GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/212

6 August 1987

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COUNCIL
15-17 July 1987

MINUTES OF MEETING

Held in the Centre William Rappard
on 15 July 1987

Chairman: Mr. A. Oxley (Australia)

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Adoption of Agenda

The Chairman referred to the Proposed Agenda which had been circulated in C/W/523 and said that in response to requests for clarification, he wished to state that the inclusion in the Agenda of the US communication on the relationship of internationally-recognized worker rights to international trade (L/6196) implied no decision on the appropriateness of action in the Council on the subject matter of the communication, which would be a matter for further consideration, nor would it prejudice positions on GATT competence in relation to the subject matter. The Council was just following in this matter normal GATT practices.

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

1. Pension and salary matters
- Report of the Informal Advisory Group on professional staff pensions (Spec(87)10/Add.1)

The Chairman drew attention to document Spec(87)10/Add.1 which contained "Chapter III - Pensions" of the report of the Informal Advisory Group, and invited Mr. Feij (Netherlands), Chairman of the Informal Advisory Group, to introduce the report.

The Chairman of the Informal Advisory Group said that the report confirmed the serious deterioration of pensions and made it clear that this was not a theoretical problem for a number of GATT professionals who had given valuable service to GATT and faced retirement in the coming years. There were two reasons for pension erosion: reductions, instead of cost-of-living adjustments, in the dollar scales of pensionable remuneration applied throughout the common system, and in the pension adjustment system in so far as it applied to the initial calculation of local currency pensions. The situation would become very serious towards the end of the present decade and in the early nineties. The UN General Assembly had decided at the end of 1986 not to review the scales of pensionable remuneration until 1990. Thus any possible improvements would

not begin to have effect until 1991 at the earliest. As the report pointed out, contributions to the Pension Fund expressed in Swiss Francs had almost halved in the past few years and the longer this situation continued, the more difficult it would become for the Fund to provide adequate benefits in Swiss Francs or other currencies that had appreciated against the dollar. The report did not contain the recent information that the actuarial position of the Pension Fund had deteriorated further. The most obvious remedy to that situation would be to increase contributions both by the employer organizations and the professional staff members. Even though some agencies, such as GATT, would not object to an increase in contributions, the UN General Assembly had decided a few years earlier not to implement further stages of the then proposed increases.

Another recent development not reflected in the report was the fact that the UN Pension Board, which would meet in early August, would consider a proposal to introduce a floor rate for the conversion of the US dollar into currencies that had appreciated. While details of this proposal had arrived too late to be commented upon in the report, he said that the introduction of a floor rate for the calculation of pensions would give temporary relief to prevent further erosion but would not in the longer run improve the actuarial position of the UN Pension Fund.

He recalled that in the case of salaries, the Group had suggested several options for supplementary payments up to a certain ceiling to be financed through the GATT budget, and that the GATT Staff Association would have liked to have seen a similar suggestion by the Group regarding pension supplements. The Group had found, however, that while salaries were administered and paid by the GATT Secretariat, pension benefits were calculated and paid by the UN Joint Staff Pension Fund directly to retired participants. Although thus far a majority of GATT pensioners had taken up residence in Switzerland, a supplementary pension scheme would also have to apply to future pensioners who decided to retire in other countries. As explained in paragraph 49, the Group believed that such a scheme would be very difficult to implement. Simplified proposals to make fixed-sum payments to future pensioners would raise serious problems of equity in the treatment of different cases.

As in the case of salaries (Spec(87)10, paragraph 29(b)), the Group had come to the conclusion that a durable solution could only be found if payment of salaries including pension contributions and benefits, for GATT professional staff, could be determined in Swiss Francs, as was already the case for staff members in the General Service Class, whose Swiss Francs pensions were paid by the same UN Pension Fund. As the common system had the extremely difficult task to set standards for a multitude of different situations and career patterns in different organizations, it would take considerable time to get agreement on such a solution. If, however, this method could be offered as an option to participating organizations, GATT, which already had a budget in Swiss Francs and no staff serving in other duty stations, would probably have no difficulty in adopting this solution.

Pending a durable solution, the Group had made two suggestions. The first concerned the introduction of seniority steps for Professional Staff after 15 and 20 years of service. This would bring GATT into line with a number of other organizations in the common system. At least one other organization in Geneva allowed for the possibility of up to six additional salary increments, and as long as pension contributions were based on the resulting higher salaries, this system was accommodated by the UN Pension Fund. At the same time, this suggestion might lead to a first move in developing staff rules for GATT, which was the only organization in the common system which did not have its own.

The second suggestion concerned the possibility of extending service to the age of 62. This was not a novelty. He quoted from an ICSC report which stated that "the decision of whether to grant extensions has traditionally been the prerogative of executive heads of organizations". The Group understood that GATT's Director-General had made use of this prerogative although the general rule was retirement at 60. Paragraph 51 should therefore not be interpreted as implying criticism of the Director-General, but rather as an encouragement to make increasing use of this possibility in the difficult years ahead. He believed that this option would be welcomed by many members of the professional staff who would reach the age of 60 in the medium term. As would be clear from the report, this was the category on which the Group had focussed its attention and analysis.

As for possible conclusions by the Council, he understood that many members were not in a position to adopt the report at the present meeting and presumed that no more could be done than inviting the Budget Committee to look into the substance in more detail. The GATT representatives at the forthcoming meeting of the UN Pension Board might consider circulating the report to other participants as a contribution to a wider understanding of the problems involved. At a later stage, if the Council could adopt the report, the possibility of presenting it to other bodies in the common system could be considered.

Miss Montague (Jamaica), on behalf of Mr. Hill (Jamaica), Chairman of the Committee on Budget, Finance and Administration, said that because of the urgency of this matter, an informal meeting of the Budget Committee had been convened on 13 July at which Mr. Feij had presented the report. The meeting had been attended by the President of the GATT Staff Council, who had had an opportunity to express the views of its members. As the members of the Committee wanted sufficient time to get reactions from their authorities, a meeting of the Committee would be convened after the summer recess to examine the report. This was, of course, without prejudice to any other process the Chairman of the CONTRACTING PARTIES or the Chairman of the Council might wish to adopt. The Council might wish to take note that the representative of the CONTRACTING PARTIES on the GATT Staff Pension Committee might draw attention to this report during the August meeting of the UN Joint Staff Pension Board, clearly indicating that the Council had not endorsed the report.

The Council took note of the statements and of the information in the report of the Informal Advisory Group (Spec(87)10/Add.1), and asked the Budget Committee to continue its consideration of this matter and to report thereon at the next Council meeting. The Council also took note that at the recent informal meeting of the Budget Committee, it had been suggested that the CONTRACTING PARTIES' representative on the ICITO/GATT Staff Pension Committee might draw attention to the report when he attended the August meeting of the UN Joint Staff Pension Board. The Council thanked Mr. Feij and the other members of the Informal Advisory Group for their efforts.

2. Uruguay - Import surcharges
- Request for extension of waiver (C/W/520/Rev.1, L/6184)

The Chairman recalled that by their Decision of 24 October 1972 (BISD 19S/9), the CONTRACTING PARTIES had waived the application of the provisions of Article II to the extent necessary to allow the Government of Uruguay to maintain certain import surcharges in excess of bound duties. The waiver, which had been extended a number of times, was due to expire on 30 June 1987. He drew attention to Uruguay's request (L/6184) for a further extension of the waiver, and to the draft decision in C/W/520.

The representative of Uruguay, referring to document L/6184, said that Uruguay had been engaged in a complex process of simplifying, reducing and harmonizing its import tariff through the application of a single tax based on customs value. The simplification of the import tax system had been realized partly with the entry into force on 1 January 1978, of the Single Customs Tax incorporating the surcharges, together with a time-table for reduction of rates. There had been four such reductions, the most recent of which provided for a reduction of the maximum global customs duty rate from 55 to 50 percent.[1] The draft transposition of Uruguay's schedule of tariff concessions was already well advanced, and there was available a statistical breakdown of import trade which would constitute an important element for any negotiations resulting from the presentation of the adjusted Uruguayan schedule. However, it had not been possible to complete the tasks involved in adjusting the new tariff structure to the concessions appearing in Schedule XXXI. For this reason, Uruguay requested an extension of the waiver until 30 June 1988, at which time it was hoped that the work would have been completed. The Uruguayan authorities hoped to propose a new Schedule XXXI for examination under the procedures established by the General Agreement.

[1] See L/6204.

The Chairman drew attention to minor amendments which should be made to the draft decision contained in C/W/520. On the first page, third paragraph, last line, the word "four" should be substituted for the word "two", and the footnote 5 should also be amended to take account of L/6184 and the Minute of the present meeting.

