate was far from fulfilled, which was frustrating for his and some other delegations because the options in which they were interested had not even been touched. Nonetheless, it was difficult for many delegations if work progressed only in one area and not in others. He agreed that informal consultations would indeed be needed to see how the work in this area, along with others, could be moved ahead in a balanced manner.

The representative of the United Kingdom, on behalf of Hong Kong, noted that the representative of the United States had linked further consultations on textiles and clothing to informal consultations on counterfeit goods. However, the latter discussions had never progressed beyond informality, while as regards textiles and clothing, there was already a working party. To go back to informal discussions would be a step backwards. It was hard to see any justification for linking these two subjects. The Working Party on Textiles and Clothing was still necessary because the problem for which it was set up was still there, i.e., to consider what should be done after expiry of the current MFA in terms of liberalizing trade in textiles and clothing, bearing in mind paragraph 7(viii) of the Ministerial Declaration.

The representative of Egypt reiterated his delegation's view that each item in the Work Program had to be treated individually, according to its specific Ministerial mandate.

The Council took note of the progress report and of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

(1) Problems of Trade in Certain Natural Resource Products - Progress report by the Chairman of the Working Party (MDF/3)

The Chairman recalled that on 13 March 1984, the Council had established the Working Party on Trade in Certain Natural Resource Products to study the three sectors of non-ferrous metals and minerals, forestry products, and fish and fisheries products, and to make separate reports for each sector. The Working Party had been requested to submit a progress report to the CONTRACTING PARTIES at their fortieth session in 1984.

Mr. Cartland (United Kingdom/Hong Kong), Chairman of the Working Party, made a report (MDF/3) on the work that had taken place in all three sectors since establishment of the Working Party, and indicated the work that was planned for the future. The Working Party had held a number of meetings in June, September and October to examine both tariff and non-tariff measures affecting trade in these products, basing its work on background studies prepared by the Secretariat in all three areas. It had been decided inter alia that the studies would be updated and reissued, as amended, to reflect corrections and comments made by delegations. The Working Party expected to pursue its activity in 1985.

The representative of Canada said that his delegation continued to attach high priority to work on trade in natural resource-based products. It was essential for the Working Party to continue expeditiously its examination of trade problems affecting non-ferrous metals and minerals, forestry products and fish and fisheries products. The Working Party had already identified some significant problems affecting trade in products which had been considered so far. Canada looked forward to completing an analysis of the remaining products as well as to addressing recommendations which it expected the Working Party to develop before the summer of 1985.

The representative of Peru hoped that the Working Party's work would continue as effectively as it had so far, and that it would be in a position to make recommendations to the CONTRACTING PARTIES, as required by the Ministerial Decision on this subject (BISD 29S/20).

The representative of Chile supported the statements by the representatives of Canada and Peru.

The Council took note of the report and of the statements, and agreed to forward the report (MDF/3) to the CONTRACTING PARTIES for consideration at their fortieth session.

(m) Exchange Rate Fluctuations and their Effect on Trade - Statement by the Chairman

The Chairman recalled that at its meetings on 13 March and 15/16 May 1984, the Council had discussed the Study on "Exchange Rate Volatility and World Trade" issued with document L/5626. At the latter meeting, the Council had agreed that informal consultations should be held on the impact of erratic exchange rate fluctuations on trade and their implications for the General Agreement. Subsequently, he had informed the Council on 14 June that the informal consultations had begun, and the Council had agreed to revert to this matter at a future meeting when they had progressed further.

He then made a brief summary, on his own responsibility, of the views which had been expressed during those consultations among interested contracting parties. The consultations had been conducted against the background of the Study and of a number of other papers on the subject.

Some participants had expressed the view that the IMF's presentation of the Study had not exhausted the 1982 Ministerial request concerning the effects of erratic exchange rate fluctuations on trade (BISD 29S/21). The main question concerned the reactions of traders and the effects these might have on trade and trade policies. Erratic fluctuations could have an inhibiting effect on commercial risk-taking generally; this could lead to greater dependence on domestic markets and to increased protectionist pressures, and could discourage investment. While difficult to quantify, additional costs imposed on traders could be serious at the margin. Other participants had noted that exchange rate risk was only one of many factors - and frequently only a minor factor - affecting international trade flows. There was a possibility for exchange rate risks to be offset throught forward currency markets, and for export markets to be diversified. The IMF Study had shown no clear evidence of a statistically significant link between exchange rate variability and trade, nor any consistent evidence that recent exchange rate fluctuations had reduced the level of international trade or investment. Variations in exchange rates essentially reflected underlying economic and financial conditions as well as expectations regarding future developments. The floating exchange rate system had made a positive contribution to the maintenance of international trade and payments and to the global adjustment process. Clearly, "erratic" exchange rate fluctuations could not justify protectionist measures, which would not resolve the uncertainty and could even aggravate it. Trade measures imposed in recent years had been introduced in response to a number of factors, other than exchange rate variability per se.

In relation to the operation of the General Agreement, several participants had said that exchange rate variability might have effects on such aspects as the basis for calculation of anti-dumping or countervailing duties as well as for the application of safeguard

provisions. The possible impact on bound tariff rates had also been referred to. Rapid appreciation of exchange rates could also result in surges of imports into particular countries, leading to demands for greater protection. A number of participants had noted that currency instability might have more serious effects on traders in developing countries than in major developed countries, due to a number of factors such as forward currency facilities being less readily available or more expensive, production and trade being less flexibly adjusted to changes in the external environment; and protectionist pressures being related particularly to products of export interest to developing countries. However, insufficient data were available to permit a clear assessment of the problem. The IMF Study had been based exclusively on data relating to developed countries. He concluded by saying that only a limited number of delegations had expressed views so far, and his brief summary could not be taken to reflect the full spectrum of opinions on the subject. Informal consultations were continuing with a view to reaching a consensus on what the Council might be invited to say or do in this matter. He would report on the outcome of these consultations in due course.

The representative of Jamaica drew attention to an UNCTAD study (UNCTAD/TDR/4), which he considered to be excellent, on the effects of floating exchange rates. The UNCTAD study had put the issues of uncertainty, investment, impact on developing countries and other factors into a proper perspective.

The representative of the European Communities said that the result of the consultations on this subject was part of the Ministerial Work Program package, which would have to be assessed as a whole, whether progress had been made or not.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

(n) Services
- Request for establishment of a working party (C/W/453)

The Chairman recalled that in the 1982 Ministerial Declaration, the CONTRACTING PARTIES had recommended "to each contracting party with an interest in services of different types to undertake, as far as it is able, national examination of the issues in this sector." They had further invited contracting parties "to exchange information on such matters among themselves, inter alia, through international organizations such as GATT". The decision had also stated that "the

compilation and distribution of such information should be based on as uniform a format as possible". The CONTRACTING PARTIES had decided to review the results of these examinations, along with the information and comments provided by relevant international organizations, at their 1984 session, and to consider whether any multilateral action in these matters was appropriate and desirable (BISD 29S/21). In January 1983, the Council had taken note of the decision on Services, including the recommendation and invitation to contracting parties, and informal consultations had been held concerning certain points related to the decision; the consultations were continuing.

He then drew attention to document C/W/453 containing a request by the United States for establishment of a working party on trade in services and proposing a decision on this item.

The representative of the United States said that in view of the fact that his country was facing huge and ever-increasing trade deficits, proponents of liberal trade were becoming scarcer as time went by. One of the few hopes of gaining support in the United States for the pursuit of liberal trade lay in the achievement of some kind of progress on services. This made sense, because the US economy was shifting towards services and away from basic manufacturing. Since the Ministerial decision, eight studies had been put forward and examined, leading to a better understanding of the issues. Given the fact that these studies covered the bulk of international trade in services, it was now time to establish a formal working party to look into this issue further. Such a move would enable broader distribution of documents, better understanding of the issues, and further GATT involvement in the subject, all of which would enhance the ability of the United States to pursue a liberal trading policy.

The representative of Sweden, on behalf of the Nordic countries, supported the US proposal. The Nordic countries considered that in order to fulfil the mandate from the Ministerial meeting, further work had to be carried out in the framework of a more formal structure, so as to enable appropriate reporting on the results of national examinations as well as on information provided by relevant international organizations.

The representative of Yugoslavia said that although the question of trade in services was important for her country, it was premature to establish a working party at this stage. Her delegation proposed further informal consultations. If some major industrialized countries needed as much as two years to produce national studies, countries such as her own would need much longer to consider action on this subject.

The representative of Japan said that his Government had prepared a national study as well as a comparative study on issues involved in trade in services. These had revealed a series of important problems deserving closer international focus in GATT. Japan considered the time

had come to establish a formal structure within GATT to fulfil the relevant Ministerial mandate, and hoped that consensus on this issue would be reached before the fortieth session of the CONTRACTING PARTIES. A decision to set up a formal structure would not prejudge future action or prejudice the position of any contracting party on this issue.

The representative of Switzerland said that his country's study would probably be presented in the next few weeks. Switzerland had a highly developed economy in services and realized how complex and deep were the problems in trying to examine this sector. That was why it favoured proceeding to a collective reflection on the matter of services so that contracting parties could support each other mutually in exploring the problems. Switzerland was open as to how this collective reflection might be carried out, but was ready to consider setting up a working party.

The representative of Canada supported the US proposal. Canada attached importance to this issue, and its own study on services had been one of the first to be discussed. The various national studies submitted so far had revealed the importance of trade in services both in domestic markets and internationally, and further information was required on the situation of more contracting parties to round out this picture. Canada continued to favour the adoption of a realistic work program on trade in services, and considered that GATT remained the appropriate forum for such work.

The representative of India said that since only eight studies had been submitted so far, of which four were circulated only in October 1984, even paragraph 1 of the Ministerial decision did not appear to have been complied with; and unless there was more substantial implementation of that paragraph, it did not appear logical to meaningfully address the second paragraph. Establishment of a working party now would be not only premature but would also amount to skipping the important sequence ordered in the Ministerial decision; it would also prejudge the issue of GATT's competence, which had wisely been left open in paragraph 3 of the decision, and would thereby prejudice the position of contracting parties such as India which held that issues relating to trade in services were outside GATT's jurisdiction and competence. The present informal consultations should be continued, and the question of establishing a working party should be addressed only when the first two stages envisaged in the Ministerial decision had been accomplished.

The representative of Argentina endorsed the statement by the representative of India, and said it would be wise not to take hasty decisions concerning services. The prudence shown by Ministers on this point in 1982 should be respected, considering that the question of GATT's competence for dealing with services had been subject to complicated and delicate discussions. Argentina also wanted to point

out that while services might account for roughly 60 per cent of the economies of certain countries and thus have high priority for them, there were subjects such as agriculture and safeguards which were of pre-eminent interest to developing countries and which represented a good 70 per cent of their economies; these deserved equally high priority.

The representative of Egypt supported the statements by the representatives of India and Argentina, and noted that all eight studies had come from developed countries. The Ministerial decision had recognized the competence in this matter of other international organizations as well as GATT; he was thinking particularly of UNCTAD which had also been examining this subject.

The representative of Brazil said that in the informal consultations, his delegation had stressed the wisdom of the Ministerial decision in providing for sequential steps which would lead to a consideration of whether any multilateral action on this matter was appropriate and desirable. Brazil had also maintained that at the fortieth session this matter would have to be examined in the context of the whole Work Program, and in the light of whatever progress might have been achieved in other Program items which, in Brazil's view, were more important. Brazil could not agree to a proposal which prejudged GATT's involvement in services. Furthermore, the representative of the United States had referred in the discussions on counterfeit and textiles to the need to assess a total package at the fortieth session, but seemed to want a decision on this particular item now. He did not see how the Council could consider certain subjects as package items and others as non-package items.

The representative of Cuba said that her delegation upheld Decision No. 192 of the Council of the Latin American Economic System (SELA) that GATT's exclusive responsibility was for trade in goods and that it was therefore not competent to deal with services.

The representative of the European Communities emphasized that the Ministerial decision on services had been a compromise and that it was part of a package of compromises. It had been said that this was a wise decision, but if nothing was to be put forward to the 1984 session, that did not strike him as very wise. He stressed that the GATT had been mentioned in paragraph 2 of the Ministerial decision not in order to exclude it but to single it out for a rôle. He asked what the Secretariat had been doing on this subject since 1982. He wondered whether the Secretariat needed a green light from the CONTRACTING PARTIES to undertake basic work.

The representative of the United Kingdom, on behalf of Hong Kong, said that in the light of the linkage seen by the representative of the United States between further progress on textiles and the start of new work on other matters such as counterfeit, his delegation drew attention

to the fact that the proposal for a working party on services was a further example of new work. Such new departures should not be at the expense of items on which there was a more specific mandate from Ministers and on which a working party had already begun its work. Hong Kong believed that the work done so far on services could continue in accordance with paragraphs 1 and 2 of the Ministerial decision with a view to arriving at a stage later when the CONTRACTING PARTIES could consider whether any multilateral action in these matters was appropriate and desirable.

The representative of Israel supported the US proposal. The question of GATT's competence in this matter had been clearly dealt with by the Ministers, and the fact that GATT was specifically mentioned in the relevant decision needed no further elaboration; paragraph 2, which referred to an exchange of information, required the direct involvement of the GATT Secretariat. Future work on services was important for both developed and developing countries.

The Director-General said that the Secretariat had scrupulously observed the divergences of opinion concerning the interpretation to be given to the Ministerial text; it was particularly aware of the concern of a number of contracting parties over the Secretariat's competence on the one hand, and the assistance that it could supply to contracting parties on the other. The Secretariat had been playing the rôle of active observer on this subject. The Secretariat's reticence -- apart from its provision of meeting rooms, some translation and interpreting -- had not been caused by any officials suggesting that more direct participation by the Secretariat on services would have been contrary to the Ministerial decision. The Secretariat had held back because it had been told that if it launched into activities in services it would be adopting a provocative attitude. As Director-General, he had considered it unwise for the Secretariat to become an additional factor complicating this exercise. He continued to think it essential that each contracting party should make the effort to look at its own interests in this domain, and it was important that compilation and exchanges of information should take place. He concluded by saying that the Secretariat had never claimed that it was or was not empowered to deal with services; it had remained strictly neutral on this issue.

The representative of the United States said that his delegation was far from doubting that the Secretariat had acted in a neutral fashion. While only eight studies had been submitted so far, they accounted for the greater portion of international trade in services; it was true that the studies varied, and that was another reason why the Secretariat should become involved to try to pull any common views together and draw some conclusions.

