GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/220
8 June 1988

Limited Distribution

COUNCIL
4 May 1988

MINUTES OF MEETING

Held in the Centre William Rappard
on 4 May 1988

Chairman: Mr. A.H. Jamal (Tanzania)

			Page
Subjects discussed:	1.	Japan - Restrictions on imports of beef and citrus products - Recourse to Article XXIII:2 by the United States	3
	2.	Japan - Restrictions on imports of beef - Recourse to Article XXIII:2 by Australia	5
	3.	Korea - Restrictions on imports of beef (a) Recourse to Article XXIII:2 by the United States (b) Recourse to Article XXIII:2 by Australia	7
	4.	European Economic Community - Import licences for dessert apples - Recourse to Article XXIII:2 by Chile	10
	5.	United States - Quality standards for grapes - Recourse to Article XXIII:1 by Chile	14
	6.	Sweden - Restrictions on imports of apples and pears - Recourse to Article XXIII:2 by the United States	15
	7.	European Economic Community - Prohibition on imports of almonds by Greece - Recourse to Article XXIII:2 by the United States	15
	8.	European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins - Recourse to Article XXIII:2 by the United States	15
	9.	Morocco - Renegotiation under Article XXVIII:4	19
	10.	GATT Integrated Data Base - Progress report by the Director-General	20

		Page
11.	Japan - Trade in semi-conductors - Panel report	21
12.	Generalized System of Preferences - United States' removal of Chile from GSP scheme - Recourse to Article XXII:1 by Chile	25
13.	Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade - Request for a working party	26
14.	United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report	33
15.	Canada - Measures on exports of unprocessed herring and salmon - Follow-up on the Panel report	37
16.	Derestriction of future panel reports - Proposal by the Director-General	38
17.	Roster of non-governmental panelists (a) Proposed nomination by Brazil (b) Proposed nomination by the United States	39
18.	Committee on Budget, Finance and Administration - Progress report by the Committee Chairman	40
19.	Japan - Quantitative restrictions on imports of certain agricultural products - Follow-up on the Panel report	40
20.	European Economic Community - Amendment to anti-dumping regulations	41

The representative of the European Communities, speaking prior to the adoption of the Agenda, noted that 14 of the 20 proposed items were related to dispute settlement. Ten of these were requests for panels; the others were otherwise linked to dispute settlement procedures. The Community did not want an erroneous reading to be made of the work to be done at this meeting, and wanted to reassure all contracting parties of the wholly coherent attitude of the Community whether as a complainant or as a defendant in dispute settlement. At the Council meeting on 22 March, the Community had begun a dialogue which had been taken up by the United States and others, in which there had been a consensus that the settlement of disputes was a sign of GATT's good health and of many contracting parties' will to settle bilateral disputes in a multilateral forum, to reject any unilateral approach, and to act in full conformity with their rights and obligations -- in other words, to make the proper use of GATT dispute settlement procedures. However, there were still some rather divergent views on the relationship between dispute settlement procedures and the

Uruguay Round negotiations. The Community was aware of the temptation to use certain dispute settlement procedures in a systematic way as an element in the strategy for negotiations, for example on subsidies, particularly in agriculture. It would be unwise to yield to this temptation, because such a strategy might well inhibit, slow down or even paralyze the process of negotiations, especially those on subsidies, which might be caught between dispute settlement and the negotiations themselves. Worse yet, such action might jeopardize negotiations on dispute settlement as a whole. Thus, the Community was making an appeal for reflection on these matters. It was necessary to be absolutely clear about the existence of this temptation and the need to resist it, so that contracting parties could work in strict respect of their rights and obligations and not become sorcerers' apprentices.

The Chairman said that the nature of the Council's work, as well as the Agenda itself, reflected the environment in which contracting parties were working. The Community's cautionary remarks should assist contracting parties in steering a course without too much difficulty or friction.

The Council was informed from the floor of items proposed for inclusion under "Other Business", and then approved the Agenda.

1. Japan - Restrictions on imports of beef and citrus products - Recourse to Article XXIII:2 by the United States (L/6322)

The Chairman recalled that at its meeting on 8 April, the Council had agreed to revert to this item at the present meeting.

The representative of the United States recalled that at the April Council meeting, the United States had sought establishment of a panel to examine Japan's restrictions on imports of beef, fresh oranges and orange juice which were inconsistent with Japan's obligations under Article XI of the General Agreement. Japan also required that imported orange juice be blended with domestic orange juice, as a condition of sale in its market. This mixing requirement was clearly inconsistent with Japan's obligations under Article III. Since the April Council meeting, these restrictions had been the subject of intensive consultations in capitals at ministerial and technical levels. These efforts had not yielded a solution, and so the United States again sought establishment of a panel. In the light of the recently-adopted panel decisions concerning Japanese restrictions on imports of certain agricultural products (L/6253), and concerning the import, distribution and sale of alcoholic beverages by Canadian provincial marketing agencies (L/6304), the outcome of the present dispute was not in doubt. Japan's import quotas, the administration of its import quotas and its mixing requirement were causing immediate and substantial harm to US exports, with an estimated US$ one billion of trade at stake.

The representative of Japan said that beef and citrus products played a very important rôle in the sound development of Japan's agriculture and local economy in many regions, and the producers involved were exerting themselves under severe constraints to improve productivity. At the same

time, Japan had annually been making every effort for a substantial increase of imports of these products through consultations with major supplying countries. In response to the US request to eliminate immediately the import quotas on these items, Japan had been making its utmost effort to find a practical solution satisfactory to all the countries concerned through consultations with the United States. However, the United States had not shown sufficient understanding of the special circumstances which made total and immediate liberalization of those items difficult, and was now asking for establishment of a panel without due regard to Japan's efforts. The US attitude was extremely regrettable. Nevertheless, Japan would not oppose the establishment of the panel, because it was important to respect GATT's dispute settlement procedures. Japan strongly hoped that the United States would take a more realistic attitude and that a practical solution, satisfactory to all the countries concerned, would be found through consultations. As for procedural aspects, he said that the US complaint addressed two different sets of import restrictions on beef and citrus products. Moreover, a separate request for a panel addressing the Japanese import restrictions on beef was going to be made by Australia under agenda item no. 2. Accordingly, Japan requested that following a decision on the establishment of a panel, the Council Chairman conduct consultations among countries concerned, with a view to working out appropriate administrative arrangements for the panel or panels.

The representatives of Australia, Israel, Argentina, New Zealand, Brazil, Uruguay and Canada supported the request for the establishment of a panel and reserved their respective countries' rights to make a submission to it.

The representative of Israel said that citrus fruit was an important export item for his country, and that Israel would be interested in the work of such a panel.

The representative of New Zealand expressed his country's interest in this matter and said that his delegation would make a substantive statement under agenda item no.2 on New Zealand's beef exports to Japan, its current request for Article XXIII:1 consultations (L/6340), and should these fail, its intention to request a panel under Article XXIII:2.

The representative of the European Communities said that the Community had an interest in this matter and reserved its right to make a submission to the panel.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned. The Council Chairman would consult with the parties and with the Secretariat concerning the appropriate administrative arrangements for this Panel.

2. Japan - Restrictions on imports of beef
- Recourse to Article XXIII:2 by Australia (L/6333, L/6340)

The representative of Australia drew attention to his Government's request for the establishment of a panel under Article XXIII:2 to review Japan's restrictions on beef imports (L/6333). Australia and Japan had held consultations on this matter but had not reached a satisfactory conclusion. In view of the establishment of a panel to examine the US complaint against Japan's restrictions on beef imports under agenda item no. 1, his delegation considered that the Council should also agree to Australia's request for a panel. He outlined the background to Australia's concern. The import of all beef into Japan other than diaphragm beef and offal was subject to and controlled by a complex system of global import quotas which was extremely restrictive. As a result, the potential growth of this important export market for Australia had been unreasonably constrained. Australia was a long-term, reliable beef supplier, well placed to meet the growing demand for beef by Japanese consumers. Its exports were complementary to the range of beef products produced by Japanese farmers. Australia acknowledged that Japan had met its obligations according to the letter of the 1984 beef agreements with Australia and the United States -- in fact, quotas for Japan's fiscal year 1987 had been set at 37,000 tonnes above the level stipulated in Australia's beef agreement due to strong Japanese demand. However, domestic wholesale prices remained close to or above the ceiling of the price stabilization bands, prices had been maintained far above world levels despite falls in world grain prices, which had sharply reduced producers' feed costs, and consumers had received little benefit from the appreciation of the yen.

Australia had been severely disadvantaged by the present arrangements in the allocation and administration of quotas and in the treatment of quota beef compared with diaphragm beef. These features had negated both the strong demand by Japanese consumers for Australian beef and Australia's price competitiveness in the Japanese market. He said that as a result, Australia's share of beef imports under quota had fallen to 55 per cent in 1987, compared with 81 per cent in 1976; Australia's share of total Japanese imports of beef and beef products, including products outside quota, had fallen from 74 per cent in 1976 to 41 per cent in 1987, and in value terms the decline had been even greater. These import figures showed that Australia was a major supplier of beef to Japan, and also that at one time, Australia had been by far the principal supplier. He noted that, while Australia's share of beef imports had fallen, that of the United States had risen from 13 per cent in 1976 to 39 per cent in 1987. Since 1979, Japan had imported increasing quantities of "high quality" beef which the quota specifications defined as being "grain-fed". US beef was generally grain-fed; Australian beef was predominantly grass-fed.

Australia considered that the benefits accruing to it under the General Agreement were being nullified and impaired within the meaning of Article XXIII:1 by Japanese restrictions on beef imports. Australia believed that these restrictions were inconsistent with Japan's obligations under Article XI:1 of the General Agreement. He noted that the import of

all beef into Japan other than diaphragm beef and offal was subject to and controlled by a complex system of global import quotas. The quotas in question had been maintained by Japan since before 1963 as balance-of-payments measures under Article XII; in that year, Japan had achieved Article VIII status in the International Monetary Fund and had disinvoked GATT Article XII. Since that time, the measures had lacked any GATT justification. They had been notified in July 1969 as "notification of import restrictions applied inconsistently with the provisions of GATT and not covered by waivers" (L/3212/Add.7). Australia did not consider that this quota system qualified for the exemption from the provisions of Article XI:1 allowable under Article XI:2(c)(i) on at least two major grounds: (1) for example, to qualify for exemption, there had to be governmental measures which operated to restrict the quantities of a product permitted to be marketed or produced (i.e., the measures of domestic restriction should effectively keep output below the level which it would have attained in the absence of restrictions); and (2) the restriction on imports could not reduce the total of imports relative to the total of domestic production as compared with the proportion which might reasonably have been expected to apply between the two in the absence of restrictions (the burden of proof lying with Japan). Accordingly, Australia requested the establishment of a panel under Article XXIII:2 to review this matter.

The representative of Japan said that as he had mentioned under agenda item no. 1, Japan had been engaging in a series of consultations with countries concerned, with a view to achieving a satisfactory solution to the problem related to its restrictions on beef imports. Since these consultations had not produced any agreement to date, Japan did not oppose the establishment of the panel requested by Australia. This corresponded to Japan's belief that GATT's dispute settlement procedures should be respected. However, Japan strongly hoped that a satisfactory solution to the problem would be found by continuing efforts to bridge the differences between Japan and Australia. He added that in light of the decision taken under agenda item no. 1, the Council Chairman should conduct consultations among countries concerned with a view to working out appropriate administrative arrangements regarding the panels set up to examine Japan's restrictions on beef imports.