The representative of the United States said that the issue of Uruguay's need to impose tariff surcharges had been with GATT for many years, first in the balance-of-payments context, and since 1972 in the form of a waiver that had to be renewed annually. It was difficult after all this time to comprehend fully the actual level of the tariff protection afforded by these measures or the impact on other contracting parties' trade, especially in the light of the lack of a recent comprehensive report by Uruguay to GATT as to the level and likely duration of the current measures. The United States would not oppose the extension of the waiver, in view of Uruguay's current efforts to address problems in its tariff structure, but was interested in more information on this issue. His delegation would examine the statistical information referred to in L/6184. The United States looked forward to the resolution of this issue and hoped that consideration of this item would not be necessary next year.

The representative of Brazil said that Brazil understood the concerns referred to by Uruguay in document L/6184, regarding simplification, reduction and harmonization of its import tariff and the related application of import surcharges. Therefore, Brazil fully supported the adoption of the draft decision in order to allow Uruguay to apply the import surcharges until 30 June 1988.

The Council took note of the statements, approved the text of the amended draft decision extending the waiver until 30 June 1988 and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

3. Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- Biennial report (L/6168)

The Chairman drew attention to the biennial report in document L/6168, containing information given by the parties to the Agreement referred to therein, and recalled that at the Council's June meeting, a number of delegations had asked to defer consideration of the report to the present meeting.

The representative of Australia drew attention to what his delegation considered to be some of the salient points of the report (L/6168). Since the Agreement had entered in force, trans-Tasman trade had shown an average annual increase of 17.6 percent. At present, some 85 percent of that trade was duty-free and roughly 92 percent was free of quantitative restrictions

or tariff quotas. Regarding the broader economic benefits of the Agreement, early studies had shown an ongoing process of trans-Tasman industry and inter-industry specialization and rationalization for a variety of industries. There was also evidence that the Agreement had provided a stimulus to trans-Tasman investment.

The representative of Switzerland said that his delegation wished to clarify some minor factual problems with the report in order to understand it better, but that this would be done bilaterally.

The representative of Australia indicated his delegation's willingness to help Switzerland in this regard.

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

4. United States - Agricultural Adjustment Act - Working Party report (L/6194)

The Chairman recalled that in July 1986, the Council had established a Working Party to examine the twenty-eighth annual report (L/5981 and Corr.1) submitted by the United States under the Decision of 5 March 1955 (BISD 3S/32), and to report to the Council. The Working Party's report was contained in L/6194.

Mr. Lacarte (Uruguay), Chairman of the Working Party, introduced the report. The Working Party had held five meetings, from October 1986 to June 1987. In accordance with its terms of reference, it had examined the twenty-eigth annual report of the US Government concerning import restrictions in effect under Section 22 of the US Agricultural Adjustment Act as amended. Additional information, supplied by the United States in response to requests from members of the Working Party, had been issued as an addendum to the report. The Working Party had also considered the reasons for the maintenance of the restrictions and whether the requirements of US legislation could be met by measures consistent with the General Agreement, giving particular attention to the possibilities for action by the United States to end the waiver. Members had often referred to the Uruguay Round negotiations as offering the most favourable context in which such action might be considered. He recalled that when the Working Party's terms of reference had been agreed in July 1986, the Chairman had said that he understood that the traditional terms of reference would permit the Working Party to make appropriate recommendations, and the Council had taken note of that statement. The Working Party had discussed at length the possibility of making recommendations to the Council concerning the present operation and future treatment of the waiver, but had not reached agreement. Members' views on this issue had been recorded in paragraphs 53 to 59 of the report, and indicated some clear and firmly expressed differences.

The representative of Australia said that his delegation supported adoption of the report; however, Australia was concerned with two main issues. First, there had been a general concern among most Working Party members over the lack of progress in removing the Section 22 waiver after 32 years. While the waiver did not contain a "sunset clause", it had been envisaged as a temporary measure to provide time for domestic policy changes which would eventually enable the United States to phase out the use of, and then terminate, the waiver. His delegation could only reiterate its disappointment that not only had this not been achieved, but the United States had been unable to provide a time-frame within which this would happen. Second, the final form of the report was disappointing in that despite considerable work, it had provided no agreed conclusions or recommendations to the Council. The Working Party's task of reporting to Council had been inhibited by the US refusal to accept any agreed conclusions or recommendations, despite the understanding reached at the July 1986 Council meeting that the traditional terms of reference would permit the Working Party to make appropriate recommendations. Australia and other members had stated that if the conclusions in paragraph 57 had been adopted, the Working Party would have recommended that the United States might undertake the review, foreshadowed in the statement to CONTRACTING PARTIES in 1955, of the circumstances that had led to the granting of the waiver with a view to terminating or modifying current restrictions. Such a review would be in line with the spirit of the Punta del Este Declaration on standstill and rollback (paragraph 58). He asked all delegations to note the comments and conclusions of the Working Party's members as set out in the report. His delegation proposed that the present report be considered by the CONTRACTING PARTIES with a view to determining recommendations to the US Government on appropriate action which might obviate continuing, indefinite need for the waiver.

The representative of Canada said that the report in L/6194 represented a faithful rendering of the Working Party's deliberations. Canada therefore supported adoption of the report and could also support Australia's proposal. As noted by the Working Party's Chairman, it had been understood that it would be open to the Working Party to make recommendations as appropriate. Canada regretted that the Working Party had been unable to suggest conclusions or recommendations, although it believed that on the basis of the deliberations, this should have been possible. It was unfortunate that there had been no consensus in that area, and his delegation urged that in any further consideration of reports covering the US Agricultural Adjustment Act by a working party, the United States reconsider its views in this regard. Canada also continued to believe that certain measures maintained by the United States under the guise of the Section 22 waiver were not fully consistent with its terms. His delegation trusted that appropriate remedial action would be taken soon, and reminded the United States that the report on its 1985/86 activities was nearly a year overdue. His delegation looked forward to

receiving that report and trusted that the United States would be able to catch up with the required annual reports to assist in providing the necessary transparency in the operation of the waiver.

The representative of the European Communities said his delegation deeply regretted the absence of recommendations by the Working Party due to the constant US opposition. Since the waiver had been in operation for 32 years, the Community believed that the conditions under which it had been granted, and which had become largely obsolete, should be re-examined. The Community supported both the adoption of the report and Australia's proposal.

The representative of Brazil said his delegation regretted the lack of progress in removing the waiver. Brazil wanted to focus specifically on paragraph 21 and related paragraphs of the report concerning US sugar policy, which had led to a dramatic reduction in sugar imports, thus depriving many developing countries of a market opportunity for an important product.

The representative of the United States said that while his delegation had remained silent when the Working Party Chairman had stated that the terms of reference would not have precluded appropriate recommendations, it had not changed its mind as to what was inappropriate. The Working Party had looked at one contracting party's policies in relation to a specific waiver from the terms of the General Agreement, and was to report to the Council on that review. When granting the waiver, the CONTRACTING PARTIES had not requested recommendations from a Working Party, and such a position would alter the terms of the original waiver. Notwithstanding the US position as to the appropriateness of recommendations in general, his delegation believed that the particular recommendation proposed was not acceptable. The United States had sought the waiver because a portion of its law (Section 22) read then as it still did: "no trade agreement heretofore or hereafter entered into shall interfere with the operation of this provision." The United States had sought to place its participation in the GATT on the firmest possible footing, and a waiver with a specific termination date would not have provided that basis. That had been recognized when the waiver had been granted. In the Uruguay Round, the United States had formally placed on the table all of its agricultural policies which affected trade, with the sole exception of bona fide aid and decoupled income payments. His delegation urged all participants in the Round to adopt the United States' bold initiatives, and believed that all countries bore some responsibility for the problems in world agricultural trade. A multilateral, multi-commodity reduction of agricultural support was needed.

The representative of Australia said that his delegation had much sympathy for the US proposal to liberalize trade in agriculture. It regretted, however, that the United States was unable to support

Australia's recommendation, which Canada and the Community had supported. His delegation wondered whether the United States would be prepared to accept a proposal to have the Council suggest that the Negotiating Group on Agriculture give due consideration to the Working Party's report.

The representative of the European Communities said that his delegation had taken note that the United States, having systematically opposed any recommendation in the Working Party, was now opposing that the Council make its own recommendations. The Community had also taken note that the US waiver and the totality of US agricultural trade policy had been put on the negotiating table. As the US proposal for negotiations called for a total phasing out of subsidies, including support programs, with two exceptions, his delegation wondered whether one of these, direct support to US farmers' income, would be considered by the United States as justifying retention of the Section 22 waiver. The Community supported Australia's latest proposal.

The representative of the United States said that the Negotiating Group on Agriculture was the appropriate place to address the issue of what might or might not be taken up by it. He recalled that Australia's proposal had been rejected in the Working Party. It was not necessary to send the report to the Negotiating Group since that body was free to consider what it wanted, and it could decide on its own to consider the Working Party's report. It was also inappropriate for the Council to send any recommendation to the Negotiating Groups; thus, the United States was not in favour of any such action.

