GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/M/209
29 May 1987

Limited Distribution

COUNCIL
14 May 1987

MINUTES OF MEETING

Held in the Centre William Rappard
on 14 May 1987

Chairman: Mr. A. Oxley (Australia)

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1. Administrative and Financial matters

(a) Pension and salary matters (Spec(87)26)

The Chairman recalled that at its most recent meeting, the Council had taken note of statements made by representatives as well as by the Chairman of the Budget Committee and the Director-General concerning pension and salary matters. The Council had agreed to proposals by the Budget Committee, and had authorized the Director-General to consult on this matter with the Chairman of the CONTRACTING PARTIES, the Chairman of the Council and the Chairman of the Budget Committee, with a view to helping in the search for an equitable solution to the problems under consideration. He drew attention to the report by the Chairman of the Budget Committee on its meeting of 7 May (Spec(87)26).

Mr. Smith (Jamaica), speaking on behalf of Mr. Hill, Chairman of the Committee on Budget, Finance and Administration, referred to the latter's statement at the April Council meeting reflecting the views of members of the Committee (Spec(87)22 and Corr.1), and his introductory comments at that meeting. Since then, the Budget Committee had met and agreed on the statement reproduced in document Spec(87)26. The Committee had not been in a position to make any recommendations to the Council but intended to keep it informed of developments which would arise from meetings of the various institutions of the common system, and would keep under review the question of salaries and pensions of GATT professional staff. Moreover in light of the recommendations adopted by the Council, the following action had been taken: (a) The International Civil Service Commission (ICSC) had been requested to carry out immediately a New York/Geneva place-to-place cost-of-living survey. In response, the Chairman of the ICSC had indicated that it was intended that this be done early in 1988. However, it was the view of the Committee that every effort should be made to have this done in the course of 1987. This was the subject of continuing consultations by the Chairman of the CONTRACTING PARTIES and the Director-General with the Chairman of the ICSC; (b) The Chairman of the CONTRACTING PARTIES had communicated to the Chairman of the ICSC the concern over the effects of exchange rate fluctuations on the remuneration of professional staff. As part of this exercise, the Budget Committee had met informally with a member of the ICSC Secretariat. The Committee members' views had been conveyed to the meeting of the Advisory Committee on Post Adjustment

Questions (ACPAQ) which had met in May and at which the GATT Secretariat had been represented. The report of this meeting was not yet available, but the Council might want to note that the ACPAQ had been entrusted with making recommendations to the ICSC on a durable long-term solution. The ICSC was scheduled to meet in July 1987. The subject had also been taken up in the Administrative Committee on Coordination (ACC) by the Director-General of GATT. This body would meet in June to continue its deliberations. The Budget Committee intended to continue its review in light of the decisions of the Council and taking into account the results of the discussions in the competent common system institutions.

The Chairman said that the Director-General's consultations on this matter had been followed by an informal meeting, to which members of the Budget Committee and other members of the Council who had expressed an interest in the matter when it had last been raised, had been invited. He also recalled that at its March meeting, the Council had requested that close attention be paid to the link between salaries and pensions, using as a basis the report on pensions to be submitted by the Informal Advisory Group chaired by Mr. Feij (Netherlands). That report had now been completed but had not yet been passed on to the Budget Committee in time for it to consider the measures proposed therein. Thus, the Budget Committee's consideration of pension matters was still to take place.

As a result of the above-mentioned consultations, he proposed that the Council decide as follows:

"(a) The Council takes note of the views and recommendations of the Budget Committee as reflected in the statement of the Chairman of the Budget Committee.

"(b) The Council also takes note of the fact that the GATT Secretariat has been pursuing these matters in the relevant institutions of the common system with a view to finding a durable solution and that it will continue vigorously its efforts in this direction. In this context, an immediate step would be for the ICSC to arrange for the place-to-place survey, referred to in the statement of the Chairman of the Budget Committee, to be carried out by July 1987.

"(c) The Council urges all contracting parties to use their best efforts to ensure that proposals leading to a clear improvement of the UN salary adjustment system in relation to exchange rate fluctuations will be elaborated in time by the ICSC to be submitted to the next General Assembly and to give sympathetic consideration to such proposals.

"(d) Aware of the urgency of the situation, the Council further considers that the CONTRACTING PARTIES should keep the situation under close review so that appropriate action may be taken as a matter of urgency, if, by the September session of the Council,

it becomes clear that no long-term durable solution within the common system is forthcoming, or that arrangements for compensating the staff by the use of the remuneration correction factor prove to be unsatisfactory.

"(e) The Chairman of the CONTRACTING PARTIES, the Chairman of the Council and the Chairman of the Budget Committee, assisted by the Director-General, should meet with the staff representatives, as soon as possible and as often as necessary, to inform them of these decisions and the background in which they have been taken."