The representative of New Zealand said that his country was the third largest supplier of beef to Japan after Australia and the United States, and therefore had strong commercial and policy interests in this issue and in the way in which it might be settled. New Zealand supported the approach by the United States and Australia in their requests for the establishment of panels to address the measures and restrictions maintained by Japan on beef imports. New Zealand's access to the Japanese market had been seriously inhibited by the operation of quantitative and licensing controls maintained by Japan in support of an artificial internal price-support mechanism for beef. New Zealand had, on numerous occasions during bilateral discussion with Japan, raised its concerns about the effects of the quota and its administration by the Livestock Industry Promotion Corporation (LIPC). New Zealand had not yet received any assurance that Japan was prepared to modify its beef import régime in a

manner consistent with its GATT obligations. The Japanese Government had told New Zealand that it would benefit from any opening of Japan's market for beef; however, the indications were not propitious that such an opening would be voluntary and soon. Therefore, in order to protect its commercial interests and to seek a resolution to this issue through GATT mechanisms, New Zealand had formally requested Japan to enter into Article XXIII:1 consultations (L/6340), which New Zealand hoped would allow differences of view between the two countries to be resolved speedily, to their mutual satisfaction, and in a manner fully in accordance with GATT. New Zealand would make every effort to achieve such a result; nevertheless, it fully reserved its rights to request the Council to establish a panel under Article XXIII:2, should consultations not resolve this matter. His delegation welcomed Japan's cooperative approach to the establishment and structure of a panel to examine Australia's complaint, and would participate, as appropriate, in the Secretariat's consultations on this matter.

The representative of the European Communities said that the Community had an interest in this matter and reserved its right to make a submission to the panel.

The representative of the United States said that his delegation supported Australia's request and was prepared to agree to consultations on administrative arrangements in connection with agenda item no. 1. The United States reserved its right to make a submission to the panel requested by Australia and similarly with regard to the Article XXIII:1 consultations mentioned by New Zealand.

The representatives of Argentina and Uruguay supported the establishment of a panel and reserved their respective countries' rights.

The representative of Canada reserved his country's right to make a submission to the panel.

The Council took note of the statements, agreed to establish a panel and authorized the Council Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned. The Council Chairman would consult with the parties and with the Secretariat concerning the appropriate administrative arrangements for this panel, in the light of the establishment of a panel under agenda item no.1.

3. Korea - Restrictions on imports of beef
   (a) Recourse to Article XXIII:2 by the United States (L/6316)
   (b) Recourse to Article XXIII:2 by Australia (L/6332)

The Chairman recalled that at its 8 April meeting, the Council had agreed to revert to sub-item (a) at the present meeting. He drew attention to document L/6332, containing a communication from Australia, which related to a new sub-item (b).

The representative of the United States recalled that at the 8 April Council meeting, Korea had stated that it would not stand in the way of the Council's establishment of a panel to examine the US complaint if a mutually satisfactory result had not been reached by then. Since no such solution had been reached, the United States renewed its request for a panel under Article XXIII:2.

The representative of Australia said that his country was also requesting establishment of a panel at the present meeting to examine the GATT compatibility of Korea's import restrictions on beef. This request had been foreshadowed at the April Council meeting. Australia's concerns had been outlined at the 22 March Council meeting when the matter had first been raised by the United States. He recalled that in the two years immediately prior to the closure of Korea's market in 1984, that country had been Australia's third largest export market for beef, taking 74,000 tonnes in 1982 and 64,000 tonnes in 1983. Australia had accounted for over 90 per cent of Korean beef tenders and had also supplied a significant quantity of high-quality beef to the hotel and restaurant trade. Australia had been the principal supplier to the Korean beef market. The market had then been closed for commercial sales. Since that closure, the Australian Government had made numerous representations to have the market re-opened and that it should operate in a non-discriminatory manner. In May 1985, Australia's Minister for Trade had been assured that the Korean Government would consider the early resumption of beef imports when the demand and supply situation in Korea permitted. Despite this and other assurances, the market had remained closed. Australia's clear preference was to settle this matter through bilateral consultations. Regrettably this had not been possible. Therefore, it had found it necessary to seek redress for its significant and legitimate trade interest through GATT processes. In Article XXIII:1 consultations held on 23 March and 5 April 1988, Australia had invited Korea to explain how its beef import régime was compatible with GATT. The responses given had not indicated any intention by Korea to alter that régime in such a way that would make it compatible with Korea's GATT obligations and, through that process, address Australia's concerns that any market re-opening be done on a non-discriminatory basis. Australia considered that Korea had no GATT justification for its beef import régime, and asked that the Council establish a panel at the present meeting and for the earliest start to the Panel's work.

The representative of Korea said that his delegation agreed to the establishment of panels to examine Korea's restrictions on imports of beef as requested by the United States and Australia. As for the modality of the establishment of panels, Korea wanted there to be two separate panels. Account had been taken of the fact that beef supplied by the United States was regarded as different in terms of source of demand and consumption pattern from beef supplied by Australia. As for the Panel's terms of reference, composition of panels and other administrative arrangements, his delegation wanted to consult with the parties concerned and with the Secretariat in accordance with established practices.

The representative of New Zealand said that prior to the suspension of beef imports, New Zealand had been the second largest supplier of beef to

Korea. It therefore supported the approach by the United States and Australia for the establishment of a panel to address the import régime in question. Since the closure of Korea's market, New Zealand had made a number of representations to that Government but had not yet received assurances that Korea was prepared to modify its import régime to meet New Zealand's concerns and to bring its measures into conformity with Korea's GATT obligations. New Zealand had recently requested formal consultations with Korea on this matter under Article XXIII:1 (L/6335) and hoped that these might resolve the differences to mutual satisfaction and in a manner fully in accordance with GATT provisions. Nevertheless, should this not be possible, New Zealand fully reserved its rights to request the Council to establish a panel under Article XXIII:2 or to make submissions to either or both of the panels to which Korea had agreed.

The representatives of Argentina, Uruguay and Canada supported the establishment of the two panels and reserved their countries' rights to make submissions to them.

The representative of the United States supported Australia's request for a panel and reserved its right to make a submission to it.

The representative of the European Communities said that the Community had an interest in this matter and reserved its rights to make a submission to the panels.

The representative of Australia supported the US request for a panel and reserved its right to make a submission to it. He welcomed Korea's cooperative approach. While it was important, as a matter of principle, for Australia to have established the legal basis for a separate panel to examine its complaint, his delegation would cooperate in making the panels' procedures more efficient. In this respect, he noted Korea's remarks and reminded the Council that Australia's case was not based on the character of Korea's beef trade but on the measures used to prescribe it, and therefore the type of product which was predominantly exported by Australia vis-à-vis another exporter was irrelevant for the purpose of the panels.

The Council took note of the statements and agreed to establish a panel to examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States in document L/6316, and a second panel to examine the matter referred to the CONTRACTING PARTIES by Australia in document L/6322. Both panels would make such findings as would assist the CONTRACTING PARTIES in making the recommendations or rulings provided for in paragraph 2 of Article XXIII. The Council authorized its Chairman to designate the Chairmen and members of the two panels in consultation with the parties concerned. The Council Chairman would consult with the parties to the two panels and with the Secretariat concerning the appropriate administrative arrangements.

4. European Economic Community - Import licences for dessert apples - Recourse to Article XXIII:2 by Chile (L/6329 and Add.1, L/6337)

The Chairman recalled that at its meeting on 8 April, the Council had agreed to revert to this matter at an appropriate time. It was on the Agenda of the present meeting at Chile's request. He drew attention to the communications from Chile in L/6329 and Add.1, and L/6339 and to communications from the European Communities in L/6337 and from New Zealand in L/6336.

The representative of Chile recalled that at the 22 March Council meeting, Chile had expressed concern over the European Economic Community's setting up of a licensing system for dessert apples aimed at monitoring imports from third countries. At that time, the Commission had assured the Council that the licensing would be automatic and would in no case restrict imports. However, Chile now faced two new sets of restrictive measures which affected apple imports into the Community. The first was the unilateral and discriminatory suspension of the granting of licenses to Chile on 12 April. The second was the establishment of quotas for all suppliers, including those in the Southern Hemisphere, from 15 February until 31 August 1988. These measures had caused serious prejudice to Chile which relied on exports not only to finance its development but also to pay its external debt. His Government had underlined the gravity of this matter in a letter to the Director-General circulated in L/6339. Chile considered that the measures in question nullified or impaired benefits accruing to it and contravened Articles I, II, XI and XIII of the General Agreement as well as Part IV, and went against the provisions of the Agreement on Import Licensing Procedures (BISD 26S/154). Chile had held two sets of Article XXIII:1 consultations with the Community with no satisfactory result. As apples were a perishable good, Chile asked the Council to establish a panel promptly under Article XXIII:2 to examine its complaint.

The representative of the European Communities said that in the case of seasonal, perishable goods, not only would the Community not object to establishment of a panel, it would agree to such. There was always an element of risk assumed by a contracting party when it exercised a GATT right. The Community assumed this risk as well. His delegation hoped that contracting parties would avoid statements of principle that might, due to their very nature, overstep the threshold beyond which controversy would be inevitable and would poison work in GATT. For this reason, the Community wanted to point out that the situation of apples in the Community was not easy; consumption was going down as was production, vast quantities of apples were being withdrawn from the market, domestic prices were declining, and imports from the Southern Hemisphere rising. The Community did not want this issue to become a source of discord in GATT.

The representative of New Zealand said that his delegation supported Chile's right to a panel under Article XXIII:2. As indicated in L/6336, New Zealand had held the first round of consultations with the Community under Article XXIII:1, in which his delegation had brought to the Community's attention the immediate and substantial trade losses, involving

tens of millions of US dollars, arising from the imposition of quotas. Furthermore, once markets were artificially distorted, the amoeba would spread in new directions; efforts would inevitably be made to divert some of the avilable Southern Hemisphere product to new markets, perhaps elsewhere in Europe, and so it would continue. There were also wider issues involved in this case, including political issues and questions of depth of commitment to previous undertakings. His delegation had taken note of the Community's statement at the outset of the present meeting regarding the effect that debates such as this could have on the agriculture negotiations; it had also noted the Community's helpful response to Chile's request for a panel. On the other hand, while the Community had argued that quotas could be imposed on primary products provided they met the conditions of Article XI, to apply that argument in this case would also imply the claim that such a quota might be unilaterally imposed on a bound item without breaching a GATT concession dating back to the very foundation of the Community. If sustained, such action would alter fundamentally the value of GATT bindings for primary products, and would also have implications for the Uruguay Round. New Zealand was deliberating on the results of its Article XXIII:1 consultations in respect of several GATT aspects, and reserved the right to move to Article XXIII:2 should those consultations not resolve this matter. In that event, his delegation would participate in consultations to determine the most appropriate way for a panel to deal with New Zealand's complaint.