In answer to a question by the representative of Pakistan, the Chairman noted that the title of the relevant Ministerial decision was "Services", rather than "Trade in Services".

The representative of the European Communities said that none of those who had participated actively in the 1982 Ministerial discussions on services had thought in terms of titles, and he doubted that argument over titles would serve any purpose. His delegation did not at this stage intend to state its position on the substance of this issue. However, he was concerned at the Director-General's reply to his earlier question, because in his view there was a distinction between being provocative and being timid. The facilities which the Director-General had mentioned were certainly valuable and appreciated, but some intellectual assistance from the Secretariat would not have prejudged GATT's competence and might have contributed to avoiding the current impasse. He wanted to know why the Secretariat had made no studies of its own on services; after all, this was its job. He could and would say the same to the UNCTAD Secretariat if this were an UNCTAD meeting. It was the GATT Secretariat's duty to assist contracting parties, and if it could now deploy its activities in this field, that would be one way of moving forward constructively.

The representative of Pakistan said it was important to look carefully at the titles of the various Ministerial decisions, because they had been the subject of quite lengthy and sometimes heated discussion. Also, apart from the fact that only eight studies had so far been submitted, the information base was also incomplete in the sense that some of the studies touched only upon services in the national economy rather than actual trade in services. Moreover, those studies which did deal with trade in services were long on the restrictions that their trade faced in other countries and short, or non-existent, on the restrictions which their governments imposed on imports of services. His delegation would appreciate some clarification on these points from those contracting parties principally interested.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

(o) Aspects of Trade in High-Technology Goods
- Communication from the United States (L/5717)

The Chairman recalled that at the 1982 Ministerial meeting, it had been agreed to refer the questions of aspects of trade in high-technology goods to the Council for consideration (SR.38/9, page 2). A revised proposal (C/W/409/Rev.2) had been submitted by the United States at its May 1983 meeting, and had been discussed then and at subsequent meetings in 1983 and 1984. The Chairman drew attention to document L/5717 containing a request by the United States for inclusion of this item on the agenda of the present meeting.

The representative of the United States said that trade in high-technology goods had been a major issue in the discussions leading up to the 1982 Ministerial meeting, and had been an integral part of the Ministerial Declaration until the very last hours when the United States had agreed to leave it outside the text of the Declaration. As technology was advancing throughout the world, the scope for this agenda item became increasingly large. Work was being done on this issue in other fora, including the OECD, and there had also been bilateral discussions; but there were signs of increasing protectionist action directed against high-technology goods. These products were increasingly assembled from component parts produced in a very wide range of countries, so this issue should be of interest to a number of delegations. The United States had shown considerable flexibility by repeatedly adapting its proposal in an effort to meet the trading needs of all contracting parties, without, however, securing any agreement on a GATT forum to discuss trade in these goods. His delegation was not suggesting that there should be negotiations on a sectoral basis for high-technology goods, but there should be a forum for constructive discussion of this issue, which was going to become increasingly important for all contracting parties in the future. The United States was open as to the terms of reference for such a forum.

The representative of the European Communities reiterated his delegation's position that it would welcome a substantive debate on this issue in the Council, but such a discussion should not be unduly protracted; after that, the CONTRACTING PARTIES could judge whether the matter should be dealt with in some other forum. It had to be remembered that even though it had been dealt with by Ministers (SR.38/9, page 2), the high technology item was somewhat peripheral to the Ministerial Declaration. Consequently, it should not have the same priority as other points in the Work Program.

The representative of Israel agreed that this element had ended up being peripheral to the Work Program, but progress nevertheless had to be made in the interests of all contracting parties. Delegations should recognize that trade in high technology was certainly within GATT's purview. This was no longer a sectoral problem; it was an inter-sectoral issue, like others in the Work Program, such as natural resource products. Israel believed that problems of trade in high-technology goods should be dealt with in GATT as quickly as possible, according to the most appropriate relevant method to be agreed. High-technology goods were composite products, with varied origins of production, and developing countries should be active in protecting their high-technology interests in GATT.

The representative of Jamaica said his delegation believed that the application of high technology to production and trade was bringing about substantial structural adjustments in national economies and in international production and trade. Accordingly, this issue should be

addressed in a multilateral forum, particularly in any organization that was concerned with comparative advantage and the international division of labour. He recalled that at the Council meeting in March 1984, the representative of the United States had said that his delegation intended to start bilateral consultations with other interested contracting parties so as to develop a paper which could serve as the basis for a substantive discussion on high-technology trade at a future Council meeting. However, nothing seemed to have been produced since that meeting. The Council should assume its responsibility and decide on constructive action in this matter.

The representative of Argentina emphasized that this item had been left out of the Ministerial Declaration for well-known reasons. No doubt there were bilateral problems in high-technology trade, but so far there was no convincing evidence that any multilateral problems existed.

The representative of Japan said that high-technology goods included a wide range of products which could open a new horizon in terms of increased production, consumption and trade. However, there was a growing tendency for countries to take trade restrictive measures against imports of these goods. Given the high degree of transfer of technology, any country would be in a position to be a producer and exporter of high-technology products. For these and other reasons, Japan felt that GATT should start actively examining this important issue.

The representative of the European Communities recalled that it was still unclear to his delegation what was behind the US request and appealed to the United States to supply a document which would enable the Council to have a proper discussion of any problems in this area so that a decision could be taken.

The representative of Jamaica said that there were substantial subsidies and protection involved in developing the high-technology sector. In his view, it was important that before this inefficient and high-cost sector was developed further and went the way of agriculture, the matter should be discussed in a multilateral forum.

The representative of Sweden, on behalf of the Nordic countries, said it appeared to them that some rather traditional kinds of trade problems existed in the high-technology field, but most if not all of these could be addressed within the current GATT framework. Some of the problems, such as government procurement restrictions and testing practices, were already being addressed in GATT. The Nordic countries would not object to any trade problem found in a particular high-technology industry being brought before an individual committee in GATT -- this was how the framework of rules was supposed to work -- but they saw no need for any comprehensive program of work or any new formal or informal group in GATT to handle such problems, as long as they appeared to be traditional in character and not specific to high technology.

The representative of the United States agreed that many problems in high-technology trade could be addressed through existing GATT provisions. However, the United States was now undertaking some significant bilateral discussions with a number of its trading partners on this issue. Since he believed in the multilateral system, he suggested that a formal or informal group be set up to deal with this issue in GATT; this would make it possible for a number of delegations not involved in the bilateral consultations to participate.

The Council took note of the statements and agreed that informal consultations should continue.

Following informal consultations, the Council reverted to this matter at its resumed meeting. The Council asked the Chairman to continue the informal consultations and authorized him to report on the further results when he introduced the Council's report to the CONTRACTING PARTIES at their fortieth session.

3. Consultative Group of Eighteen
- Report by the Chairman of the Group (L/5721)

The Chairman recalled that as required under its terms of reference, the Consultative Group of Eighteen submitted once a year a comprehensive account of its activities to the Council.

The Director-General, Chairman of the Group, presented its report for 1984 (L/5721), which had been prepared on his own responsibility. During the Group's three meetings in 1984, it had discussed five subjects: subsidies in the GATT system; the relationship between trade policy and the international financial system; structural adjustment; countertrade; and the status of the 1982 Ministerial Work Program.

The discussion on subsidies had provided a useful review of the difficulties arising in this area, and of the different approaches among contracting parties as to the appropriate means of dealing with them. There was a general view that existing rules on subsidies, whether in the GATT or in the Subsidies and Countervailing Measures Code, were not working altogether satisfactorily, but it was not clear whether this was due to deficiencies in the rules or in their implementation. The Group had concluded that contracting parties should be encouraged to make proper use of existing rules, and if there were areas of imprecision and misunderstanding, to cooperate in clarifying them. It also favoured greater efforts to improve transparency in the use of subsidies.

On the linkages between trade policy and the financial system, the Group had heard, and generally endorsed, a report by the Chairman of the Committee on Balance-of-Payments Restrictions on his consultations on possible ways in which the Committee could play a larger part in identifying and highlighting external factors which adversely affected the export trade, and thus the payments position, of consulting

countries. The Group had also supported the lines along which relations between the secretariats of the GATT, the International Monetary Fund and the World Bank had been developed, which was on the basis that trade problems and trade negotiations should be dealt with under the aegis of the GATT and in conformity with its principles.

The Group had discussed at length the relationship between structural adjustment and trade policy in July, and in October had been informed of the proposal, put before the Council at the present meeting, on new terms of reference for the Working Party on Structural Adjustment (C/W/454). All members had recognized the inescapable link between open trade policies and the efficiency of the domestic adjustment process, but there had been differences of view as to whether this link could be given operational force in GATT.

The Group had also had an interesting first discussion, without coming to any firm conclusions, on the economics of countertrade or barter and its possible relevance to GATT rules.

The status of work on the Work Program had been the main subject discussed at two of the Group's meetings. On both occasions, concern had been expressed about the pace of work on particular items in the Program, but more especially about the need for a stronger sense of joint commitment to strengthening the GATT system. There had been agreement on the need to achieve the maximum possible progress in implementing the Program before the November 1984 session of the CONTRACTING PARTIES, and for that session to provide a clear and positive directive for the continuation of work in 1985.

The representatives of Chile, Jamaica, Colombia, Egypt, Brazil, Peru, Argentina, Uruguay, Malaysia on behalf of the ASEAN countries, Cuba, Korea and Senegal expressed concern at what they saw as the Group's lack of adequate representation for their respective regions; they supported proposals that the CONTRACTING PARTIES and the Director-General should address this concern and thus increase the Group's effectiveness.

The representative of Chile said that in view of the wide range and strategic nature of the subjects discussed by the Group, perhaps a better feedback system could be arranged to transmit the results of those discussions to other GATT bodies.

The representative of Jamaica congratulated the Director-General for making the Group a place where effective dialogue took place. This dialogue could naturally be improved, for example, by giving greater attention to the monetary and financial policies of the major reserve currency countries and to how these affected the trading system. He suggested that since the Director-General went to Washington each year to address the joint Bank/Fund Development Committee on GATT's

activities, perhaps the executive heads of the International Monetary Fund, the World Bank and UNCTAD should be invited to attend some of the Group's meetings. If the impact of monetary and financial policies on the trading system could be identified, then this ought to be drawn to the attention of the relevant institutions and of governments so that corrective action could be taken. There should be no discussions in the Group without pragmatic results and recommendations. He added that care should be taken that trade policy questions did not move outside the GATT framework to other institutions. He also appealed for the Group's reports to be issued earlier so that they could be considered more carefully in capitals.

The representative of Colombia suggested that the CONTRACTING PARTIES at their fortieth session examine the effectiveness of the representation of various regions in the Group with a view to taking necessary corrective action.

The representative of Egypt supported the suggestion by the representative of Jamaica that documents concerning the Group's activities be issued earlier. Referring to section V of the Group's report, his delegation wanted to emphasize that countertrade could also have a trade-creative effect for developing countries by enabling them to pay for their imports through increased exports. There was also a great potential for developing countries to rely on countertrade in their mutual commerce.

The representative of Brazil proposed that the Director-General, as Chairman of the Group, hold consultations and report to the Council as soon as possible on how the Group's balanced representation could be improved.

The representative of Uruguay said that since the Group was a power-house of ideas for the GATT system, it would be helpful if the Group could issue reports more frequently and as early as possible.

The Director-General noted that his predecessor had spent two years in setting up the Group, and most of that time had been devoted to working out its composition rather than its terms of reference. He was ready to hold the consultations that had been proposed, but wanted to warn the Council of the difficulties involved in this task. Composition was indeed a key issue, because the efficiency and flexibility of the Group depended on its being small enough to allow for and encourage real dialogue. He appealed to representatives that the CONTRACTING PARTIES should agree at their fortieth session to maintain the present basis for selecting the Group's members for 1985, on the understanding that the proposed consultations would be held thereafter. He agreed that documents should be issued as soon as possible, but pointed out that L/5721 had in fact appeared, in GATT's three working languages, only six working days after the Group's October meeting, notwithstanding the current extreme pressure on the translation and documentation services

of the Secretariat. He added that it had been essential for the Group to meet as late as possible before the November Council meeting because its main topic had been the progress, or lack thereof, in the Work Program. As to the question of the relationship between GATT, the Fund and the World Bank, his participation at meetings of the Interim Committee and the Development Committee was intended solely to enable him to inform those bodies of GATT's activities.

The Council took note of the report (L/5721) and of the statements, including the request to the Director-General to hold informal consultations on the effectiveness of the Group's membership after the fortieth session of the CONTRACTING PARTIES.

4. Trade in Textiles
   (a) Reports of the Textiles Committee (COM.TEX/38 and 39)
   (b) Annual Report of the Textiles Surveillance Body (COM.TEX/SB/984 and Add.1)

The Director-General, Chairman of the Textiles Committee, noted that document COM.TEX/38 related to the special session of the Textiles Committee held on 4-5 September 1984, which had considered two sets of measures taken by the United States. One involved countervailing duty petitions by the US industry with respect to textiles and clothing imports from 13 developing countries, and the other concerned country-of-origin regulations. The Textiles Committee had noted a common view on the measures under discussion, and had agreed to keep this, as well as related matters, under consideration and to review the situation in the light of developments.

Document COM.TEX/39 contained the Committee's report on its annual meeting held on 17 and 22 October 1984. The principal objective of this meeting had been to carry out the major review during the third year of the operation of the MFA[1] as provided for in its Article 10:4. It had been agreed in 1983 that the Committee should meet before the present Council meeting and the fortieth session of the CONTRACTING PARTIES, in order to be able to report to them on this matter. Along with the major review, the Committee at this annual meeting had also reviewed recent developments affecting international trade in textiles, including the matters dealt with at the Committee meeting on 4/5 September, and had taken note of the Report by the Textiles Surveillance Body (TSB) on its examination of the matter concerning countervailing duty actions by the United States, which the Committee had referred to the TSB at its September meeting.

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[1] Arrangement Regarding International Trade in Textiles (BISD 21S/3) as extended by the 1981 Protocol (BISD 28S/3).