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

5. Committee on Balance-of-Payments Restrictions
(a) Consultations with Colombia and Turkey (BOP/R/166)

Mr. Girard (Switzerland), Chairman of the Committee on Balance-of-Payments Restrictions, introduced the Committee's report. The Committee had held simplified consultations with Colombia and Turkey in June (BOP/R/166). For Colombia, the Committee had found that full consultations were not necessary and had recommended that it be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1987. Regarding Turkey, the Committee had felt that in general, Turkey had continued its efforts to liberalize its trade in the areas of both tariffs and import licenses. However, it considered that full consultations with Turkey in 1988 would be useful, since the most recent such consultation with that country had been in 1979.

The representative of Colombia said that as indicated in the documentation submitted and the statement made by Colombia in the consultations, his country had been liberalizing its foreign trade since

its most recent consultation two years earlier. Colombia would pursue this general procedure of liberalization, and would respect the commitment in Article XVIII:12(b).

The representative of Turkey noted that his country had been invited by the Committee to participate in a full consultation. He said that Turkey had liberalized its foreign trade régime to a large extent within a short period, and believed that it was carrying out its economic and trade policy within the framework of the provisions of the General Agreement.

The Council took note of the statements, agreed that Colombia be deemed to have fulfilled its obligations under Article XVIII:12(b) for 1987, took note that it would be desirable to schedule a full consultation with Turkey at an appropriate time during 1988, the exact date to be determined under the normal consultation procedure, and adopted the report (BOP/R/166).

(b) Meeting in June 1987 (BOP/R/167)

The Chairman of the Committee referred to the report in BOP/R/167 and said that the Committee had taken note of the notification by the European Community and Greece (L/5945/Rev.1/Add.4) according to which the import deposit system adopted by Greece in 1985 for balance-of-payments reasons had been repealed as of 1 May 1987. Thus, the Committee had concluded that Greece had disinvoked Article XII. The Committee had agreed to a very busy schedule of consultations for October and November 1987; statements made by delegations had been reflected in the report. In conclusion, he said that the Committee had emphasized again the question of non-consulting contracting parties which had been identified as taking measures for balance-of-payments purposes. He asked the delegations concerned to keep in mind the Committee's indications in paragraph 8 of BOP/R/167.

The Council took note of the statement and of the information in document BOP/R/167.

6. India - Import restrictions on almonds
- Recourse to Article XXIII:2 by the United States (L/6197)

The Chairman recalled that at the Council's June meeting, the representative of the United States had reserved his delegation's rights to raise the matter of India's import restrictions on almonds again at an appropriate meeting of the Council should this matter not be resolved through bilateral consultations. He then drew attention to document L/6197, which contained a request by the United States to establish a panel under Article XXIII:2.

The representative of the United States said that his country had requested a panel under Article XXIII:2 because it had been frustrated in all other attempts to resolve the long-standing dispute concerning India's import restrictions on almonds. More than six years earlier, India had revoked the policy of "Open General Licensing" then applicable to almond imports, replacing it with a restrictive licensing policy which set quantitative restrictions on those imports. The United States believed that these restrictions were not permissible under Article XI of the General Agreement and constituted prima facie nullification or impairment of US benefits. In addition, the United States believed that India operated the licensing régime in a manner contrary to the requirements of the Licensing Code[1]. In response to a US request, on 19 June the two parties had held consultations on these issues under Article XXIII:1 of the General Agreement and Article 4.2 of the Licensing Code. Despite a thorough discussion of the issues, a satisfactory resolution had not been forthcoming. The United States maintained that India had not met the requirements of Article XVIII, Section B. This issue had been the subject of many discussions -- nearly 20 times at the senior officials level alone -- since April 1981. It was only after six years of virtually no progress that the United States had determined it necessary to pursue the issue under the procedures of GATT Article XXIII and Article 4.2 of the Licensing Code. The United States looked forward to the Council's expeditious consideration of its request for a panel to examine the matter.

The representative of India recalled that, as stated at the June Council meeting, his authorities had given prompt consideration to the US request for Article XXIII:1 consultations. While this matter had been the subject of bilateral discussion over a number of years, several changes had been introduced in India's import licensing régime which had benefitted US exports to India. He noted that under Article XXIII:2, a contracting party could ask for a panel to be established should consultations under Article XXIII:1 fail to arrive at a satisfactory solution within a reasonable period of time. In the present case, the first and only such consultation had taken place on 19 June 1987. Expecting to resume further consultations for clarification of the points raised, India had instead received formal notice on 2 July (in document L/6197) of the US intention to seek the establishment of a panel at the present meeting. In India's view, such a request at the present stage ran counter to the principle that such matters should be settled through consultations and that all efforts should be made for a mutually satisfactory solution within a reasonable period of time. India could not, therefore, support the US request at the present time. He noted that the United States had referred in L/6197 to the nullification or impairment of its rights under the General Agreement as well as under the

[1] Agreement on Import Licensing Procedures (BISD 26S/154).

Licensing Code. It was inappropriate to raise matters pertaining to that Code in the Council; these should be raised in the Committee on Import Licensing. He pointed out that India's régime for almond imports was non-discriminatory in character. The restrictions on almond and other dried fruit imports were maintained in full conformity with the relevant GATT provisions relating to balance-of-payments restrictions. Considering the tiny percentage of total US almond exports accounted for by India, the US assertion of nullification or impairment of benefits in regard to this matter seemed far-fetched; however, US almond exports to India accounted for over 50 per cent of India's total almond imports. He said that India's import policy in overall terms had continued to be liberalized, and accorded due priority to the importation of products the Government deemed more essential, given its economic development policy. Also, India's balance-of-payments situation continued to be precarious and was likely to deteriorate due to a number of factors, including the growing protectionism in international trade. India had always honoured its commitments and requirements under Article XVIII, Section B, and the Committee on Balance-of-Payments Restrictions had periodically reviewed that conformity. In the light of these considerations, his delegation could not agree to the US request for a panel, and maintained that bilateral consultations should be allowed to proceed in order to explore all possibilities of a mutually satisfactory solution.

The representatives of Egypt, Yugoslavia, Brazil, Argentina, Colombia, Peru, Nicaragua, Cuba and Mexico said that this matter was within the competence of the Committee on Balance-of-Payments Restrictions and should properly be examined there. Some of these representatives noted that a full balance-of-payments consultation with India was scheduled for October, and that this matter could be taken up then.

The representatives of Yugoslavia, Brazil, Argentina, Peru, Nicaragua and Cuba said their delegations believed that a matter involving a measure taken for balance-of-payments purposes could not be submitted to dispute settlement procedures.

The representative of Egypt noted his delegation's concern regarding the principle involved: there were no precedents for the Council's addressing a measure taken by a developing country for balance-of-payments purposes. The establishment of a panel to address such a problem could set a dangerous precedent regarding the submission of such matters to dispute settlement procedures. Should there be related questions regarding import licensing, these should be addressed in the Committee on Import Licensing.

The representative of Yugoslavia said that it was neither justified, rational nor consistent with the basic GATT rights of developing countries and their obligation to carry out balance-of-payments consultations, to submit balance-of-payments measures to dispute settlement procedures.

The representative of Brazil said that his delegation believed there was no precedent for a balance-of-payments measure to be the subject of dispute settlement.

The representative of Argentina shared the views of the previous speakers.

The representative of Colombia said that it would be prejudicial to GATT to submit balance-of-payments problems to the Council, as this would create a serious precedent. His delegation appealed to the United States and India to pursue bilateral consultations in order to try to find a satisfactory solution as soon as possible.

The representative of Peru said her delegation hoped that India would be able to pursue bilateral consultations with the United States. Any problem concerning import licensing could be dealt with in the Committee on Import Licensing or in the balance-of-payments consultation in October.

The representative of Nicaragua said that her delegation supported the views of the previous speakers. As this matter involved a developed and a developing contracting party, and the latter was willing to carry out bilateral consultations, time should be allowed for it to pursue those consultations in order to try to find a solution within that framework.

The representative of Mexico said that while bilateral consultations might help to resolve this issue, this matter should first be dealt with in the Committee on Balance-of-Payments Restrictions.

The representative of the European Communities said that his delegation saw no objection in principle and could agree to the establishment of a panel in this case. In the Community's view, the procedures followed in GATT dispute settlement and in the Committee on Balance-of-Payments Restrictions were quite distinct, served different purposes and were not mutually exclusive. The Community had an interest in this matter and, should a panel be established, reserved its right to make a submission to it.