The Council so agreed.

The representative of the European Communities pointed out that this issue was a sensitive one which deserved sensible treatment in order not to lose sight of the essential, i.e., the challenges that both delegations and the GATT Secretariat had to meet, namely the Uruguay Round. The Community and its member States were keenly aware of and concerned about questions relating to the Secretariat staff remuneration. This concern was fully consistent with the Community's political and economic support of the fundamental undertakings of GATT, notably the Uruguay Round, which placed an additional workload and responsibilities on the Secretariat. The Community could not remain silent on such an important problem as that of a decent remuneration for the staff, and was paying very close attention to the staff's reactions on this subject. The Community and its member States shared and supported the Budget Committee's view that GATT should remain in the common system while, at the same time, preserving GATT's specificity. They were aware of the common system institutions' forthcoming meetings and hoped that contracting parties could, collectively and individually, continue to exert pressure to achieve a satisfactory solution. They expected that the CONTRACTING PARTIES, through the Budget Committee and the Council, would be kept informed on a permanent basis of the developments in the common system institutions and in particular would receive a report on the July meeting of the ICSC. As the interim arrangements would expire at the end of August, the European Communities and the member States expected the Budget Committee and the Council to be in a position to review all aspects of the matter in September. He emphasized that the GATT was something particular and specific. Recalling that on many occasions the Community had paid tribute to the intrinsic qualities of the Secretariat staff and the professional standard of its work, he said that the CONTRACTING PARTIES and the GATT staff were in the same boat; if it were to be damaged, all would sink together. Accordingly, any manifestations which might give a false interpretation of the issue to the outside world, especially through the mass media, would not be conducive to preserving the serenity so necessary in the search for a solution.

(b) Report of the Committee on Budget, Finance and Administration (L/6151)

Mr. Smith (Jamaica), on behalf of Mr. Hill, Chairman of the Committee on Budget, Finance and Administration, introduced the Committee's report (L/6151), which dealt with a number of matters on which the Committee recommended that the Council take action. These were the approval of the audited accounts for 1985, the appointment of a representative and an alternate representative of the CONTRACTING PARTIES to the ICITO/GATT Pension Committee, the approval of the revised budget estimates for 1987 to meet the additional requirements arising from the Uruguay Round, and the approval of transfers between budgetary sections of the 1986 Budget. The Committee recommended to the Council that the CONTRACTING PARTIES approve the audited accounts for 1985 (Audited Accounts for 1985: Director-General's Financial Report on the 1985 Accounts and Report of the External Auditor Thereon) and convey to the External Auditor their thanks for the valuable assistance given to the CONTRACTING PARTIES in the audit of the accounts since 1959. Concerning the appointment of the representative and alternate representative of the CONTRACTING PARTIES on the ICITO/GATT Pension Committee, the Budget Committee wished to reiterate its appreciation to Mrs. E. Michaud (France) and Mr. G. Stünzi (Switzerland) whose mandates had expired on 31 December 1986. It recomended that the Council approve the nomination of Mr. Nils-Erik Schyberg (Sweden) and Mr. Munir Ahmad (Pakistan) as representative and alternate representative, respectively, to represent the CONTRACTING PARTIES on the ICITO/GATT Pension Committee for a three-year period beginning on 1 January 1987.

The Committee had examined the proposals put forward by the Director-General concerning the supplementary budget estimates for the financial year 1987 to meet the additional requirements arising from the Uruguay Round of Multilateral Trade Negotiations. The Committee recommended the approval of the detailed budget estimates of Sw F 1,225,000. This amount would be financed from the credit of Sw F 1,500,000 included in Section 16 of the 1987 budget. It should be noted that the amount of Sw F 1,225,000 included Sw F 100,000 which had been set aside to cover the initial cost in 1987 of a Trade Policy Data Base, subject to the approval of its establishment by the Council at a later date. Consultations on the setting-up of this data base were currently taking place. The Committee had examined document L/6142 which gave the final position of the 1986 budget, and recommended that the Council approve transfers between budgetary sections amounting to Sw F 117,483. The Committee had examined measures to encourage payment of outstanding contributions, the calculation of contributions to the GATT budget and the level of the Working Capital Fund which, in the Director-General's and the Committee's view, were interrelated and at the origin of the cash management problem faced by the Secretariat. A further examination of these issues was included in the Committee's work plan for 1987. He drew attention to the status of outstanding contributions as at 30 April 1987; accumulated arrears for the period 1973-1987 amounted to

Sw F 47.6 million. This included outstanding contributions of Sw F 31.8 million for 1987 and Sw F 7.3 million for 1986. He noted in paragraph 18 of the report that in the 1986 budget there was a deficit of Sw F 2.3 million on 31 December 1986. It was his view that GATT's financial situation required close attention by contracting parties as the continuation of outstanding contributions made its financial position unsatisfactory. He recommended that the Council approve the Committee's report in L/6151.