The major review had been supported by two reports. The first was a report (COM.TEX/SB/984 and Add.1) by the TSB on the MFA's operation since 1982, containing findings and conclusions by the TSB on its review of all restrictions and bilateral agreements notified by various parties to the MFA. This report was submitted for consideration by the Council in accordance with Article 10:4 of the MFA. The second was a report by the Sub-Committee on Adjustment analysing information provided by participating countries on adjustment measures and policies, and containing recommendations by the Sub-Committee in respect of its future work program.

He added that at its annual meeting, the Committee had also dealt with two other items, one relating to the request by Panama for accession to the MFA and the other relating to membership of the TSB for the year 1985. He recalled that the Committee was required, under Article 10:5 of the MFA, to initiate discussions on the MFA's future one year before its expiry. Since the current Protocol would expire at the end of July 1986, the Committee had to meet for the purpose of initiating its discussion before the end of July 1985. This would not, as noted in the report, exclude the possibility of the Committee meeting before that date should this be considered necessary.

The representative of Pakistan, speaking on behalf of the developing country exporters of textiles and clothing, noted that they had repeatedly referred in Council meetings during 1984 to the problems of international trade in these products. Chapter IV of the TSB's report clearly reflected in what a discriminatory and restrictive manner they had been treated. He drew attention to paragraph 69 of COM.TEX/39, in which the Chairman of the Committee had said that "the Committee had heard a number of appeals and suggestions from all sides directed to the United States delegation, both with respect to the overall character of the measures taken, and with respect to some of their specific aspects. These matters would, of course, be kept under review." The seriousness of the problems caused by the US measures was evident from the spate of criticisms recorded in that report and made it necessary that concrete meaning should be given to the Chairman's remark. The possibility of a further special meeting of the Textiles Committee in the first quarter of 1985 would have to be borne in mind.

Th Council took note of the statements and adopted the reports of the Textiles Committee (COM.TEX/38 and 39).

5. Provisional Accession of Tunisia
- Request for extension of time-limit (C/W/452, L/5714)

The Chairman recalled that the Declaration of 12 November 1959 on the Provisional Accession of Tunisia, as extended by the Fifteenth Procès-Verbal of 1 November 1983 (BISD 30S/3), and the Decision of the CONTRACTING PARTIES providing for the Participation of Tunisia in the work of the CONTRACTING PARTIES (BISD 30S/8), were due to expire on 31 December 1984. A request by the Government of Tunisia for an extension of these arrangements had been circulated in L/5714.

The representative of Tunisia said that his authorities were continuing preparations for Tunisia's full accession to the General Agreement, and that he hoped he would soon be in a position to come before the Council with instructions to complete this process.

The representative of Austria said that the yearly extension of the Declaration on Tunisia's provisional accession caused considerable work for his authorities, which had to seek approval on this matter from the Austrian Parliament. He sought clarification from the representative of Tunisia as to whether his country intended to accede fully to the General Agreement in the forthcoming year. If this did not appear likely, his delegation suggested that the Declaration be extended for two years.

The representatives of Senegal, India and Egypt supported Tunisia's request.

The representative of Tunisia said it was not certain that the procedures for full accession would be completed within the next year, but his authorities would make every effort to complete the process as soon as possible.

The representative of the United States said that his delegation encouraged all due haste on this matter so that it would be removed from the Council agenda.

The Council took note of the statements, approved the text of the Sixteenth Procès-Verbal Extending the Declaration to 31 December 1985 (C/W/452, 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/452, Annex 2) extending the invitation to Tunisia to participate in the work of the CONTRACTING PARTIES to 31 December 1985, and recommended its adoption by the CONTRACTING PARTIES at their fortieth session.

6. Philippines - Rates of certain sales and specific taxes - Review under Paragraph 3 of the Protocol of Accession (C/W/450, L/5710)

The Chairman drew the Council's attention to a request (L/5710) by the delegation of the Philippines for a five-year extension of the period allowed to the Philippines in the context of paragraph 3 of its Protocol of Accession (BISD 26S/192) to bring the application of its sales taxes on imported and domestic goods into line with Article III of the General Agreement.

The representative of the Philippines noted that his Government had submitted information in L/5710 on the steps it had taken towards aligning rates of internal taxes on domestically produced goods

vis-à-vis their imported counterparts. The Government had made maximum efforts in taking these steps, but recognized that further action had to be taken to fully comply with its GATT obligations. However, the economic difficulties confronting the Philippines, in particular the acute imbalance of payments problems, had prevented it from completely aligning the remaining differential internal taxes.

The Council took note of the statement by the representative of the Philippines, approved the text of the draft decision (C/W/450) and recommended its adoption by the CONTRACTING PARTIES at their fortieth session.

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

The Chairman recalled that this matter had been considered by the Council at its meetings in March, May and June 1984.

The representative of the European Communities referred to documents C/W/439, L/5627 and L/5654 which, together with the relevant Council minutes during 1984, had given Council members all the necessary information to have a clear idea of this case. Informal consultations had also been held by the Chairman. The Community now wanted the Council to agree to its request for a working party.

The representative of Japan expressed gratitude to the Chairman for the balanced and objective manner in which he had carried out the informal consultations, during which no new convincing reasons had been put forward as to why a working party should be established. In a spirit of cooperation, his delegation had offered to discuss the problems mentioned by the European Economic Community at a recent meeting of the Working Party on Trade in Natural Resource Products, but this offer had been rejected. Japan considered that its position had been fair and open-minded, and that it had conformed with the requirements of Article XXII in this matter. Japan considered that its position was shared by at least several other contracting parties.

The representative of Norway, speaking on behalf of the Nordic countries, Austria and Portugal, said they had concluded that as this matter was still unclear, a further exchange of views was needed. They were open as to the forum in which such an exchange of views should take place, and would accept either a working party or continued informal consultations conducted by the Chairman. They did not favour this matter being dealt with in the Working Party on Trade in Natural Resource Products, considering that a body of that kind should not be burdened by a dispute settlement question.

The representative of Peru said that his delegation had still not understood exactly what the problem was that the Community faced, since no particular GATT provision seemed to have been violated. Peru

considered that the informal consultations should be continued in an effort to find a solution before any working party was established. His delegation did not favour this matter being examined in the Working Party on Trade in Natural Resource Products, which had a specific mandate.

The representative of Chile agreed in general terms with the statements by the representatives of Norway and Peru. However, his delegation considered that the Working Party on Trade in Natural Resource Products did have a mandate which could cover a problem such as this, but not at this stage. Perhaps a sub-group of the Working Party could be created to examine this problem. If this were not to be the case, Chile would prefer that the informal consultations continue.

The representative of the European Communities said it appeared clear that his delegation's request for a working party could not be met. It was difficult to prove that there had been flagrant violations of certain provisions of the General Agreement in this case. This was yet another "grey" or perhaps "dark" area in GATT. The GATT was apparently unable to respond to the serious difficulty of a contracting party. Although consensus was necessary for the establishment of a working party under Article XXII, there had been no precedent of such a request being rejected; this case would constitute such a precedent, and the Community would draw the appropriate conclusions concerning future applications by others of Article XXII as well as for its own future policy. He also drew the Council's attention to paragraph 3 of the Resolution of 17 November 1956, in which the CONTRACTING PARTIES resolved inter alia "that it would be appropriate for them to enter into consultations on problems arising out of the trade in primary commodities pursuant to the provisions of paragraph 2 of Article XXII and of paragraph 5 of Article XVIII after the entry into force of the revised text of the General Agreement" (BISD 5S/27). For the Community, the file was not closed.

The representative of Jamaica suggested that the Council should not simply take note of the statements made at the present meeting, but should ask the Chairman to continue to consult with the interested parties, define the issues involved, look at whatever precedents were relevant to those issues, and report back to the Council.

The representative of Norway, speaking on behalf of the Nordic countries, Austria and Portugal, expressed concern at the statement made by the representative of the European Communities, and hoped that this matter would not develop into an impasse with wider implications. Flexibility had always been a feature of GATT, and it would be a failure if the Council did not manage to resolve a problem where at least some contracting parties saw real problems. He proposed that the Chairman, the Director-General and the parties mostly concerned find a flexible way to treat the problems involved in this case, hoping that Japan would also play its part, and that the Council revert to this matter later.

The representative of Japan said that his delegation would agree to further consultations and would maintain an open-minded attitude. As far as precedent was concerned, there had been no precedent for a request to establish a working party without presentation of reasonably convincing reasons for doing so. The Community had said that it had its doubts about Japanese practices and policies on copper, but he wondered whether doubts by themselves were enough to justify establishing a working party and over-burdening the GATT system. He said that the Community had made statements in the Council in the past to the effect that the Council should avoid automatically setting up working parties whenever a contracting party raised a particular issue.

The representative of the European Communities said that the procedures in this case had been far from automatic. This was the fourth time that the matter had been discussed in the Council, and despite informal consultations, no solution was in sight. The Community had no written proof in this case; there were certain practices which could not be pinned down to specific articles of the General Agreement. The copper industry in the Community faced a real problem and firms might soon close for good. In the meanwhile, there was inconclusive discussion in the Council. This reflected poorly on the efficiency of the GATT. The Council's reaction was equivalent to outright rejection of the Community's request.

The Council took note of the statements, noted that there was no agreement on the request by the European Communities, agreed that the Chairman would continue informal consultations with a view to achieving a solution which would be satisfactory to all parties, and agreed to revert to this item at a future meeting.

8. United States - Caribbean Basin Economic Recovery Act (CBERA)

- Report of the Working Party (L/5708)

The Chairman recalled that at their thirty-ninth session in November 1983, the CONTRACTING PARTIES had established a working party (SR.39/1, p.11) to examine the United States request for a waiver under Article XXV:5 concerning the Caribbean Basin Economic Recovery Act (CBERA), and to report to the Council.

Mr. Endo (Japan) introduced the report (L/5708) on behalf of Mr. Chiba, Chairman of the Working Party. He noted that the Working Party had been open to CBERA eligible beneficiary countries not contracting parties wanting to participate as observers. The Working Party had made an in-depth examination of the CBERA and the implication of its implementation for the General Agreement. The report contained the text of a draft waiver (Annex I). The Working Party's conclusions in paragraphs 58 to 65 reflected, in a carefully balanced manner, the views expressed by members. There had been a large measure of support and understanding in the Working Party with respect to the objectives

and purposes of the CBERA, particularly with regard to the objective of promoting economic development and raising the standard of living of the people in the region through increased access for their exports. These objectives, it had been noted, were consistent with the objectives of the General Agreement. At the same time a number of questions concerning the relationship of the CBERA to GATT principles and provisions had also been raised. The Working Party had recognized that there were a number of different approaches within the GATT framework to the establishment of preferential schemes, and that each case had to be analyzed on the basis of all the circumstances peculiar to it. Having considered the alternative approaches in this case, a number of members of the Working Party had concluded that the waiver procedure under Article XXV:5 was the most appropriate alternative; others had considered this was not the case. Notwithstanding these differing views, it had been acknowledged that a decision on whether to ask for a waiver could only be made by the United States, which had requested that the draft waiver annexed to the report be submitted to the CONTRACTING PARTIES for a vote. The Working Party had prepared the draft waiver bearing in mind the assurance given by the United States that the Act would be administered in a manner which did not damage the trade of non-beneficiary suppliers. The Working Party had noted the understanding that the waiver would in no way affect the legal rights of contracting parties under the General Agreement. According to paragraph 1 of the draft waiver, the provisions of Article I:1 of the General Agreement would be waived until 30 September 1995, to the extent necessary to permit the United States to provide duty-free treatment to eligible imports of Caribbean Basin countries benefiting from the provisions of the Act. The draft waiver sought to take account of the various concerns expressed by the members of the Working Party; its provisions concerning notification of trade-related measures taken under the Act, reporting requirements, review, consultations, and treatment of sugar were intended to provide full transparency with regard to the implementation of the CBERA and ensure that the GATT rights of contracting parties were not unduly impaired.

The representative of the United States said that his delegation appreciated the constructive attitude taken by other contracting parties in considering the US request. The United States, in a spirit of compromise, had attempted to address in a satifactory manner the concerns of other contracting parties which had been raised in the Working Party. His delegation urged that the Council adopt the report, including the annexed draft waiver, and forward the draft waiver to the CONTRACTING PARTIES for favourable consideration at their fortieth session.

The representative of Cuba said that the Act's provisions were detrimental to the universal development of the region, because various Caribbean States had been excluded. Concessions for entry into the US market had been designed on the basis of bilateral relationships through country-by-country negotiations, another discriminatory feature implicit

in the Act. Cuba considered that this kind of arrangement was incompatible with certain Articles of the General Agreement, particularly Article XXXVI:1(b), 2 and 4; it was also incompatible with paragraph 7(ii) of the 1982 Ministerial Declaration (BISD 29S/11).

The representative of Australia supported adoption of the report and approval of the draft waiver. The Working Party had achieved the twin aims of trying to ensure that the benefits conferred on the developing country beneficiaries would not be impaired by the terms of the waiver, and also that the GATT rights of non-beneficiaries, developing and developed, were not unduly impaired. The discussions on alternative approaches for handling this case had highlighted the extent to which non-beneficiary contracting parties could protect their rights by negotiating terms and conditions with respect to arrangements of this type. These discussions would provide a valuable basis for considering similar arrangements in the future. Both the report and the draft waiver would contribute not only to transparency in GATT, but would also substantially help the CONTRACTING PARTIES adopt a positive attitude to the US request.

