GENERAL AGREEMENT ON TARIFFS AND TRADE

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MINUTES OF MEETING

Held in the Centre William Rappard on 26 May 1983

Chairman: Mr. H.V. Ewerlöf (Sweden)

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1. Guatemala - Request for observer status

The Chairman said that the Director-General had received a request from Guatemala to attend the meeting as an observer, as a Rule 8 country. He added that Guatemala had observer status for sessions of the CONTRACTING PARTIES but not for meetings of the Council. He asked whether the Council would agree to invite the representative of Guatemala to attend the present meeting as an observer, pointing out that the Council, if it agreed, would be following the same procedure that it had followed for other Rule 8 countries.

The Council agreed to invite Guatemala to attend the meeting as an observer.

2. International Trade Centre
- Report of the Joint Advisory Group (ITC/AG(XVI)/88)

Mr. Rijpma (Netherlands), Chairman of the Joint Advisory Group, introduced the report. He recalled that the Group reviews the activities of the International Trade Centre (ITC) and formulates recommendations to the governing bodies of UNCTAD and GATT. The Group had noted that total net financial resources available to the ITC, including carry-over from previous years, had declined in 1982. The Centre's Third Medium-Term Programme for 1983-1985 had a target of available extrabudgetary resources of US$60 million for the three-year period. The Group had concluded that the Programme had realistic objectives and that it reflected the evolving needs of the developing countries, and had urged that the resources required by the Centre should be forthcoming from present and new donors.

The Group considered that priority should be given by the ITC to the identification of export potential in developing countries and to the encouragement of development of products for export. The Group had reiterated that close attention should be paid to the trade problems of

the least-developed countries and had endorsed the Centre's intention to develop a strategy for the African continent. Furthermore, in order to bring about further expansion of trade between certain centrally-planned economy State-trading countries and developing countries, the Group had recommended that more attention be given to technical co-operation among these countries.

He said that out of the ITC's total technical co-operation activities, about 30 per cent were financed through the United Nations Development Programme (UNDP). The Group had noted that acquisition of executing agency status with the UNDP would in no way modify the Centre's status as a joint subsidiary organ of GATT and the United Nations, the latter acting through UNCTAD. Such a change in status would help in making the Centre's rôle as focal point for trade promotion more visible vis-à-vis governmental co-ordinating agencies, and vis-à-vis UNDP executing agencies with which the ITC wanted to build and strengthen co-operation. Given these considerations, and taking account of the unanimous support expressed during its discussions, the Group had decided to recommend ".... that the International Trade Centre UNCTAD/GATT seek through its parent bodies executing agency status with the United Nations Development Programme. It was understood that this recommendation in no way should be interpreted as a step towards ITC becoming a specialised agency of the United Nations, as ITC will continue as a joint subsidiary organ of GATT and the United Nations, the latter acting through UNCTAD...". (ITC/AG(XVI)/88, para. 98).

The representatives of Pakistan, Turkey, Uruguay, India, Finland on behalf of the Nordic countries, Cuba, the European Communities, Canada, Peru and Switzerland expressed their support for the ITC, and said they would like to see greater funds put at its disposal. They also supported the recommendation in paragraph 98 of the Group's report to grant the ITC executing agency status with the UNDP.

The representative of Israel, pointing to the financial difficulties facing the ITC, noted that while the Centre was making efforts to promote trade between certain centrally-planned economy State-trading countries and developing countries, none of the former group of countries figured in the report's list of pledges by trust fund donors (ITC/AG(XVI)/88, page 27).

The representative of Jamaica called for a strong recommendation by the Council for a substantial increase in resources for the ITC so as to boost developing country exports. The Council ought also to recognize the contribution of the countries on the list of trust fund donors, and make a strong plea to all donor countries to increase their contributions.

The Director-General said that his visits to contracting parties had reinforced his conviction of the important rôle played by the ITC, and he fully associated himself with the appeals for new resources to be offered to the Centre. In reply to questions, he noted that the Group's recommendation to grant the ITC executive agency status with the UNDP would not in any way change the relationship between GATT and the Centre. Adoption of the report by the Council would give him the necessary authority as Director-General to contact the UNDP and inform them of the Council's decision; he would do this after consulting with the Secretary-General of UNCTAD.

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

The Chairman said that the next step on the GATT side would be for the Director-General to transmit, in consultation with the Secretary-General of UNCTAD, the recommendation as adopted to the Administrator of the UNDP for appropriate action. The Chairman understood that the UNCTAD Board would be considering the Group's report in the autumn of 1983.