The representative of the United States expressed his delegation's surprise at the suggestion by several delegations that Article XXIII:2 did not apply to all GATT provisions, and suggested that those, and other contracting parties, reflect carefully on that view -- which the United States did not accept -- and its implications for other issues of interest to them. Regarding references by India and others to the Licensing Code, he pointed out that the 19 June consultations had taken place both under GATT Article XXIII:1 and under Article 4.2 of the Code; his delegation was still considering the next step in dispute settlement under that Code. He said that the Article XXIII:1 consultations on this matter were without prejudice to the full consultations on India's balance-of-payments

situation scheduled for October. While India claimed that the restrictions were consistent with Article XVIII, the United States had challenged their consistency with other GATT Articles. In addition, nothing in GATT prohibited examination of an issue under Article XXIII:2 because it might be discussed elsewhere. The United States did not believe that the Committee on Balance-of-Payments Restrictions was the best place to deal with its complaint, and had made clear that its request for a panel addressed the basic consistency of the trade barrier with Articles XI and XXIII. His delegation was satisfied that all substantive differences had been discussed at the 19 June consultation, and continued to believe that a panel was appropriate at the present stage. Should a panel not be set up at the present meeting, the United States expected that this would be done at the next meeting and asked that the matter be placed on the agenda for that meeting.

The representative of Argentina said that his delegation believed that the provisions of Article XXIII applied to all of the provisions of the General Agreement. However, there should be no incompatibility in the treatment of any matter, i.e., a measure notified to and approved by the Committee on Balance-of-Payments Restrictions could not then be submitted to dispute settlement. The measure in question would have to be examined in that Committee and should it be found there to be inconsistent with the provisions of the General Agreement, it could then be submitted to dispute settlement procedures.

The representative of Canada said that his delegation could support in principle the US request for a panel. Canada agreed with the Community's view that nothing prevented consideration under Article XXIII:2 of matters being considered under any other GATT provisions.

The representative of India thanked the delegations which had supported India in principle in this matter. They had made important points regarding the lack of precedent in GATT for a balance-of-payments matter to be submitted to dispute settlement -- and the danger of creating such a precedent -- and the inappropriateness of raising this matter in the Council as opposed to the Committee on Balance-of-Payments Restrictions. There was nothing in the procedures of that Committee to preclude any matter being raised. Argentina had made an important point regarding the inconsistency of submitting to dispute settlement a measure which had been approved by the Committee. His delegation was concerned by the US statement that should a panel not be established at the present meeting, this should be done at the next; this seemed to indicate a closed mind regarding the possible results of consultations. He reiterated that due allowance should be made for settling the matter through bilateral consultations. All such possibilities had not been exhausted, and all contracting parties' rights in this matter were reserved, including India's.

The representative of the Philippines quoted the second paragraph, last sentence, of L/6197 in which the United States claimed that India had not followed the requirements of Article XVIII, Section B. He said that the Council already had a standard way to deal with such matters, namely, referral to the Committee on Balance-of-Payments Restrictions. That Committee had held consultations with India and had reported to the Council, which had adopted its reports. Consequently, his delegation could not understand the US position in this matter.

The representative of the United States said that his delegation had never excluded the possibility of a mutually satisfactory settlement in this matter and would, in fact, welcome one. However, establishment of a panel never precluded a settlement, and should one not be reached by October, the United States fully expected a panel to be established.

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

7. Measures affecting the world market for copper ores and concentrates - Report of the Group of Governmental Experts (L/6167)

In July 1986, the Council established a Group of Governmental Experts to examine this matter. At the Council meeting in June 1987, the Chairman of the Group introduced its report (L/6167), at which time it was agreed to defer consideration of the report to the present meeting.

The representative of the European Communities drew attention to paragraph 16 of the report and noted that the Group had agreed that world trade in copper had been negatively affected by various factors relating to production policies, structural changes, decline and changing patterns of consumption, and trade policy measures maintained by some countries. The report had registered opposing views, in particular those of the Community and Japan, on certain pricing and trading practices without coming to a specific conclusion. While the report reflected these views, the Community was not satisfied with this situation and continued to contest Japan's assertion that its domestic prices for refined copper were based on free competition and world market prices and were free of quantitative restrictions. The prices quoted by Japan to substantiate this assertion related solely to imported copper and not to domestic sales. This was an important matter for the Community, which could not wait for the outcome of the Uruguay Round negotiations, if in the meantime European companies were going bankrupt due to shortages of copper concentrates caused, in the Community's view, by Japan's practices. Therefore, the Community had little choice but to submit this matter to an independent and neutral arbitrator, and asked Japan to accept a binding arbitration for which the Director-General would appear to be the most suitable person.

The representative of Japan recalled that at the June Council meeting, his delegation had commented that the Group had discussed every factor and problem in the global trade situation for copper, and that Japan had agreed to adoption of the Group's report. His delegation was not in a position to react definitively to the Community's request for arbitration by the Director-General; however, that reaction was very likely to be negative because the Group had dealt with global trade in copper and not with bilateral issues involving specific countries. Consequently, Japan was skeptical about entrusting this matter to arbitration by the Director-General as part of a kind of dispute settlement procedure. The Group had completed its work and had presented its conclusions in paragraph 16. An expert from the Community had participated fully in its discussions. The Group had expressed the hope that further liberalization of copper trade would be achieved through the Uruguay Round negotiations; in Japan's view, that was the proper course to take, for whatever questions that might arise concerning global trade in copper.

The representative of the European Communities said the problem lay in the fact that for certain important aspects of the matter, the Group had not been able to reach a conclusion; it was on these aspects that the Community's and Japan's views were opposed. The Community failed to see why, if Japan was so convinced that its views were correct, it could not agree to submit these issues to a binding arbitration. Therefore, the Community repeated its request for such arbitration, while understanding that a final answer could not be expected at the present time. His delegation was prepared to wait and to consult further should that be useful.

The representative of Japan recalled that this matter had first been raised as an issue for dispute settlement between the Community and Japan. However, Japan had never accepted that this matter could or should be a subject of dispute between particular parties. Consequently, the Council had agreed to examine the global situation of trade in copper ores and concentrates. The Group had agreed that world trade in copper had been negatively affected by various factors, but paragaraph 16 of the report did not address any measures taken by any one country. There was no reference to the bilateral contentious issue between the Community and Japan.

The representative of the European Communities said that Japan's reaction to the Community's suggestion should be obtained before the Group's report was adopted.

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

The representative of Chile asked whether the Council, at its next meeting, would consider the Group's report or the problem between Japan and the Community on copper. Chile agreed with Japan that the Group had not dealt with the latter, but rather with the global situation of trade in copper.

The Chairman said that the Council would revert to the Group's report. Until it was adopted, the report and the Agenda item provided the scope to discuss related matters.

The Council took note of the statements.

8. Integrated Data Base
- Note by the Director-General (C/W/521)

The Chairman drew attention to the Note by the Director-General (C/W/521).

The Director-General recalled that at the May Council meeting he had drawn attention to the fact that, in response to suggestions by a number of delegations and in pursuance of requests made in GATT Committees and Groups, the Secretariat had been drafting a proposal to create a fully integrated trade and trade-policy data base (hereinafter referred to as the IDB) in the GATT. At that time, he had encouraged all interested delegations to obtain a copy of the preliminary version of the proposal, and to participate in an Informal Advisory Group created to guide the Secretariat on this matter. A number of delegations had responded, and the Informal Advisory Group had met three times. Specific comments had been taken into account in elaborating the detailed proposal in the Annex to C/W/521; general comments had been summarized in its paragraph 4. He said that he wanted to make one general observation and to draw attention to three more technical points. The general observation was that the GATT was the international organization primarily responsible in the area of trade policy. As such, it was only natural for GATT to be the repository of comprehensive and up-to-date information in the trade policy area. The proposal to create an IDB should be seen in this light.

Turning to the first technical point, he emphasized that the proposed data base should be seen as a management tool that would allow the Secretariat to organize, store and process information much more efficiently than it was able to do at present. The Secretariat was currently maintaining six separate inventories and data bases for which efforts were being made to improve the quality, timeliness and country coverage of information. Since each inventory and data base had been created independently of the others, it was extremely difficult, and in many cases nearly impossible, to link the information in one with information in one or more of the others. The result was that the Secretariat's information on trade flows and trade policies remained fragmented and compartmentalized. An attempt by the Secretariat to provide meaningful information on a product that was the subject of a standstill notification, for example, could involve reference to three or four different sources of information. He was certain that no contracting party believed this fragmentation was desirable, or that it would make a positive

contribution to increasing the Secretariat's efficiency in servicing the CONTRACTING PARTIES' needs in the coming years. A better supply and organization of information was necessary, because only information notified by contracting parties, or verified by them, could be used for GATT purposes.

Second, the question of establishing the IDB had to be seen separately from the question of how it would be used; i.e., the existence of the data base would not have any implications for contracting parties' positions in respect of the information it might contain, nor would it, in any way, pre-judge the ways the available information would actually be used in the Uruguay Round and in GATT's regular work.

Third, it was important that as many contracting parties as possible participate in the data base from the beginning. It would seem obvious that the larger the number of participants and the more detailed the information supplied, the more meaningful the data base would become in the activities of GATT.

