GENERAL AGREEMENT ON

TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard
on 15 April 1987

Chairman: Mr. A. Oxley (Australia)

Subjects discussed:			Page
	1.	Administrative and financial matters	2
		(a) Pension and salary matters	2
		(b) Procedures for future appointments of the Deputy Directors-General	9
	2.	United States - Caribbean Basin Economic Recovery Act (CBERA) - First biennial review under the Decision of 15 February 1985	10
	3.	Japan - Trade in semi-conductors - Recourse to Article XXIII:2 by the European Economic Community	12
	4.	Technical Group on Quantitative Restrictions and Other Non-Tariff Measures - Report	15
	5.	China's status as a contracting party - Report by the Council Chairman on consultations	17
	6.	United States - Trade measures affecting Nicaragua - Panel report	17
	7.	Egypt - Economic Development Tax - Communication from Egypt	18
	8.	Implementation of Generalized System of Preferences (GSP) schemes	19
	9.	United States - Tax reform legislation for small passenger aircraft - Recourse to Article XXIII:2 by the European Economic Community	19
	10.	United States - Unilateral measures on imports of certain Japanese products	20

		Page
11.	Canada - Measures on exports of unprocessed salmon and herring - Panel terms of reference and composition	21
12.	United States - Customs user fee - Panel terms of reference and composition	21
13.	Third Lomé Convention - Working Party Chairman	22

The Chairman, on behalf of the Council, welcomed Antigua and Barbuda as the 93rd contracting party to GATT.

1. Administrative and financial matters

(a) Pension and salary matters (Spec(87)22 and Corr.1)

Mr. Hill, Chairman of the Committee on Budget, Finance and Administration, drew attention to his report in documents Spec(87)22 and Corr.1. He recalled the Council's previous discussions going back to May 1986, and in particular that at the March 1987 meeting when the Council had decided to refer this matter to the Committee for consideration and had asked it to make appropriate recommendations for consideration, if possible, by the May meeting of the Council. The Committee had discussed this matter with a view to speeding up the process whereby CONTRACTING PARTIES, through the Council, could act appropriately in the light of the concerns expressed by the professional staff to the Director-General and the views expressed by the Director-General to the CONTRACTING PARTIES. Spec(87)22, as corrected, set out the discussions in the Committee, and although it was a report by the Chairman, the text had been approved by the full Committee. Paragraph 2 noted certain interim measures to ameliorate the problem faced by the professional staff, namely, that the International Civil Service Commission (ICSC), the body charged with implementing the Common System, had decided to introduce on 1 April a modified remuneration correction factor which would be in effect until 31 August. Paragraph 3 pointed out that the Director-General, while welcoming the ICSC's action, did not consider that it went far enough in addressing the urgent and acute problems related to the erosion of professional salaries due to exchange rate fluctuations. Paragraph 4 set out the Committee's view that GATT was de facto part of the Common System, and reflected the views of some members that GATT should not take the initiative to adopt, even on a temporary basis, any arrangement not discussed and approved in the Common System. Paragraph 5 set out other members' views that the Informal Advisory Group's proposals (Spec(87)10 and Corr.1) were not inconsistent with the Common System of salaries and allowances, and indicated their readiness, on that basis, to explore those proposals and to make recommendations on interim measures to the Council, on condition that the adoption of such proposals

would not result in additional costs which could not be accommodated within existing appropriations. The Secretariat had confirmed that the proposals in Spec(87)10 could be accommodated within existing appropriations. Paragraph 6 included the Secretariat's view that deliberations inside the Common System could be a drawn-out process; he thought, however, that other solutions might not take as long as envisaged. Paragraph 7 drew attention to the link between salaries and pensions, and he understood it was the Informal Advisory Group's intention to present shortly to the Council a report on the equally important matter of pensions. Paragraph 8 set out two decisions the Committee had felt should be taken, i.e., that further consultations be held with organizations in Switzerland and with the ICSC with a view to examining how the Group's proposals could be considered among possible solutions to the problem of ensuring equitable treatment of staff among duty stations, and that this should include a discussion with a local representative of the ICSC Secretariat. Unfortunately, the latter consultations had not yet taken place. The Committee had also felt that the GATT Secretariat, as part of the Common System, should continue to play an active rôle within the existing Common System bodies in the search for a durable solution. In the light of these considerations and decisions, the Committee had decided to recommend that the Council take the following action:

(a) request the ICSC to carry out immediately a New York/Geneva place-to-place cost-of-living survey;

(b) request the Chairman of the CONTRACTING PARTIES to communicate to the Chairman of the ICSC, the CONTRACTING PARTIES' concern over the effects of exchange rate fluctuations on the remuneration of professional staff, and to urge the ICSC to pursue the elaboration of an acceptable, durable long-term solution to the problem with diligence, in such a way that it might be in a position to take action at its 26th session in July 1987; and

(c) to request the Committee on Budget, Finance and Administration to keep the matter of remuneration under close review and to report to the Council on the outcome of the consultations which the Committee had decided should be undertaken. The Committee should also pay close attention to the link between salaries and pensions, using as a basis the report on pensions expected from the Advisory Group. The Committee is invited to make recommendations, if possible, to the Council meeting of 14 May.