3. Uruguay - Import Surcharges
- Extension of Waiver (C/W/416, L/5489)

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 of the General Agreement 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 1983. The delegation of Uruguay had submitted a request for a further extension of the waiver (L/5489). The Chairman drew attention to the text of the draft decision contained in document C/W/416.

The representative of Uruguay said that his country was engaged in a process of reducing, simplifying and harmonizing its import tariff through the application of a single customs tax, but world economic difficulties had necessitated some adjustments in this process. Uruguay had started to open its economy after years of being separated from world economic growth. Most of Uruguay's imports were raw materials, intermediate inputs and capital goods which did not compete with local production, so putting a brake on imports would have led to a decrease in imports of goods which were indispensable for the development of the country, and this would also have led to a reduction of exports. Uruguay had therefore decided to maintain its present policy of opening its economy in all its basic aspects and of making the necessary adjustments to survive in a period of reduced international economic activity. It was in order to have time to complete the task of adjusting the concessions included in Schedule XXXI that Uruguay had asked for a further extension of the waiver until 31 December 1983. Uruguay hoped to be able to submit by the end of 1983 a proposal for a new Schedule XXXI which would be examined under the procedures established by the General Agreement.

The Council approved the text of the draft decision extending the waiver until 31 December 1983, and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

4. European Economic Community - Imports of citrus fruit and products - Terms of reference of the Panel

The Chairman recalled that on 2 November 1982, the Council had agreed to establish a panel to examine the US complaint. He had been authorized to decide on appropriate terms of reference for the panel, in consultation with the two parties concerned and with other contracting parties which had indicated an interest in the matter and, in consultation with the two parties concerned, to designate the Chairman and members of the panel. The terms of reference had been considered at the Council meeting on 20 April 1983. On the basis of further consultations with delegations, he wished to inform the Council of the following 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 the tariff treatment accorded by the European Community to imports of citrus products from certain countries in the Mediterranean region (L/5337), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings, as provided for in Article XXIII:2."

The Chairman then made the following statement: "Agreement on the above-mentioned terms of reference has been reached on the basis of the following understandings. As regards product coverage, it is understood that the reference to document L/5337 means a reference to the products indicated therein. Given the special nature of this matter, in that the tariff treatment which is to be examined by the Panel is an element of Agreements entered into by the European Community with certain Mediterranean countries, it is expected that the Panel will take due account, inter alia, of the reports of the working parties relating to these agreements and of the minutes of the Council sessions where these reports were discussed and adopted, and, in setting up its own working procedures, will provide adequate opportunities for these countries to participate in the work of the Panel as necessary and appropriate."

The Council took note of the terms of reference and of the Chairman's statement.

The representative of the United States said that his delegation had reluctantly accepted the understanding in order to have the Panel established. He noted that the United States had asked for a panel eleven months earlier, and that the terms of reference had first been discussed more than six months earlier. He hoped that the slow procedures in this case would not be a precedent for future dispute settlement cases, as this would call into question the Tokyo Round Understanding in this area (BISD 26S/210).

The representative of the European Communities said that this could not be called an ordinary affair. He wanted to recall the spirit of pragmatism and conciliation which had been shown by the Community in this case, and to underline that the Community had not been defending its own interests. His delegation had not understood why the Panel had been requested. The Director-General's good offices had not produced satisfactory results for all concerned. The Community had then asked that the matter not be pressed further, but the United States had insisted, so the Community had thought it better to set up a working party. When this alternative had been rejected, the Community had finally agreed to set up a panel. He wondered whether the US request for a panel was aimed at something more fundamental. A large share of world trade was carried out on the basis of agreements deriving from Article XXIV; if an attempt was made to meddle with the principles underlining this vast volume of world trade, great care would have to be taken. His delegation hoped that the Panel would show skill, pragmatism and impartiality. It would have to resist pressures and recall that this was not a routine matter.

The representative of Spain expressed satisfaction that a solution had been reached to what was a minor but not an ordinary matter. He regretted that the US delegation was not entirely happy with the solution. Spain was not entirely happy either, but had accepted the solution because it did not want to be held responsible for the slowness of a process that should have moved faster. When the case had come before the Council, Spain had asked for a working group, not a panel. But the United States had insisted on a panel, and Spain and other delegations had recognized its right to a panel. Spain and the other Mediterranean countries had agreed, but they wanted to be sure that their interests would be fully taken into account. The complaint had not been made against the Mediterranean countries but they had vital export interests in this matter.

The Chairman said that consultations would be pursued actively concerning the composition of the Panel.

The Council took note of the statements.