The representative of Nicaragua noted that Title II of the Act, concerning duty-free treatment, had entered into force on 1 January 1984, meaning that the United States had not considered it necessary to secure approval from the CONTRACTING PARTIES before implementing provisions falling specifically within GATT's purview. Her delegation considered that such action was in breach of paragraph 7(i) of the Ministerial Declaration. The United States had presented the CBERA as being a regional program of limited duration designed to promote economic and political stability of the Central American and Caribbean region. It was therefore essential that any waiver granted by the CONTRACTING PARTIES be designed, unequivocally, to achieve that objective, which would be the only objective that could legitimately justify such a waiver. Industrialized countries had recognized that developing countries required preferential treatment to meet their development needs, and it would not have been difficult for the United States to find an appropriate provision in GATT allowing preferences at regional level. There were precedents of arrangements approved by the CONTRACTING PARTIES, under the Enabling Clause[1] or Article XXIV, for example. Given this Act's limited scope and the small economies of countries in that region, existing GATT provisions, together with the existence of the GSP as a permanent independent mechanism, seemed to offer the necessary guarantees. Nicaragua believed that the conditions of the draft waiver would oblige the United States to take due account of this concern. Her delegation was convinced, however, that the economic recovery of this region -- which was the Act's stated aim -- could not be achieved so long as some countries in the region were excluded from its benefits. Furthermore, the Act could

[1] BISD 26S/203.

not be consistent with GATT principles if applied in a discriminatory manner; such discrimination was also inconsistent with GATT principles. The exclusion of certain countries from the benefits of the Act was based on non-economic considerations which were unacceptable in the light of the provisions of Part IV and of the Enabling Clause. Neither could commitments deriving from paragraph 7(iii) of the Ministerial Declaration be invalidated by a waiver from Article I of the General Agreement. She said that the exceptional circumstances, i.e., the economic crisis, that the United States had put forward to justify its request for a waiver, affected all countries in the region. In these circumstances GATT's consultation and nullification or impairment mechanisms would be ineffective. She added that the United States representative had stated in the Working Party that the benefits established by the Act could be granted on an equal basis to the 27 countries listed in Article 212(b) of that Act. Furthermore, the Act gave the US President the necessary authority to declare those countries beneficiaries even if they did not meet all the requirements established in it. If the President so decided, the CBERA could be implemented in a manner consistent with the General Agreement. The task of the CONTRACTING PARTIES would be to oversee that implementation. Consequently, Nicaragua considered that the Council could adopt the Working Party's report with the following conditions: (1) it should be clearly understood that the waiver from Article I of the General Agreement did not invalidate the commitments in paragraph 7(iii) of the Ministerial Declaration regarding restrictive trade measures, applied for reasons of a non-economic character, not consistent with the General Agreement; Nicaragua sought the Director-General's opinion in that respect; and (2) the word "beneficiary" should be deleted from the third paragraph of the preambular part of the draft waiver. This amendment would adjust the text of the draft to what had been stated by the US Government, as reflected in L/5573 and in paragraph 4 of the Working Party's report. Nicaragua's position on this matter was fair, constructive and true to the principles and objectives of the General Agreement. She added that if the United States were to apply the Act in a non-discriminatory manner, this would be consistent with other programs of multilateral assistance for that region. She emphasized that the CONTRACTING PARTIES' decision on this matter could have grave consequences.

The Director-General said that paragraph 7 of the Ministerial Declaration stood by itself. It was not for the Secretariat but for the CONTRACTING PARTIES to decide how the provisions of the Ministerial Declaration were to be interpreted and implemented. The language of paragraph 7(iii) required that contracting parties abstain from taking restrictive trade measures for reasons of a non-economic character not consistent with the General Agreement. In this case, the United States was asking for a waiver that would permit it to grant certain benefits to a group of developing countries without extending those benefits to

all contracting parties. It was not for the Director-General to say why these benefits might be granted to some contracting parties without being extended to others which might consider themselves in a similar situation. It was clear, however, that the waiver would not authorize the application of restrictive measures to the trade of any contracting party.

The representative of Finland, on behalf of the Nordic countries, said they did not oppose granting the waiver but saw a need in GATT for a discussion on preferential arrangements between industrialized and developing countries. In principle, it should not be excluded that preferential agreements in favour of developing countries be based on GATT provisions instead of on waivers from those provisions.

The representative of the Philippines said that his delegation supported adoption of the report, on the understanding that the draft waiver in Annex I had to be interpreted in the light of the discussions reflected in Annex II. For example, the provisions of the draft waiver dealing with sugar had to be seen within the context of the record of the discussions on sugar.

The representative of the European Communities noted that the Working Party had recognized that there were varying approaches within GATT concerning establishment of preferential arrangements, and that each case should be analysed on its own merits. A number of delegations had stated in the Working Party that this particular case could not be considered as setting a precedent. The Community supported adoption of the report and would vote in favour of a decision granting a waiver at the forthcoming fortieth session.

The representative of the United States referred to the request by the representative of Nicaragua that the word "beneficiary" be deleted from the third paragraph of the draft waiver's preamble. The draft waiver had been fully discussed in the Working Party, and his delegation wanted to see the report, and the draft waiver, go to the CONTRACTING PARTIES as they stood. Furthermore, he wanted it to be clear that no statements made for the record at this Council meeting could be construed as conditions to adoption of the report or the draft waiver.

Following an exchange of views and questions about procedure, the Chairman noted that the draft waiver would be voted upon at the fortieth session of the CONTRACTING PARTIES. The Council's report to the CONTRACTING PARTIES would, of course, reflect the views put forward by representatives at the present meeting.

The representative of Jamaica said that since it was not the intention of the CBERA to provide access to the US market for all developing countries in the region, it was appropriate to be specific and to refer to the beneficiary developing countries. He added that the waiver would apply exclusively to duty-free treatment for imports of eligible articles into the United States from beneficiary Caribbean countries and territories, and drew attention to the first paragraph in the draft waiver's preamble.

The representative of Nicaragua said her delegation had only asked that the text of the draft waiver be brought into line with paragrah 2 of L/5573, in which the United States had notified the Act. However, her delegation would agree to the report being adopted, on the understanding that Nicaragua's comments at the present meeting would be reflected in the Council's report to the CONTRACTING PARTIES.

The representative of Jamaica said his delegation had made clear in the Working Party that since the Act covered aspects other than trade, it was not within GATT's competence to grant a waiver on all aspects of the Act. The waiver would apply exclusively to duty-free treatment for imports of eligible articles into the United States from beneficiary Caribbean countries and territories, and he drew attention to the first paragraph in the draft waiver's preamble.

In answer to a question from the representative of the United States, the Chairman said it was correct to say that none of the statements made at the present meeting constituted conditions either on the report or on the draft waiver.

The representative of the Netherlands, speaking on behalf of the Netherlands Antilles, one of the Act's beneficiary territories, drew attention to paragraph 62 of the report which made clear that it had been acknowledged in the Working Party that only the United States could decide whether to request a waiver for the CBERA.

The representative of Nicaragua said it was true that the United States was the only contracting party with the right to ask for a waiver in this case; nonetheless, the conditions for the waiver were the concern of all contracting parties.

The Council took note of the statements, adopted the report of the Working Party (L/5708), and agreed to send the draft waiver in Annex 1 of the report to the CONTRACTING PARTIES for their consideration.

9. Japan - Measures on imports of leather
- Follow-up on the report of the Panel (L/5623)

The Chairman recalled that at its meeting on 15/16 May 1984 the Council had adopted the Panel's report (L/5623) on the complaint by the United States. This item had been put on the agenda of the present meeting at the request of the United States.

The representative of the United States said his delegation sought a report from Japan on measures it had taken so far to implement the recommendation in the Panel's report, and on those measures which it intended to take in the near future, particularly with regard to finished leather. Japan had informed the Council in May of the first step it intended to take, relating mostly to wet-blue chrome, but had

not yet announced any steps in respect of finished leather. The United States was disappointed by the lack of action in this regard; it hoped that the Japanese delegation would be able to inform the Council at the present meeting of when Japan would eliminate the restrictions on finished leather.

The representative of Japan recalled his delegation's statement, at the 15/16 May Council meeting, announcing his Government's intention to take various measures with a view to the expansion of leather trade, and he outlined these measures. Since that time, Japan had been doing its utmost to implement those measures in the face of great difficulties. Since September 1984, Japan had increased the import quota for bovine and equine wet-blue-chrome, and had implemented the equivalent of automatic import licensing for this product. The import quota on leather had been established and published for the period October 1984 to March 1985, and the Government had been vigorously trying to advance the elimination of tariffs on bovine and equine wet-blue-chrome grain, with a view to getting the necessary legislation enacted by April 1985. Regarding finished leather, he stressed that his authorities were making great efforts to implement the measures announced in May, and were looking into all circumstances surrounding this matter.

The representative of Australia recalled that his delegation had agreed to adopt the report on the basis of the finding in paragraph 59 that Japan eliminate its quantitative restrictions on imports of semi-processed and processed leather products. He said that the steps taken by the Japanese constituted a quota, albeit a "non-binding" or "national" quota, and thus had done nothing to address the problem; in effect, one quantitative restriction had replaced another. Furthermore, these quotas had been applied in disregard of Japan's obligations under Articles X and XIII concerning distributions within quotas. He expressed concern over the possible effect of the Japanese measures on contracting parties' rights. The matter had already been brought to Japan's attention, and, if in response to the Panel's recommendations, Japan continued to take measures inconsistent with its GATT obligations, Australia might want to take the matter up in GATT.

The representative of India said that notwithstanding his delegation's position that paragraph 59 of the report constituted the sole legal basis for its adoption, India had concurred with the Council's decision that Japan be given some time to implement the Panel's recommendation. Quite some time had elapsed since adoption of the report, yet evidence regarding implementation was lacking. His delegation looked forward to expeditious compliance.

The representative of the European Communities recalled that the Community had indicated on several occasions its interest in this matter He noted the Japanese statement, which the Community might wish to bear in mind in future.

The representative of Brazil recalled that when the report was adopted, a number of contracting parties had difficulty with the suggestion included in its paragraph 60. It had been accepted, finally, that some time should be given to Japan to comply with the Panel's recommendation. His delegation felt it was now time that Japan did this. He reiterated his delegation's view that there should be full compliance with the recomendations of all reports adopted by the Council which were clear and unequivocal.

The representative of Uruguay said that his authorities had carefully scrutinized the measures taken by Japan to implement the Panel's recommendation. Subsequent to the adoption of the report, consultations had been held between Uruguay and Japan. His delegation had taken note of the Japanese representative's statement at the 15/16 May Council meeting that the measures adopted were a first step - he wished to be assured that they had been implemented for all countries concerned and, if so, what the result had been. He further wanted to know what new measures Japan was planning to take on the products in question.

The representative of New Zealand noted with interest the statement made by the representative of Japan. Nevertheless, there were aspects of the Panel's decision that had yet to be addressed by the Japanese authorities. He suggested that Japan address all aspects of the Panel report with as much energy as it had indicated had been brought to bear on implementation of the announced measures.

The representative of Japan stated that the subject of the Panel report was a very difficult problem. His delegation had, at the time the report was adopted, indicated that time would be needed to bring Japan's practices on leather imports into conformity with GATT; this seemed to have been recognized by everyone. He reiterated that measures would be taken one by one, pointing out that implementation of the initial steps announced had been very difficult and had required all the energies of the responsible authorities.

The Council took note of the statements.

10. United States - Imports of sugar from Nicaragua - Follow-up on the report of the Panel (L/5607)

The Chairman recalled that at its meeting in March 1984, the Council had adopted the Panel report (L/5607) on the complaint by Nicaragua. The follow-up on the Panel report had subsequently been brought before the Council at its meetings in May and July 1984. At the July meeting, he had informed the Council of a letter which he had received, in his capacity as Chairman, from the Nicaraguan Minister of Foreign Trade asking him to urge the United States to notify the CONTRACTING PARTIES promptly of the measures which it intended to adopt in order to comply with the Panel's recommendation. He had then discussed this matter with the delegations of Nicaragua and the United States. This item had been put on the agenda of the present meeting at the request of the Nicaraguan delegation.

The representative of Nicaragua said that not only had the United States failed to take account of the Panel's recommendation, but by its action on 1 October 1984 in allocating to his country a sugar quota of 6,000 short tons for the 1984-85 fiscal year, it had deliberately applied a measure contrary to the General Agreement, and once again, it had failed to notify the measure to the CONTRACTING PARTIES. Given the level of international market prices, the reduction of the sugar quota for 1984-85 would represent a loss in Nicaragua's export earnings of about US$17 million. His delegation could predict that the US justification would be that the new measure, like the earlier one, corresponded to considerations of a general character. That reply would be unacceptable. If the measure corresponded to security considerations, Nicaragua wondered why the United States had not invoked Article XXI. There was no doubt that this was a non-commercial measure applied in breach of paragraph 7(iii) of the 1982 Ministerial Declaration. Nicaragua considered that it had exhausted the procedures available under the GATT, and in such circumstances, it could only appeal for help from the CONTRACTING PARTIES. Nicaragua was well aware of its rights under Article XXIII, but it was not sure how to exercise them. Retaliation was impractical; the disproportion between the two parties to this dispute was such that any measure that Nicaragua might take would inevitably be contrary to its own interests. Moreover, retaliatory measures were contrary to the spirit of the General Agreement. This interpretation corresponded to the development of the dispute settlement procedure as reflected in paragraphs 22 and 23 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). His delegation was sure that the CONTRACTING PARTIES would make every possible effort to bring about a constructive solution to a dispute that was causing serious injury to a developing contracting party.

The representative of the United States said that his delegation had been candid with regard to its position on this case, and the position had not changed. The United States had not obstructed Nicaragua's resort to GATT's dispute settlement process; it had stated explicitly the conditions under which the issue might be resolved; and it recognized that Nicaragua had certain rights under Article XXIII which it had reserved and could continue to exercise.

The representative of Argentina reiterated his delegation's position that the United States should implement the recommendation by the Panel, and respect paragraphs 7(i) and (iii) of the Ministerial Declaration.

The representative of Brazil recalled the statement made by his delegation at the Council meeting in March 1984 when the Panel report had been adopted. Brazil attached great importance to speedy and full implementation of the Panel's recommendation.

The representative of Cuba said that her delegation was deeply concerned by the failure of a contracting party to comply with a panel recommendation, especially in view of paragraph 7 of the Ministerial Declaration. Cuba felt that pressure should be exerted on contracting parties to comply with such recommendations, because failure to do so would be a dangerous trend for GATT.

The representative of Hungary quoted a statement from a recently published article by a ranking US Administration official that "a high priority of US policy with respect to the GATT is to try to strengthen the dispute settlement procedure to make its rules more enforceable. ..... as things stand now, the country that loses the case can essentially block implementation of the Panel's recommendation. This is something that troubles us and we think ought to be changed." Hungary fully agreed with that statement.

The representative of India recalled the statement made by his delegation at the Council meeting in March 1984. Since all contracting parties had agreed that the dispute settlement mechanism constituted one of the fundamental and most important features of the GATT system, India hoped that the United States would comply quickly with the Panel's recommendation.

The representative of Uruguay supported the statements made by the representatives of Argentina and Brazil. He added that if discussions in the Council on strengthening GATT's dispute settlement procedures were to move out of the realm of theory, panel recommendations would have to be implemented in practice.