Further work on the IDB required formal approval by the Council. Such approval would involve only the initial phase, and changes in design and content would still be possible as the work progressed. It would thus be helpful if the Council could give its approval at the present meeting. Should this not be possible because some governments required more time to consider the data base proposal, he hoped that a decision would be taken at the first Council meeting after the summer break.

The representative of India said his delegation had been among those which had participated in the three meetings of the Informal Advisory Group and had sought a number of clarifications with regard to the nature and objectives of the proposal, its coverage, participation, access for all contracting parties, and the question of its relationship to the existing data bases and to the Uruguay Round. India had pointed out that the negotiating mandate of the Uruguay Round did not commit delegations to an IDB. So far it was not even clear what the advantages would be. In India's view, work needed to be done on the updating of, and fuller participation in, the existing data bases. He said that the proposal for an IDB could not itself compensate for the shortcomings in the existing data bases and in the long run would suffer from those same deficiencies. On the question of coverage or content of the proposal, his delegation was not yet clear whether the IDB would go beyond the requirements of the existing GATT notification procedures into macro-economic aspects such as production, employment and investment. The fact that a budgetary provision had been made should not be allowed to prejudge the question of whether and how such a proposal would contribute to ongoing work. His delegation suggested that informal consultations be continued, to allow all aspects of the proposal to be clarified.

The representative of Uruguay drew attention to paragraph 6 of Annex I of C/W/521 which stated that GATT's Technical Cooperation Division would continue to respond to individual requests for technical assistance but that the information provided would remain subject to many limitations -- a fact with which Uruguay had to live. His delegation associated itself with the Director-General's remark that it was inconceivable that GATT would not have a comprehensive data base. It was imperative that one be started as soon as possible; consequently, it was absolutely necessary to approve the proposal without delay at the present meeting. As adjustments could be made "en route", it was imperative that the first stage, a simple one, get started. Consultations would continue in order to address concerns such as India's. He said that there was an immense difference between developed and developing countries' facility to obtain and update information, and that it was the developing countries themselves which most needed this data bank, in order to improve their participation in the Uruguay Round.

The representative of Canada said his delegation supported the proposal in C/W/521 and strongly endorsed Uruguay's statement, which had brought out that the task of improving the existing data bases and of setting up an IDB were not inconsistent. His delegation strongly urged that the work move forward with the fullest participation.

The representative of Yugoslavia said that while her authorities were still examining the Director-General's Note, her delegation considered the Informal Advisory Group's consultations useful and shared the Director-General's hopes that the Note would facilitate the process of consultation on this complex undertaking. Yugoslavia needed additional time to explore the proposal as a whole as well as certain of its aspects. While Yugoslavia did not oppose the establishment of an IDB, a Council decision on this should be carefully prepared and negotiated, and the Director-General's statement should be reflected in it. In the Informal Advisory Group, her delegation had pointed out that the success of the exercise would hinge not only on the number of participants but also on trade policy coverage of all kinds. The IDB should thus encompass all measures notified to GATT under different Articles, including Articles VI and XIX, as well as voluntary export restraints, orderly marketing arrangements and other grey-area measures so that the picture would be realistic and balanced. At the same time, the IDB should not be confined to the information readily available and envisaged for the initial phase. In her view, the decision on the establishment of the IDB should state explicitly that the IDB would have no impact on the methods of negotiation on concessions subject to decisions by negotiating bodies. The decision had to be based on a real assessment of such elements as the number of countries included, coverage, stages, timetable, methodology and budget. Yugoslavia had concluded that its own inclusion into the IDB would represent an additional administrative burden. This would also be true for other countries having insufficient administrative support and whose national language was not used by the GATT. The system of notifications

for the the IDB should be simplified and should follow a definite pattern by introducing appropriate forms to be filled out, although her delegation was aware of the negative side of this procedure. Still outstanding was the question of the timetable which was connected, among other things, with the introduction of the Harmonized System. Before taking any decision, both group and individual consultations should also be pursued; efforts should also be made to see what could be done both in the GATT and in capitals so as to use the resources and manpower as rationally as possible.

The representative of Chile said that his delegation supported those who believed that an IDB was vital not only for GATT work but also for the Uruguay Round. Chile could not envisage a negotiation without having adequate information on world trade. He did not know how the IMF, which had considerable information, would be associated with the Round, but he was concerned that GATT itself did not have commensurate information. Thus, it was important that the proposal be adopted at the present meeting and that the first stage get started.

The representative of Mexico said that his delegation did not think it possible to go further in the Uruguay Round and in the surveillance function without the proposed IDB. Mexico supported the proposal to set up the IDB and hoped the first stage would get started as soon as possible.

The representative of Switzerland said that his country felt the IDB should be established as soon as possible, and strongly supported the Director-General's proposal so that work could get underway without delay.

The representative of the European Communities said that his delegation warmly supported the proposal, recalling that the Community had been among the first to advocate the idea of a complete and up-to-date data base. It was important that work continue and that the necessary means be provided to complete the first stage. The Director-General had made important points when stating that the IDB would be a factual and neutral management tool and that the Council was being asked to decide on the first stage only, with room for future adjustment. The Community would make proposals in this respect. His delegation had noted India's remark on the improvement of the existing tools and on wider participation in them and presumably in the Tariff Study. The Community thus hoped that India would add gesture to words by promptly supporting the Tariff Study, and that other delegations would do the same.

The representative of the United States said his delegation strongly supported the Secretariat's activities regarding the IDB, which would expand contracting party participation in existing data bases, improve them and make the information easier to use through greater integration. Priority should be given to expanding participation in the tariff data bases, where the Secretariat held useful tariff information but on only less than 20 percent of total GATT membership. The United States

considered this situation embarrassing for an organization that called itself the General Agreement on Tariffs and Trade. The absence of tariff and trade information would also hinder work in the negotiations. His delegation supported the proposal in C/W/521; as to those delegations concerned with what it might mean, he referred them to paragraph 4(F) of the Director-General's Note. The United States agreed fully with that statement, and on that basis urged the earliest possible Council approval for the work to begin.

The representative of Tanzania said that he understood paragraphs 23 and 25 of the Note to imply that participating countries would be expected to provide additional budgetary funds and information. His country could not at this stage, nor in the foreseeable future, meet that requirement in order to participate effectively in the exercise. At the same time, his delegation did not want to see its rights sidetracked, and therefore expected to be able to revert to the matter for a decision at a later stage.

The representative of Japan said his delegation considered that the IDB would be useful and a very effective tool to assist the Uruguay Round negotiations and to strengthen the GATT system. When establishing the IDB, the various comments from contracting parties should be taken into account. Japan hoped that as many countries as possible, including developing countries, would participate.

The representatives of Colombia and Argentina said their respective delegations supported the proposal to go ahead at the present meeting with the first stage of the IDB.

The representative of Sweden, speaking on behalf of the Nordic countries, said that these delegations supported the expeditious establishment of the IDB and strongly supported the remarks made by the Director-General, Uruguay and Canada. They hoped that the IDB would include the widest participation.

The representative of Hungary recalled that his country had participated in the Tariff Study from the early stages; thus, the initial stage of the IDB did not present an additional burden. He noted that practically all delegations had supported the proposal. Hungary hoped that further discussion and consultations would clear the way for a decision to be taken as soon as possible.

The representative of Australia recalled his country's participation in the Tariff Study and its early support for the IDB and for what it considered to be important work in the Uruguay Round.

The representative of India said that his delegation was grateful to those supporters of the proposal who had recognized the need for consultations. His delegation did not have a closed mind but sought clarification of additional points: Was the IDB indeed important in the Uruguay Round? Was it some sort of package gift which would be made available to delegations through technical cooperation to serve as a type of magic wand? The obligation to be more responsive and to supply more information was the essential element of the proposal, which some delegations seemed to have forgotten. In India's view, the IDB was only a modality; there were, however, modalities already available in terms of existing notification procedures and these could serve the purpose. So far there had been no discussion on how their deficiencies could be improved and how the IDB would provide a valuable substitute. Another point was that suggestions for negotiating techniques and modalities for the Uruguay Round had begun to flow in; however, the IDB had not been mentioned in the Punta del Este Declaration. A clarification of how the negotiations would be affected by this IDB would facilitate his delegation's decision. As to whether this would require fuller participation, it was obvious that there were shortcomings. These shortcomings and those of the specific data bases, as well as their improvements, had yet to be examined. He hoped that the process of consultations to which the Director-General had referred would continue. His delegation would participate actively in them.

The Director-General said that perhaps the problem should be approached in a different way. Experience had shown that improvements in working tools were needed from time to time; the six separate data bases needed to be overhauled in line with the very great improvements which were now available in the means for storing, exploiting and distributing data. He stressed that in the proposal he was doing no more than trying, with the governments' own cooperation, to serve them as well as possible in the work of GATT and the Uruguay Round. The IDB was only a working tool that the Secretariat was trying to put together.