5. United States - Imports of sugar from Nicaragua (L/5492)

The Chairman drew attention to document L/5492 containing a communication from the delegation of Nicaragua.

The representative of Nicaragua said that the announcement by the United States of a forthcoming reduction, effective on 1 October 1983, of his country's sugar quota from 58,800 short tons to 6,000 short tons for the financial year 1983/84, had serious consequences not only for

Nicaragua's sugar sector but also for the general development of its economy. The reasons given by the United States for this drastic cut were stated to be: first, Nicaragua's negative attitude towards US initiatives to discuss problems that threatened peace and stability in Central America; second, the hostile propaganda which the United States claimed that Nicaragua carried on against the United States; and third, the support given by Nicaragua to guerrillas in El Salvador. Nicaragua's sugar sector was vitally important to its economy, and sugar was Nicaragua's third export product after coffee and cotton, representing between eight and ten per cent of its global exports. From 1979 to 1983, the United States had taken between 75 and 100 per cent of Nicaragua's sugar exports. The annual currency loss that would be caused by the implementation of the US measure had been evaluated at about $13.5 million on the basis of 1980-83 trade figures. The measure would also have serious socio-political consequences for Nicaragua as more than 65 per cent of cane production was in private hands. If the measure were to be implemented, Nicaragua's sugar industry would most likely head for bankruptcy.

Nicaragua considered that the US measure was unilateral, discriminatory, and violated the principles of the General Agreement, particularly Articles II and XIII, especially paragraphs 2, 2(d) and 4. The measure also went against the spirit and the letter of Part IV. The share-out of the 52,800 tons taken away from Nicaragua and given to El Salvador, Costa Rica and Honduras did not meet fair economic criteria, and had created a disturbance in the economic relations of the Central American Common Market. Also, as with any restrictive trade measure, the United States should have notified this to the contracting party affected.

The reasons put forward by the United States as justification for the proposed quota cut were not economic reasons and therefore could not be accepted by Nicaragua. Nicaragua had fewer than three million people and no powers of retaliation; it relied on the proper functioning of the GATT multilateral system, whose objective was to secure law and order in international trade and economic relations.

Nicaragua had requested bilateral consultations with the United States under Article XXIII:1. His delegation was pleased to inform the Council that it had received a positive reply from the United States and that the two delegations would start these consultations as soon as possible.

The representative of the United States confirmed that his delegation would soon be holding Article XXIII:1 consultations on this matter with Nicaragua. On 9 May, the US President had announced that for the year beginning in October 1983, the allocation of any US sugar import quota would be modified by a reduction of Nicaragua's allocation, which would be redistributed to Honduras, Costa Rica and El Salvador.

There was no change in the current allocation for the quota year, nor would this decision affect the overall level of US sugar imports for the following year, or the quota allocation of any other country. The reasons for the decision were well known, and had been the subject of discussion in other, more appropriate international fora. The United States had informed Nicaragua that it expected Article XXIII:1 consultations to be scheduled expeditiously. His delegation was also willing to consult with any other contracting party wishing to do so. He did not intend to go into the substance of this matter or to respond at this time to the views of the Nicaraguan delegation. This was not customary in circumstances where consultations had been agreed under GATT procedures. It would be premature to engage in a multilateral debate before the consultations had taken place.

The representative of Argentina said that his delegation was struck by the selective, political nature of the US measure against Nicaragua, and by the negative impact the measure would have on that country's economic development. There had been other cases recently of developed countries adopting restrictive trade measures against developing countries in violation of the spirit and letter of the General Agreement, particularly Part IV. He also recalled the formal undertaking in the 1982 Ministerial Declaration to abstain from taking restrictive trade measures for reasons of a non-economic character not consistent with the General Agreement (L/5424, paragraph 7(iii)). His delegation hoped that the Article XXIII:1 consultations between Nicaragua and the United States would lead to cancellation of the US measure.

The representative of Cuba said that once again an arbitrary trade measure was being taken against a contracting party, for political rather than for economic or trade reasons. His delegation was concerned at the frequency of cases where trade was being used as a weapon to enforce positions on other countries. The proposed cut in Nicaragua's sugar quota would cause considerable prejudice to a contracting party. He recalled that in 1960 the United States had cut Cuba's sugar quota by 92 per cent. The US measure against Nicaragua had violated the 1982 Ministerial Declaration only six months after its adoption. In his view, the solution of this dispute would show whether that Declaration was credible or not.

The representative of Poland said there had recently been a disturbing proliferation of trade restrictive measures with unmistakably political origins. Such measures were especially regrettable when they applied to a sensitive, export-oriented sector of a developing country and thus made structural adjustment particularly difficult. His delegation hoped for a reversal of the US measure as a result of the bilateral consultations.