He said that GATT's professional staff and management were concerned that this question be addressed in an expeditious manner. He trusted that

in the present discussions, sufficient time would be devoted to the subject so that, consistent with the CONTRACTING PARTIES' apparent desire to keep GATT in the Common System, members could understand the implications of any decisions that might be taken.

The representative of the United States recalled that at the Council's March meeting, his delegation had expressed its appreciation for the fine work of the GATT Secretariat, had recognized the distress that fluctuating exchange rates had caused for the professional staff and had indicated its willingness to seek a solution to the problem. Since then, the dollar had continued to depreciate, the measures taken within the Common System had failed to halt the further decline in the professional staff's remuneration and the ICSC had been forced to take the emergency measure of fixing a floor- and a ceiling-exchange rate for the operation of the remuneration correction factor. It was within this context that the United States had studied closely the report of the Informal Advisory Group. From this study and from the fine summary of the issues presented by the Chairman of the Budget Committee, as well as from the discussion in the Budget Committee, it was clear that the adjustments to the Common System had created an inequity between New York and Geneva salaries. Since 1985, the salaries in New York had been frozen at the same level in dollars, as a result of a UN General Assembly decision; if the System were meeting its stated objectives, salaries in Geneva should have been frozen in Swiss francs, rather than fluctuating, as had been the case. The Group's report had calculated that the average GATT professional staff member was receiving several hundred Swiss francs less in remuneration each month than would be required by the Common System principle of equal purchasing power in New York and Geneva. It was also clear that the post adjustment system designed to compensate for changes in the relative costs of living between New York and Geneva was being used incorrectly for changes in exchange rates. It was not clear, however, as the report of the Budget Committee Chairman showed, when the Common System would redress this situation. It was against this background that the CONTRACTING PARTIES had been asked to consider a temporary solution within GATT. The Group's report suggested two options, both of which, in effect, fixed an exchange rate for professional staff remuneration. It was not surprising that the Budget Committee had been unable to reach a consensus to examine these options; there was a certain degree of bureaucratic inertia in each capital, especially regarding financial matters, that needed to be overcome. There was also a strong attachment in capitals to the Common System, although a close examination of that System would show significant differences among international organizations. Furthermore, some of the ICSC's decisions did not meet the stated aims of the System, since they did not affect Geneva and New York equitably. The United States shared others' attachment to a workable Common System, but believed that the options in the Group's report were consistent with the System and should be given serious consideration by the CONTRACTING PARTIES. In fact, the ICSC, by its recent decision setting an exchange-rate floor for Geneva salaries, had recognized the validity of the Group's approach, although one might ask why the ICSC

believed that Geneva salaries could fluctuate between a floor of 1.7 and a ceiling of 2.13 while salaries in New York remained fixed. The adoption of one of the options in the Group's report, or a modified version thereof, might serve as an example or model for the ICSC deliberations in July. In conclusion, he said that while the United States supported the modest recommendations that the Budget Committee could agree upon, it believed that the situation was serious enough to warrant consideration of a temporary solution within GATT which was consistent with the Common System's aims and which would remain in effect until a lasting solution was found within it.

The representative of Japan recognized that the urgent and acute problems related to the erosion of professional salaries due to exchange rate fluctuations affected not only the GATT professional staff's standard of living but also their morale, especially when GATT was embarking on the difficult task of the Uruguay Round negotiations. His delegation was very much in sympathy with the difficulties faced by the GATT professional staff and was anxious to have the Uruguay Round function smoothly. Japan supported the temporary measures recommended by the Informal Advisory Group, pending a long-term solution. Such temporary measures should be implemented within GATT's existing 1987 budget, which his delegation understood was technically possible. He hoped that an acceptable solution, taking into account the urgent problem facing the GATT professional staff, would be found as soon as possible and not later than the next Council meeting.

The representative of Colombia said that his delegation also shared the concerns expressed by the Chairman of the Budget Committee, especially at a time when more work was being asked of the Secretariat in the context of the Uruguay Round. The CONTRACTING PARTIES should consider very seriously the situation which had developed, and urgent measures were required to resolve the problems. He referred to contracting parties' budgetary contributions in Swiss francs, the dollar equivalents of which were increasing with the fall in the value of that currency vis-à-vis the Swiss franc, while at the same time the professional staff's salaries, which were paid in Swiss francs but based on dollars, were declining. The decision on the assessment of contributions in Swiss francs had been taken precisely to shield the budget from such fluctuations, but salaries were not treated in the same way. His delegation wondered whether, in the future, the whole system should be based on the Swiss franc, i.e., both the members' budget contributions and staff salaries should be established and paid in Swiss francs. This would eliminate the problem caused by exchange-rate fluctuations, and should be seriously examined.