He emphasized that the Secretariat was very aware that, whatever the decision on the IDB, for some countries, e.g., Tanzania, data collection and distribution would pose problems. The Secretariat was prepared to extend, if asked, maximum technical assistance in this respect. The proposal in C/W/521 was a simple one, and the report itself was long only because the consultations had raised many questions; it tried to show that the proposal as such was not going to modify in any way the substance of negotiating positions. That was why he had insisted that the question of establishing the IDB was to be seen separately from that of its use.

The Chairman said that some representatives felt it was premature to move on this issue, while the larger body of opinion was that work should move forward expeditiously. He asked whether a consensus existed.

The representative of India said his delegation believed that it was premature to take a decision and would not be able to join a consensus.

The representative of Yugoslavia said that her previous statement had been provisional and that her delegation was not in a position to join a consensus at this stage.

The Chairman suggested that the Council take note of the statements, agree to revert to this item at its next meeting and take note of the points emphasized by the Director-General, in particular, the importance of taking a decision on this matter at the next Council meeting.

The Council so agreed.

9. United States - Trade measures affecting Nicaragua - Panel report (C/W/506, C/W/522, C/W/524, C/W/525, L/6053)

In introducing the item, the Chairman said that, as representatives were aware, he had been engaged in a process of informal consultations with the key delegations, conscious that there was a strong view among contracting parties that this matter should be resolved by consensus, which was the means by which the Council customarily concluded such matters. That process of informal consultations had not yet provided the basis for determining where a consensus might lie in respect of this item.

Many representatives thanked the Chairman for his efforts toward reaching a consensus on this matter.

The representative of Nicaragua confirmed that it had unfortunately not been possible to reach the solution for which all parties were looking. One day before the meeting had started, his delegation had submitted a draft text (C/W/524) which Nicaragua believed could be the basis for a decision by the Council at the present meeting. Nicaragua's primary concern had been how to contribute to the strengthening of the GATT dispute settlement machinery without renouncing its legitimate rights. Developing countries needed a strong, stable and predictable international trading system. The main points in C/W/524 were (1) the adoption of the Panel report which, given the Panel's limited terms of reference, was an objective report even though it did not formulate any actions to be recommended; (2) a reference to the implementation of the terms of reference given by the Council, which called for the determination of the scope of the nullification or impairment of Nicaragua's GATT benefits; (3) a reaffirmation of the CONTRACTING PARTIES' 1982 decision concerning Article XXI (BISD 29S/23); (4) a recommendation that the United States take into consideration the negative effects of the application of its embargo on the multilateral trading system, on contracting parties in general and on the developing ones in particular: the estimated cost of

the embargo was US$600 million, a huge amount for his country, whose total exports amounted to some US$250 million; (5) a recommendation that any contracting party wishing to do so should grant trade concessions to Nicaragua; and (6) a reference to progress in the GATT system and the concern of contracting parties to ensure that it responded to the legitimate interests of developing countries. Nicaragua asked that the Council adopt the contents of this proposal, as it was essential not to pass over in silence an action which seriously, unjustly and irresponsibly injured the trade interests of a country which threatened no one, and which had always shown flexibility and a desire for direct constructive dialogue with the United States. Nicaragua urged bilateral talks to try to find a solution to this problem.

The representative of the United States said that it was wholly unwarranted for Nicaragua to propose this resolution, which flew in the face of the Panel conclusions and all GATT rules and traditions. As Nicaragua well knew, its proposed resolution could not help in the least to resolve the underlying national security issues that had led to the US actions of which Nicaragua complained, or help to expedite the lifting of those actions. Nor did the proposal follow the customary practice of the dispute settlement system. The only purpose of the resolution was political, and the consequence of approving it could only be to politicize the GATT and weaken it as a trade organization. Moreover, Nicaragua's threats -- made in the corridors -- to defy the tradition of consensus decision-making in GATT by calling for a vote on such a resolution, was a political act which itself had its costs for the effective functioning of GATT. Contracting parties could not, at a time when GATT had so much to do in its proper economic functions, endorse such a step. He said that nothing new had been said at the present meeting; his delegation would not repeat its position and views on the embargo, since these were well known and fully reflected in the Panel report and the Council Minutes.

The representative of Mexico recalled that the delegations of Argentina, Brazil, Colombia, Mexico, Peru and Uruguay had participated in efforts to find a consensus solution to this matter in good faith. They had the previous day submitted to the US and Nicaraguan delegations a paper which, in the opinion of those six countries, included the necessary elements for a satisfactory solution which could be approved by consensus and would avoid having to proceed to a vote on Nicaragua's proposed decision in C/W/524. While these countries retained full confidence in the Chairman's efforts in consultations, they asked the Secretariat to distribute their text in the meeting room so that members might become acquainted with it and the elements therein.

The representative of the United States said it was plain to his delegation that the authors of the paper referred to by Mexico either had never read the Panel report or had quickly forgotten its most important elements. The Panel had recognized that the General Agreement protected

each contracting party's essential security interests through Article XXI, and that the General Agreement's purpose was, therefore, not to make contracting parties forego their essential security interests for the sake of GATT's aims. The Panel had also found that the United States was under no obligation to remove the embargo. Moreover, the Panel had concluded that the CONTRACTING PARTIES could, in the circumstances of the present case, take no decision under Article XXIII:2 that would re-establish the balance of advantages which had accrued to Nicaragua under the General Agreement prior to the embargo. The paper ignored those most significant elements of a carefully reasoned Panel report, and forgot the fact that the United States had acted in full conformity with its GATT rights and obligations. The Panel had not found otherwise. It was his delegation's strong view that the six delegations submitting this text were not helping the process of consensus. He reminded them that the United States continued to believe this was a dispute that should never have been brought to GATT; the events of the past few days had made that perfectly clear. There were and had been many instances of trade sanctions imposed by various contracting parties for reasons, it might be surmized, of national security. Rarely had these situations even been raised in the GATT, because contracting parties, including those against which sanctions had been imposed, had tacitly recognized that GATT, by its traditions, its competence, and the terms of Article XXI, could not help resolve such matters, and that pressing the issue would only weaken GATT in its intended trade rôle. His delegation regretted that the Chairman's efforts to bring this matter to a conclusion had not yet been successful. The Panel had reached sound conclusions in a difficult situation, and its report should be adopted without additional suggestions that the Panel itself had not made.

The representative of Cuba said that her country was also suffering from a US trade embargo imposed over 20 years ago. Her delegation fully supported Nicaragua's statement and asked that the text proposed by Nicaragua be adopted. She added that the critical remarks by the United States concerning the text of the six Latin American countries resulted in their efforts having been made in vain.

The representatives of the European Communities, Switzerland, Canada, Australia, Austria, Japan, Finland on behalf of the Nordic countries, Israel, Turkey, Singapore, Yugoslavia and Indonesia supported the continuance of the Chairman's consultations aimed at seeking a consensus solution to this matter.

The representative of the European Communities said that both the United States and Nicaragua had their respective reasons, and that both were right. What the Community was concerned about was the implication for the GATT multilateral trading system if this dispute could not be settled, and also the way in which this matter would be handled. The Council had to weigh carefully the consequences of any undertaking or decision, which

would have to be taken by consensus. The Community asked the Council not to adopt Nicaragua's draft decision, because as long as there was no consensus to do so, this would be contrary to GATT's practices. The Chairman's priority task was to seek a consensus. This question had to be dealt with as a routine matter, and in accordance with the usual, normal and customary practices of GATT. He said it was clear that the Panel report had been extremely well drawn up, but equally clear that the report and, in particular, its paragraph 5.17 raised questions which the Council could not take up, because neither it, nor the CONTRACTING PARTIES, could reply to those questions. Such questions would remain without reply, and for the Council to try to answer them in the present circumstances might risk damaging or endangering the GATT system. For this reason, the Community asked the Chairman to pursue his consultations to try to seek a consensus which, he repeated, was a priority task. Nothing at the present stage indicated that a consensus was beyond the possibilities of the Council and of the Chairman's efforts. In addition, he recommended that all contracting parties read carefully paragraph 5.17 of the Panel report, as this contained the essence of the Panel's conclusions in a balanced manner.

The representative of Switzerland said that the statements at the present meeting had clarified positions on this matter and showed clearly contracting parties' will to deal with this problem in a GATT-like manner and to find a consensus solution to it.

The representative of Canada said his delegation had noted the Chairman's assessment that a consensus had not yet been found. Canada considered it vital for the GATT system that any decision on this matter be taken on the basis of a consensus.

The representative of Australia said his delegation considered that GATT's interests would be better served by continuing consultations aimed at reaching a consensus than by resorting to a vote.

The representative of Austria said his delegation was fully aware of the negative consequences which a vote -- a departure from a sacrosanct practice in GATT -- would have for all GATT activities.

The representative of Japan said it was his delegation's view that the problem involved was not easy, but that a consensus could and should be reached.

The representative of Israel said his delegation felt that the system was in danger; this had implications for all contracting parties, and not just the parties to the present dispute.