The representatives of Colombia, Peru, Chile and Uruguay expressed support for Nicaragua and concern at what they saw as an erosion of the General Agreement and of the 1982 Ministerial Declaration concerning trade measures taken for non-economic reasons. They hoped that the Article XXIII:1 consultations would lead to a satisfactory solution.

The representative of Spain believed that this dispute brought the risk of politicizing the GATT as a technical body; such would be the result of trade measures applied for political reasons in violation of the General Agreement and of the 1982 Ministerial Declaration. His delegation regretted this particular situation between Nicaragua and the United States, and thus was glad to hear that both parties would be opening consultations.

The representatives of Sweden, Romania, Czechoslovakia, Portugal, Yugoslavia and Jamaica expressed satisfaction that the two parties would be opening Article XXIII:1 consultations and hoped for a satisfactory solution within the GATT framework.

The representative of Brazil assumed that the United States would notify the measure against Nicaragua to GATT. His delegation hoped that the consultations would proceed quickly, and that as a result the trade relations between Nicaragua and the United States could be adjusted to the provisions of the General Agreement.

The representative of Switzerland said that his delegation hoped that the consultations would lead to a satisfactory result. Switzerland was against the use of trade measures for political reasons, just as it rejected the use of political measures for trade purposes.

The representative of India hoped that the consultations would lead to a satisfactory solution, and that the United States would notify the measure to GATT. He also hoped that contracting parties would adhere to their commitment against trade measures for non-economic reasons contained in the 1982 Ministerial Declaration.

The representative of Guatemala, speaking as an observer, said his delegation was following this matter with great interest. He hoped that the Article XXIII:1 consultations would lead to a satisfactory solution within the GATT framework.

The representative of the European Communities said that his delegation did not intend to support either party in this dispute. It was glad that GATT mechanisms were going to be used, and hoped that a satisfactory solution could be found.

The representative of Nicaragua reiterated his delegation's full trust in the GATT and in its machinery, which he was sure would produce a solution satisfactory to the two parties. Nicaragua reserved its right to put this matter before the Council again if consultations with the United States failed to produce a solution.

The Council took note of the statements.

6. Customs Unions and Free-Trade Areas; Regional Agreements - Calendar of biennial reports (C/W/417)

The Chairman recalled that at their twenty-seventh session in November 1971, the CONTRACTING PARTIES had instructed the Council to establish a calendar fixing dates by which contracting parties that were members of a regional agreement would be invited to submit a biennial report on developments under the Agreement concerned. The most recent calendar established by the Council in June 1981 had covered the period October 1981-April 1983. In document C/W/417 the secretariat had circulated suggestions for a new calendar for consideration by the Council.

The representative of Pakistan said that the sheer number of regional agreements listed in the new calendar confirmed his delegation's view that the Council should at some point carry out an overview of regional agreements, as these had emerged as an important element of the GATT trading system.

The Council approved the proposed calendar and took note of the statement.

7. United States - Imports of certain automotive spring assemblies - Report of the Panel (C/W/396, C/W/400, L/5333)

The Chairman recalled that in December 1981 the Council had established a panel to examine the complaint by Canada. The Panel had submitted its report in document L/5333, which had been before the Council at its meetings in June, July, October and November 1982. At the Council meeting on 26 January 1983, the Council had agreed that the Chairman should consult informally with the two parties and other interested delegations to see how this matter could be resolved at one of the next Council meetings. There had been further discussion on this matter at the Council meeting on 20 April 1983. The Chairman said he was now in a position to make the following proposal to the Council:

"That the Council take note of the statements made in the discussion on the report of the Panel (L/5333), and adopt the report on the 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."

The representative of Brazil said that his delegation would not oppose a consensus on this proposal, but would not join it. Brazil reserved its position entirely, not only on the substance of this matter but also on the procedures that the Council had adopted in dealing with the Panel report. In his view, the Council had failed to take up its responsibilities not only under Article XXIII of the General Agreement, but also under the Tokyo Round Understanding on dispute settlement (BISD 26S/210), and under the 1982 Ministerial Decision on dispute settlement (L/5424, pages 6-8). The Panel report had not, in Brazil's view, addressed certain aspects of this case and therefore had not provided sufficient advice for the Council either to make recommendations or to give a ruling under Article XXIII:2. Considering that the specific bilateral problem which had led to the Canadian complaint had ceased to exist, Brazil considered that the Council could have simply taken note of the Panel's report.