The representative of South Africa recalled that at the March Council meeting, his delegation, like others, had expressed its concern that the Community's import licensing system on dessert apples not be converted into a protective instrument. South Africa had understood the Community's response to imply that this measure was intended simply to monitor imports and not to become an impediment to legitimate trade. However, within four weeks and without advance consultation, the Commission had announced the imposition of quotas for apple imports from Southern Hemisphere suppliers and from some other countries. His delegation was concerned about this turn of events and the resultant uncertainty it created with respect to the value of the Community's GATT commitments regarding the importation of dessert apples. South Africa found the arguments for requesting a panel to be persuasive, fully supported the request and welcomed the Community's willingness to agree to it. Article XIII laid down specific obligations regarding the non-discriminatory administration of quantitative restrictions. Even if the Community were able to justify its action elsewhere under GATT, his delegation failed to see how it could be reconciled with Article XIII. South Africa also questioned seriously the compatibility of the method of allocation of quota shares among supplying countries with Article XIII:2(d), and would avail itself of the Commission's invitation in L/6337 to pursue this aspect bilaterally.

The representatives of the United States, Argentina, Canada, Brazil, Hungary, Uruguay, Australia, Romania and Thailand supported the establishment of a panel to examine this matter.

The representatives of the United States, Argentina, Canada, Uruguay, Australia, Romania and Poland reserved their delegations' rights to make a submission to the panel if established.

The representative of the United States said that in the light of the Community's statement prior to approval of the Agenda, his statement would be brief. The United States firmly believed that the import restrictions in question clearly violated the Community's GATT obligations and its standstill undertaking. It was a clear attempt by the Community to isolate its apple crop from competition, to the detriment of third-country producers and Community consumers. The restrictions affected US exporters, which had already reported order-cancellations. The United States was also concerned about diversion into the US market of apples originally bound for the Community. Accordingly, his delegation was requesting its own Article XXIII:1 consultations.

The representative of Argentina said that the Community's quota system was in clear violation of GATT rules and of the standstill commitment.

The representative of Canada said that this measure had had an immediate restrictive effect on Canada's exports of dessert apples to the Community. His country was concerned at the manner in which the licensing system had been applied and was seeking more details on how it functioned. Canada considered the Community's lack of transparency in introducing this régime regrettable, and did not believe the measure to be compatible with Article XI.

The representative of Brazil said that his country had continuously supported the tradition in GATT that every contracting party had a right to a panel. In the present case, the request came from a developing contracting party, and the Council should respond with immediate action. Brazil was deeply concerned over the protectionist measure adopted by the Community.

The representative of Hungary recalled that at the April Council meeting, the Community had assured contracting parties that the measure would not affect trade flows. Shortly thereafter, the Community had suspended import licenses for Chilean apples and had established quotas for all third countries. He reiterated his delegation's concern over this trade-restrictive measure and noted with satisfaction the Community's willingness to agree to Chile's request for a panel.

The representative of Uruguay said that his delegation saw this matter as a source of particular concern, and shared the views expressed by a number of representatives. The Community's measure was in contravention of a number of GATT Articles, and was contrary to the standstill commitment which was one of the fundamental bases of the Uruguay Round. The measure created uncertainty amongst exporters and led to diversion of these exports to other markets. Furthermore, the measure affected a perishable good, and thus had disastrous effects on the countries concerned. It was also in contradiction with special and differential treatment for developing countries, especially those in the Southern Hemisphere.

The representative of Australia said that his delegation shared the concerns of Chile and others regarding the GATT-consistency of the measures in question. His delegation supported Uruguay's statement regarding the questions this matter raised on the commitments under standstill and the preparedness to negotiate reductions in agricultural supports, which had become one of the cardinal points of the Uruguay Round. The Community had touched on these matters at the outset of the present meeting, and the generality of its earlier statement applied to the present discussion. The Community had already once attempted to apply restraints on apple imports through the negotiation of voluntary restraint agreements.

The representative of Romania expressed regret that the Community was taking measures which were contrary to the commitments undertaken in the Punta del Este Declaration.

The representative of Thailand said that as an exporter of a wide range of agricultural products, his country had on many occasions expressed concern over the effects of unfair trade in agricultural products and unilateral actions taken by some importing countries which resulted in restrictions on imports from developing countries like his own. His delegation welcomed the Community's decision to accept Chile's request for a panel. Thailand shared New Zealand's concern over the quotas imposed on bound items, which had wider implications for a contracting party's obligations regarding its tariff bindings.

The representative of the European Communities said that his delegation had hoped that its positive approach towards this matter and its quick acceptance of the establishment of a panel would be repaid in kind, but this did not seem to be the case. Some of the statements had gone beyond the Community's threshold of acceptability. Serious concepts should not be used lightly. For example, the political commitment under standstill should not be confused with the exercise of the legitimate rights of contracting parties. With respect to the criticism of the introduction of the measures after the most recent Council meeting, it was true that his delegation had given assurances in the Council, as these had been received from its headquarters, but governments were not infallible and sometimes found it necessary to take urgent measures. However, the Community had promptly agreed to the establishment of a panel and hoped that this would be taken into account. Any contracting party had the right to have an opinion, but the Community could not accept a step such as Brazil's contention that the measures in question were protectionist. The Community could understand that this measure was causing difficulties, but contracting parties should not take undue advantage of this situation, as this would be neither productive nor constructive.

The representative of Chile said that his delegation did not share the Community's view on the interpretation of the standstill agreement. Measures such as those taken by the Community undermined the Punta del Este Declaration. Chile interpreted the statements supporting its position as expressions of concern over the matter under consideration. His country had given clear evidence of its readiness to eliminate from its own trade régime any trace of protectionism. His delegation assured the Community

that Chile would act in the spirit and letter not only of the General Agreement but also of the Punta del Este Declaration.

The representative of Israel expressed his delegation's satisfaction with the Community's prompt agreement to the establishment of a panel, given the large number of contracting parties which shared Chile's concern. This was a positive signal to the world that the GATT system was operating and was effective. Israel hoped that the panel would begin work soon and make its recommendation promptly. Israel would follow this process closely, with much interest in the results.

The Council took note of the statements, agreed to establish a panel to examine the matter referred to the CONTRACTING PARTIES by Chile, and authorized its Chairman to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

5. United States - Quality standards for grapes
- Recourse to Article XXIII:1 by Chile (L/6324)

The representative of Chile referred to the communication from his delegation in L/6324 and said that from 1987 onwards, most of Chile's grape exports to the United States had been subjected to quality control standards under the so-called "marketing order" applicable from 20 April of each year. The US Congress had included in the Omnibus Trade Bill authorization for the Secretary of Agriculture to require compliance with these standards up to 35 days prior to 20 April, for three years beginning in 1989. While this was not yet law, it would cause serious prejudice to Chile if passed. The marketing order was being applied to Chile in a discriminatory way, since quality inspection for US and other grapes was done at the point of origin; for Chile, inspection was upon entry into the United States. Such discrimination contravened the provision on national treatment in Article III as well as the m.f.n. clause in Article I. Chile asked that the United States eliminate this discrimination, and had asked for consultations on this matter under Article XXIII:1.

The representative of the United States said that as noted by Chile, the provision in question was included in legislation that was not yet law, the Omnibus Trade Bill, which the US President had indicated he would veto. Furthermore, the United States did not believe that this provision would succeed if re-introduced as separate legislation; even if passed, the provision was discretionary. Should it become law, his delegation stood ready to consult with any contracting party concerning its impact on trade.

The Council took note of the statements.

6. Sweden - Restrictions on imports of apples and pears
- Recourse to Article XXIII:2 by the United States (L/6330)

The Chairman drew attention to a communication from the United States in L/6330. He had been informed that Sweden and the United States were continuing their consultations on this matter, and that the United States might want to bring it before the Council at a later date.

The Council took note of this information.

7. European Economic Community - Prohibition on imports of almonds by Greece
- Recourse to Article XXIII:2 by the United States (L/6327)

The Chairman recalled that this matter had been raised at the 22 March Council meeting, and drew attention to a communication from the United States in L/6327.

The representative of the United States said that on 2 May there had been a second round of Article XXIII:1 consultations on this issue. At that time, the Community delegation had told his delegation that Greece had informed it that the ban on almond imports had been lifted as of 29 April. The Community had now provided the United States with a letter to the same effect. The United States was pleased with these developments and hoped to receive formal written confirmation directly from Greece. While the United States would not pursue its request for a panel at the present meeting, it reserved its right to revert to this issue should such confirmation not be received.

The Council took note of the statement.

8. European Economic Community - Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins
- Recourse to Article XXIII:2 by the United States (L/6328)

The representative of the United States said that following Article XXIII:1 consultations concerning subsidies paid by the Community to its processors and producers of oilseeds and related animal-feed proteins, which had not led to a satisfactory adjustment of the matter, the United States was seeking the establishment of a panel under Article XXIII:2. The Community's subsidization system for oilseeds and related animal-feed proteins provided for extremely high levels of subsidies -- of the order of 200 percent of the world price -- to the processors and producers of these products, resulting in huge increases in production and severe market distortion. They had resulted in a direct nullification or impairment of benefits accruing to the United States and other contracting parties from a zero tariff binding negotiated on oilseeds and oilseed meals in the Dillon Round of negotiations in 1960-1962. In addition, the Community subsidized its processors to purchase Community-produced oilseeds and related animal-feed proteins in violation of Article III of the General Agreement.

These issues raised a question of fundamental importance to GATT: whether a contracting party could take actions, in this case, payment of subsidies, which had the effect of rendering its tariff bindings meaningless. Each contracting party had to be assured that concessions that it bargained for would not be rendered meaningless by subsequent actions of another contracting party. In this regard, it was worth recalling that in 1961, at the very time the tariff concessions in question were being negotiated, the Panel on Subsidies had reiterated the position adopted by the CONTRACTING PARTIES in 1955 (BISD 3S/224) that, "so far as domestic subsidies are concerned it was agreed that a contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the concession by the subsequent introduction or increase of a domestic subsidy on the product concerned." (BISD 10S/201). The Community had suggested further "technical discussions", but the United States did not see how these could be helpful at this point, since the dispute was over the interpretation of official Community import statistics. The Community had also stated that its "budget stabilizer package", agreed to at the February EC summit, would solve the problem. This package could not reasonably be expected to repair the nullification or impairment of trade concessions suffered by the United States. The United States had suffered a massive decline in trade, of the order of US$1.5 - 2 billion annually, while the Community had offered 200 percent subsidies to its producers and processors and literally stimulated an explosion of production. The budget package made no effort to roll back the massive increase in production or to reduce the massive subsidies; indeed, the package called for increases in the quantities of oilseeds that could be produced before any price cuts occurred. The production increase, the relatively minimal price cuts involved, given the 200 per cent level of subsidization, the failure to deal with related animal-feed proteins, and the Community's past record of unsuccessful attempts to restrain agricultural production, regrettably led the United States to believe that the nullification or impairment of benefits would not cease and that this issue should be brought before a panel.