The representative of Yugoslavia appealed to the two parties to this dispute to help in efforts to reach a consensus solution.

The representative of Nicaragua said that her delegation had deliberately avoided dealing with GATT Article XXI when presenting its own draft decision, precisely because it wanted to find a consensus. The Nicaraguan proposal in C/W/524 merely reaffirmed the rights of a contracting party affected by measures taken under Article XXI, as provided in the 1982 Decision. This was not new; it simply reflected Nicaragua's awareness that no one believed that Nicaragua was a threat to any country's security. Nicaragua could accept that the Panel report did not deal with the question of US recourse to Article XXI, because the Panel's terms of reference had precluded this, but Nicaragua could not accept that the United States had the right to invoke Article XXI and still less to impose the embargo. On the other hand, the Panel had decided not to offer an opinion on the basic question of whether the measures adopted under Article XXI could nullify or impair benefits accruing to Nicaragua under the General Agreement. Nicaragua would never accept that the embargo was justified; this would not be good for the GATT. She repeated that Nicaragua was in favour of working towards a consensus and would continue to work towards that goal, as it had been doing ever since the Panel had presented its report, without renouncing its GATT rights in doing so. Nicaragua would maintain its proposal until a suitable solution was found in this context.

The representative of the European Communities said that the Panel had not found one way or the other because it could not do so, and had raised questions which the Panel itself could not answer. The Community sympathized with Nicaragua and noted that since the imposition of the US embargo, Nicaragua had in 1985 doubled, and in 1986 almost trebled, its use of the Community's scheme under the Generalized System of Preferences. This instrument existed and the Community had made its contribution through its application. The Community could not go beyond this. Moreover, his delegation had taken note that Nicaragua, without giving up its proposal, had stated its preference for the text submitted by the six Latin American countries.

The Chairman said it seemed clear to him that the overwhelming desire of the Council was to continue the process of consultations. He had welcomed the suggestions made to him during the course of the consultations held to date. He proposed that the Council adjourn and resume the following day in order to complete consideration of this item as well as the remaining items on the Council's Agenda.

When the Council reconvened on the following day, the Chairman confirmed that as delegations were aware, he had continued his consultations to see if a basis could be established for consensus on the conclusion of this item. He could not yet advise that such a consensus could be identified.

The representative of Mexico asked the Secretariat to distribute, as a Council document, the text which he had introduced the previous day on behalf of six Latin Amercian countries.[1]

The Chairman said that this would be done. He proposed that the Council agree that he continue the process of consultations on this matter and agree to revert to this item at its next meeting.

The Council so agreed.

10. United States - Section 337 of the Tariff Act of 1930
- Recourse to Article XXIII:2 by the European Economic Community (L/6198)

The Chairman recalled that at the June meeting of the Council, the European Communities, speaking under "Other Business", had reserved the Community's rights to request the establishment of a panel at the present Council meeting if no satisfactory solution had been found in the meantime. He drew attention to a recent communication by the Community (L/6198) and invited its representative to introduce this item.

The representative of the European Communities said that a number of aspects of Section 337 of the US Tariff Act of 1930, and the way in which they had been applied, had in the past been criticized by the Community and other contracting parties. A recent case had again given rise to serious concern over their GATT compatibility because, for the purpose of enforcing private intellectual property rights, imported goods were subjected to separate, distinct and discriminatory procedures solely by virtue of their non-US origin. The Community's view was that the application of Section 337 was inconsistent with the national treatment requirement of Article III and could not be justified under Article XX(d). The Community thus considered that benefits accruing to it under the General Agreement were being nullified or impaired. He recalled that the Community had requested Article XXIII:1 consultations in April 1987 (L/6160). These had been held on 10 July but had not led to a satisfactory solution. For this reason the Community sought the establishment of a panel at the present meeting in order to examine the matter and to make the necessary findings.

The representative of the United States expressed his delegation's disappointment over the Community's request for a panel concerning application of the Section 337 exclusion order in the aramid fibre matter. In May 1983 the Council, with the Community's concurrence, had adopted a

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[1]The text was circulated in C/W/525.

Panel report concerning US exclusion of infringing imports of spring assemblies pursuant to a Section 337 order.[1] Examination of that report should lead to the conclusion that Section 337 and its application in the present case were consistent with US GATT obligations. As had been noted in that report, the Article XX(d) exception would in principle apply to many cases of alleged patent infringement, and the only effective remedy in such cases under existing US law would be an exclusion order under Section 337 of the Tariff Act of 1930. All actions taken by the United States under that Section, including the exclusion from the United States of imports of aramid fibre found to infringe a valid US patent, were in compliance with US GATT obligations. There was no nullification or impairment of any benefits accruing to the Community under GATT. Factually, the aramid fibre and spring assemblies cases were quite similar; in both, the laws and regulations at issue were the US patent laws. These laws were consistent with GATT provisions, and protection of patents was an area of national law explicitly mentioned in Article XX(d). The order in the aramid fibre case had not been applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against countries where the same condition prevailed, or in a manner which would constitute a disguised restriction on international trade. Section 337 was the only effective relief available to owners of US process patents against imports of goods produced by means of a process that would infringe the US patent if practiced in the United States. The United States had met with the Community only the previous week for Article XXIII:1 consultations on this matter, and his authorities were still considering the issues raised. In light of the very recent completion of these consultations, the United States believed that it was premature to establish a panel at the present time.

The representative of Japan said that his delegation was also apprehensive about Section 337 because its application in certain cases could distort and adversely affect the normal conduct of trade. Japan therefore supported the Community's request for a panel on this matter and reserved its rights in this regard, including to make a submission to a panel when one was established.

The representative of Korea said that in view of the increasing recourse to the provisions of Section 337 by the United States in its bilateral trade relations, Korea had an interest in this matter and shared the concerns expressed by other delegations. His delegation supported the establishment of a panel and reserved its GATT rights.

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

The representative of Canada recalled that his country had been involved in a previous Section 337 case, and that in May 1983 the Council had adopted that Panel's report on the basis of an understanding that "this shall not foreclose future examination of the use of Section 337 to deal with patent infringement cases from the point of view of consistency with Articles III and XX of the General Agreement" (C/M/168, page 10). Canada maintained the view that Section 337 could operate in a manner not consistent with US obligations under GATT. His delegation would follow the present case with particular interest and might revert to it at the next Council meeting.

The representative of Switzerland said that his delegation was very interested in this matter. Switzerland faced similar problems and shared the same concerns, and should a panel be established, reserved the right to make a submission to it.

The representative of the European Communities thanked Canada for having drawn attention to the conditions of adoption of the spring assemblies Panel report. His delegation regretted that the United States could not agree to the establishment of a panel at the present meeting. Given the number of bilateral discussions and the ample time for the United States to reflect on the complaint, his delegation thought that the United States could at least agree in principle to the establishment of a panel pending a mutually satisfactory solution in the coming month.

The representative of the United States pointed out that what was at issue was the application of Section 337 to a specific case. Even with this caveat, his delegation regretted that, since there had been only one Article XXIII:1 consultation only a week earlier, the United States was not prepared to agree to the Community's alternative proposal.

The representative of the European Communities said his delegation regretted very much that the United States was not able to agree even in principle, thereby not following the good example set in the recent past. His delegation expected that unless a mutually satisfactory solution was found in the meantime, a panel would be established at least at the next Council meeting.

The representative of Canada reserved his delegation's right concerning the US representative's last statement as to what kind of case was at issue.

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

11. Communication from the United States on the relationship of internationally-recognized worker rights to international trade (L/6196)

The representative of the United States drew attention to the US communication (L/6196) on the subject of internationally-recognized worker rights and trade. This had increasingly been the subject of attention in the United States, and his Government believed that it deserved serious discussion in a multilateral forum. The US delegation had on many occasions been chastized for acting unilaterally; on this occasion, he wanted to stress the importance his Government attached to the establishment of a multilateral dialogue. As stated in L/6196, the United States believed that the relationship of worker rights to trade was an issue that warranted discussion in GATT and that the Council was the appropriate forum; a working party, established by the Council, would be a suitable vehicle for facilitating such discussion. He would not go into the substance of the issue in any detail at the present meeting, as that would be the focus of ongoing informal consultations which his delegation planned to continue with a view to seeking appropriate action by the Council at its next meeting. His delegation had tried to ensure participation in these talks of those delegations which in the past had expressed an interest in the subject, and urged all delegations with an interest in this topic to participate.

The representative of Sweden, speaking on behalf of the Nordic countries, said that they had a continued interest in this matter and welcomed an opportunity for discussions in GATT. They were conscious of the fact that the issue had many aspects and that it was not uncontroversial. Therefore, they wanted to make it clear at the present stage that, in their view, these discussions should not lead to results that could be misused for protectionist ends. They looked forward to consultations under the Council Chairman's guidance.