The representative of Jamaica, recalling the statement made by the representative of Brazil at the Council meeting on 20 April 1983, wondered whether the Council was always obliged to adopt panel reports. If the two parties to a dispute had settled their dispute bilaterally, his delegation considered that the Council could take note of a panel report and need not adopt it.

The Chairman said that the Council was always free to decide how it wanted to proceed.

The Council agreed to the Chairman's proposal.

The representative of Canada said that for previously explained reasons, including those contained in the statement (C/W/396) made by his delegation at the Council meeting in October 1982, Canada would have preferred not to adopt the Panel's report. In particular, Canada was concerned that certain aspects of the report created possible risks with respect to future application and interpretation of Article XX. However, in the light of the various statements made and of the understanding just agreed, Canada believed that those risks had been minimized and was thus able to agree with the Chairman's proposal.

The representative of the United States said that the Panel report and the understanding just agreed stood on their own merits, and no interpretations that the United States or any other member of the Council might ascribe to the report or the understanding were binding on the Council as a whole. He recalled that his delegation had never claimed that adoption of the report would consitute a blanket approval of any use of Section 337 for patent infringement cases, or that the United States would thereby be immunized from future GATT examination in the dispute settlement process. The report itself made clear that the Panel had carefully avoided conferring such a blanket approval or

immunity for the use of Section 337 on the basis of the one case before it. The United States did not anticipate or fear a future challenge on Section 337 under Article XXIII, and it continued to respect the right of all contracting parties to invoke dispute settlement procedures. Where any of the delineated general exceptions in GATT obligations in Article XX applied, then the question of conformity with other GATT obligations did not arise. Conversely, if Article XX exceptions were found not to apply, then a measure could properly be examined from the point of view of conformity with the obligations of Article III or any other GATT obligations.

The representative of the European Communities said his delegation considered that the understanding represented a reasonable compromise which preserved the rights of contracting parties to challenge the use of Section 337.

The Council took note of the statements.

8. Aspects of Trade in High-Technology Goods (SR.38/9, C/W/409/Rev.2)

The Chairman recalled that at the 1982 Ministerial Meeting it had been agreed to refer the question of trade in high-technology goods to the Council for further consideration (SR.38/9, page 2). At its meeting on 26 January 1983, the Council had taken note of the Ministers' decision as well as of a proposal by the United States in document C/W/409. The Council had considered the matter again at its meetings on 9 March and 20 April, at which a revised proposal by the United States (C/W/409/Rev.1) had been discussed. The Council had agreed to revert to this item at the present meeting, with the understanding that further consultations would take place. The Chairman drew attention to a further revision of the proposal by the United States which had been circulated in document C/W/409/Rev.2.

The representative of the United States said his delegation considered that the revised proposal in document C/W/409/Rev.2 went a long way towards meeting the concerns expressed by other delegations at the Council meeting on 20 April. He suggested that the second paragraph should read "... in a manner consistent with the provisions and objectives of the General Agreement...", making clear that the reference was to the entire General Agreement, not only to its preamble. His delegation continued to believe that trade in high-technology goods was increasingly important, and that the GATT should at least look at possible barriers to expanding trade in this area. The US proposal had, in its basic form, been before the Council for nearly six months and had been discussed at several Council meetings; he believed that it was appropriate for the Council to take action on this matter at the present meeting so that the secretariat could begin work on the study.

The representative of Brazil said his delegation could accept the revised proposal in document C/W/409/Rev.2 with the amendment suggested by the representative of the United States.

The representative of Argentina said that his delegation was not ready to take a stand on the revised proposal.

The representative of Jamaica asked whether the MTN agreements, particularly the Agreements on Goverment Procurement and on Subsidies and Countervailing Measures, were included by paragraph 2 of C/W/409/Rev.2. He also asked whether the sectors mentioned in the footnote constituted a comprehensive, definitive list of trade in high-technology goods.

The representative of the United States said that his delegation assumed that the MTN agreements were included by paragraph 2, and he stressed that the sectors mentioned in the footnote were only examples. It was also clear that the sectors to be examined would have to be agreed in consultation with interested delegations and the secretariat.

The representative of Israel said that his delegation basically supported the latest US proposal, but would prefer the document to contain two footnotes: the first showing that computers, semi-conductors, and the other items were only examples of what was meant by high-technology goods; the second would be the statement by the Chairman of the Council that the sectors to be analyzed would be decided through consultations among interested contracting parties.

The representative of the European Communities said his delegation agreed that trade in high-technology goods accounted for a growing share of world trade. His delegation wanted to consider this matter carefully on the basis of a correct assessment of the situation, and would continue to examine it in the light of s'atements made in the Council and in consultations.