The representative of Canada supported the Budget Committee's recommendations in paragraph 9 of Spec(87)22 and agreed that the Council should decide at the present meeting to take the action called for in those recommendations. His authorities recognized the urgency of the situation as viewed by the GATT staff, and had found the Informal Advisory Group's

report very useful in setting out the nature of the problem, which clearly existed. This had been recognized as well by the ICSC's decision at its 25th session to adopt a modification of the remuneration correction factor. Canada attached considerable importance to maintaining the United Nations Common System of which GATT was de facto a part, and was concerned that this System might break down if each organization adopted different policies. Canada therefore preferred that a solution to the problem of staff salaries be found through improvements within the Common System, and agreed that GATT should work closely with other UN agencies in Switzerland to encourage the ICSC to move quickly to solve the problem, as noted in paragraph 8 of Spec(87)22. The ICSC's decision at its 25th session had brought a partial rectification to the problem of exchange rates as they affected professional staff salaries, by setting a floor and ceiling for the Swiss franc/dollar exchange rate. His authorities were still assessing this decision, which was only temporary, however, as it expired on 31 August 1987; it was thus incumbent on the ICSC to take further action by that time. The ICSC's interim decision should not, therefore, deter the Council from taking the action recommended to it at the present meeting. The Council should send a clear message to the ICSC that a durable solution to this problem was required, and should ensure that the Advisory Committee on Post Adjustment Questions (ACPAQ) meeting in May and the ICSC meeting in July took account of the CONTRACTING PARTIES' views. Canada would continue to give this issue consideration in order to ensure that a fair, equitable and early solution to the problem was found.

The representative of Australia supported the recommendations in the Budget Committee Chairman's report. Australia held that a solution to the problem should be sought in the Common System and that any solutions found should preserve the integrity of that System. This was a common problem which needed to be addressed in terms of common solutions.

The representative of Switzerland said his delegation strongly supported the recommendations contained in paragraph 9 of the Budget Committee Chairman's report, extremely modest as they were. The problem was not only real but urgent and called for a solution on the basis of equity, which naturally flowed from the analysis of the case. Switzerland also attached importance to the Common System and would prefer a solution in that framework. However, in the same spirit as the GATT itself, one should not become hostage to the heavy procedural burden of the United Nations system. He encouraged the Chairman of the Budget Committee to pursue vigorously the examination of the question on the basis of the alternatives contained in the Informal Advisory Group's report, with a view to deciding on a recommendation to the Council at its May meeting.

The representative of Hong Kong associated her delegation with the concerns expressed by the previous speakers. Hong Kong appreciated the Secretariat's good work. While agreeing that every effort should be made to find a long-term durable solution, she felt there was need for urgent

transitional arrangements to alleviate the plight of the professional staff. Such transitional arrangements did not conflict with parallel efforts to find a long-term solution within the Common System. Her delegation supported the recommendations in the Informal Advisory Group's report and urged the Budget Committee to make appropriate recommendations to be considered at the Council's May meeting. Moreover, salaries were only part of the problem; the question of pensions also had to be addressed, and Hong Kong urged the Committee to give serious consideration to this issue.

The representative of Brazil expressed his delegation's appreciation for the work done by the GATT staff and its support for the recommendations in the Budget Committee Chairman's report. The serious situation faced by the GATT staff deserved urgent attention and immediate solutions. His delegation shared Colombia's view that a long-term solution should be found in the interest of the GATT, the CONTRACTING PARTIES and the staff.

The representative of Nicaragua said that the CONTRACTING PARTIES should take the problem of salary erosion very seriously, and that while a common solution would be preferable given that the problem was common, the System itself was not as common as certain delegations claimed. Her delegation shared Colombia's view that provisional and immediate measures should be taken to resolve a problem which it considered to be of utmost gravity. The fact that a long-term solution was being sought should not be a pretext not to adopt immediate measures.

The representative of India said that the problem was to ensure that the Secretariat staff's terms and conditions of work, both for salaries and pensions, were preserved. The proposed measures should not be seen as a bonus for the staff's good work, but as justly deserved. A deterioration in terms and conditions of work would have a demoralizing effect on any secretariat. The seriousness of the problem should not be judged according to the work demands on the Secretariat. His delegation had followed with interest the discussions of this issue in the Budget Committee and supported the recommendations in paragraph 9 of Spec(87)22. India shared the view that the matter deserved urgent attention and that an early solution should be sought. His delegation would support any consultation or deliberation in the Budget Committee which would lead to further specific measures designed to alleviate the situation.

The representative of Korea said his delegation believed that urgent and serious consideration should be given to the problem of rapid erosion of salaries. Korea supported the recommendations in the Informal Advisory Group's report for temporary measures (Spec(87)10, paragraph 26(d)) within existing budget appropriations, pending a durable long-term solution.

The representative of Singapore said her delegation supported the recommendation in paragraph 9 of Spec(87)22.

The representative of Gabon emphasized that the problem was one of equity of treatment among all international civil servants. His delegation supported not only the recommendations in paragraph 9 of Sec(87)22 but also the interim measures in paragraph 5, provided they were within the budget appropriations. It was only normal to adopt transitional measures pending a long-term solution.

The representative of Argentina expressed his delegation's sympathy with the staff's concerns, and its recognition of the latter's invaluable work. His delegation considered that the Common System should be subject to permanent adjustment, and supported provisional measures pending a long-term solution.

The representatives of Malaysia, Indonesia, Hungary and Mexico expressed their delegations' sympathy with the staff's problem and their support for interim measures as well as for the recommendations in paragraph 9 of Spec(87)22.