The representative of Poland said that the Council should be very concerned to find itself in a blocked situation, where a major trading nation first decided to disregard a basic provision in the Ministerial Declaration in applying a commercial measure for non-economic reasons, and then stated that the fact that the measure had been applied for non-economic reasons should be of no concern to GATT.

The representative of Nicaragua thanked representatives who had expressed support for her country's position. The attitude of the United States in this case gave cause for great concern because it had shown clearly that it had no intention of trying to find a satisfactory solution. Her delegation would reserve further comment on this matter until the fortieth session of the CONTRACTING PARTIES.

The Council took note of the statements.

11. United States - Agricultural Adjustment Act - Report of the Working Party (L/5707)

The Chairman recalled that in February 1984, the Council had established the Working Party to examine the twenty-sixth annual report sbumitted by the United States under the Decision of 5 March 1955 (BISD 3S/32) and to report to the Council. The report of the Working Party had been circulated in L/5707.

Mr. Olarreaga (Uruguay), on behalf of Mr. Grünwaldt Ramasso, Chairman of the Working Party, introduced the report. He said that the Working Party had carried out a substantive and in some respects difficult discussion of the matter under examination, reviewing, in the light of the conditions attached to the waiver, all aspects contained in the twenty-sixth annual report (L/5595). Special attention had been devoted to the question of possible and appropriate actions which could lead to the termination of the waiver. The statements made and approaches suggested in this regard were fully reflected in the report of the Working Party.

The representative of Australia said there was no indication in the report (L/5707) that the United States was taking adequate measures to remedy the situation which had given rise to the waiver request, nor that efforts in this direction could be expected. Referring to dairy imports, he said the United States had assured Australia in 1975 that it would negotiate the liberalization of dairy quotas in the Tokyo Round; only marginal concessions had been made. Statistics for the period 1979-1981 showed a worsening of the supply and demand disequilibrium that the waiver had been intended to address. With regard to sugar, there had been an administrative change in the import régime which permitted sugar imports to be subject to both fees and quotas, where under the waiver only one or the other of these measures could be applied. His delegation had proposed in the Working Party that it examine what, if any, modifications might be made in the waiver, but had agreed to pursue this issue at a later stage and possibly in a working party set up for that specific purpose. It was his delegation's view that the CONTRACTING PARTIES had the right under Article XXV to review the terms of the waiver, and if appropriate, to propose its termination or modification. His authorities did not accept that the waiver was a matter for negotiation, since the United States had not paid for it by way of commensurate trade concessions; nor did they see any legal link between review of the waiver and the work of the Committee on Trade in Agriculture. Australia reserved its GATT rights to raise this issue again, possibly at the time when the CONTRACTING PARTIES examined the next annual report, which hopefully would provide, as suggested in paragraph 37 of L/5707, a detailed examination and a critical evaluation of the reasons why measures consistent with the provisions of the General Agreement would not constitute a feasible alternative to those maintained under the waiver. His delegation supported adoption of the Working Party's report.

The representative of the European Communities reiterated his delegation's view that a working party established to examine annual reports under the waiver was no longer the best way to address this problem, since it was unrealistic to imagine that the United States would relinquish such a long-enjoyed privilege without some gestures in return. The waiver increased and tended to perpetuate the imbalance of rights and obligations of contracting parties in agricultural trade. It was an intolerable privilege and not in fact a waiver, which by

definition was intended to be short-term and temporary. He supported the objectives of the suggestion made by the representative of Australia, but saw no chance of their success. As the Community had stated in the past, the Committee on Trade in Agriculture - and not a working party - was the place to take up the elimination of this privilege which the United States had continued to enjoy year after year while working parties and the Council went through the motions of this review exercise. This had to stop. The best gesture that the United States could make with regard to strengthening the multilateral system would be to consider eliminating this intolerable privilege and its very negative effects on the balance of rights and obligations of contracting parties in agricultural trade.

The representative of New Zealand said this issue was one of long-standing concern to his country. The Working Party's report reflected US intransigence. As his delegation had stated in recent years, the waiver was anachronistic; the United States did not have the right to continued recourse to this waiver ad infinitum. He drew attention to paragraph 37 of L/5707 and supported the views expressed by the representative of Australia on this point. He welcomed the positive moves taken by the United States to implement structural adjustment in the dairy sector, but said that recent moves on honey had raised the possibility that this product would be included under Section 22 protection. It was not enough for the United States to say that the Committee on Trade in Agriculture might eventually take up this problem. The United States should understand that New Zealand did not propose to offer any concessions for removing the waiver.

The representative of Argentina said his delegation was particularly concerned by this issue and fully supported the statements by the representatives of Australia and New Zealand.

The representative of the United States said that the Working Party's report faithfully reflected the views of its members. His delegation hoped that the work of the Committee on Trade in Agriculture could bring some positive results on this matter.

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

12. European Economic Community - Operation of beef and veal régime - Request by Australia for consultations under Article XXIII:1 (L/5715)

The Chairman drew attention to a communication from Australia (L/5715) requesting consultations with the European Economic Community under Article XXIII:1.

The representative of Australia said it was his Government's view that the operation of the Community's beef and veal régime had nullified and impaired Australia's benefits under the General Agreement and had also impeded the attainment of the objectives of the GATT as envisaged

in Article XXIII:1(b). Australia had informally advised the Community of its intentions regarding these consultations and would shortly provide it with a written statement giving the reasons for seeking these consultations. The Community had informally agreed to these consultations, which were expected to begin before the end of the year. Although it hoped that a satisfactory solution could be achieved, Australia reserved its right to bring this matter before the CONTRACTING PARTIES again under the relevant provisions of the General Agreement.

The representative of the European Communities said his delegation would accede to the request for Article XXIII:1 consultations but could not understand why, as this matter was being dealt with bilaterally, it was necessary to bring it to the multilateral level. Australia's desire to do this was either an exercise of friendly, but moral pressure on the Community, or an indication that Australia was not entirely sure of its case and perhaps felt it was a lost cause. He added that it was not a good idea to create such procedural precedents.

The representative of New Zealand said his country wanted to be informed of the results of the proposed consultations and suggested that it might be appropriate that they be reported to the Council in due time.

The Council took note of the statements.

13. Committee on Balance-of-Payments Restrictions
- Statement by the Chairman of the Committee

Mr. Feij (Netherlands), Chairman of the Committee on Balance-of-Payments Restrictions, informed the Council about the outcome of meetings held by the Committee between 30 October and 2 November 1984 to conduct full consultations with Portugal and Korea and simplified consultations with Bangladesh and the Philippines. Under "Other Business", the Committee had taken note of notifications received from Colombia (L/5542 and Adds.1-3) and Argentina (L/5643 and L/5687), concerning import restrictions introduced for balance-of-payments reasons. It had decided to hold consultations with Colombia under Article XVIII:12(b). The Committee had taken note of two notifications from Israel concerning the extension of its import deposit scheme until 1 December 1984 (L/5669) and the introduction of a number of temporary prohibitions for six months with effect from 3 October 1984 (L/5697 and Add.1). The Committee had also taken note of a notification from Hungary that, with effect from 1 July 1984, reference limits had been abolished for all goods except the six products subject to import quotas in 1984. Hungary had made a statement to the Committee of its intention to remove all balance-of-payments measures with effect from 1 January 1985. The Committee had also heard a statement from Brazil concerning the bilateral consultations held with its major trading partners on possible trade measures which might be taken by them on an m.f.n. basis

to help alleviate Brazil's balance-of-payments problems. The representative of Brazil had expressed disappointment that Brazil's main trading partners had so far not responded in a concrete manner to these consultations, and that obstacles to Brazilian exports had in some cases been increased during 1984. Complete reports on these consultations would be forwarded to the Council shortly in documents BOP/R/145 (Portugal), BOP/R/146 (Korea), BOP/R/147 (Bangladesh and the Philippines) and BOP/R/148 (Other Business).

The representative of Korea expressed appreciation to the Committee for the constructive questions and suggestions put to his delegation during the consultations, which he said had been an important and useful exercise for the Korean representatives.

The representative of Colombia said that his delegation was prepared to carry out full consultations with the Committee, in accordance with established procedures. However, Colombia wanted to make some general remarks on what it considered to be a lack of balance between the obligations of developed and developing contracting parties. Article XVIII authorized developing contracting parties to take a series of measures to promote their economic development. Section B of that Article authorized them to take measures to restrict their imports, subject to compliance with its requirements. Developing countries could find themselves in a continuing process of consultations under a procedure to determine the legality of the measures and policies at regular intervals. Developed countries did not invoke Article XVIII:B, but had sometimes stated that because of disproportionate increases in their imports, in many cases coming exclusively from developing countries, they had found themselves obliged to take corrective measures which often fell into what had been termed the grey area, they had adopted legislation inconsistent with the General Agreement or with other agreements subscribed to by them as in the case of textiles, or they had applied countervailing duties (in some cases against countries not parties to the Subsidies and Countervailing Measures Code) as a form of import restriction. There were other provisions in favour of developing countries in the General Agreement and in the 1982 Ministerial Declaration which should play an important rôle in the balance-of-payments problems of developing countries but which had not been implemented. There should be a GATT procedure under which developing countries could make as detailed an examination of developed country measures as was made of their own in the Balance-of-Payments Committee. Colombia considered that measures by developed countries to restrict imports from developing countries should be examined in the Sub-Committee on Protective Measures. However, the developed countries had always resisted this, and the developing countries had no specialized forum in GATT where such measures could effectively be examined. His delegation would revert to this matter in the Balance-of-Payments Committee but wanted to express its concern in the Council over whether GATT rules established in favour of developing countries were really being implemented, and whether those countries effectively received more favourable treatment in GATT than the more developed contracting parties.

The representative of Chile referred to the provisions of Articles XII, XXXVI and XXXVII of the General Agreement, and of the 1979 Declaration on Trade Measures Taken for Balance-of-Payments Purposes (BISD 26S/205) relating to external factors adversely affecting the trade of contracting parties applying balance-of-payments restrictions. He also referred to the statement by the Chairman of the Committee in the Council on 13 March 1984 (C/125), which had suggested a possible expansion of the Committee's rôle in this area. That statement had been the subject of broad consultation and discussion and some members of the Committee, including Brazil, had made significant contributions towards what appeared to be a substantial consensus. The Consultative Group of Eighteen had discussed that suggestion, and in its report (L/5721) to the Council had noted that it had been widely endorsed. Chile noted that under present GATT practices, a country facing serious balance-of-payments problems could apply import restrictions; the existence of these problems and their dimension were verified by the International Monetary Fund; the CONTRACTING PARTIES then considered whether the restrictions were commensurate with the balance-of-payments problems as well as the immediate effects of the measures and the period for which they were to operate. In such cases the CONTRACTING PARTIES acted ex-post facto, on the assumption that efforts to expand exports in order to ease the balance-of-payments problem had already been exhausted. Under present arrangements, this assumption could have some validity, but it was a false one in terms of economic, political and legal logic. Chile considered that a preventive mechanism was needed to supplement existing provisions, and to utilize possibilities for export expansion before moving on to the stage of import contraction. Apart from economic considerations, this approach would have the political advantage of placing the country faced with payments difficulties in the more positive position of defending trade liberalization. Such a mechanism would place developed and developing contracting parties on a footing of better equality with regard to their rights and obligations in GATT; it would also facilitate consultations between the country in balance-of-payments difficulties and its principal trading partners. In the consultations, conditions of market access would be examined, particularly for products of special interest to the country concerned, and immediate action that could be taken to improve those conditions could be considered. The mechanism would have to be flexible and effective, with participation by the Secretariats of the Fund (to verify the extent of the balance-of-payments problem) and of GATT (to examine the trade conditions of the country concerned and give assistance indicating the type of measures that importing countries could apply). If the Council were to find these ideas acceptable, Chile proposed that the Chairman of the Committee undertake consultations with the support of delegations wishing to contribute to this suggested improvement of procedures. Such an improvement would not only benefit countries having balance-of-payments difficulties but would also contribute to overall liberalization of international trade. Rather than suggest a strict time-limit for completing the consultations, Chile underlined the urgent need for such a mechanism, since the problems of indebtedness called for concerted and flexible solutions if a still greater deterioration of international trade was to be avoided.

The representative of Brazil reiterated the statement by his delegation to the Committee on 2 November 1984 (BOP/R/148), noting that Brazil had submitted to its main trading partners (the United States, Japan, EEC, Australia, Austria, Canada, Sweden and Switzerland) a list of suggestions for co-operative action that they could autonomously adopt on an m.f.n. basis, during the adjustment period of Brazil's balance of payments. However, there had so far been no positive specific reaction to the Brazilian approach, but only responses of a general nature. Brazil's offer to make itself available for consultations on its suggestions had not been taken up by any of the countries approached. These reactions contrasted with the Committee's recognition, in its consultations with Brazil in December 1983, of the importance of the possibilities for alleviating and correcting balance-of-payments problems through measures that contracting parties might take to facilitate an expansion of export earnings of consulting contracting parties. He expressed his delegation's disappointment at the lack of results from Brazil's initiative, and took note of the attitude of some contracting parties in refusing to accept their share of the responsibility for alleviating balance-of-payments problems of other contracting parties. In some cases, barriers to Brazilian exports had since been strengthened and new ones created. His Government would take these facts into account in examining any future request for balance-of-payments consultations with Brazil.

The representatives of Argentina and Peru supported the statements and suggestions made by the representatives of Colombia and Chile.

The representative of the European Communities said that his delegation would need time to reflect on the statements made by the previous speakers. He emphasized that Brazil's proposal had not fallen on deaf ears. The Community had agreed that an effort should be made to enable Brazil to increase its exports rather than reduce its imports, and had tried to help Brazil by refusing certain protectionist measures which had been called for in the Community. He added that the Community had given Brazil a precise answer to its proposal in the fields of the GSP and textiles. He emphasized that it was difficult for the Community to undertake any spectacular measures in this regard, but noted that efforts to help countries in balance-of-payments difficulties should be a matter for cumulative efforts by all contracting parties to reverse trends. He noted that Brazil's economic situation seemed now to be less precarious than previously, and that its trade balance with the Community had continued to improve.

The representative of Uruguay supported the statements by the representatives of Colombia, Chile and Brazil.

The Council took note of the statements and agreed that the Chairman of the Committee on Balance-of-Payments Restrictions would hold consultations concerning the proposals made by Colombia and Chile.