The representative of the European Communities said that he wondered whether the US request did not mask an attempt to explain the difficulties encountered by its exporters and their loss of competitivity in the Community's market. The Community had always supported the right of any contracting party to request a panel, while insisting that resort to this right had to be used with circumspection; the corollary to this was that the establishment of a panel was not automatic. In the Uruguay Round, the Community had made progress and, subject to the final package, was prepared to accept the principle of the right to the establishment of a panel for any contracting party, it being understood that the Council could nevertheless reject unfounded or whimsical requests in order to remain credible. It was the Community's understanding that there had never been a case in GATT of a request for a panel being blocked forever; that right had been recognized de facto. The Community considered that at the present stage, the US request was neither necessary, justified nor timely. It addressed measures which did not and could not contravene GATT provisions.

Thus the United States should provide detailed justification for it. While there might be pressures in the United States under Section 301 of the US Trade Act of 1974, an emergency could not be claimed to exist when a measure had gone unchallenged for 22 years. Thus it could only be a political issue, or worse, a negotiating strategy. To lock agricultural subsidies in between the regular dispute settlement procedure and the Uruguay Round negotiations would entail serious risks for all. It risked inhibiting, slowing down or even paralyzing not only negotiations on agricultural subsidies but also those concerning the principles and procedures for GATT dispute settlement. He asked how it was possible that given the Community policy, the United States' partners or competitors had achieved a remarkable performance in the Community's market, while US exporters had lost market share. However, the spirit of conciliation should prevail; accordingly, consultations had to be completed and a mutually satisfactory solution found, including the possibility of a panel, which the Community did not fear, as long as it was fully justified. More time was needed to explore this matter in order to work out a solution.

The representative of the United States expressed deep regret over the Community's response. The United States disputed the claim that it had slept on its rights, noting that there had been numerous consultations over the years. The Community's denial that facts had been presented was incorrect, and the United States was concerned by the Community's refusal to respond to them. When speaking prior to the adoption of the Agenda, the Community had referred to the possibility of bringing disputes under the dispute settlement mechanism as an element of a negotiating strategy. That was clearly not the case in the present dispute. The United States felt strongly that the right to a panel was not suspended during a negotiating period. On an earlier item[1] on the Agenda, the Community had stated that standstill obligations did not mean that a contracting party was giving up its GATT rights; the same logic should be applied in the present case. It was not up to the party responding to a request for a panel to decide that more consultations were needed. As the requesting party, the United States had come to the conclusion that further Article XXIII:1 consultations would not result in a mutually satisfactory solution of the dispute, and had therefore exercised its right to request a panel. The United States hoped that the Community would come forward with a new proposal to resolve this issue, rather than just a repetition of previous arguments and proposals.

The representative of Canada thanked the Community for drawing attention to important current developments in the GATT dispute settlement system. He recalled that the Community had spoken on this matter at the 22 March Council meeting. At that time, the Director-General had suggested that it be taken up again at the next special Council meeting in June, in which the discussion might be carried a bit further. Canada proposed that in preparation for this, the Secretariat prepare a brief note setting out, by country of invocation, a listing of recourses to Article XXIII:2 since

---

[1] See item no.4.

1982, when the CONTRACTING PARTIES had most recently made formal procedural changes in the dispute settlement system. Canada had set out its position on Article XXIII:2 in recent months: the right to a panel was not an automatic right; there had to be discussion in the Council; it was up to the party invoking Article XXIII:2 to decide when the matter needed to be pushed to a final decision; if a request for a panel was unfounded or ill-prepared, then any panel established would make short shrift of the matter referred to it.

Canada was concerned with the effect of the Community's practices as they pertained to colza (rapeseed), particularly over the preceding three to four years when the level of subsidization had increased substantially as compared, for example, to levels existing during the first ten years of the program's operation. Canada could understand the Community's concerns about using the dispute settlement system to address a subsidization practice that had been in effect for 22 years, as a Canadian practice that was over 40 years old -- indeed that pre-dated GATT -- had been challenged under that system. Canada considered the current Community practice to be contrary to Article III in that the subsidy was provided to Community crushers of rapeseed for the purchase of Community product only, to the exclusion of imported rapeseed. In addition, Canada considered the program to nullify or impair the bound concession granted to Canada in 1962 by upsetting the competitive relationship between imports and domestic products. Canada had raised its concerns bilaterally with the Community and had been reviewing the latter's oilseeds program in light of its GATT obligations. As there were certain differences in the program as between rapeseed and other oilseeds such as soya, Canada was considering Article XXIII:1 consultations with the Community. Canada supported the US request for a panel and reserved its rights to make a submission to it without prejudice to other action Canada might take within GATT to defend its interests.

The Chairman, in response to a query from Jamaica, said he understood that the Community was not entirely unsympathetic to the US concerns but felt that more time was needed to consider this issue.

The representative of Jamaica said that his delegation supported Canada's proposal regarding information on panels. His delegation was concerned whether the US request covered only oilseeds and animal-feed proteins, rapeseed and soya beans, or whether other products would be involved. His delegation failed to understand the difference between agricultural and tropical products in the area of oil. It would be useful in future requests for panels to indicate the relevant tariff lines. This would allow a country to verify whether its interests were affected, and thus to decide whether or not to reserve its right to make a submission to a panel.

The representative of New Zealand said that although his country did not have a direct interest in the case at hand, it recognized the broader implications of these issues and their potential impact on New Zealand's whole agricultural trade with the Community. His delegation therefore

supported the US request for a panel and reserved its right to make a submission to it, if one were established.

The representative of Australia supported the US request for a panel. He agreed with Canada that, since the requirements for holding Article XXIII:1 consultations appeared to have been met -- those being that two rounds represented a reasonable effort to try to reach a solution --, it was the general prerogative of the complainant party to activate a request for a panel. His country had a trade interest in this issue as an exporter of grain, légumes and lupins to the Community, valued at US$ 150 million in 1986/87, and reserved its right to make a submission to a panel.

The representative of Malaysia said that his country exported oils, oilseeds, and animal-feed proteins. In connection with the products concerned, he supported Jamaica's proposal on tariff lines. Malaysia supported the US request for a panel and reserved its right to make a submission to it.

The representative of Uruguay confirmed his country's position that a panel should be established when requested, in the interest of the good functioning of GATT dispute settlement. Uruguay had a trade interest in this matter, supported the US request and reserved its right to make a submission to a panel.

The representatives of Argentina, Indonesia and Brazil supported the establishment of a panel and reserved their countries' rights to make submissions to it.

The representative of the European Communities said that he had tried carefully to explain the Community's position with frankness and openess. He agreed with the Chairman's assessment of the situation regarding the establishment of a panel. However, some statements risked aggravating the situation. That was a risk worth calculating by all. Regarding Canada's remarks, it was not up to the requesting party alone to decide on a panel request; the other party also had its right to decide when and how to accept the request. Moreover, the number of consultations was irrelevant; it was the importance of the case at hand that mattered, as there were enormous interests at stake. He warned against those who might seek to complicate the solution of this issue.

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

9. Morocco - Renegotiation under Article XXVIII:4 (L/6326 and Add.1)

The Chairman drew attention to L/6326, containing a request by Morocco for authority under the provisions of Article XXVIII:4 to renegotiate four concessions included in its Schedule, and to the Addendum to that document, containing statistical information supplied by Morocco.

The representative of Morocco said that as indicated in L/6326, his country had recently carried out a tax reform aimed at reducing a fiscal levy of 12.5 per cent on imports to replace the special tax on imports and the customs stamp duty. This new tax would apply to all imports into Morocco. The measure was provisional in that it would be eliminated as soon as the budget deficit was reduced to a reasonable level. Morocco had ensured that the total amount of bound duties would not be affected except in the case of four items. Therefore, his Government sought authorization under Article XXVIII:4 to renegotiate these concessions with interested parties. His delegation had communicated statistical data for these four tariff headings in L/6326/Add.1, in which the tariff heading for newsprint should have read "48.01 AI".

The Council took note of the statement, agreed to grant the authority sought by Morocco, and invited any contracting party which considered that it had a principal supplying interest or a substantial interest, as provided for in Article XXVIII:1, to communicate its claim in writing and without delay to the Government of Morocco and at the same time to inform the Director-General. Any such claim recognized by the Government of Morocco would be deemed to be a determination within the terms of Article XXVIII:1.

10. GATT Integrated Data Base
- Progress report by the Director-General (C/155)

The Director-General drew attention to his progress report on the GATT Integrated Data Base (IDB) in C/155. He recalled that when the Council had agreed in November 1987 that the Secretariat could begin work on setting up the IDB, it had indicated its intention to keep progress on the IDB under review. Since the Council's decision, there had been four meetings of the Informal Advisory Group, as well as a number of informal consultations. He was pleased to report that, as a result, a substantial number of contracting parties had indicated their intention to participate in the IDB. Although the Council had asked contracting parties to indicate their intentions by the end of March 1988, he emphasized that countries could join the IDB at any time. The ongoing nature of this process was illustrated by the fact that since document C/155 had been issued, Austria and Egypt had indicated that they would participate, bringing the share of the contracting parties' total trade accounted for by participants in the IDB to 90.01 per cent. The Secretariat's work on the design of the IDB was also well under way. In addition, arrangements were being made to help contracting parties, especially developing countries, to deal with any technical problems involved in meeting the data and format requirements of the IDB. Finally, he wanted to encourage delegations to participate actively in the Informal Advisory Group. He urged contracting parties which had not yet indicated their intention to participate in the IDB to do so at an early date, so that they could benefit fully from these arrangements and contribute to the ongoing work.

The representative of the European Communities said that his delegation was encouraged by the Director-General's statement. Instruments

similar to the IDB were being created and developed in a number of international organizations. The Community did not intend to discourage this type of initiative, but wished to recall that GATT should have an instrument suited to its own specific needs, particularly in the field of negotiation. In the Community's view, the IDB should be a privileged instrument giving developing countries the opportunity to participate fully in the negotiations and to be full partners in the multilateral trading system. There were, inevitably, technical difficulties and unavoidable delays, but there were also priorities and urgent matters, as for example in the tariff and trade field, which were part of a greater global objective. GATT had to be a credible institution, with the IDB paving the way to a better use of negotiating instruments and better cooperation with other institutions.

The representatives of Pakistan, Morocco and Malaysia expressed their delegations' intentions to participate in the IDB.

The representative of the United States recalled that when the Council had authorized work to begin on the IDB, the United States had reserved its right to revisit the decision in light of contracting parties' indications of their intent to participate in it. His delegation was pleased by the progress to date, and believed that once operational, the IDB would improve GATT's effectiveness in establishing a sound, comprehensive and transparent factual basis covering contracting parties' trade régimes. The United States encouraged those contracting parties which had not yet done so to join the IDB.

The Director-General said that with the addition of Pakistan, Morocco and Malaysia, the percentage of contracting parties' trade covered by the GATT Integrated Data Base would rise to 91.2 per cent.

The Council took note of the statements.

11. Japan - Trade in semi-conductors
- Panel report (L/6309)

The Chairman recalled that at its meeting on 8 April, the Council had agreed to revert to this item at the present meeting.

The representative of the European Communities said that his delegation continued to support the adoption of this Panel report, which the Community considered to be sound and to have clear findings. In particular, the report concluded clearly that the Japanese measures, taken in the context of the so-called third-country monitoring, constituted export restrictions inconsistent with Article XI:1. The Community would call upon Japan to bring these measures into conformity with the General Agreement, which in essence meant repealing them.