The Director-General said that matters relating to salaries and pensions were always serious. He wanted first to express his personal thanks to the personalities, chairpersons, councils, committees and working parties of the "GATT family" who had dedicated so much time and effort to the search for adequate solutions, be they provisional, to the generally recognized deterioration of the financial situation of the GATT professional staff. Lack of success in this endeavour and the resulting reactions should in no case be a source of discouragement or of tension. He interpreted the sense of the present debate to mean that efforts should be redoubled and enlarged. The necessary channels to carry forward the much needed dialogue among all interested parties already existed. It was clear, however, that a decision on this matter would have to be taken by the Council on the basis of a recommendation from the Budget Committee. The target date should be the Council meeting of 14 May. He recalled that following the informal contacts established under his own chairmanship between the Staff Council and representatives of contracting parties -- in the persons of the Chairman of the CONTRACTING PARTIES, the Chairman of the Council and the Chairman of the Budget Committee -- it had been agreed to entrust the Informal Advisory Group, under the chairmanship of Mr. Feij (Netherlands), to examine the problems of salaries and pensions. That Group had done very useful work which was presently at a critical point and should continue. However, given the importance of this problem, he believed it would be useful if he himself were to carry out a series of consultations with the Chairmen of the CONTRACTING PARTIES, of the Council and of the Budget Committee, with a view to helping in the search for an equitable solution to the problems under consideration. The GATT Staff Council had asked to meet with him as soon as possible, and he would, of course, agree to do so.

The Council took note of the statements and of the report by the Chairman of the Committee on Budget, Finance and Administration in Spec(87)22 and Corr.1. The Council agreed to the proposals in paragraph 9

of that document and authorized the Director-General to consult on the basis of the procedure in his statement, noting the importance of coordinating such a procedure with the deliberations of the Committee. The Council also agreed to revert to this matter at its next meeting.

The Chairman of the Committee on Budget, Finance and Administration thanked representatives for having devoted time to the discussion of such an important matter. He suggested that in order to speed up the process, the part of the Informal Advisory Group's report on pensions, which was soon to be released, be sent directly to the Committee, should it be available before the next Council meeting. Turning to another matter, he stressed that the GATT's financial situation was neither stable nor comfortable. Referring to paragraph 5 of his report in Spec(87)22, where it was said that additional temporary measures could be met within "existing" appropriations, he pointed out that GATT appropriated and spent more funds than it actually received from contracting parties. That implied that although savings were effected on appropriations, yearly deficits were incurred because of arrears in contributions. At the end of 1986, those arrears amounted to SF17 million, and for 1986 alone to SF7 million. He wanted to flag this problem, which he hoped the Council would address in a similar way in due course.

The Council took note of the statement.

(b) Procedures for future appointments of the Deputy Directors-General (C/W/514)

The Chairman drew attention to document C/W/514 in which he had briefly set out the background of this matter, and recalled that at their Forty-second Session in November 1986, the CONTRACTING PARTIES had decided that the procedures for appointing Deputy Directors-General should be pursued by the Council (SR.42/1, paragraph 24, sub-point 30(c)(ii)). As he had emphasized in document C/W/514, in the consultations carried out in 1986 by the Chairman of the CONTRACTING PARTIES, consensus appeared to have been reached on this matter, but it had not been included in the Chairman's report to the Session because not all governments participating in the consultations had received final instructions regarding the text. Informal consultations conducted on his behalf with delegations had led him to conclude that representatives were now prepared for the Council to adopt the following proposed procedures:

> "The Deputy Directors-General are to be appointed by the Director-General for renewable terms of three years. The Director-General is to announce at a meeting of the Council that he will hold consultations on the appointment or reappointment of a Deputy Director-General. Such consultations will start not less than three months before the expiration of the term of office of the Deputy

Director-General. After the termination of the consultations, the Director-General will inform the Council of his decision concerning the appointment."

The Council adopted these procedures.

The representative of Uruguay expressed his delegation's satisfaction at the way a solution had been reached on the question of the designation of the Director-General and the Deputy Directors-General. This was a step towards greater transparency in the GATT system. He noted that only the post of Director of the International Trade Centre was not subject to consultations, and hoped that in due time this situation could be examined in the light of the special nature of this post.

The Council took note of the statement.

2. United States - Caribbean Basin Economic Recovery Act (CBERA) - First biennial review under the Decision of 15 February 1985 (L/5779, L/6146)

The Chairman recalled that at the March Council meeting, the representative of the United States had informed the Council that the second annual report on the implementation of the Caribbean Basin Economic Recovery Act (CBERA) would be submitted shortly. This report had since been circulated in document L/6146 and was now before the Council.

The representative of the United States stated that in accordance with the terms of the waiver approved in February 1985 (L/5779), his delegation was submitting the second annual report (L/6146) on the trade-related provisions of the Act. This report included data covering the calendar year 1986, and had not been submitted earlier because annual trade statistics had not been available until mid-February. The United States had complied fully with the terms of the waiver. In addition, the Act had achieved some success; not only had US imports of non-petroleum products from the Caribbean region grown since the Act's inception, but US imports of non-traditional products from its beneficiaries had grown by about ten percent from 1985 to 1986. The United States looked forward to continued positive results from this important trade and investment program.

The representative of Nicaragua recalled that her delegation had participated actively in the discussion on CBERA. The waiver had meant a significant departure from basic GATT principles by permitting discrimination among developing contracting parties of a given region and by excluding Nicaragua, for political reasons, from the benefits thereof. Nicaragua had not voted against the waiver considering that it was designed, in principle, to bring additional benefits to, among others, members of the Central American regional integration scheme. The report in

L/6146, while interesting, was not highly analytical. Her delegation had drawn certain conclusions, for which she cited statistics, from the tables contained therein. The first related to the evolution of the overall trade balance between the donor country and the beneficiaries, which reflected an important net improvement for the United States; it seemed that the major beneficiary of the Act had been the United States itself. Another conclusion was that the distribution of benefits had been highly uneven. Nicaragua felt that if the tendancies observed to date continued, the CONTRACTING PARTIES should study the case seriously to see whether it was necessary to modify or derogate from the waiver.