The representative of Brazil wanted to make clear that his delegation supported the proposal in C/W/409/Rev.2 on the understanding that in paragraph 2 the reference was only to the General Agreement itself. As for the footnote, he agreed it was obvious that the list was not comprehensive.

The representative of Switzerland said his delegation attached great importance to this matter. If no agreement were possible on the text at the present meeting, consultations should be continued so as to reach a satisfactory solution as soon as possible.

The representative of Japan recalled that at the 1982 Ministerial Meeting, his delegation had supported the proposal to study trade in high-technology goods. Japan strongly hoped that GATT would study this issue as soon as possible, and expected that those contracting parties which had asked for more time to reflect would finalize their positions so that the Council could decide to launch the study at its next meeting.

The representative of the United States said that the proposal in C/W/409/Rev.2 was in two distinct parts: first, it called for a study by the secretariat on trade barriers in high-technology goods; second, it called on the Council to examine the data and to do something, if something needed to be done, consistent with the General Agreement. He noted that the representative of the European Communities had said that his delegation needed to assess the matter; the United States considered that the study which it was requesting would help the Community to make that assessment. He urged that delegations be prepared to reach a decision at the next Council meeting.

The representative of Spain said that his delegation understood that the phrase "... provisions and objectives of the General Agreement ..." in paragraph 2 of C/W/409/Rev.2 referred only to the General Agreement, and not to other agreements negotiated later.

The Council took note of the statements and agreed to revert to this item at its next meeting, on the understanding that further consultations would take place in the meantime.

9. Trade in Counterfeit Goods
   - Report by the Director-General on consultations with the Director General of the World Intellectual Property Organization (C/W/418)

The Chairman recalled that at its meeting on 26 January 1983, the Council had taken note of the intention of the Director-General to hold consultations with the Director General of the World Intellectual Property Organization (W.I.P.O.) in accordance with the 1982 Ministerial decision on Trade in Counterfeit Goods (L/5424, page 11). At the meeting of the Council on 20 April, representatives had been informed that the Director-General expected to report on these consultations at the present meeting. He drew attention to document C/W/418 containing the Director-General's report.

The Director-General said that his report was self explanatory and that members of the Council would no doubt wish to draw their own conclusions with respect to any further action. In carrying out the consultations with W.I.P.O., the GATT secretariat had tried to remain strictly within the limits of the mandate given to it in terms of the

November 1982 Ministerial Decision. The report, together with its Annex, had been shown to the W.I.P.O. secretariat and had been discussed with them. The report thus contained an agreed summary of the points covered by the consultations and of the views expressed by the Director General of W.I.P.O. The Director-General added that it was his personal view that any difficulties in dealing with problems in this area did not arise at the level of the secretariats; it was for governments to decide how they wanted to proceed in the matter.

The representative of the United States said he was encouraged by the Director-General's report that there had been good cooperation between the GATT and W.I.P.O. secretariats, although his delegation was disappointed that it had taken so much time to carry out the consultations. The report could be useful for further consideration of this matter in GATT. It was evident that firm measures against trade in counterfeit goods were strong objectives of W.I.P.O. members, and that such measures were far from inconsistent with the Paris Convention for the Protection of Industrial Property. However, it was also evident from the Annex to the report that current rules of the Paris Convention fell short of providing formal obligations to deal with counterfeit trade, and that there was little realistic possibility that revision of those rules or a new convention would be taken up within W.I.P.O. for quite some time. He urged the Director-General to organize informal consultations among the interested delegations concerning implementation of the Ministers' instructions on this matter in the light of the report, so that the Council could determine a course of action at its next meeting.

The representative of the European Communities said that, generally speaking, he agreed with the views expressed by the representative of the United States, while recognizing that the process of consultation takes time. Apart from problems of the fields of competence of W.I.P.O. and GATT, most governments had not yet grasped the importance of this issue. Certain calculations put the volume of trade in counterfeit goods at one per cent of all trade in manufactured goods, which would make it a very significant economic problem. Care would be needed lest measures to prevent trade in counterfeit goods be used for protectionist purposes. Moreover, counterfeit trade took place in North, South, East and West and should be attacked wherever it occurred, especially where it was conducted through obscure or dubious channels. He urged that governments intent on attacking counterfeit trade attend to problems in their own countries before acting multilaterally.

The representative of Argentina said that his government intended to study the report in depth, and would react to it at a later stage.

The representative of Brazil said that the report was being carefully examined by her authorities, who were looking at all the relevant factors including the legal and institutional aspects mentioned in the 1982 Ministerial Declaration.