14. Canada - Measures affecting the sale of gold coins - Recourse by South Africa to Article XXIII:2 (L/5711)

The Chairman drew attention to document L/5711 concerning recourse by South Africa to Article XXIII:2 over Canadian measures affecting the sale of gold coins.

The representative of South Africa recalled that on 10 May 1983 the Provincial Government of Ontario had announced that the Canadian Maple Leaf gold coin would, effective 11 May 1983, be indefinitely exempted from the 7 per cent Ontario retail sales tax, while this tax would remain in force on imported gold coins. The stated purpose of this measure was to assist Canadian gold coin producers by encouraging the production of the Maple Leaf in the face of increasing future competition. Protracted bilateral efforts with Canada to rectify this discriminatory practice had not yielded any positive results. Consequently, South Africa had brought this issue to the attention of the CONTRACTING PARTIES on 3 July 1984 (L/5662). Subsequent Article XXIII:1 consultations with Canada had also been to no avail. South Africa maintained that the measure was in breach of Article III of the General Agreement, which stipulated that internal taxes and other internal charges should not be applied to imported or domestic products so as to afford protection to domestic production. It was also in breach of Article II, because Canada had granted a duty-free binding on this item which was being nullified or impaired by the application of a discriminatory fiscal measure. This was clearly demonstrated by the mounting losses in the sale of Krugerrands in the Province of Ontario since the introduction of this measure. The Canadian Federal Government had not taken such reasonable measures as were available to it under the General Agreement to ensure observance of the provisions of GATT, as was required under Article XXIV:12. South Africa therefore requested the CONTRACTING PARTIES to establish a panel under Article XXIII:2 to examine this matter with a view to giving appropriate rulings.

The representative of Canada confirmed that this matter related to the imposition of a retail sales tax by the Province of Ontario on the sale of gold coins. His Government had been in frequent contact with the Provincial Government concerned and these contacts were continuing. Given that consultations under Article XXIII:1 had been held only in late September 1984, his authorities considered the South African request to be premature. Nevertheless, Canada did not oppose establishment of a panel.

The Council took note of the statements, agreed to establish a panel to examine the complaint by South Africa, and authorized the Chairman, in consultation with the parties concerned, to decide on appropriate terms of reference and to designate the Panel members.

The representative of Australia said the issues raised in South Africa's request for a panel were of concern and interest to his Government, which reserved its right to make a submission to the Panel.

The Council took note of the statement.

15. Pakistan - Renegotiation of Schedule
- Request for extension of waiver (C/W/447, L/5694)

The Chairman drew attention to the request by Pakistan, circulated in L/5694, and to the draft decision in C/W/447, regarding a further extension of the CONTRACTING PATIES' Decision of 29 November 1977 (BISD 24S/15) to waive the application of the provisions of Article II of the General Agreement to enable Pakistan to maintain in force the rates of duty provided in its revised Customs Tariff, pending the completion of negotiations for the modification or withdrawal of concessions in its Schedule XV.

The representative of Pakistan recalled that the reasons for revision of the bound tariff rates were primarily fiscal. The budgetary difficulties which had led to these revisions had continued. He reported that Pakistan had completed negotiations with one country and had received proposals from others, which it was hoped would facilitate the process of negotiations. More time was needed to complete these negotiations; therefore, it was requested that the time limit for the waiver be extended to 31 December 1985.

The representative of the United States supported the request by the representative of Pakistan.

The Council took note of the statements, approved the text of the draft decision extending the waiver until 31 December 1985 (C/W/447), and recommended its adoption by the CONTRACTING PARTIES by a vote at their fortieth session.

16. Committee on Tariff Concessions
- Report by the Chairman of the Committee (TAR/87)

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 questions relating to tariffs.

Mr. Bondad (Philippines), Vice-Chairman of the Committee, on behalf of Mr. Lavorel (United States), Chairman, pointed out that since the last meeting of the Committee on Tariff Concessions had taken place only a few days earlier, it had not been posible to make available to the Council at this time a detailed report on its activities. The Committee had therefore entrusted him with the task of making an oral report to the Council; his statement would be distributed to all contracting parties in TAR/87.

Since its last report to the Council in November 1983, the Committee had met in December 1983 and in April and November 1984. The meeting in December 1983 had been entirely devoted to the question of the establishment of a common data base in connexion with the introduction of the Harmonized Commodity Description and Coding System, and with Article XXVIII negotiations. Agreement had been reached that the Secretariat should begin preliminary work to establish a common data base. Interested delegations had held several informal meetings during the year to advise the Secretariat on the technical needs relating to the data base. Progress was being made in computerizing the information necessary for the Article XXVIII negotiations. As in the past, the Secretariat was ready to provide technical assistance to developing country delegations which might not have the technical means to participate in the data base, so that they could take full part in these negotiations.

He recalled that the Harmonized System was to be implemented on 1 January 1987, and noted that several countries had started work on preparing documentation and had exchanged the agricultural chapters of their schedules. Only one country had at present signed the Convention, but other countries were expected to follow in the foreseeable future.

He reported that the submission of schedules in loose-leaf form had progressed slowly; so far, only 34 contracting parties had submitted their loose-leaf schedules, out of a total of 62 having a schedule. Verification of schedules submitted years ago had also progressed slowly.

No consensus had so far been reached regarding the application of Article XXVIII to new products, and further informal consultations would be required before this item could be taken up again in the Committee.

At its November meeting, the Committee had considered the possibility of preparing a Sixth Certification of Changes to Schedules The question of implementation of MTN tariff concessions had been placed on the November agenda of the Committee, and a proposal had been made that contracting parties inform the Committee of the status of their implementation of remaining tariff cuts; this proposal would be considered further at the next Committee meeting in the spring of 1985.

The Council took note of the report.

17. United States fiscal legislation (DISC-FSCA)
- Communication from the European Economic Community (L/5716)

The Chairman drew attention to the communication from the European Economic Community (L/5716) concerning the US Foreign Sales Corporation Act (FSCA). The US delegation had recently supplied the Secretariat with the text of the Act with the request that it be circulated. Copies would be made available to contracting parties (see L/5723).

The representative of the European Communities recalled his statement at the July 1984 meeting of the Council in which he had raised two issues of concern regarding the FSCA: the taxes which had been deferred under the DISC legislation and which the FSCA had now forgiven, and the compatability of the FSCA with the General Agreement and with the understanding of December 1981 (L/5271) when the Council had adopted the DISC Panel report (L/4422). Since that time nothing had been done by the United States to address the problems raised. The Community wanted the opportunity to discuss the follow-up to the Panel report, and suggested that plurilateral consultations be set up to examine the question of the deferred taxes which now were forgiven and the GATT compatability of the new legislation. This, it was felt, was within the scope of paragraph 22 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210). His delegation was open-minded as to how the consultations should proceed, but wanted to move rapidly towards them.

The representatives of Brazil, New Zealand, Portugal, Finland on behalf of the Nordic countries, Switzerland, Australia, Canada, Spain, Austria, India, Hungary, Japan, Argentina, Jamaica and Korea supported the Community's proposal in L/5716 and asked to be included in any consultations held on this matter.

The Chairman asked any other contracting parties wishing to be included in the consultations to inform the Secretariat.

The representative of New Zealand said that his authorities were concerned by the US intention to continue the DISC scheme for exporters with annual export sales of up to US$10,000,000; roughly 90 per cent of New Zealand exporters would fit this category. Thus, the United States was asking for endorsement of subsidies for firms which were in direct competition with New Zealand firms.

The representative of Spain recalled that DISC had been before the Council for 13 years and considered that the persistence of this problem was not only injurious to the parties concerned but prejudiced the entire GATT system. Spain was ready to support any procedure which might solve this problem.

The representative of the United States said that his delegation questioned the sincerity of the Community's request since it had never responded to the US standing offer to consult bilaterally on the FSCA. The United States had duly notified the CONTRACTING PARTIES of the enactment of the FSCA in conformity with paragraphs 3 and 22 of the 1979 Understanding. Following both the letter and spirit of the GATT, this legislation had removed the offending trade practice; thus, the matter had been resolved and there was no basis for further surveillance. Any allegations with regard to the FSCA's conformity to US obligations under the General Agreement, or any allegations which the United States might bring concerning the GATT conformity of the EEC member States' tax

practices to the Community's obligations, would raise new issues which could be pursued under Articles XXII and XXIII procedures. If these were the issues the EC wished to address, these Articles would provide the only proper "modalities" for their consideration. The United States objected to the establishment of a plurilateral "follow-up" review pursuant to paragraph 22 of the 1979 Understanding, but if that were to be the will of the CONTRACTING PARTIES, the United States would insist that the review also include a determination of whether the tax practices of Belgium, France and the Netherlands were in conformity with the General Agreement and the Understanding of December 1981. He noted that the Community, as well as any other interested contracting party, was free to seek information on the FSCA on a bilateral basis from the United States pursuant to paragraph 3 of the 1979 Understanding.

While the representative of the European Communities could understand the US opposition to discussion of the new legislation under paragraph 22 of the 1979 Understanding, he could not understand how the United States could refuse discussion on what remained of the DISC, i.e., the deferred taxes which had now been forgiven. His delegation had requested informal consultations in order to avoid a dispute over the legal foundation for formal consultations. If the United States insisted on treating the FSCA and the DISC as separate matters, the Community was nevertheless entitled to formal consultations on the deferred tax issue. It was up to the United States to choose; it might be wise to agree to informal consultations for the purpose of clarification of both aspects and thus perhaps to avoid future Article XXIII consultations on the FSCA. He noted that a large number of delegations had supported the proposed consultations and asked the Chairman to insist that the United States reconsider its position.

The representative of the United States said that the Community was suggesting that Article XXIII somehow required payment of some kind of back damages, and pointed out that this Article promoted prospective remedies. The FSCA was the response to the DISC Panel report.

The representative of Australia said that the FSCA's forgiveness of taxes deferred under DISC had not responded to the Panel's recommendations. As the Community had stated, the contracting parties were entitled, under the surveillance rights, to ask the United States certain questions; it was not proper for the United States to include, as a condition for the proposed consultations, examination of other matters which had not come before the CONTRACTING PARTIES.

The representative of the European Communities said that it would not be acceptable for this matter to be kept on the agenda and taken up at the next Council meeting. The United States should agree, at least, to begin informal discussions so as to see what should be discussed with regard to the former DISC legislation in terms of the Panel's report.

The Chairman suggested that he consult with the delegations concerned regarding the best way to proceed with this matter at the next Council meeting.

The representative of the United States agreed that further time should be allowed for informal consultations without any decision taken as to what future steps might be; the best approach would seem to be bilateral consultations with any and all interested parties.

The representative of the European Communities said he had wanted to avoid this legal battle, but reiterated that the Community was fully within its rights, under paragraph 22 of the 1979 Agreement, in asking for consultations which were not to be bilateral.

The Chairman explained that the consultations he had suggested were to be for the sole purpose of clarifying the scope of the discussion on this item at the next Council meeting, and would not constitute the informal consultations requested by the Community.

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

18. European Economic Community - Imports of newsprint from Canada - Report of the Panel (L/5680)

The Chairman recalled that in March 1984, the Council had established a panel to examine the complaint by Canada. The Panel's report had been circulated in document L/5680.

Mr. Shaton introduced the report on behalf of Mr. Patterson, Chairman of the Panel. He noted that the Panel had met intensively during the summer so as to meet the three months deadline provided in urgent cases by the procedures in the Understanding on Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), an aim that it had almost achieved, thanks also to the co-operation of the parties concerned. The Panel had unanimously reached its findings and conclusions in the last section of the report. Taking all factors mentioned by the parties into account, the Panel had concluded that the EEC, in unilaterally establishing for 1984 a duty-free quota of 500,000 tonnes, had not acted in conformity with Article II of the GATT. The Panel had recognized, however, that as a result of newsprint imports from EFTA countries entering the Community market duty-free since 1 January 1984 under the terms of the Free-Trade Agreements, the value of the EEC concession had greatly increased for non-EFTA suppliers and especially for Canada as the most important m.f.n. supplier. The Panel had concluded that this increased value of the concession justified the EEC engaging in renegotiations under Article XXVIII, in accordance with the customary procedures and practices for such negotiations, with the objective of achieving some reduction in the size of the tariff quota, and that such a reduction would, in a case like the one before the Panel, be without payment of compensation. In conclusion, the Panel had suggested that the CONTRACTING PARTIES recommend that, pending the termination of such renegotiations, the duty-free tariff quota of 1.5 million tonnes for m.f.n. suppliers be maintained.

The representative of the European Communities congratulated the Panel on having presented its report so quickly. The Community was ready to have the report adopted, even though it disagreed with some of the Panel's observations. He noted in particular that the Panel had recognized that the Community might undertake negotiations under Article XXVIII in order to reduce the tariff quota without compensation being paid. He underlined that the Panel, while not excluding the application of Article XIII in such a situation, and while saying that the Community should have recourse to Article XXVIII, had recognized there was no GATT provision which would prevent the Community from opening a tariff quota of 1.5 million tonnes and counting imports coming from EFTA countries against this quota. Nonetheless, the Panel had stated that such a practice was inappropriate and would create a bad precedent. This was an observation which, if followed, would involve the creation of a new obligation for contracting parties that was not based on any legal provision; it was thus unacceptable. He noted that on 1 November 1984 the Community had submitted a notification (Secret/312) that it was ready to begin negotiations on this matter under Article XXVIII.

The representative of Canada said his delegation had noted that the Community was ready for the Council to adopt the report. Canada appreciated the Community's co-operation during the Panel's deliberations and thereafter. Much had been said at the present meeting about what was wrong with GATT's dispute settlement process; this case was an encouraging example of what was going right. Canada also appreciated the speed, skill and diligence with which the panelists and the Secretariat had worked on an issue that needed to be dealt with urgently. Canada considered that the Panel's conclusions presented well-reasoned interpretations and analysis of GATT rights and obligations, but did not want to enter substantive debate at the present meeting on issues argued before the Panel, especially given the fact that the Community was ready to adopt the report. Canada wanted it to be adopted as soon as possible, so that the Panel's conclusions could also be implemented speedily. Since one delegation had not yet received instructions on this matter (although no problem on substance was foreseen), his delegation would agree to deferring Council action on the report's adoption until the resumed session of the present meeting on 20 November; but to postpone action beyond that date would create serious difficulties for his delegation and would also interfere with the dispute settlement process which contracting parties were now trying to improve.