The representative of Cuba recalled her statement on this issue at the March Council meeting. Her delegation felt that the present report lacked a deep analysis of the effects of the Act, and proof that it was working. Nevertheless, information was available from other sources, such as the press, analysts and political observers of the region. She quoted statistics from a US International Trade Commission report of September 1986 which showed that both dutiable and duty-free US imports from beneficiaries had declined substantially. On the other hand, if one considered the Act as a new form of preferential access to the US market, product coverage was discouraging, since prior to the Act, 30.4 percent of US imports already entered duty free. Moreover, the new reduction in US imports from the Caribbean countries further depressed their economies, in particular those of countries heavily dependent on sugar exports, such as Jamaica, Barbados, Trinidad and Tobago, the Dominican Republic and Guyana. As a palliative, the United States had proposed shipping rice, beans and wheat to those countries at prices which had flooded the local producers' market. Cuba considered that for some countries in the region, the Act had not helped to increase exports, or to provide preferential access to the US market, and that the United States was taking back with one hand what it was giving away with the other. In the Working Party that had examined this matter, Cuba had said that the Act was far from promoting political stability in the region; after three years, this assertion had been confirmed.

The representative of Jamaica said her country was one of the Act's beneficiaries, and believed that the report in L/6146 provided useful information on the impact of the Act's trade measures on trade expansion. For 1985 and 1986, a growth rate of ten percent had been recorded for non-traditional exports, and there was scope for further product diversification with more liberal treatment for product coverage. However, she noted that the six percent growth rate was below that recorded for world trade over a comparative three-year period. While there had been positive developments, protectionist measures were being introduced in the US Congress, and sensitive products in which Jamaica had comparative advantage were being excluded from CBERA coverage. Jamaica had recently conveyed these concerns to the US Administration and Congress. It was hoped that Congress would address these issues in its consideration of general trade legislation, and that there would be a removal of trade

restrictive measures and the inclusion of products of export interest to Jamaica in duty-free provisions of CBERA. The current situation reflected problems of a more global nature; her authorities trusted that multilateral efforts aimed at reducing trade tensions and at compliance with commitments on standstill and rollback undertaken in Punta del Este would be redoubled.

The representative of Canada said his delegation welcomed the report. Canada had supported the US initiative and noted that US imports of non-traditional products from CBERA beneficiaries had grown by about ten percent between 1985 and 1986. Canada hoped that this trend would continue and that the initiative would lead to the economic recovery of these countries.

The representative of Switzerland expressed the hope that the format of this report did not become a standard model for other reports.

The Council took note of the statements and of the information in L/6146.

3. Japan - Trade in semi-conductors
- Recourse to Article XXIII:2 by the European Economic Community (L/6129)

The Chairman recalled that at its March meeting, the Council had agreed to revert to this item at the present meeting and that in the meantime, he would conduct consultations with the interested parties on all relevant aspects of this issue. Such consultations had been conducted by himself and by the Secretariat on his behalf.

The representative of the European Communities said that his delegation maintained its request for a panel as specified in document L/6129 and as explained at length at the Council's March meeting. He thanked the Chairman for the fruitful consultations he had undertaken, which he was confident would lead to a decision at the present meeting.

The representative of Japan recalled that his delegation had explained at length at the March Council meeting that the Community had not provided sufficient justification for its complaint. While Japan maintained this view, it would, out of respect for GATT's dispute settlement procedures and in view of the Chairman's informal consultations, be ready to accept the establishment of the panel. However, his Government believed that as the case was directly related to the Japan-US Semi-conductor Arrangement, both the Japanese and the US Governments should jointly accept the Community's request for a panel.

The representative of the United States recalled that at previous Council meetings, his delegation had argued against the merits of the Community's case. Another fundamental aspect of this dispute was the fact that the Japanese actions of which the Community was complaining were taken because of, and pursuant to, a bilateral arrangement between the United States and Japan. He quoted from the Community's request for a panel in document L/6129 which indicated recognition of this fact. His delegation remained convinced that there was no basis for a panel, but if the Community and other delegations believed that the matter deserved further exploration through a panel, the dispute could not be limited to Japan. The United States had to be "put in the dock" as well, with all the procedural rights that that entailed, and could not agree to a panel proceeding limited strictly to Japan.

The Chairman noted that the following contracting parties had been recorded as having reserved their rights to make a submission to the panel: Hong Kong, Canada, Singapore, Switzerland, Malaysia, Sweden on behalf of the Nordic countries, Korea, Brazil and Argentina. He said that any other delegations wanting to reserve their rights in this matter should do so at the present time.

The representatives of Austria, Australia, Thailand and Mexico reserved their delegations' rights to make a submission to the panel.

The representative of Austria said that his delegation was against bilateral agreements such as the one at issue, which involved market sharing with negative effects to other countries. Austria supported the Community's request for a panel.

The representative of Australia said that his country had a commitment to see this matter settled through the multilateral system rather than through escalating bilateral action which damaged the new round process and weakened the dispute settlement system.