The representative of Japan said that he wanted to lay down clearly his Government's undertanding of the meaning of the Panel report. The Panel had not agreed to the Community's contention that prevention of

dumping was an exclusive right of importing countries, and had not denied, as such, actions taken by exporting countries in order to prevent dumping. However, it had been the Panel's view that Article VI did not justify restrictive measures which were inconsistent with Article XI. Furthermore, the Panel had concluded that the complex of measures taken by Japan to implement third-country market monitoring constituted a coherent system restricting the sale for export of monitored semi-conductors at prices below cost, and was inconsistent with Article XI:1. In Japan's view, what was meant by the conclusion seemed ambiguous. For example, Japan did not consider that requests by the Government to companies not to export semi-conductors at prices below cost constituted in itself a contravention of GATT provisions. With respect to monitoring, Japan understood that the Panel had put into question, in light of the General Agreement, cases where export transactions were restricted as a result of measures such as the use of export licenses. Furthermore, it was Japan's view that supply and demand forecasts, which were merely estimates, by no means fell under GATT export restrictions. He pointed out that the Panel had not judged the consistency of any individual measure with the General Agreement. Should the Panel report be adopted, his Government would take appropriate measures as soon as possible to bring its existing measures relating to third-country market monitoring into conformity with GATT, based on the Panel's conclusion that a coherent system was inconsistent with GATT, and on the interpretation of the report he had outlined. Japan would ensure that improvement of the measures would not constitute any trade restriction inconsistent with the General Agreement. With this statement duly recorded, his Government would not stand in the way of adoption of the report.

The representative of the United States said that his authorities had reviewed this Panel report with care. The United States noted with satisfaction that the actions taken pursuant to the part of the US/Japan Semi-conductor Arrangement dealing with access to the Japanese market had been completely vindicated by the Panel as legitimate, non-discriminatory market-opening efforts. The United States was also satisfied with the Panel's findings with respect to third-country dumping, and noted that the Panel had reached no conclusions about the bilateral arrangement itself but only about Japan's methods of implementing it. Further, the Panel had determined that nothing in Article VI precluded an exporting country from taking actions to end dumping by its exporters provided such actions were not inconsistent with Article XI. While the Panel had found that the "complex of measures" taken by Japan had formed a "coherent system" of export controls that were inconsistent with Article XI, the Panel had not found that any individual measure under consideration was inconsistent with that Article.

The representative of Hong Kong said that his country had a direct interest in this dispute and welcomed the Panel's well-reasoned findings. Regarding the question of the relevance of Article VI to this dispute, he noted that paragraph 120 of the report stated that while Article VI was silent on action by exporting countries, it did not provide a justification for measures restricting exports inconsistent with Article XI:1. The substantive issue before the Panel was whether the measures taken by Japan

were in keeping with the spirit of Article VI, and in this regard Hong Kong supported the finding that Article VI could not be used to justify measures that were trade-restrictive and inconsistent with GATT. He expressed Hong Kong's satisfaction that Japan had agreed to adopt the Panel report, and made the following points: (1) the interpretation of a Panel's findings was the prerogative of the Council and could not be left solely to a particular contracting party; and (2) there should be total transparency in this process, bearing in mind that the recommendations, once the report was adopted, became recommendations of the Council and that all contracting parties, not just those directly involved in the dispute, had a legitimate interest in seeing that the recommendations were properly and promptly implemented. Hong Kong trusted that Japan would implement the report, keeping in mind these points, and that the Council would closely monitor progress in this matter.

The representative of Australia said that his delegation agreed with and supported the Panel's findings in paragraphs 117 and 118 of the report, that Japan's measures applied to semi-conductor exports "constituted a coherent system restricting the sale for export of monitored semi-conductors at prices below company-specific costs to markets other than the United States, inconsistent with Article XI.1", and that Japan's export licensing practices "constituted restrictions on the exportation of such products inconsistent with Article XI.1". Australia supported the Panel's conclusion, therefore, to recommend that Japan's measures relating to sales for export of semi-conductors to contracting parties other than the United States be brought into conformity with the General Agreement. Article VI clearly left to the importing country the decision on whether or not to take anti-dumping action. Paragraph 6 of that Article, in addressing the issue of protecting the interests of third-country exporters, specifically placed the right of action in the hands of the importing country and the CONTRACTING PARTIES as a whole. These provisions were reinforced in the Anti-dumping Code[2], in particular its Article 12, to which both Japan and the United States were parties. Australia interpreted these provisions to mean that the decision to take action on imports of dumped Japanese semi-conductors into Australia rested with Australia, and not with Japan as the exporting country or the United States as a third party. There was also the possibility that international arrangements without the consent of importing countries could breach those countries' laws on trade practices. Australia did not consider that the Panel's finding that Article VI was "silent on actions by exporting countries" adequately addressed those arguments or adequately protected the legitimate rights of importing countries in cases such as the present one. His delegation supported the adoption of the Panel's report because of its findings on the inconsistency of Japan's export control measures with the provisions of Article XI.1. Regarding the US statement that the Panel had made no conclusion about the Arrangement itself, this could not be

---

[2]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (BISD 26S/171).

construed as a comment by the Council on the GATT-conformity of the Arrangement. Australia had its own views on that matter, which was not at issue in the present case but might be in future.

The representative of Singapore said that her delegation supported adoption of the Panel report. Singapore had made a submission as a third party with a substantial interest in this case. Her delegation had carefully analysed the Panel's recommendations and wanted to make the following comments on the report. The Panel's terms of reference had not required a finding on the question of the GATT consistency of the Semi-conductor Arrangement itself, which in Singapore's view was the key problem in this dispute. The Arrangement contained a third-country clause which stated that in order to prevent dumping, the Government of Japan would monitor, as appropriate, costs and export prices on the products exported by Japanese semi-conductor firms from Japan. The Panel had not addressed the consistency or otherwise of this aspect of the Arrangement. Silence on the part of the Panel did not imply that contracting parties could in future apply procedures which deviated from existing GATT provisions on third-country dumping. She reiterated Singapore's support for the adoption of the report and its satisfaction with Japan's agreement to adopt it. Singapore urged Japan to implement the Panel's recommendations by removing those measures relating to Japanese exports of semi-conductors to third markets other than the United States which were inconsistent with Article XI:1, or to bring them into conformity with the General Agreement in an expeditious manner. She emphasized the need for transparency regarding Japan's implementation of the Panel's recommendations, for which progress should be monitored by the Council on a regular basis.

The representative of Jamaica said that his delegation wanted to underscore Hong Kong's statement, and the point made by Canada that Article VI left entirely in the hands of the importing country the absolute and sole discretion as to how and when it would impose anti-dumping measures. Jamaica shared this view on the interpretation and application of Article VI, which it felt applied to both agricultural and industrial products.

The representative of the European Communities welcomed the statements supporting adoption of this report. The Community had no intention at the present stage of entering into a debate on the interpretation of the report, which it felt was clear. The Community could not agree to a contracting party interpreting panel findings in its own way, and could not at the present stage take any position regarding the GATT consistency of any hypothetical alternative measures of implementation. Such measures had not been before the Panel and were not now before the Council. The Community expected implementation of this report in conformity with the Panel's recommendation and with GATT obligations.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they agreed with the Panel's conclusion that the measures in question were inconsistent with Article XI:1. Therefore, they endorsed the Panel's recommendation that Japan align these measures, aimed

at markets other than the United States, with its GATT obligations. The Nordic countries had noted with satisfaction Japan's statement, but found it regrettable that the Panel had not examined the GATT-consistency of the measures in relation to Articles X and XVII:1(c) to which the Community had pointed, as it would have been valuable to have an analysis of these aspects.

The representative of Japan reiterated that his Government would take appropriate measures as soon as possible to bring its existing measures into conformity with GATT. Japan would, naturally, be responsible for deciding on appropriate measures to be taken to implement the recommendation, and would inform the Council of the content of the measures without delay.

The Council took note of the statements and adopted the Panel report (L/6309).

12. Generalized System of Preferences - United States' removal of Chile from GSP scheme
- Recourse to Article XXII:1 by Chile (L/6298)

The Chairman said that this matter was on the Agenda of the present meeting at Chile's request and drew attention to the communication from Chile in L/6298.

The representative of Chile said that his Government wanted to continue consultations with the United States, and asked that consideration of this matter be postponed until a later date.

The representative of the European Communities said that his delegation would ask his authorities whether the Community might not have an interest in this matter. The Community did not contest Chile's motivation in requesting these consultations, but its communication, particularly regarding the notion of "unilateralism", was deeply disturbing. In dealing with this matter, it was necessary to return to the sources of the Generalized System of Preferences (GSP), which had originated in UNCTAD. At no time had there been any question of a unilateral decision; it was by consensus that a mutually acceptable system had been established. "Unilateral" today had a connotation that the Community would not like to see in GATT, where there had been references to a non-binding decision or commitment, and one taken by consensus. He recalled that the GSP had been set up on a temporary basis. Therefore, in any consultation to be held, the notion of "unilateral" should be set aside, as this word implied discretionary and arbitrary action which had nothing to do with "autonomous" action, which was the language in the non-binding commitment.

The representative of Chile said his delegation hoped that the Community's statement was based on certain errors of appreciation. While the GSP had been born in UNCTAD, it had been subject to the CONTRACTING PARTIES' approval in two decisions. In GATT, contracting parties were

governed by the General Agreement and by all the CONTRACTING PARTIES' decisions. Therefore, the origin of the GSP was not a valid argument. The notion of "unilateral" had been introduced by a contracting party which said that it was free to apply or not apply the GSP as it wished. Chile had stressed in L/6298 that in addition to the unilateral, or autonomous, aspect of GSP, its other basic principle was non-discrimination. Chile's interest was to see that there was no discrimination in GSP implementation, and his delegation would revert to this matter in due course.

The Council took note of the statements.

13. Communication from the United States concerning the relationship of internationally-recognized labour standards to international trade - Request for a working party (L/6196, L/6243)

The Chairman said that this item was on the Agenda at the request of the United States. He drew attention to the communications from the United States in documents L/6196 and L/6243.

The representative of the United States recalled that at the Council meeting on 10-11 November 1987, his delegation had proposed the establishment of a working party to study the relationship of internationally-recognized worker rights to trade. As agreed at that meeting, there had been a number of informal meetings to discuss the US proposal, which his delegation believed had been very useful and had served to put many fears and misconceptions to rest. The United States had asked that this item be placed on the Agenda for the present meeting in order to resume substantive Council discussion of its proposal, as the time had come to establish a working party. The purpose of the latter would be to examine the possible relationship of internationally-recognized labour standards to trade. The United States had intentionally used the term "possible relationship" so as not to prejudice the position of any country as to whether such a relationship would be found to exist. That would be the proper business of the working party. In raising this issue, the United States did not intend to attempt to impose its own labour standards on the world or to negotiate an international minimum wage. It agreed with other contracting parties that discussion of this issue should not lead to protectionist actions. It was not proposing that the GATT involve itself in writing and implementing labour standards -- that was the International Labour Organization's (ILO) responsibility -- but simply that GATT examine how these labour standards related to trade. Worker rights were not a new issue to the GATT: its Preamble included the need to raise standards of living; Article XX(e) allowed contracting parties to prohibit imports of prison labour; and finally, Article XXIX incorporated in the GATT, by reference, the Havana Charter's provisions on internationally-recognized labour standards. The November 1987 proposal had suggested specific terms of reference for a working party. The United States was open to suggestions for modifications and clarifications, but it believed the Council should establish a working party, as there was an important precedent at stake -- the right of any contracting party to a working party.