The representative of New Zealand said that his delegation supported early adoption of the report, which contained a well-prepared analysis of the points of view expressed, with clear findings. These were particularly important, given the basic issue that needed to be addressed, namely the security and predictability of GATT bindings. As the Panel had noted in paragraph 52 of the report, this principle was "a central obligation in the system of the General Agreement". Given the

fundamental importance of this issue, his delegation hoped that contracting parties could support both recommendations by the Panel in paragraph 56.

The representative of Finland, on behalf of the Nordic countries, said the fact that the Panel had been able to reach its conclusions within a short time contributed to the credibility of GATT's dispute settlement mechanism. They agreed with the Panel's conclusion that the increased value of the EEC concession to Canada, resulting from the EFTA/EEC Free Trade Agreements, justified the Community engaging in renegotiations under Article XXVIII with the objective of achieving a reduction in the size of the tariff quota. They had also noted the Panel's view that such a reduction would, in a case like this, be without payment of compensation. Furthermore, they agreed with the Panel's suggestion in paragraph 56 that the CONTRACTING PARTIES recommend that the EEC engage promptly in these renegotiations, and noted that the Community had already made a step towards that end. Examination of the report had led the Nordic countries to some general observations not only on this report, but also on the functioning of the dispute settlement mechanism generally. In order to be able to fulfil the expectations attached to them, panels should draw up conclusions and recommendations that were well-reasoned and based on the provisions of the General Agreement or other agreed instruments. In paragraph 55 of this report, the Panel had pronounced its view on one option presented by the EEC which implied that the tariff quota would be maintained at 1.5 million tonnes, but that imports from all sources, including the EFTA countries, would be recorded against the quota. While the Panel had been unable to find specific GATT provisions forbidding such proposed action, or precedents for guidance, it had nevertheless concluded that this would not be an appropriate solution to the problem and would create an unfortunate precedent. Without taking a position on the substance of this consideration by the Panel, the Nordic countries noted that its mandate had been to examine the matter in the light of relevant GATT provisions. They considered it to be inconsistent (1) to suggest that the CONTRACTING PARTIES recommend to the EEC that pending the termination of the negotiations, the duty-free tariff quota at the original level of 1.5 million tonnes be maintained; (2) at the same time to deny the right to include the deliveries of EFTA producers in the quota; and (3) to admit that the maintenance of the 1.5 million tonnes quota would represent such an increase of the value of the concession that it justified a reduction in the size of the quota without compensation. Despite the absence of relevant GATT provisions in these particular matters, the Panel had expressed itself, thus attempting to create a precedent in a question that had not been solved in negotiations between contracting parties. In the Nordic view, the main purpose of the dispute settlement mechanism should be to assist parties concerned to solve the dispute in question, and to examine the matter in the light of existing, commonly agreed rules. Panel reports going beyond this task risked complicating the functioning of the dispute settlement mechanism; this had also been seen in other cases.

The representative of Chile said that his delegation approved the Panel's conclusions and supported adoption of the report, which dealt with a complex subject and raised matters of general interest for contracting parties, including the scope and operation of Article XIII. Chile had noted the constructive position taken by the two parties involved, which augured well for the negotiations soon to be undertaken.

The representative of Austria supported the statements by the representatives of the European Communities and Finland. His delegation had doubts about the Panel's opinion in paragraph 55 that "while the Panel could find no specific GATT provision forbidding such action and no precedents to guide it, it considered that this would not be an appropriate solution to the problem and would create an unfortuante precedent". Austria considered that this meant the Panel had established new rules, which raised the question of whether the Panel had gone beyond its mandate; if such were the case, that would be an unfortunate precedent in itself. Nevertheless, Austria supported adoption of the Panel's report.

At its resumed meeting, the Council adopted the Panel's report (L/5680).

The representative of the United States said that the report raised some questions about the sanctity of GATT bindings, which all contracting parties should reflect on further.

The representative of Canada recalled his earlier statement and reiterated some of the points which he had made. He noted the effectiveness of GATT's dispute settlement process in this case. The report had addressed all issues raised by the parties and discussed with the Panel, including the so-called "Option B", which it had notably found would not be an appropriate solution. By adopting the report without qualification at the present meeting, the Council had completed one of the most important multilateral phases of GATT work on this dispute. It was now for the parties to follow up on the Panel's findings and conclusions. He again welcomed the Community's formally stated intention to enter into Article XXVIII negotiations; bilateral negotiations would be needed to resolve a number of issues which the Panel had considered, such as compensation. In his view, this case came close to being a text-book illustration of how the panel process should work once a panel was established.

The representative of the European Communities referred to his earlier statements, and recalled that both the Community and the Nordic countries had questioned the Panel's conclusion on "Option B" - the opening of a tariff quota of 1.5 million tonnes against which imports from EFTA countries would be counted - as no GATT provision had been found to back up the Panel's rejection of this option. In so doing, the

Panel had decided on a solution in a discretionary manner. The Community questioned Canada's statement that this constituted a precedent in panel findings. He said that some of the contracting parties in favour of adopting this report had qualifications, and that some clarification would be necessary as a result of the Canadian statement. He hoped that the Article XXVIII negotiations, which the Community had already begun, would proceed as quickly as had the panel process, and that an equally expeditious attitude would be shown by Canada should other cases arise between that country and the Community.

The representative of Canada said that his delegation was satisfied with the Panel's conclusions, which had not been subject to any reservation. His delegation was aware that disagreement had been expressed with some of the Panel's observations; each delegation had the right to express its views.

The Council took note of the statements.

19. Consultation on trade with Romania
- Establishment of Working Party

The Chairman recalled that the Protocol for the Accession of Romania 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 the measures taken under the terms of the Protocol.

The Council agreed to establish a working party with the following terms of reference and membership:

Terms of Reference

"To conduct, on behalf of the CONTRACTING PARTIES, the fifth 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: Mr. O. Lopez Noguerol (Argentina).

20. Training activities (L/5701)

The Director-General introduced the 1984 report (L/5701) on the Secretariat's activities in the field of training. He expressed gratitude to the Governments of France, Italy, Spain and Canada for having received the participants of the 56th, 57th and 58th courses during study tours carried out in 1983 and 1984, and to the Swiss

authorities, who continued each year to receive the GATT trainees for a one-week study tour in Switzerland. He thanked the UNDP for its continued liaison between governments, candidates and the Secretariat, and expressed appreciation to those members of delegations and representatives of other international organizations who had generously given their time to discuss various questions with the participants in the courses.

The representatives of Korea, Egypt, Bangladesh, Turkey, Uruguay, Romania, Argentina, Yugoslavia, Peru (also on behalf of Chile, Colombia and Cuba), Israel, Nicaragua and Brazil as well as the representative of Mexico, speaking as an observer, expressed appreciation to the Director-General and to the Secretariat for the courses and noted their great value and importance.

The representatives of Uruguay and Argentina said that sufficient funds should be made available for this very important program. The representatives of Korea and Yugoslavia said that GATT's training activities should be given more priority and should be expanded in spite of budgetary pressures. The representative of Bangladesh concurred with this and expressed surprise at the proposal to reduce the budget for these courses by Sw F 95,000 in 1985, especially as they were of such benefit to developing countries.

The representative of Egypt referred to the decision, reflected in the 1982 Ministerial Declaration (BISD 29S/23), on the need to strengthen the courses and to increase participation in them. He expressed satisfaction that the number of participants in each course had been increased by four and that courses in Spanish were being held on a regular basis.

The representative of Peru noted that the first regular course in Spanish had been held in 1984, in which a number of individuals from 17 Spanish-speaking countries and two regional organizations had participated; this course had been a great success. On behalf of Chile, Colombia and Cuba, she said that regular courses in Spanish should be continued in spite of the budgetary constraints on the program as a whole.

The representatives of Nicaragua and Brazil, as well as the representative of Mexico, speaking as an observer, fully supported the statement by the representative of Peru.

The Director-General said that the Secretariat attached great importance - shared by the contracting parties as a whole - to the commercial policy courses. The record showed sustained interest in these courses ever since their inception in 1955, as evidenced by the amounts budgeted for them and by voluntary contributions. He noted that in introducing the proposals on this item to the Commmittee on Budget, Finance and Administration (L/5699), he had clearly stated his intention

to consult with delegations in Geneva on the possibilities of expanding the courses in the future, from the standpoint of funding and staffing. He reported briefly on the Committee's discussions on this item, including the increase in the number of participants and the provision of a Spanish-language course. He described the difficult problem of finding suitable accommodation for the trainees within the limits of the subsistence allowance available to them. He noted that the reduction in the amount budgeted for the training program would result in a decrease in the per diem allowance, and expressed the hope that host countries for study tours would follow Canada's example by covering the travel expenses as well as the normal subsistence expenses. He assured the Council that the budget reduction for this program was not a question of principle but simply a matter of having ready cash on hand, and that at least for the present, this problem had been solved. He asked that the CONTRACTING PARTIES instruct him to conduct consultations on the future of these courses.

The representative of Spain said that although his country had been able to benefit very little from the commercial policy courses, his delegation attached great importance to them and wanted to see them improved and increased. He expressed satisfaction with the availability of these courses in Spanish and thanked the government of Switzerland, which had financed the first such course.

The Council took note of the Director-General's report and of the statements.

21. Administrative and financial questions
- Report of the Committee on Budget, Finance and Administration (L/5699)

Mr. Rigault (France), Chairman of the Committee on Budget, Finance and Administration, introduced the Committee's report (L/5699).

He said that the outturn figures examined by the Committee indicated anticipated over-expenditure of some Sw F 360,000 by the end of 1984. This had resulted from the effects of exchange rate fluctuations, from the effects of decisions taken by the United Nations General Assembly after the establishment of the 1984 GATT budget, and from an increase in the contribution payable to the International Trade Centre (ITC). The impact of these factors would have been much greater had it not been for the strict economy measures that the Secretariat had taken and was continuing to apply. The problem of outstanding contributions continued to be a matter of great concern, and the Committee had agreed to examine this question again with a view to making an appropriate early recommendation to the Council. The Committee had also proposed that the Director-General be authorized to have recourse in 1984, if necessary, to a bank overdraft to cover the Secretariat's undeferrable cash commitments.

Turning to the 1985 budget, he said the Committee had been particularly concerned at the effects on expenditure of the great escalation in the volume of documentation produced by the Secretariat and the large increase in the number of meetings resulting from the 1982 Ministerial Work Program and from requests from contracting parties. The Committee would examine these questions, and would also review the financial implications of the commercial policy training courses which had been given special attention during its discussions. As a result of the concerns expressed by the Committee over the level of the increase proposed in the 1985 budget estimates, the Director-General had proposed reductions of Sw F 1,384,000 which were conditional upon a cut-back in the volume of documentation and the number of meetings. The Committee had consequently recommended the adoption of a revised expenditure budget totalling Sw F 57,540,000.

Regarding the ITC, revised estimates for the biennium 1984-1985 had been presented at the Committee's recent meeting. This had the effect of increasing the approved Swiss franc contribution from GATT's 1984 budget by some Sw F 118,000, and GATT's 1985 contribution would be Sw F 995,000 greater than the level originally approved for 1984.

The representative of Egypt noted that the Budget Committee would meet at an early date to examine, among other things, the commercial policy training courses with a view to seeing whether further economies might be possible. He was concerned lest any future reductions in the relevant budget item seriously affect the objectives and content of the GATT Training Program. As 1985 would mark the 30th Anniversary of the courses, there was probably a need to review the Program to see whether any basic modifications in the content and policy of the courses were necessary, taking into account the past objectives and experience gained in the operation of the courses, and changes in international trade relations over the years. In his view, the Budget Committee would not be the proper place to discuss these issues; questions concerning matters such as the content and length of the courses, and the number of participants, which were directly related to the policy and objectives of the courses, should be discussed at the level of trade policy experts. A broader-based forum where all countries which benefit from the training program could express their views, would be appropriate. He therefore proposed that the Chairman of the Council, in collaboration with the Chairman of the Budget Committee, hold informal consultations to determine how the Program could be reviewed before its financial implications were examined further by the Budget Committee. His delegation would want to participate in such consultations. Finally, he emphasized his delegation's hope that the reductions in the 1985 budget would neither impair the effective running of the training courses, nor prevent the carrying out of study tours, which were one of the important features of the courses.

The representative of Australia said that the authorization for a bank overdraft would be for 1984 only, and it should not become a de facto, permanent and inequitable solution to GATT's financial problems. It was necessary to find an equitable solution to a financial crisis which had been brought about by the non-receipt or the late payment of contributions and which imposed direct and indirect costs on other contracting parties. His delegation commended the Director-General for his efforts to collect arrears, and exhorted contracting parties which were in arrears to pay their contributions. He welcomed the Committee's agreement to meet at an early date to try to find a solution to these problems. He noted that the 11.07 per cent increase package agreed was 8 per cent higher than his authorities originally intended, but only 2.4 per cent below what the Secretariat had originally asked, which indicated a flexible attitude on the part of his delegation. Australia had also been disturbed by suggestions in the Committee that the budget examination was an opportunity for negotiating priorities in the 1982 Ministerial Work Program. His delegation had disassociated itself from the implication that all elements of the budget were interlinked, so that if a cut was made under one item, then contracting parties should accept equal cuts under others. Australia would participate in the Committee's future discussions positively to ensure that any solutions maintained GATT's effective operation and status.

The representative of Malaysia, on behalf of the ASEAN countries, said that their total contribution as a group had increased over the previous year by an average of 23 per cent. This could be explained by their increased relative share in world trade, which was, however, due to increased imports needed for development purposes rather than to higher exports. They also faced the added burden of external debt. They viewed the increased GATT budget for 1985 with deep concern and expected sacrifices to be made similar to their own. They were convinced there were still certain areas where reductions were possible. They attached great importance to the commercial policy courses, and supported Egypt's proposal for consultations on the future policy of the Training Program. They would want to participate in any such consultations. As for late payments and arrears in contributions, the ASEAN countries would welcome a long-term solution to that problem which would involve incentives rather than penalties.