The Chairman drew attention to the Committee's specific recomendations in paragraphs 9, 12, 16 and 19, and proposed that the Council approve them, taking note of the information in paragraph 16 and of the statement made on behalf of the Chairman of the Budget Committee.

The Council so agreed.

The representative of the European Communities said that the Communities as such intended in future to contribute to the GATT budget to an extent larger than many smaller contracting parties' net contributions. The Community intended to contribute to GATT's technical assistance program for the duration of the Uruguay Round negotiations.

The Council took note of the statement.

2. Provisional accession

(a) Request by El Salvador (L/6163)
(b) Request by Honduras (L/6164)

The Chairman suggested that the two sub-items be taken together, and drew attention to documents L/6163 and L/6164 containing requests from El Salvador and Honduras, respectively, for provisional accession to the General Agreement.

The representative of El Salvador, speaking as an observer, reiterated his Government's request for provisional accession to GATT, in pursuance of Section F(a)(v) of the Punta del Este Declaration and as a first step towards definitive accession. El Salvador attached great importance to the international organizations and in particular to GATT, which was the principal instrument for multilateral trade negotiations. Provisional accession to the General Agreement would allow his country to strengthen its trade, make the necessary adjustments in its economy and achieve firmer bases in the trade field. El Salvador hoped in particular that the developed contracting parties would give it the special and more favourable treatment accorded to developing countries in GATT. His Government was certain that co-operation to this end would benefit the international community and allow El Salvador to solve its economic and social problems for the well-being of the country's population.

The representative of Honduras, speaking as an observer, reiterated his Government's request for provisional accession to GATT, as a first step towards definitive accession. Honduras recognized the significance of GATT's daily activities in the international co-operation to strengthen trade. In the current period of difficulties in the world economy which greatly affected the developing countries, whose earnings largely depended on exports, GATT offered a possibility to expand markets. His Government's decision was based on its commitment to promote economic growth by developing exports and by seeking to encourage greater interdependence among nations.

The representative of Argentina said that the Latin American contracting parties welcomed the statements by El Salvador and Honduras and supported fully their requests for provisional accession to GATT. These requests were very important in the context of improving the multilateral trading system, and were a significant contribution to strengthening the presence of the Latin American countries in GATT.

The representative of Nicaragua said his delegation fully supported the statement by Argentina and welcomed the requests by El Salvador and Honduras.

Regarding El Salvador, the Chairman proposed that the Council take note of the statements and agree to establish a working party with the following terms of reference and composition:

Terms of reference

To examine the request of the Government of El Salvador to accede provisionally to the General Agreement and to submit recommendations to the Council.

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of El Salvador.

The Council so agreed.

Regarding Honduras, the Chairman proposed that the Council take note of the statements and agree to establish a working party with the following terms of reference and composition:

Terms of reference

To examine the request of the Government of Honduras to accede provisionally to the General Agreement and to submit recommendations to the Council.

Membership

Membership would be open to all contracting parties indicating their wish to serve on the Working Party.

Chairman

The Council would authorize its Chairman to designate the Chairman of the Working Party in consultation with representatives of contracting parties and with the representative of Honduras.

The Council so agreed.

The Chairman invited the representatives of both El Salvador and Honduras to consult with the Secretariat as to further procedures, in particular regarding the basic documentation to be considered by the two Working Parties.

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

The Chairman recalled that at its March meeting, the Council had agreed to establish a Working Party, and that in April, the Council had agreed that he should continue his consultations with all interested parties aimed at reaching agreement on presiding arrangements, terms of reference of the Working Party and other matters related to the Council's decision. He had held those consultations and could, at the present meeting, make a proposal.

He explained that the terms of reference he was going to propose for adoption by the Council referred to statements made at the meeting of the Council on 4 March 1987, i.e., the meeting when the Working Party was established. He wished to stress, however, that statements made during the discussion of this item at other Council meetings had also been taken into account. As usual, the Working Party would follow GATT procedures and practices. He then read out the proposed terms of reference as follows:

"The People's Republic of China has submitted to the GATT CONTRACTING PARTIES a request to resume its status as a contracting party (L/6017) and a Memorandum on the People's Republic of China's Foreign Trade Régime (L/6125). Taking note of the statements made in the Council of 4 March 1987, a Working Party was established by the Council. This

Working Party will examine the foreign trade régime of the People's Republic of China, develop a draft Protocol setting out the respective rights and obligations, provide a forum for the negotiation of a schedule, address as appropriate other issues concerning the People's Republic of China and the GATT, including procedures for decision-making by the CONTRACTING PARTIES, and make recommendations to the Council."