The representative of Nicaragua said that his delegation had participated in some of the informal consultations on this matter, in which it had recognized that any contracting party had a right to request a working party, but that the appropriate multilateral forum for discussing internationally-recognized labour standards was the ILO. His delegation had also made the point that a special group could not be created in GATT each time pressures were exerted on a government. He asked the United States not to insist and said that in so doing, Nicaragua was only applying the principle of reciprocity.

The representative of New Zealand said that his country supported the establishment of a working party to examine the relationship between internationally-recognized labour standards and international trade. New Zealand agreed with the United States that an important objective of a liberal international trading system should be that trade benefits contributed to raising living standards in less-developed countries. In supporting this proposal, however, his delegation had noted the concern of some contracting parties that it was being promoted in order to provide a further rationale for protectionism. This would be unacceptable. Accordingly, New Zealand would participate fully in any working party on this issue in order to ensure that the issue of workers' rights could not be manipulated in that manner.

The representative of Canada said that his country supported the US request on the ground that any contracting party had the right to bring before the GATT any matter which it considered to be related to the GATT, and to ask for a working party to examine it.

The representative of Mexico said that his delegation had taken part in the informal consultations on this matter and had expressed the view that although internationally-recognized labour standards did not fall within the competence of GATT, Mexico did not oppose their inclusion on the Agenda, on the ground that any contracting party had the right to request the Council to listen to its concerns or suggestions with a view to taking a decision. He said that the US request (L/6243) and its other communication (L/6196) did not correspond to the type of questions to be examined in GATT. For Mexico and many other contracting parties, internationally-recognized labour standards were those found in the numerous ILO Conventions and not those considered as such by some countries in the light of their own legislation or domestic practices. Mexico believed that this matter should not be looked at solely from the point of view of its effects on international trade, but in terms of the knowledge, expertise and tripartite focus of the ILO. Neither the GATT nor the ILO should involve itself in matters of the other's competence. Mexico thus opposed the establishment of a working party as proposed by the United States and invited the latter to reconsider its proposal. Mexico reiterated its readiness to examine this matter in the ILO.

The representative of Sweden, speaking on behalf of the Nordic countries, said that during the informal consultations it had been argued that this matter did not fall within the competence of the GATT, and the relationship to trade had been questioned. The Nordic countries believed

that it had been amply shown, for example in some of the Uruguay Round Negotiating Groups, how difficult, if not impossible, it was to define "trade-related". With regard to the competence of GATT, there was no definitive limit in the sense that, as the Uruguay Round showed, GATT was not static. One ought to take a generous approach in delimiting GATT's competence. If a country asked to have a matter which it regarded as important to trade discussed in a working party, other contracting parties should not refuse to establish the working party even if it was to deal with controversial matters, as was indeed the case at hand. As stated earlier in the Council, the Nordic countries found it reasonable to agree to the US request to set up a working party, particularly as it was only to examine in a factual, neutral and unbiased manner the possible relationship of internationally-recognized labour standards to international trade and to the attainment of GATT's objectives. The Nordic countries found it worthwhile to undertake such an investigation, the result of which might well be that there was no such relation. He restated that even the slightest risk of using the outcome of this working party for protectionist ends would be sufficient for the Nordic countries to reject any proposals for action.

The representative of Thailand, speaking on behalf of the ASEAN contracting parties, said they associated themselves with other speakers who had expressed their reservation on the US request for a working party on this matter. At the November 1987 Council meeting, the ASEAN delegations had registered their view that GATT was not an appropriate forum to discuss this matter. They had participated in the informal consultations on this matter with a view to finding a solution acceptable to all parties concerned. The consultations had been very constructive, but no satisfactory solution had yet been reached. He therefore reiterated the ASEAN contracting parties' position that GATT was not an appropriate forum to deal with this matter. The US communication (L/6243) had rightly referred to Article XXIX of the General Agreement as well as Article 7 of Chapter 2 of the Havana Charter relating to "fair labour standards". However, it was the ASEAN contracting parties' firm belief that worker rights standards in each country were a consequence of that country's political, social and economic environment. They did not oppose discussing these issues, as long as this was done in another forum where the question could be examined in a wider context.

The representative of Japan said that his delegation had already stated earlier that Japan did not oppose, from a procedural point of view, the examination of this problem in GATT, including in a working party. Any such examination should focus on the relationship of labour standards to trade and not on labour standards as such, and an ILO involvement of some sort would be welcomed since the matter was dealt with by that body. His delegation was pleased to see that the United States was proposing the establishment of a working party with the technical assistance of the ILO.

The representative of Cuba said that her delegation also considered that the informal consultations held so far on this matter had been useful, but they were not completed. Concerns had been expressed, and useful proposals had been put forward, but these had not been examined in depth.

Her delegation subscribed to the right of a contracting party to bring any issue before GATT, but the ultimate decision, in this case to establish a working party, belonged to the Council and required consensus. The responsibility for the substance of this matter belonged to another organization. Moreover, GATT did not have the necessary experience and technical expertise to examine the worker rights mentioned in document L/6243.

The representative of Chile said that his delegation believed, as stated on previous occasions, that the question of worker rights was the exclusive competence of the ILO and that therefore GATT should not be concerned with it. Internationally-recognized worker rights constituted precise and perfectly defined concepts which had to be examined in the light of the original conventions. To bring this matter before an organization alien to it, such as GATT, risked weakening the concept and submitting it to non-technical criteria. Moreover, an examination in GATT could result in the questioning and elimination of developing countries' comparative advantages. Chile therefore opposed the establishment of the working party requested by the United States.

The representative of Romania said that his delegation's position had not changed since the previous Council discussion of this matter. Romania opposed the establishment of a working party and believed that the US request was not justified. He said that in reality, references to labour standards and erroneous and arbitrary interpretations of other countries' situations had been used to justify protectionist and discriminatory measures.

The representative of Israel said that since this issue had been raised, Israel had examined it very carefully, knowing that it was a sensitive issue for many delegations. Israel had participated in the informal consultations, which had been very useful in clarifying the matters involved in the US request. His delegation was ready to agree to the establishment of a working party, based also on the belief that each contracting party had the right to ask for the establishment of a working party to examine issues it felt relevant to international trade. Israel's view was that the results of a working party's examination should not and could not be prejudged. It was also understood that a working party would limit its examination to the relationship between international trade and those labour standards listed at the end of document L/6243. The acceptance of the establishment of this working party could not be inferred as giving GATT any competence in the establishment of labour standards or as giving any other organization competence to deal with international trade issues. Lastly, it should be clearly understood that examining these issues could not, in any way, serve to justify any protectionist measures.

The representative of Nigeria associated his delegation fully with the view expressed by many representatives that every contracting party had the right to have a working party. However, referring to the Community's statement under item no. 8 concerning panels, he said that similarly, establishment of a working party was not automatic. The reservations and apprehensions previously registered by his delegation still stood.

The representative of Hong Kong said that his delegation had appreciated the clarification provided by the United States at the informal consultation on 7 March. Hong Kong still had misgivings about the proposal, in particular about the GATT relevance of the issue. However, it recognized the right of a contracting party to bring to the attention of the Council any matter which was relevant to GATT. As to the question of relevance, there were clearly differing views. Hong Kong therefore suggested that the United States continue its informal discussions with a view to finding an alternative way forward whereby the examination of the issue could be carried out without prejudging the relevance question.

The representative of Brazil said that the US request had been discussed both in the Council and in informal consultations for quite some time, but that a consensus on this issue was not any nearer. His delegation did not question the right of any contracting party to request a working party, provided the subject matter to be examined had a direct and unambiguous bearing on international trade and the GATT. The ongoing discussions showed significant divergences of view regarding the appropriateness and relevance of the issue proposed for review. It would not be convenient to initiate discussion in GATT of issues that did not bear directly on its objectives. His delegation was aware that the US request did not presuppose the existence of a causal relationship between the observance of internationally-recognized labour standards and international trade, and indeed it was the existence of that link that the United States was seeking to establish. His delegation did not consider, however, that this issue could or should be addressed by a working party and understood the concerns of many delegations concerning GATT competence. Unless appropriate steps were taken to amend that competence, his delegation would not agree to any flexible and enlarged interpretation thereof.

The representative of Pakistan said that his country did not question the right of any contracting party to the establishment of a working party, but felt that GATT procedures had to be followed. Those provided for decision-making based on consensus. His delegation remained unconvinced as to the reasons for establishing a working party in this case on three counts: the subject matter did not fall within GATT's competence; the US request was thought to be motivated by protectionist considerations; and in the final analysis, it was designed to neutralize whatever comparative advantage developing countries had. He referred to the bitter experience of developing countries in agreeing to the establishment of the Working Party on Market Disruption[3] in the 1950s, which had culminated in the imposition on developing countries of the Multifibre Arrangement[4]. His delegation was keenly aware of that earlier experience, and thus would

---

[3]Avoidance of Market Disruption - Establishment of Committee. Decision of 19 November 1960 (BISD 9S/26). Report of the Working Party (BISD 9S/105).

[4]BISD 21S/3 and 33S/7.

strongly resist attempts to establish a working party to discuss the issue at hand in GATT.

The representative of Egypt expressed his delegation's appreciation for the US efforts to clarify this issue. However, Egypt's views on this matter had not changed. It seemed to his delegation that GATT relevance was at stake, and that the latter could not simply be defined by whether an issue was trade-related or not. Egypt could not agree to the establishment of a working party in this case.

The representative of the European Communities said that his delegation had participated in the informal consultations. Those had been useful and had thrown some light on the various problems which had been expressed again at the present meeting. He recalled that the Community had expressed the opinion at an earlier Council meeting that GATT had a broad so-called deliberative competence to discuss questions of any sort which had a relationship to trade, including labour standards. That was, of course, without prejudice to the question of GATT competence with regard to taking action. His delegation was aware of the concerns which had been reiterated at the present meeting and agreed with some of them, for example, that labour standards should not be used for protectionist measures. However, there was no justification for prejudging the intentions of the proponent of this issue and questioning the good faith of a request for discussing real-world problems. The Community was not opposed to a working party, but attached great importance to the need to respect the various positions expressed, and in that spirit suggested that the Chairman might conduct consultations once more in an effort to find a solution. His delegation could not accept the argument that because a problem appeared to be difficult or almost impossible to resolve, it could not be considered in GATT; that would be interpreted as a sign of weakness.

The representative of Turkey said that his country's position had not changed; Turkey was still not convinced that GATT was competent to discuss this matter. His delegation was not opposed to examining it in a more appropriate forum and thought it useful for the Chairman to hold further informal consultations.