The Chairman proposed that the Council establish a panel with the following terms of reference:

> "To examine, in the light of the relevant GATT provisions, the matters referred to the CONTRACTING PARTIES by the European Economic Community relating to trade by Japan in semi-conductors, in the context of the arrangement between Japan and the United States, as specified in document L/6129, and to make such findings, including findings on nullification or impairment, as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2."

The Panel would be established on the basis of the following Understanding related to the terms of reference:

"Given the special nature of the matter to be examined by the Panel, which is related to certain aspects of the arrangement between Japan and the United States concerning trade in semi-conductor products (L/6076), it is understood that in setting up its own working procedures, the Panel will provide adequate opportunity for the United States to participate in the work of the Panel as necessary and appropriate."

Contracting parties which had reserved their rights to make a submission to the Panel under paragraph 15 of the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/213) would be treated in accordance with standing practice in this respect.

The Council would authorize the Chairman of the Council, in consultation with the two parties concerned, to designate the Chairman and members of the Panel.

The representative of the United States said that his delegation could reluctantly agree to the proposed formulation, provided that all contracting parties were clear on one point: "adequate opportunity to participate" had to be interpreted by the Panel in the same way as this phrase was interpreted in an earlier dispute addressed in document L/5776.[1]

The representative of Japan said that his delegation could also reluctantly accept the Chairman's proposal.

The representative of the European Communities said that it was up to the complaining country to decide on this matter, including what party was being complained against. The Community understood the interest of the United States, and agreed with the interpretation which the United States gave to the Chairman's proposal, i.e., the reference to document L/5776.

The representative of Jamaica, quoting from the second sentence of page 2 of L/6129, asked if there were any relationship between the proposed panel's work and examination of this matter within the Anti-Dumping Code (BISD 26S/171), and what the implications were of two dispute settlement procedures running in parallel.

The representative of the European Communities said that the Community had begun to deal with this matter in the context of the anti-dumping dispute settlement procedure, but had not followed it up there because it recognized the desirability of having a single panel examine all aspects of the matter.

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[1] Panel report on the European Community Tariff Treatment on Imports of Citrus Products from Certain Countries in the Mediterranean Region.

The representative of Canada said that his delegation could agree to the US interpretation of the proposed Understanding. Canada was guided in the dispute settlement process by the 1979 Understanding and by other documents agreed by the CONTRACTING PARTIES; however, in the present case, existing procedures were not adequate. Canada viewed the US request to participate in the Panel as unique and did not want to see such a request become an established practice of the Council without further discussion and agreement among the contracting parties. This might be done within the Uruguay Round negotiating group on dispute settlement.

The representative of Hungary said that his delegation could accept the Chairman's compromise package to resolve this issue and to establish a panel. He referred to the first paragraph of page 2 of L/6129 and expressed the hope that the Community would, in its own trade relations with other contracting parties, refrain from the "modalities of application" cited therein which could lead to discriminatory implementation of trade measures.

The Council agreed to the Chairman's proposal and took note of the statements.

The Chairman said that, in his view, it was important that the parties concerned had recognized that the difficult aspects of this dispute should be dealt with within GATT, given the different dimensions this dispute included.

4. Technical Group on Quantitative Restrictions and Other Non-Tariff Measures
- Report (L/6149, L/6150)

Mr. Williams, Director of the Non-Tariff Measures Division, Chairman of the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures, introduced the Group's report (L/6150) which was comprised of a note on its meeting of 30 March 1987. The main result of that meeting was the finalizing of the updating of the documentation previously prepared by the Technical Group, a task set for it by the CONTRACTING PARTIES' decision at their Forty-second Session in November 1986 (L/6100). As noted in paragraph 23 of the report, this documentation was currently available to other groups, including the relevant Uruguay Round bodies. The Secretariat would consolidate and re-issue this information in a more manageable form. He recalled that notifications of quantitative restrictions and of other non-tariff measures under the 1984 and 1985 decisions of the CONTRACTING PARTIES (BISD 31S/12 and 32S/12) would continue; the Technical Group would carry out the biennial multilateral reviews of the accuracy and adequacy of the documentation, and the grounds for and GATT conformity of measures taken. The next such review would be held in October 1988.

The representative of the United States said that his delegation could agree to take note of the Technical Group's report, but drew attention to the US statement at the March Council meeting concerning Mexico's notification of import permit requirements and quantitative restrictions in effect (L/6137 and Add.1). His delegation had pointed out that Mexico, in its Protocol of Accession, had undertaken to notify and to justify under the appropriate GATT Articles, the remaining restrictions of this sort. The United States had also raised this issue in the Group's March meeting and had urged Mexico to notify which GATT Articles applied to its quantitative and licensing restrictions. At that time, Mexico had alleged that it had no obligation at the present time to justify its remaining restrictions under GATT Articles. While the United States recognized and complimented Mexico's efforts to reduce the number of the restrictions it applied, his delegation believed that Mexico was bound by its accession commitments to submit a formal justification for each of the remaining restrictions; the Technical Group was a good place to start. Consequently, his delegation asked for Mexico's cooperation in (1) distinguishing, in document L/6137/Add.1, between items subject to import permit restrictions and items under direct quotas, (2) undertaking to notify all of these restrictions as soon as possible to the Technical Group, including a reference to the GATT Article under which the restriction was justified, and (3) submitting this report to the Council in fulfillment of the commitments in its Accession Protocol.