The Council took note of the Director-General's report in document C/W/418 and of the statements and agreed to revert to this item at its next meeting.

10. Administrative and financial questions

(a) Final position of the 1982 Budget of the GATT (L/5477)

The Chairman drew attention to document L/5477 containing the final position of the 1982 Budget. He noted with satisfaction that the Director-General had been able to cover the additional cost resulting from the 1982 Ministerial Meeting within the approved Budget. Annex A showed outstanding contributions at the end of 1982 amounted to nearly six and a half million Swiss francs. Although some payments had since been received, the situation continued to be a matter of great concern and, once again, he urged governments to assume their financial responsibilities as promptly as possible.

The representative of Jamaica said that at some stage the Council ought to look at the possibility of re-scheduling the debt arising from the outstanding contributions. Turning to the Expenditure Budget, he noted under Section 2 (meetings of the Council and other meetings) that there had been excess expenditure of more than Sw F 77,000. In his view, there should be no excess expenditure for meetings of the Council itself and such expenditure could only arise from meetings of other bodies. Thus there was a need to break down the heading so as to show separately meetings of the Council and meetings of the Committees and Councils established under the MTN. In respect of paragraph 7, he sought an explanation as to the "other services" that had incurred excess expenditure of Sw F 53,264.- in 1982. Finally, he considered that it would have been useful if the Committee on Budget, Finance and Administration had examined the point for decision in paragraph 7 before it was submitted to the Council.

The Director-General said that the excess expenditure for meetings under Section 2 in 1982 was largely a result of preparations for the Ministerial Meeting. As for the question of excess expenditure on "other services" in paragraph 7, he pointed out that in 1982 there had also been a number of activities directly linked to the Ministerial Meeting. Turning to the presentation of document L/5477, the Director-General said that the Council itself normally dealt with such reports, although if the Committee had met before a Council meeting, its views would have been sought.

The Council authorized the increase in appropriations, approved the proposed financing as reflected in paragraph 7 of document L/5477 and took note of the statements.

(b) Assessment of additional contribution to the 1983 Budget and advance to the Working Capital Fund (L/5482)

The Chairman drew attention to document L/5482 containing a proposal that following the accession of Maldives in accordance with the provisions of Article XXVI:5(c), an additional contribution to the 1983 Budget as well as an advance to the Working Capital Fund should be assessed on Maldives.

The Council adopted the assessments.

11. Exchange rate fluctuations and their effect on trade - Status of consultations with the International Monetary Fund

The Director-General said that as requested in the Ministerial Declaration (L/5424, page 14), he had consulted the Managing Director of the International Monetary Fund on the possibility of a study of the effects of erratic fluctuations in exchange rates on international trade. As a result of those consultations, the Fund had undertaken to have its contribution to the study ready for submission to its Executive Directors in November 1983; and the GATT secretariat would have an opportunity to comment on the Fund's contribution before that meeting. He hoped that the study would thus be available by the end of 1983.

The representative of the European Communities said that the financial and monetary aspects were assuming increasing importance in international economic relations, and exchange rates constituted only one of the various factors involved. An attempt should be made to establish some kind of co-operation as regards financial and monetary problems on the one side and trade on the other. The Communities believed that while governments were responsible for their own national economic policies, the international environment, particularly in terms of financial and monetary problems, had become an obstacle to efforts undertaken on the domestic front, especially where national economies were fragile and vulnerable. It was important that efforts made on the domestic front should not be jeopardized by external forces. GATT obviously had a rôle to play in assessing the impact of erratic exchange rate fluctuations on international trade, and the Community was interested to know their impact in terms of micro-economics.

The representative of Jamaica asked whether the GATT secretariat had set in motion its own study and whether it was now waiting for a separate IMF study to complete the GATT study. He also asked whether the study would deal with the effects of exchange rates off-setting or over-shooting tariff cuts, because some of the Tokyo Round tariff cuts had been neutralized by changes in exchange rates.

The Director-General said that the study would be a joint effort by the GATT and the IMF secretariats. He had considered that it would be more useful to receive a study which had already been approved by the Fund's Executive Directors, so as to avoid the study going back and forth between the two organizations, but he stressed that the GATT secretariat would have an opportunity to comment on the study before it was submitted to the Fund's Executive Directors. As for substance, the plan was to produce as comprehensive and detailed a study as possible on the effects of exchange rate fluctuations on trade.

The Council took note of the statements.