The representative of India said that his delegation was perplexed by certain remarks that had been made and wanted to challenge them. The Nordic countries had said that the issue of competence was not germane, since one could not say what the proper competence of GATT was, considering the number of issues being negotiated in the Uruguay Round. The implication was that the issue of GATT's competence was wide open. His delegation did not subscribe to that view; Ministers had agreed to negotiate on issues in the Uruguay Round within very carefully defined parameters, and had taken every care to ensure that the proper competence of international agreements and treaties was preserved and respected. There had also been numerous statements which had accompanied the adoption of the Punta del Este Declaration. Therefore, the Council could not accept any suggestion that the issues, particularly those being negotiated in the Uruguay Round, were without any proper context, that the GATT had lost any

frame of reference that it might have had, and that the issue of competence was therefore wide open. When this matter had last been considered in the Council, it had been his delegation's understanding that it would be raised again in Council only if it appeared that some consensus was emerging in the informal consultations on this matter. From the various statements at the present meeting, this did not appear to be the case. His delegation was therefore surprised that the matter had been brought before the Council once more. India had fundamental and substantive objections in this matter, and could not agree to the setting up of any working party in GATT to deal with this issue. The Community had referred to problems which existed in the real world. India was accutely aware of the problems it faced in the real world, and which all countries faced. There were innumerable problems such as hunger, health and the incessant arms race. Was GATT the only forum to deal with them? His delegation was not convinced that the problem, if any, had been defined in the area of internationally-recognized worker rights related to trade. Therefore, India would be reluctant to agree prima facie that there was any problem in this area, particularly with regard to its relationship, even if only a possible one, to trade.

The representative of Yugoslavia said that his delegation had participated in the informal consultations and that its position had not changed. The ILO was a more appropriate body to discuss this issue. Yugoslavia was opposed to the establishment of a GATT working party on this matter.

The representative of the United States noted that some representatives felt there was a point of principle which was worth pursuing. His delegation believed that GATT's rather wide deliberative competence should be recognized and that in the exercise of that competence, contracting parties should not react from fear of possible consequences and be afraid to discuss in an organized fashion an issue considered to be of importance to a number of delegations. He noted that at the present time, there was no consensus even on that particular point. The United States had brought before the Council a controversial issue. On another occasion it could be another contracting party bringing up an issue on which the United States' views might be opposed, but because of GATT's wide deliberative competence, the United States would be prepared to support at least a forum for organized discussion of that issue should it be of importance to another delegation. His delegation recognized the difficulty of the present issue and appreciated the opportunity for another discussion of it, but for the United States, that issue would not go away. His delegation took note of the points made, of the fact that a number of delegations had addressed the question of principle and had supported the working party despite the controversial nature of the substance involved. His delegation had noted a tendency to argue out in the Council the substance of the very issue that was to be considered by a panel or a working party; that seemed to be an odd point of procedure and an unfortunate one in that it prejudged the outcome of the issue. His delegation would review the matter internally and decide how best to bring it back before the Council.

The Council took note of the statements.

14. United States - Taxes on petroleum and certain imported substances - Follow-up on the Panel report (C/W/540 and Add.1, L/6175)

The Chairman recalled that in June 1987, the Council had adopted the Panel report in L/6175. The matter had been discussed at the February and March 1988 Council meetings and was on the Agenda of the present meeting at the request of the European Communities. He drew attention to the communications from the European Communities in C/W/540 and Add.1.

The representative of the European Communities referred to documents C/W/540 and Add.1 in which his delegation requested the Council to authorize the withdrawal of concessions equivalent to the damage caused to the Community as a consequence of the United States' failure to comply with the Panel's conclusions in L/6175 and the recommendation adopted by the Council in June 1987. Following the discussion at the March Council meeting, the Community had communicated the factual elements relating to the calculation of the injury and the elements relating to the products which the Community felt should be included in the concessions to be withdrawn. His delegation had made very effort to look into this with great diligence, and he pointed out that the amount of injury calculated was well above the amount of the value of the concessions to be withdrawn.

The representative of the United States said that his Government had some questions regarding the Community's request for authorization to suspend concessions, and thus could not agree that the Council should approve that request at the present meeting. However, the United States would have no objection to the establishment of a working party to examine this issue.

The representative of the European Communities expressed his delegation's satisfaction with the United States' acceptance of a working party to examine the matter. Every contracting party had a right to ask questions and to get clarifications, and the Community was fully prepared to follow the appropriate procedures in this context.

The representative of Nigeria supported the Community's request for withdrawal of equivalent concessions. As a principal supplier, Nigeria was seriously perturbed by the United States' inaction in this case. Benefits accruing to his country, directly or indirectly, were being impaired. Nigeria encouraged the United States to implement the Panel's recommendation as a matter of urgency.

The representative of Mexico recalled that at the March Council meeting, the United States had indicated that it might have information to report at the present meeting which would obviate further consideration of the request regarding withdrawal of concessions. Unfortunately, there had apparently been no substantive progress in finding a solution, and Mexico continued to suffer injury in its trade with the United States. This not only reduced its export possibilities to that market but lessened

credibility in the GATT system and raised serious doubts concerning fulfilment of the standstill commitment. His country had not advanced as far as the Community regarding efforts to restore the balance of benefits which Mexico had expected prior to implementation of the Superfund legislation. Mexico continued to believe that the main objective of GATT dispute settlement procedures was to suppress measures which were not in conformity with the provisions of the General Agreement. However, in light of the lengthy period of inaction by the United States, Mexico was now calculating the estimated injury it had suffered so as to be able, in due course, to have the necessary elements to restore the balance of benefits in conformity with the General Agreement. Mexico had stressed its preference that any measures taken to solve this problem should be trade liberalizing rather than restricting.

He then asked the Secretariat for a legal opinion on whether in the calculation of the level of injury, not only the value of trade affected but also other broader economic elements should be taken into account, as had been done in the earlier dispute between the Netherlands and the United States (BISD 1S/62). He recalled that at the March Council meeting, Mexico had reserved its rights under Article XXIII:2 including recourse to procedures available to it as a developing country according to the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18) and the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210), in particular paragraphs 21 and 23.

The representative of Canada said that his delegation continued to support the establishment of a working party of some sort to consider the Community's request. In the Council's discussion of this matter, issues had been raised concerning whether or not the parties directly affected by the US measures should be full members of the working party. In Canada's view, there might be some merit in having a working party in which the parties to the dispute would be able to make their views known and to be present in the deliberations, but would desist from participating in the working party's decision. However, should other contracting parties prefer to have a working party governed by regular working party procedures, Canada could accept this. His authorities were examining Canada's options under Article XXIII:2. Canada was a major supplier of oil to the United States and reserved its rights to present, at a later date, its own request for authority to retaliate. Such a request could be presented either to the working party in question or to the Council. He recalled that the principal objective of dispute settlement was removal of the measure found to be inconsistent with GATT, and that remained Canada's preferred outcome in the present case.

The representative of Norway reiterated his country's interest in this matter. The idea of a working party seemed a particularly interesting and constructive one in the follow-up process in the dispute settlement mechanism. His delegation assumed that such a working party would be open to all interested parties, and Norway would take part therein.

The representative of Malaysia recalled his delegation's statement when this Panel report was adopted, that the dispute settlement process did

not end with the adoption of the report. In the present case, many months had passed without the Panel's recommendation being implemented. This was a great cause of concern to his delegation, which sympathized with the Community's request for the withdrawal of equivalent concessions. As a developing country with a major stake in all exports to the United States, Malaysia reserved its GATT rights to seek any recourse available to it should this matter remain unresolved.

The representative of Nigeria said that there were developing contracting parties which could not, at the present time and due to current structural imbalances, take any retaliatory measure against the United States. He asked the Secretariat to help him advise his authorities regarding what action such countries should take in this situation. Nigeria considered it incumbent on the contracting parties to take appropriate action promptly in cases of this nature, and had reservations regarding the establishment of a working party which might delay such action with serious repercussions on developing-country suppliers.

Mr. Lindén, Legal Adviser to the Director-General, in responding to Mexico's question about the principles in GATT for calculating the level of damage when the trade interests of a contracting party had been injured, referred to the report of the Working Party that had examined the Netherlands' request for permission to retaliate against the United States in 1952 (BISD 1S/62). That report stated that although the Working Party had recognized that it was appropriate to consider calculations of the trade affected by the measures and countermeasures in question, it was aware that a purely statistical test would not by itself be sufficient, and that it would also be necessary to consider the broader economic elements entering into the assessment of the impairment suffered. At the time the report had been discussed at the CONTRACTING PARTIES' session, the Chairman of the Working Party had said that he wanted to make it clear that the Working Party's considerations had included various statistical calculations, the additional elements of the damaged suffered, and finally the purpose for which the measure was proposed. The last remark -- the purpose for which the measure was proposed -- obviously referred to the fact that the measure was a retaliatory measure.

There were a few provisions in the General Agreement where retaliation was foreseen. In two of these, Articles XIX and XXVIII, retaliation was defined as the withdrawal of substantially equivalent concessions. In the case of Article XXIII, the wording was wider, referring to measures determined to be appropriate in the circumstances, which meant that there was a wider leeway in calculating the retaliatory measures under Article XXIII than under Articles XIX or XXVIII.

There had never been any decision by the CONTRACTING PARTIES regarding the actual calculation of the level of damage. The most common case involved the withdrawal of tariff concessions, for which there were fairly well established criteria that were taken into account in the calculation of compensation. The first criteria was the development of the imports during, normally, the three years before the renegotiations started. What was taken into account was not just a statistical average, but also the

trend in the development of trade during that period. Furthermore, account was taken of the size of the tariff increase being negotiated. Moreover, an estimate was made of the price elasticity of the product concerned. The CONTRACTING PARTIES had agreed on two occasions that it was not possible to draw up firm rules for the calculation of damage in such cases, and that it had to be left to the negotiators in each individual case to calculate what they considered to be the damage and the appropriate compensation. Only for tariff negotiations was there large experience in how to calculate damage and compensation. Thus, there were no established rules about the calculation of damage or compensation in Article XXIII cases.

In response to Nigeria's question, he said that the Panel had examined the US measure under the relevant provisions of the General Agreement, and had found it not to be in conformity with Article III. A working party in the present case would examine whether the retaliatory measures requested by the Community would be appropriate in the circumstances; that would include the question of how to calculate the damage and the compensation. Thus the working party examination would go a step further than the Panel's.

The representative of Mexico said that after having heard the Secretariat's legal opinion, his delegation was still concerned by Nigeria's statement. In Mexico's view, the Community had put forward a concrete request and the United States was suggesting that to examine this request, a working party might be set up. Should such a working party be set up, what would happen to the Council's recommendations? Would many more months go by while a working party examined this matter? Would there be recommendations by the CONTRACTING PARTIES which might be accepted or rejected? Would Mexico go on suffering injury even though the Council had adopted a recommendation by consensus? He reiterated that Mexico reserved all its rights including the right to raise this matter again when necessary.

The representative of the European Communities said that he wanted to clarify a fundamental point, namely, that in this matter, the primary objective was that the United States comply with the Panel's recommendation and repeal the measure. One of the main purposes of the Community's request was to help in this process, and to exercise its right to advance this process by requesting withdrawal of equivalent concessions in order to put additional pressure on the United States to implement the Panel's recommendation in full. To that extent the Community was in full agreement with Canada and Mexico, and fully agreed with what the Legal Adviser had said. The Community considered that its calculations were clear-cut and followed the precedent cited, but should there be questions, these could be examined.