The representative of Mexico said that his delegation had noted the US statement and would convey it to his authorities for consideration. He said that -- not in response to the US statement but rather for the benefit of delegations which had not been present at the meetings of the Council and of the Technical Group in March -- his country's GATT commitment in connection with this question had to be considered within the framework of its Protocol of Accession, and specifically, in the light of paragraph 29 of the report of the Working Party on Mexico's Accession (L/6010). This had been mentioned in document L/6137 and had to be made clear. These commitments were to be respected as a function of the Protocol of Accession and not as a function of a decision taken by the CONTRACTING PARTIES. Regarding the latter, his delegation had not referred, in its notifications, to existing restrictions because the process of substituting duties for licenses was a dynamic one, the extent of which should not be pre-judged. Since the informal consultations scheduled with the United States in the Technical Group had not yet taken place, Mexico was surprised at the thrust of the US statement. He stressed that such consultations should be held in Geneva, not in Washington. Regarding the US request, he said that subject to a decision by his authorities, his delegation could identify the items subject to import permits and those subject to quotas. He noted that in the Technical Group, not all contracting parties had submitted their justifications for measures concurrently with their notifications. He recalled that there had been delays in the updating and examination of this information, and said that as a new contracting party, Mexico should not be expected to go further and faster than other

contracting parties. This was a complex matter which would have to be analyzed within the framework of Mexico's policy of gradual substitution of duties for import permits, through consultations with the Secretariat and with other contracting parties as necessary.

The Council took note of the statements and of the report in L/6150.

5. China's status as a contracting party
- Report by the Council Chairman on consultations

The Chairman recalled that at its March meeting, the Council had agreed to establish a Working Party open to all contracting parties indicating their wish to participate in it, and had authorized him to conduct consultations with interested parties on presiding arrangements, the terms of reference of the Working Party and any other matters related to the Council's decision. Consultations had been held, and while some progress had been made, it had not yet been possible to reach the necessary level of agreement. Therefore, he proposed that he continue the consultations with all interested parties with a view to reaching agreement before the Council's next meeting on 14 May.

The Council took note of this information and so agreed.

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

The Chairman recalled that at its March meeting, the Council had agreed to defer consideration of this item to the present meeting, and that he had said he would discuss with the interested delegations. It had been clear in those discussions that the basic positions on this matter remained unchanged.

The representative of Nicaragua said that in order for the consultations on this matter to be meaningful, a minimum political will had to be shown by all participants to achieve positive results. Her delegation had that political will and felt that a satisfactory solution was possible and necessary. Such a solution would have to include a number of elements: first, the Panel's report (L/6053) which had concluded that the embargo was contrary to the fundamental objectives of the General Agreement and that it caused serious harm to a developing contracting party; and second, the decisions of other fora which had spoken out on the legal and political aspects of the case, in particular, the International Court of Justice which had concluded that the embargo was not necessary to protect any US security interest, as well as Resolutions 40/188 and 41/164 of the United Nations General Assembly which called for the immediate cessation of the embargo. If the Council, on the basis of these elements, were to formulate appropriate recommendations, Nicaragua could adopt the

Panel's report. Subsequently, the Uruguay Round negotiating groups, in particular, the group on dispute settlement, could examine some of the considerations put forward in the report. If such a solution were to be blocked because of one party's lack of political will, Nicaragua would have to continue to insist on its legitimate right, for two imperative reasons: first, the embargo's negative effects were increasing and, together with the military agression and deterioration of the international economic environment, delayed further the possibility for recovery and development; second, lack of action by the CONTRACTING PARTIES would place GATT in a precarious situation regarding international law, while showing it to be incapable of protecting the legitimate interests of its less developed members, whose survival and economic stability depended so much on the application of international principles and rules, especially at a time when the Uruguay Round was trying to bring a new impetus to multilateralism in the world trade system. The CONTRACTING PARTIES could not permit the continued abuse of GATT's provisions and the procedures which governed it. They could not permit the US Government to continue to justify its embargo by invoking GATT provisions while opposing GATT's examination thereof, nor could they allow a Panel report's conclusions to be distorted, particularly when it had not yet been adopted. She then read out portions of UN document A/C.2/41/L.29, illustrating the points she had just made. These were amendments, suggested by the US delegation, to the draft UN Resolution, which indicated that GATT did have competence to rule on this matter, and in fact had done so. Her delegation trusted that the US delegation would no longer claim that the embargo should not be considered in GATT. Nicaragua felt that the unilateral lifting of the embargo would be an extremely important step towards strengthening GATT, and trusted that the US President would not renew the embargo in May.

The representative of the United States said his delegation had little to add to the statements it had made on this matter since it was first brought to the Council. The Panel's findings in this case merely confirmed the US position that the solution to this matter did not lie within GATT. He reiterated that with respect to this and other similar issues brought before the Council in the past, the GATT, by its traditions, its competence, and the terms of Article XXI itself, could not resolve cases where trade sanctions were imposed for national security reasons.

The Council took note of the statements, agreed to revert to this item at its next meeting and took note that in the interim, the Chairman would consult with interested delegations.