12. Safeguards
- Status of informal discussions

The Chairman recalled the Decision taken by the Ministers in November 1982 on the need for an improved and more efficient safeguard system, and for arriving at a comprehensive understanding to this end not later than the 1983 Session of the CONTRACTING PARTIES (L/5424, page 4). He said that over the recent months, he had held, jointly with the Director-General in his capacity as Chairman of the Safeguards Committee, a series of informal consultations with a view to exploring how effective progress might be made. Following these informal consultations, it had been concluded that a useful point of departure for further efforts in the area of safeguards would be to examine, on a completely informal basis, recent cases of voluntary export restraints and orderly marketing arrangements, as well as other import measures of a safeguarding nature, taken outside Article XIX. The purpose of the discussions in this first phase was to arrive at a fuller picture of the precise nature of these measures, the reasons for which they had been taken or accepted, their possible effects including those on the trade of third countries, the reasons why Article XIX action had not been taken, and what could be said about the establishment of multilateral disciplines. This discussion, in which delegations were participating almost on a personal basis, and which it was clearly understood had no bearing on the legal nature of these measures or on the rights and obligations of the participants under the General Agreement, would continue at further informal meetings.

He hoped it would be possible to draw up a first set of reflections resulting from these discussions to serve as a basis for the Interim Report to the Council envisaged by the Ministers. It was his intention to present such a report to the Council at its next meeting. Thereafter, the CONTRACTING PARTIES would need to devote considerable time in the autumn to the process of further discussion and negotiation so that decisions could be taken on this important issue at the 1983 Session of the CONTRACTING PARTIES.

The Council took note of this information.

13. Notification, Consultation, Dispute Settlement and Surveillance

The Chairman recalled that under the GATT Work Programme adopted in November 1979 (BISD 26S/219), the Council was responsible for the conduct of the regular and systematic review of developments in the trading system, as provided in the Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210).

As a result of the discussion at the recent meeting of the Consultative Group of Eighteen, it appeared that at its next special meeting, the Council should also deal in the course of its review with developments relevant to paragraph 7(i) of the 1982 Ministerial Declaration (L/5424). The Director-General had decided that the special meeting would be held on 12 July 1983, after which the Council would reconvene to consider items on its regular agenda.

The Council took note of this information.

14. Japan - Further opening of the Japanese market

The representative of Japan, speaking under Other Business, informed the Council of the two latest developments in the further opening of the Japanese market. First, the Prime Minister had announced on 1 May 1983 his intention to consider revising Japan's scheme under the Generalized System of Preferences in the financial year 1984 to bring about an increase in the total ceiling quotas for industrial products by approximately 50 per cent over those of the current fiscal year. His delegation would inform the Council once the measures had been decided. Second, he drew attention to document L/5494 outlining the amendments to the related laws concerning standards and certification systems. He stressed the extraordinary and unprecedented speed with which the Diet had acted on this matter, the determination of his Government to work further to ensure that the omnibus law and the specific improvement measures would be implemented properly and steadily, and his Government's hope that its trading partners would take full advantage of these new measures and make further efforts to expand their exports to Japan.

The Council took note of the statement.

15. United States tax legislation (DISC)

The representative of the United States, speaking under Other Business, recalled that at the Council meeting on 9 March 1983, his delegation had announced that the Cabinet had approved a general proposal to replace the DISC through substantial modification of existing US tax law, and had indicated the parameters of the legislation sought from Congress. He reported that the Administration, in

consultation with Congressional staff and private sector representatives, had since been refining the details of the general proposal. Within the following week, the Administration would have completed a detailed description and technical explanation of its proposal for the President to submit formally to Congress, after which Congressional staff working with the Administration would translate this into the language of a bill. The United States remained willing to discuss details of its proposal bilaterally with those embassies in Washington which were interested. However, he had to caution that tax legislation was the constitutional prerogative of Congress, so any discussion of details of the administration's proposal might be of limited use at this point. The United States would continue to work diligently to achieve a satisfactory result on this matter as quickly as possible, and would report to the Council on Congressional action concerning the proposal to amend the DISC legislation.

The representative of the European Communites said that his delegation was concerned by press reports that the US Congress was considering the repayment of taxes on the profits of companies covered by the DISC since 1972, which would be a huge subsidy to firms that had already benefited from tax postponements. If Congress were to take such a decision, then the Community might have to bring this issue before the Council in connexion with past injury. The Community had the impression, also gleaned from press reports, that measures relating to the US territorial fiscal system might not be in line with GATT or with the 1981 Understanding (L/5271). He recalled that the two EEC proposals (C/M/157, page 16 and C/W/392) were maintained, and reserved the right to return to these at a future Council meeting.

The Council took note of the statements.