The representative of India said that his delegation had been among those which had questioned the appropriateness of inscribing this item on the Council agenda. His delegation's view on the suitability of dealing with this issue under the General Agreement had been amply stated in previous discussions in the Preparatory Committee for the Uruguay Round and elsewhere. While not wishing to address the substance of the matter that had been raised at the present Council meeting, his delegation reserved its position with regard to it.

The representatives of Romania, Nicaragua and Tanzania supported the views expressed by the representative of India and reserved their position as to the substance of the matter.

The representatives of Mexico, Brazil, Colombia, Cuba, Yugoslavia, Tanzania, Malaysia, Chile, Singapore, Philippines, Indonesia, Hong Kong, Nigeria, Thailand and Czechoslovakia expressed their delegations' reservations regarding GATT's competence to consider this issue.

The representatives of Nicaragua, Mexico and Cuba said that this issue belonged to, and should be discussed in, other fora such as the International Labour Organization.

The representative of Brazil said his delegation had taken due note of the Chairman's statement when the Agenda for the present meeting had been adopted, and had serious reservations as to GATT's competence in this matter.

The representative of Tanzania said his delegation was among those which had had difficulty with this item's inclusion on the Agenda, and had taken note of the Chairman's statement in this regard at the beginning of the present meeting. Tanzania believed this matter to be, prima facie, irrelevant to GATT and reserved its position. His delegation wanted to study the legal implications of having this item on GATT's agenda before taking a position.

The representative of Argentina underlined the delicate nature of this matter. Argentina did not support the establishment of a working party and cautioned that prudence was required in consultations on this matter.

The representative of Uruguay said his delegation did not think there were sufficient elements in the current proposal that would justify GATT's consideration of the matter.

The representatives of Malaysia, Singapore, Philippines and Indonesia said that the strong reservations their delegations had expressed on this issue in the Preparatory Committee remained unchanged.

The representative of Chile said that prudence was required in dealing with this issue.

The representative of Hong Kong said that his delegation had noted with satisfaction the non-inclusion of the subject for negotiation in the Punta del Este Declaration. Hong Kong doubted whether this issue should be raised in the GATT forum, partly due to the competence question and partly due to its propensity to be used for protectionist purposes.

The representative of Nigeria recalled his delegation's view on this issue, which had been reflected in the records of the Punta del Este meeting. He suggested that before a decision was taken on how to handle it, these records should be examined, taking account of the sensitive nature of this issue.

The representative of Thailand said his delegation supported Hong Kong's views.

The representative of the European Communities said his delegation did not have preconceived ideas about this matter, which would have to be discussed. The Community was ready to explore this issue in depth with interested delegations, in particular the United States.

The representative of Israel said this issue was an important one; his delegation was ready to explore, in informal consultations, the procedural aspects concerning GATT competence and other issues.

The representative of Hungary reserved his delegation's position pending the outcome of further consultations, and shared Hong Kong's concern with the propensity of this matter to be used for protectionist purposes.

The representative of Japan said his delegation was prepared to participate in consultations in order to clarify the problem in detail and to see how the issue was to be examined.

The Chairman proposed that the Council take note of the statements and of the wish that this matter be continued as a subject of informal consultations and also take note that, as Chairman, he would be prepared to ensure that this requirement was satisfied.

The Council so agreed.

12. Enlargement of the European Economic Community
- Recourse to Article XXIII:2 by Argentina (L/6201)

The representative of Argentina, speaking under "Other Business", referred to document L/6201 and said that his delegation had requested the inclusion of this matter under "Other Business" because Spain's accession to the European Communities had introduced a new and delicate situation in the relations between the Community and Argentina. Argentina asked that this matter be included on the agenda of the next Council meeting.

The representative of Japan said that the Community's legal interpretation of Article XXIV:6 was familiar and that his Government could not accept it. Japan had a strong interest in this matter and reserved its rights under the General Agreement.

The representative of the United States said that his delegation agreed with Argentina that in cases where there was a fundamental disagreement over the application of a GATT Article, the CONTRACTING PARTIES could be asked to establish a panel to give recommendations on the issue. The United States supported Argentina's request for a panel to review the Article XXIV:6 dispute with the Community, particularly since the latter had already implemented its arrangement and Argentina was already suffering the effects. His delegation reserved its right to make a submission to a panel when one was established.

The representative of Chile expressed his delegation's concerns with this matter as well as with the whole subject of the Harmonized System, which was still pending in the Committee on Tariff Concessions. Chile would in due course make a submission on this matter.

The representative of Canada said that his delegation had noted Argentina's statement and reserved its right to make a submission to the panel should one be established.

The representative of the European Communities said his delegation was somewhat surprised by the number of statements that had been made on this matter, since Argentina had not requested that it be discussed at the present stage. Consequently, his delegation would remain silent on the issue itself.

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

13. Italy - EEC import duties on bananas
- Request for Article XXII consultations by Colombia

The representative of Colombia, speaking under "Other Business", recalled that at the March Council meeting, his delegation had requested Article XXII:1 consultations with the European Community concerning Colombian banana exports to Italy. He said that those consultations had led to a satisfactory settlement, and his delegation thanked the Community for its understanding of the problem.

The representative of the Philippines said his delegation hoped that the Community would take no action which might harm his country's banana exports.

The Council took note of the statements.

14. Possible future arrangements for the GATT infrastructure

The Director-General, speaking under "Other Business", reminded the Council that the FIPOI[1], the Swiss Foundation which owned the Centre William Rappard and other buildings occupied by international organizations in Geneva, was currently analyzing the medium- and long-term needs of those organizations with regard to meeting rooms, offices and parking. It was evident that GATT's current premises were being utilized to their limit, and since 1986, it had been necessary to rent 21 additional offices outside the Centre William Rappard. FIPOI had undertaken a feasibility study for the construction of a new conference room with 400-500 seats, which would be situated in one of the present parking lots and could be rented to GATT.

[1]Fondation des immeubles pour les organisations internationales (FIPOI).

In view of the increasing demand by international organizations for office space, FIPOI had decided to construct in the Montbrillant area of Geneva an office building with some 750 offices destined for the United Nations High Commissioner for Refugees (UNHCR). Sometime in 1993-94, the UNHCR would vacate its space in the Centre William Rappard. He thought it wise to take an option on the vacated offices which would be placed at GATT's disposal, as the cost per square meter was much less than the going rate on the Geneva market. The Canton of Geneva planned to build an underground parking of 800 places in the Chemin des Mines, of which some 350 could be rented by FIPOI so as to be made available to the GATT and the UNHCR. In the absence of any other solution, this offer merited attention. He emphasized that this information was only preliminary but could serve as a basis for discussion among contracting parties, the Secretariat, FIPOI and the Geneva authorities. Ultimately the Secretariat would draft a proposal for the Committee on Budget, Finance and Administration, on which the Council could take a decision.

The Council took note of this information.

15. GATT's 40th Anniversary

The Director-General, speaking under "Other Business", recalled that 1987 marked GATT's fortieth anniversary. In his view, GATT was at something of a crossroads -- best epitomized by the Uruguay Round -- a stage in its life which should not pass unmarked and unobserved. It seemed to him that the CONTRACTING PARTIES' Session at the end of November and beginning of December 1987 would be an appropriate occasion within which an event could be arranged to mark the anniversary. The event should be something out of GATT's usual routine, stimulating -- an exercise in which ministers and senior officials might want to participate -- but also of functional importance and of interest for GATT itself. He intended to reserve 30 November, the day before the opening of the Session, for an event which would serve to reminisce, celebrate, examine and cause everyone to think beyond the normal horizons of GATT's first forty years and how it might look to the future, well beyond the Uruguay Round. He outlined several details regarding possible speakers and forms of discussion, which would be designed to encourage the widest possible exchange of views outside the normal constraints of the contractual relationships within which contracting parties normally worked. More detailed information, and consultations, would be needed. It had been suggested to him that an evening be put aside for the delegations and the staff of the Secretariat to get together. He would consult with interested delegations, and saw this as a joint venture between the Secretariat and the delegations. Either 27 or 28 November could be reserved for this event.

The Council took note of this information.

16. Deputy Director-General post
- Renewal of Appointment

The Director-General, speaking under "Other Business", recalled that at the May Council meeting, he had noted that the present term of office of Mr. M.G. Mathur, Deputy Director-General, was due to expire at the end of 1987, and that he had begun consultations -- as foreseen in the procedures adopted by the Council in April 1987 (L/6161) -- with a view to renewing Mr. Mathur's contract. He informed the Council, also in accordance with the above procedures, that following consultations, he had decided to renew that contract for a further three-year period, i.e., through 1990.

The Council took note of this information.

17. Norway - Further liberalization of Generalized System of Preferences (GSP) scheme

The representative of Norway, speaking under "Other Business", informed the Council that his country had notified to GATT, that same day, improvements in its Generalized System of Preferences scheme, thereby contributing to increased market access for developing countries. Details could be found in the notification (L/4242/Add.27).

The Council took note of the statement.