The representative of Mexico said that his delegation understood that the Legal Adviser's explanation applied individually to each of the Articles mentioned and not as a whole to the problem of interpretation of Article XXIII:2. In particular regarding the procedures agreed to determine the amount of retaliation under Article XXVIII, Mexico understood that these would not necessarily apply to Article XXIII:2.

The representative of Australia said that his delegation wanted to participate in any consultations regarding the proposed working party.

The Council took note of the statements and agreed to revert to this item after the Chairman had consulted informally with interested delegations.

15. Canada - Measures on exports of unprocessed herring and salmon - Follow-up on the Panel report (L/6268)

The Chairman recalled that at its meeting on 22 March, the Council had adopted the Panel's report on this matter (L/6268). The item was on the Agenda of the present meeting at the United States' request.

The representative of the United States recalled that the Panel had found Canada's export restrictions to be inconsistent with the General Agreement. Canada had responded by announcing its plans to maintain the export restrictions until January 1989, and then to replace them with a requirement that fish be landed, off-loaded, sorted, and subjected to so-called "quality inspection" in Canada before being exported. This new rule had been described by Canadian officials, including the former Trade Minister and the current Fisheries Minister, as replacement measures for the old export restrictions -- measures that would, in the words of the President of the British Columbia Fisheries Council, have the effect of making sure that fish caught by Canadians, landed in Canada, would be exported essentially in the form of processed products. The United States agreed with this assessment, which was the basis for its concern. These measures, by design, would delay deliveries, increase handling costs and lower the final quality of the fish so much that, in many cases, it would simply not be practical for US processors to buy from Canadian suppliers. Furthermore, Canada had announced plans to extend the new landing requirements to all species of fish. Preliminary estimates on the effect of this expansion were that it would increase the damage to US trading interests from roughly US$10 million, arising from the original export restrictions, to over US$100 million. There was no conservation rationale for imposing such requirements. For decades, both the United States and Canada had successfully managed stocks of commercially-valuable fish species without export restrictions or landing requirements of any kind. Canada had consistently refused US requests that it detail the specific conservation needs which landing requirements were allegedly intended to meet, and that it explore with the United States alternative means of meeting those alleged needs through non trade-restrictive means. The only conceivable purpose of such a landing requirement was to protect Canadian processors, which the Panel had already rejected as an impermissible motive and effect. The United States could not accept a régime of landing requirements that simply replaced and expanded GATT-illegal export restrictions. To do so would be unfair to US producers, would make a mockery of the GATT dispute settlement process, and would undermine US domestic support for the GATT system.

The representative of Canada expressed his delegation's surprise at the tone of the US statement, which it considered to be full of innuendo and improper assertions about his Government's motivation. He noted that the President of the British Colombia Fisheries Council was neither employed by nor spoke for the Canadian Government. At the March Council meeting, Canada had indicated its intention to implement the Panel's recommendations and to remove the existing export restrictions as soon as possible. It had accepted the finding that its export restrictions requiring processing in Canada prior to export were not consistent with its GATT obligations. Nonetheless, the removal of these measures would raise a serious issue for the management of Canada's salmon and herring fishery. The export restrictions had been in place for most of the century. The requirement for processing prior to export of course necessitated that the fish be landed in Canada. This de facto landing requirement had played an important rôle in Canada's fisheries conservation and management programs. While addressing Canada's legitimate concerns in the latter areas, the new system would operate in a transparent manner and at a sufficient number of ports to allow foreign buyers to have access to unprocessed Pacific salmon and herring. The new measures, which Canada intended to implement by not later than 1 January 1989, would be fully consistent with Canada's international rights and obligations, including its GATT obligations. His delegation urged the United States to judge Canada by what it actually did in this case in implementing the Panel findings.

The Council took note of the statements.

16. Derestriction of future panel reports
- Proposal by the Director-General (C/W/544)

The Chairman recalled that at its meeting on 22 March, the Council had agreed to revert to this matter.

The Director-General referred to his proposal in C/W/544, which had followed the discussion at the March Council meeting when a decision had been taken to derestrict a panel report which had been adopted but was still restricted. He understood that some delegations had spoken together about this matter. In the light of their comments to the Secretariat, he suggested that his proposal be modified slightly, so that in future, panel reports would be derestricted upon their adoption unless prior to adoption, a party to the dispute had informed the Council Chairman or CONTRACTING PARTIES' Chairman that it opposed derestriction in that particular case. The Secretariat would check with the parties to a dispute prior to the Council meeting or CONTRACTING PARTIES' session at which the report was to be adopted.

The representative of the United States said that his delegation strongly supported the idea of derestriction and could support the Director-General's proposal in its amended form.

The representative of Jamaica asked what the effect of the amendment would be.

The Director-General explained that the Council would agree at the present meeting on the principle of immediate derestriction of future panel reports when they were adopted, but that the Secretariat would check prior to each adoption to determine if any party to the dispute in question had an objection to derestricting that report.

The representative of Jamaica asked if this would also apply to future working party reports.

The Director-General said that it was not excluded that the proposal could apply to working party reports to the extent that such reports were part of the dispute settlement procedures.

The representative of Australia asked for confirmation that the amendment to C/W/544 proposed by the Director-General would mean that the words "unless the circumstances in a particular case make this inappropriate" would now lapse.

The Director-General said that this was the case.

The representative of the European Communities said that the Community agreed with the principle that panel reports, once adopted, should be derestricted. This was a sound principle, and should there be a need in special cases for a safety valve, the Community had no objection to the proposal by the Director-General as amended; however, these should remain exceptional cases based on special circumstances.

The Council took note of the statements and agreed that in future, panel reports would be derestricted upon their adoption by the Council or the CONTRACTING PARTIES unless, prior to adoption, a party to the dispute had informed the Council Chairman or CONTRACTING PARTIES' Chairman that it opposed derestriction in that particular case. The Secretariat would check with the parties to a dispute prior to the Council meeting or CONTRACTING PARTIES' Session in this connection.

17. Roster of non-governmental panelists
(a) Proposed nomination by Brazil (C/W/545)
(b) Proposed nomination by the United States (C/W/546)

The Chairman drew attention to C/W/545 and C/W/546 containing proposals for nominations to the roster of non-governmental panelists.

The representative of Brazil gave additional information on the nominee proposed in C/W/545, and reiterated that his Government attached great importance to the GATT dispute settlement mechanism.

The representative of the United States seconded Brazil's nomination and gave additional information on the nominee proposed by his Government in C/W/546.

The Council took note of the statements and approved the proposed nominations.

18. Committee on Budget, Finance and Administration
- Progress report by the Committee Chairman

The Chairman recalled that at the 22 March Council meeting, the Chairman of the Committee on Budget, Finance and Administration had made a progress report. He informed the Council that since that meeting, extensive bilateral consultations had taken place among the members of the Committee and considerable work had been accomplished. However, due to the complexity of the problem, the Committee was not yet in a position to present a proposal to the Council. It would meet on 5 May with a view to formulating a solution which should be reasonable, fair, simple and durable. The Council would hear a full report on this matter at its regular meeting in June.

The representative of Canada recalled that this matter had led to some difficult meetings towards the end of 1987. While GATT's financial situation was usually better at this time of the year than at the end, when available funds ran down, he hoped that other contracting parties would not become complacent because there was no immediate problem to be solved. He assured the Council that Canada would make every possible contribution to the work to be done prior to the June Council meeting with a view to finding a durable solution.

The Council took note of this information and of the statement.

19. Japan - Quantitative restrictions on imports of certain agricultural products
- Follow up on the Panel Report (L/6253)

The representative of the United States, speaking under "Other Business", said that five months had elapsed since this Panel report had been circulated to contracting parties, and three months since its adoption by the Council. The Panel had found that all of the quotas in question were inconsistent with Japan's GATT obligations, and the United States wanted to know when Japan would take action to liberalize completely the ten quotas that had been found to be fundamentally GATT-inconsistent. As this would not require legislative action, it could be done by within ten days by the Japanese executive authorities. Japan had not even attempted to justify the restrictions on groundnuts and dried légumes and therefore should take steps to expand these quotas substantially in the near future.

The representative of Japan recalled that Japan's position on the implementation of the recommendation in question had been explained in detail at the February Council meeting. His Government was currently deliberating on appropriate actions to be taken on the basis of that position. Japan faced an important problem and was studying it seriously.

He hoped that the result would show that five months were not so long after all.

The representative of Australia said that his delegation had previously registered its interest in the reforms that Japan should implement to meet the Panel's recommendation. As the measures in question had been found to be GATT-inconsistent, Japan had an obligation to act speedily to bring its import régimes into line with its GATT obligations. These changes should be non-discriminatory in nature and effect, and commercial competitiveness should be the only criterion for deciding on the source of import. Australia had reiterated to Japan its concern that Japan not attempt to establish any bilateral agreements in resolution of those issues, which might operate to the detriment of third parties. Australia looked forward to being consulted by Japan on the measures it intended to take.

The representative of Thailand, speaking on behalf of the ASEAN contracting parties, reiterated their concerns, which were similar to those expressed by the United States and Australia. She said that due note had been taken of Japan's difficulties and of the study it had undertaken, which should not take too long.

The representative of Uruguay said that Uruguay's bilateral consultations with Japan had corroborated the fact that to date, Japan had taken no action to comply with its GATT obligations. Uruguay hoped that Japan's decisions and their application would not be delayed. Uruguay had an interest in the quasi-totality of the products concerned, and hoped that Japan's compliance measures would apply to all contracting parties.

The Council took note of the statements.

20. European Economic Community - Amendment to anti-dumping regulations

The representative of Japan, speaking under "Other Business", said that Japan had expressed on several occasions[5] its concern with respect to the anti-dumping regulation which the Council of the European Communities had adopted on 22 June 1987 against local production using imported parts.[6] On 18 April 1988, the Community had decided that anti-dumping duties would be imposed on products of five Japanese affiliated companies under that regulation. This had prompted Japan to request a special meeting of the Committee on Anti-Dumping Practices to examine the consistency of the regulation with the General Agreement and with the Anti-Dumping Code (BISD 26S/171). Japan reserved its rights to take further action under the General Agreement.

---

[5]See C/M/207, item 14 ("European Economic Community - Proposed amendment to anti-dumping regulations").

[6]See ADP/1/Add.1/Suppl.5.

The representative of the European Communities said that his delegation was looking forward to a full discussion of this matter at the special meeting of the Committee on Anti-Dumping Practices later in the week.

The representative of Hong Kong said that Hong Kong had an interest in this matter and reserved its GATT rights.

The representative of Singapore said that her country had an interest in this matter and was concerned with its broader implications. Singapore would follow developments and the results of the special meeting of the Committee, and reserved its GATT rights.

The representative of Jamaica said that as his country was not a member of the Committee on Anti-Dumping Practices, and as there were trade-related investment aspects of this matter, his delegation hoped that it would be brought back to the Council for further consideration.

The Council took note of the statements and agreed to revert to this item at an appropriate time.