The representative of Jamaica said that, like many other contracting parties, her Government was now having to examine very carefully all public expenditure, including contributions to international organizations. Her delegation felt that the proposed increase in the budget had not been reduced enough and, in view of the high percentage of so-called unavoidable, non-discretionary expenses, Jamaica recommended that the Director-General and the Committee review the situation in which decisions by bodies over which GATT had no jurisdiction could have a significant impact on the budget. Her delegation encouraged the Committee to work expeditiously on suggestions

for dealing with the long-standing problem of unpaid contributions and to study the question of increasing documentation, but considered that a review of the increasing number of meetings should be conducted by the Council itself. A distinction should be drawn in the budget between meetings of the Council and other regular GATT bodies on the one hand, and meetings of the MTN Committees and Councils on the other, and appropriations for official missions should be kept separate from technical cooperation missions. It was regrettable that dispute settlement panel expenditure had exceeded the appropriation in 1984. Efforts should be made in 1985 to keep expenditure to the 1984 appropriated level. Jamaica reiterated support for the commercial policy training courses, and noting the steady increase in costs, felt that countries hosting the study tours should follow Canada's recent example and offer to cover the costs involved. Her delegation supported carrying out a comprehensive review of the courses. Finally, she noted that Jamaica participated only as an observer in the Committee, but was now interested in becoming a full member.

The representative of Sweden, on behalf of the Nordic countries, said that they had reluctantly accepted the Committee's proposals for certain savings on the amounts originally indicated by the Secretariat, but doubted that this was the time for cut-backs in budgets for multilateral trade efforts. 1985 would be an important year for the trading community, and the Secretariat would have to be able to answer positively to demands for substantially increased activity. The Nordic countries regretted that several contracting parties had made their payments very late in the financial year; furthermore, it would be appropriate for those contracting parties whose payments were in constant arrears and who had not made amortization plans for those arrears, to do so as soon as possible.

The representatives of Nigeria and Uruguay supported the proposal by the representative of Egypt.

The representative of Canada supported adoption of the Committee's report and its recommendations. While the increase in the estimates for 1985 expenditure was unusually high, his delegation recognized that the greater part of this increase was for non-discretionary expenditure and believed that the proposed budget was the minimum necessary to carry out the tasks before GATT. Canada was also concerned at the arrears and late payment of contributions, and encouraged the contracting parties concerned to meet their financial obligations as soon as possible. His country strongly supported the commercial policy training courses and believed that the amount provided in the budget should be adequate if contracting parties did all they could to find appropriate accommodation for the participants, and if they supported the study tours abroad.

The representative of India supported the view that in future further economies might be possible, including some that would become apparent when the overall questions of meetings, documentation and the training courses had been examined in depth, but was apprehensive lest any reduction for the training courses seriously affected their content and objectives. His delegation supported establishment of a mechanism to review the operation of the training courses and to make recommendations to the Council. The Budget Committee would not be the appropriate forum for discussing trade policy issues.

The representative of Yugoslavia supported the statement by the representative of India. Her delegation was also concerned about the income budget estimate for 1985, given the fact that some contracting parties were more than five years in arrears.

The representative of the United States said that his delegation had sent the Committee's report to his authorities, with the recommendation that it be accepted. He noted that final action on the report and the Committee's recommendations would be taken by the CONTRACTING PARTIES at their fortieth session. His delegation did not want to stand in the way of consensus on this matter; he hoped that he would not have to raise this issue again.

The Director-General appreciated the fact that no delegation had opposed the Committee's report or recommendations. The need to have recourse to a bank overdraft would depend upon receipts of contributions and, in this connexion, he thanked those contracting parties that had paid their contributions early. With regard to the need to distinguish between official and technical co-operation missions abroad, it often turned out that official missions were in fact technical co-operation missions as well. Concerning the reductions made in the budget proposals, he had accepted them in a spirit of co-operation, which had to be seen as a two-way street. He noted that in 1981 the Secretariat had produced 20 million pages of documents and for 1984 the 28 million figure had already been reached by October. The number of pages translated had increased from 19,000 in 1981 to 26,000 in 1984, inevitably meaning an increase in staff. If contracting parties wanted to reduce expenditure, this would imply a consequent reduction in documents, translation and number of meetings. He reiterated his previous appeals for fuller participation by all contracting parties in all GATT's activities, including the MTN Agreements and Arrangements. In conclusion, he said that the proposed budget for 1985 was the basic minimum for the Secretariat to operate efficiently, and stressed that the compromise had also resulted from co-operation on the part of the Secretariat.

The Council took note of the statements, approved the Committee's recommendations in paragraphs 15, 17, 19, 23, 63 and 64, and agreed to submit the draft resolution in paragraph 57 to the CONTRACTING PARTIES for consideration and approval at their fortieth session.

With regard to paragraph 23, the Council made a special plea to governments to meet their financial obligations fully and promptly by paying their pending contributions immediately, and to pay each year's contribution as early as possible in the year in which it fell due, so as to avoid cash-availability problems.

The Council approved the report (L/5699) and recommended that the CONTRACTING PARTIES at their fortieth session adopt the report, including the recommendations contained therein and the Resolution on the Expenditure of the CONTRACTING PARTIES in 1985 and the ways and means to meet that expenditure.

22. United States - Trade and Tariff Act of 1984

The representative of the European Communities, speaking under "Other Business", said that although the US Administration had made admirable efforts to limit the negative and possibly damaging aspects of the US Trade and Tariff Act of 1984, it nevertheless included some provisions which seriously concerned the Community. For example, section 612 of the Act introduced a new definition of the wine industry; this issue had already been raised in the Committee on Anti-Dumping Practices and in the Committee on Subsidies and Countervailing Measures. Another area of concern was section 207 regarding marks-of-origin requirements on steel pipes and tubes; the Community had asked for Article XXII:1 consultations on this matter. The Community reserved its GATT rights regarding all aspects of the Act and appealed to the US Administration to show restraint when implementing this legislation.

The representative of Canada expressed concern over certain aspects of the Act. In his delegation's view, the section 207 marking requirements were blatantly protectionist in intent and in effect. The new requirements would increase production costs and, in view of the extremely short notice of their implementation, could seriously disrupt trade unless applied flexibly. Canada was consulting bilaterally on this matter and had asked the US Administration to avoid application of this serious non-tariff barrier to trade. If implementation of the new law was unavoidable, Canada would expect that, as a minimum, it would be applied narrowly and flexibly, and that immediate steps would be taken with a view to its removal. Such marking requirements were inconsistent with US obligations under GATT, in particular Article IX:4, and impaired benefits accruing to Canada. Canada would request Article XXII consultations with the United States on this issue and would welcome the participation of other interested contracting parties. Canada also had concerns with section 612, which included a broad definition of industry for wine and grape products subject to countervailing and anti-dumping investigations. Canada shared the Community's view that this section was at variance with the GATT Codes on anti-dumping and subsidies and countervailing duties.

The representative of Australia said that his Government, too, was concerned at the implications of the proposed marking requirements, which presented technical difficulties, imposed additional costs and put at risk a number of Australian future exports; it also put at risk established contracts. Australia was concerned about the lack of advance notice and considered that an impediment of this nature was inconsistent with US obligations under Article IX:4. He asked that Australia be included in any Article XXII consultations. His delegation also shared Canada's concerns regarding the extended definition of industry under section 612 and believed that these might be at variance with the GATT Codes.

The representative of Brazil said there were a number of difficulties with the potential application of section 207, some of which had been mentioned. He pointed out that in some cases it was impossible to make the required markings without damaging the product; there were also difficulties regarding technical specifications. He noted that the marking requirements did not seem to apply to domestically produced tubes, and were contrary to the principles and the spirit of the Agreement on Technical Barriers to Trade. His Government was contacting the appropriate authorities in the United States and would be interested in following the developments in this field.

The representative of Spain said his authorities, too, were concerned at sections 612 and 207 of the Act. Spain reserved its rights to participate in any consultations on this issue.

The representative of the United States said that his authorities were aware of this situation and were looking into it. He assured the Council of his delegation's willingness to consult bilaterally with any interested contracting party as soon as possible.

The Council took note of the statements.

23. Poland - Suspension of most-favoured-nation tariff treatment by the United States

The representative of Poland, speaking under "Other Business", recalled that m.f.n. treatment of Polish exports to the United States had remained suspended for more than two years. This situation had impaired Poland's legitimate trading interests, with direct and indirect trade losses running into tens of millions of dollars annually. He further recalled that the explanation offered by the United States for this action was Poland's performance with respect to its import commitments under the Protocol of Accession; but there was no doubt that the US action was political. He said it was regrettable that political considerations were being increasingly offered in the Council and in other GATT fora as legitimate reasons for trade related discriminatory measures. Regarding Poland's obligation to increase total imports from contracting parties at a predetermined rate, he noted

that Poland was the only contracting party which was formally required by the terms of its accession to do this. With regard to actual import developments since m.f.n. treatment had been suspended, there had been significant growth in total Polish imports from sources other than the Eastern trading area; similar growth could be assumed for the future and would certainly exceed the 7 per cent commitment. His Government was determined to pursue an open economic and trade policy and had on many occasions demonstrated its desire to reinvigorate commercial relations involving GATT contracting parties. He asked the US delegation what, if any, trade related criteria should be met in order to terminate this most unfortunate situation. Until and unless a satisfactory response to this question was given, his delegation would insist that the issue remain on the GATT agenda.

The representative of the United States said that his delegation had taken note of the statement and would refer it to his authorities. He reiterated that the United States believed it had acted within its rights under paragraph 7 of Poland's Protocol of Accession.

The Council took note of the statements.

24. Documents

The representative of India, speaking under "Other Business" on behalf of the Informal Group of Developing Countries, informed the Council and the Secretariat of difficulties being encountered by the members of those delegations due to the unavailability of documents for Council meetings at an earlier date; the resulting time allowed to prepare for these meetings was insufficient, and was inadequate for proper consultations with authorities in capitals. He requested that efforts be made to rectify this situation.

The Council took note of the statement.

25. Brazil - Treatment of electronic data processing equipment

The representative of Sweden, speaking under "Other Business", said that on 3 October 1984 the Congress of Brazil had adopted a new law concerning data processing equipment and informatics. This law contained a number of elements which had considerable potential trade effects and raised questions concerning its compatibility with the General Agreement. He identified and described the two main parts of the law, one concerning import protection for the domestic production of products and services, and the other concerning support for the domestic production and exports of products and services in the data processing field, and said these gave rise to concern. He asked the Brazilian delegation when the law would be notified to GATT, and reserved Sweden's right to revert to this issue.

The representative of the European Communities said that the Community was also concerned over this law and hoped that it and subsequent measures would be notified, so that this matter could be discussed with the Brazilian delegation. He also reserved the Community's right to revert to it in the Council.

The representative of Brazil pointed out that the GATT obligation to notify clearly did not apply to legislation or regulations of a general nature enacted by competent national bodies. Such obligations referred only to concrete trade measures taken under circumstances explicitly mentioned in the General Agreement and according to procedures established by competent organs of the GATT. He took note of the question by the representative of Sweden and said that he would transmit it to his authorities. He pointed out that the law had not yet entered into force, and that Sweden's request could be seen as a matter for information to be dealt with through bilateral channels.

The representative of the United States agreed that bilateral contacts might be appropriate in the present case, but said his delegation might also want to revert to this matter in GATT as well.

The Council took note of the statements.

26. European Economic Community - Sales of butter at below minimum prices

The representative of Australia, speaking under "Other Business", registered his Government's concern at the EEC action to permit sales of surplus butter at a price well below the IDA[1] minimum price in breach of the EEC's obligation under that Arrangement. This action had been taken without consultation with other IDA members, and the EEC regulation had been published the same day that a special IDA meeting was being held to discuss the matter. Australia would continue to seek means by which to restore the IDA's credibility and viability. Revocation of the regulation in question would be the preferable course to take. His Government welcomed the Community's decision to defer implementation of its regulation, and hoped that further discussions would lead to a constructive result.

The representative of New Zealand recalled his statement on this matter in the special Council meeting immediately preceeding the present meeting and drew it to the attention of the Council.

The representative of the European Communities recalled that this item had already been discussed in the IDA Council and in the relevant IDA Committee. The implementation of these measures had been deferred

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[1] International Dairy Arrangement (BISD 26S/91).

to allow for consultations to take place. He shared Australia's hope that the trilateral discussions between the Community, Australia and New Zealand would lead to a satisfactory solution. The Community had no intention of destabilizing the dairy market.

The Council took note of the statements.

27. European Economic Community - Quantitative restrictions on imports of certain products from Hong Kong
- Follow-up on the report of the Panel (L/5511)

The representative of the United Kingdom, on behalf of Hong Kong, speaking under "Other Business", said that bilateral consultations on quartz watches had been held under Article XIX between Hong Kong and the European Communities and were expected to continue. However, France continued to maintain quota restrictions against Hong Kong in respect of various other products despite definitive determinations by the CONTRACTING PARTIES that these measures did not conform with GATT. A reasonable time had elapsed since the adoption of the panel report (L/5511) in July 1983, and all such remaining restrictions should be removed without further delay.

The Council took note of the statement.

28. New Zealand - Imports of electrical transformers from Finland

- Terms of reference and composition of the Panel

The Chairman recalled that on 2 October 1984, the Council had established a panel to examine the complaint by Finland, and had authorized the Chairman of the Council to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

He informed the Council that following such consultation, the Panel's composition and terms of reference were as follows:

Chairman: Mr. H. van Tuinen
Members: Mr. J. Kaczurba
Mr. A. Stoler

Terms of reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by Finland relating to the imposition of anti-dumping duties by New Zealand on electrical transformers from Finland, and to make such findings, including findings on the question of nullification or impairment, as will assist the CONTRACTING PARTIES in making recommendations and rulings, as provided for in Article XXIII."

The Council took note of this information.

29. Conference rooms - Smoking

The Chairman recalled that at its meeting on 14 June 1984 the Council had agreed that informal consultations would be held on this subject so that a decision could be taken at a future meeting.

He reported that the views of a number of delegations had been sought but that there did not yet seem to be any commonly held view among delegations or, for that matter, inside some of the individual delegations themselves. The consultations would continue, and the Council would be informed of the results.

The Council took note of the Chairman's report.

30. Report of the Council (C/W/449)

The Secretariat had distributed in document C/W/449 a draft of the Council's report to the CONTRACTING PARTIES on the matters considered and action taken by the Council since the thiry-ninth 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 notes regarding discussion and action taken at the present meeting.

The Council agreed that the report, with these amendments and additions, should be distributed and presented to the CONTRACTING PARTIES at their fortieth session by the Chairman of the Council.