7. Egypt - Economic Development Tax
- Communication from Egypt (L/6148)

The representative of Egypt drew attention to document L/6148 containing his Government's official notification of the abolishment of its Economic Development Tax by law no. 178 of 1986, effective 22 August 1986.

He recalled that Egypt's Protocol of Accession (BISD 17S/2) had allowed it to maintain in effect the "Consolidation of Economic Development Tax" on bound duties, at rates not exceeding the rates in force on the date of the Protocol. The measure had been subject to review both by his Government and by the CONTRACTING PARTIES every five years, the latest review having been made in 1985, at which time Egypt had been allowed to maintain the tax in effect until 31 December 1990 (BISD 32S/15). However, his authorities had undertaken a review of a number of trade policy measures which had resulted in the adoption of liberalizing measures and, thereby, the assumption of more obligations under GATT. Egypt hoped that such confidence building measures, taken on the eve of the Uruguay Round and by a developing country, would be duly recognized by its trading partners as an important contribution to the multilateral trading system.

The Council took note of the statement and of the information in document L/6148.

8. Implementation of Generalized System of Preferences (GSP) schemes

The representative of Brazil, speaking under "Other Business", requested the inclusion on the agenda of the Council's next meeting, of a specific item on the implementation of schemes under the Generalized System of Preferences (GSP), in light of the CONTRACTING PARTIES' decisions of 25 June 1971 (BISD 18S/24) and 28 November 1979 (BISD 26S/203).

The representative of Nicaragua supported Brazil's statement.

The Council took note of the statements.

9. United States - Tax reform legislation for small passenger aircraft - Recourse to Article XXIII:2 by the European Economic Community (L/6153)

The representative of the European Communities, speaking under "Other Business", said that the discrimination involved in the matter described in L/6153 was quite transparent, since only aircraft manufacturers in four states of the United States would benefit from the tax exemptions cited. While the time frame for orders and deliveries to qualify for these exemptions was short, it was the violation of the principle of non-discrimination, rather than the economic impact of the measure, which had prompted the Community to ask for the establishment of a panel to examine this matter. Particularly at a time when the Uruguay Round negotiations were getting underway, contracting parties should be ready to examine such a case. His delegation asked that this matter be included on the agenda of the Council's next meeting in order that such a decision might be taken.

The representative of the United States said that while the US Tax Reform Act of 1986 contained a transition rule benefiting the domestic commuter and business aircraft industry, the rule required that certain specific criteria be met. The provision had been temporary and was over, and the United States had no intention of extending it. He said that data on domestic shipments and imports of the aircraft in question indicated that the measure had had no significant effect on trade; in fact, US imports of these aircraft were on the uptrend. While his delegation reserved its rights concerning the GATT-consistency of the transition rule, it noted that the objective which a panel could be expected to accomplish -- elimination of the practice in question -- had already been achieved. He said that GATT's resources in dispute settlement were already considerably overburdened and should be used for matters involving an actual and ongoing burden on trade.

The Council took note of the statements.

10. United States - Unilateral measures on imports of certain Japanese products

The representative of Japan, speaking under "Other Business", noted that with regard to US/Japanese trade in semi-conductors, the US Government had announced on 27 March 1987 the President's decision to impose 100 percent ad valorem tariffs on certain Japanese exports to the United States, effective 17 April 1987. Such measures were to be applied only against Japan. His Government would continue its efforts to resolve this issue in a mutually satisfactory way and strongly hoped that the United States would not take such unilateral measures which would clearly contravene Articles I and II, and would nullify or impair benefits accruing to Japan under GATT. Should such measures be put into effect, his Government would immediately request Article XXIII:1 consultations with the United States in order to seek the satisfactory adjustment of the matter, including the removal of the US measures.

The representative of the United States said that the measures referred to by Japan were still under consideration by his Government, and that consultations with Japan on this matter were continuing. While his delegation did not agree that the measures under consideration would be inconsistent with the United States' GATT obligations, it did agree that any contracting party had the right to request Article XXIII consultations where it considered that its benefits were being nullified or impaired. The United States would treat seriously any such request addressed to it.

The Council took note of the statements.

11. Canada - Measures on exports of unprocessed salmon and herring
- Panel terms of reference and composition

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had agreed to establish a panel to examine the complaint by the United States, and had authorized him to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned.

He announced the Panel's terms of reference and composition as follows:

Terms of Reference:

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States relating to Canada's measures affecting exports of unprocessed herring and salmon (L/6132), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided for in paragraph 2 of Article XXIII."

Composition:

Chairman: Mr. Jànos Nyerges

Members: Mr. Timothy Groser
Mr. Arne Sivertsen

The Council took note of this information.

12. United States - Customs user fee
- Panel terms of reference and composition

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had agreed to establish a panel to examine the complaints by Canada and the European Economic Community, and had authorized him to draw up the terms of reference and to designate the Chairman and members of the Panel in consultation with the parties concerned and with interested delegations.

He said that his consultations on this matter were continuing, and that once they were concluded, he would inform representatives of the results.

The Council took note of this information.

13. Third Lomé Convention
- Working Party Chairman

The Chairman, speaking under "Other Business", recalled that at its March meeting, the Council had established a working party to examine the Third ACP-EEC Convention signed at Lomé and had authorized him to designate the Chairman of the Working Party in consultation with interested delegations.

He said that his consultations were continuing and that once they were concluded, he would inform representatives of the results.

The Council took note of this information.