The representative of Japan reiterated that his delegation welcomed China's application for membership in GATT. Since the Working Party had already been established by the Council in March, Japan hoped that the substantive work would start immediately, that such work would be conducted expeditiously and that the remaining issue of presiding arrangements would be solved as soon as possible. His delegation would participate actively in the Working Party. Regarding the proposed terms of reference, Japan wanted to state its understanding that the decision to be taken by the CONTRACTING PARTIES, upon recommendation by the Working Party, for the integration of China into the GATT, would be made in accordance with established GATT procedures.

The representative of the European Communities supported Japan's interpretation of the phrase "established GATT procedures".

The Council adopted the terms of reference as read out by the Chairman.

The Chairman said that during the consultations, a delegation had requested a legal opinion by the Secretariat on the meaning of the phrase, "including procedures for decision-making by the CONTRACTING PARTIES", in the terms of reference.

Mr. Lindén, Legal Adviser to the Director-General, first pointed out that the Secretariat could only express opinions, and could not interpret legal texts. The phrase to which the Chairman had referred should be understood, it seemed to him, as meaning that the Working Party would -- in the light of its deliberations -- decide which of the available options for taking decisions by the CONTRACTING PARTIES would be the most appropriate one in this particular case.

The Chairman said that consultations on presiding arrangements for the Working Party had gone a considerable distance but that consensus had not yet been reached. He proposed that the Council authorize him to continue those consultations with a view to finding a consensus.

The representative of the European Communities said that the Community and its member States were satisfied by the adoption of a mandate that would allow the Working Party to start the substantive work to enable China to assure its presence within the GATT system. He wanted to state publicly the embarassment felt by the Community and its member States over the length of the consultations which had been held to date. The Community had

insisted that usual GATT practices be respected, in part because many of the delegations participating in the consultations, including contracting parties, had seemed not to be thoroughly familiar with what traditional GATT procedures and practices were. He had even been led at times to wonder whether China was negotiating its accession to the GATT or rather the reverse. He recalled the Community's statement at the March meeting that once China was in that system, nothing would be as it had been in the past; this was testimony to the political dimension of this event. The attitude of the Community and its member States in this matter remained unchanged and had always been consistent and friendly; they wanted to be equitable and fair, and it would be doing China an injustice to be complaisant. They would, in the course of the negotiations on this matter, seek a durable -- not a make-shift or hastily adopted -- solution, and for this reason demanded that there be, from the start, no ambiguity. Their position should not be misinterpreted. For example, in the Chairman's remarks preceding the reading out of the terms of reference, his reference to GATT procedures and practices applied to issues of substance regarding the Working Party's work, and not to its presiding arrangements. A different interpretation should not be used as an argument against the Communities' position during consultations on procedural arrangements. The Community and its member States were concerned over three points: (1) that procedural arrangements should mark clearly that this matter involved a collective commitment or undertaking by contracting parties, (2) that there be total, constant availability of the Chair so as to ensure proper continuity, having regard to the probable duration of the Working Party, and (3) that the overall, global dynamic vision of GATT, including its weakness and lacunae, but foremost its future and the need for a moderating influence from the Chair on the work to be achieved, be kept in view. In other words, procedural arrangements should be such as to protect and assure the proper conditions for the successful carrying out of this work. He was saying this as acknowledgement of the importance of the event, and reiterated that the Community would continue to defend this position in further consultations.

The representatives of the United States, Canada, Brazil, Korea and Israel expressed their delegations' satisfaction that the Working Party's terms of reference had been agreed.

The representative of the United States expressed his delegation's regret that final agreement on the Working Party chairman had not yet been possible and looked forward to further consultations on that matter to be conducted according to normal GATT procedures and practices. In that context, his delegation believed that work done in the GATT was, generally speaking, reflective of the collective commitment of contracting parties; therefore, there seemed no reason for any changes in procedures, and the position taken by the United States in the consultations on procedural arrangements would not change.

The representative of Canada said that his delegation had noted and fully accepted the Chairman's statement that the Working Party would follow usual GATT procedures and practices. Canada supported the proposal that further consultations be held regarding procedural arrangements, and wanted to participate in them. While his delegation maintained an open mind on this matter, it favoured a consensus on a single chairman if that were possible.

The Chairman said that the informal consultations were open to any contracting party who indicated either to him or to the Secretariat the wish to take part in them.

The representative of Brazil said that his delegation had hoped that procedural arrangements could have been settled. However, Brazil agreed with the Community that this matter should be addressed carefully, given the importance to GATT of China's request. Contracting parties should consider procedural arrangements a key part of the decisions they were about to take. Brazil would participate in any consultations to be held on this matter.

The representative of Korea said his delegation hoped that agreement on chairmanship could be worked out as soon as possible in order to enable the Working Party to begin its work; Korea looked forward to participating in that work.

The representative of Israel said his delegation had taken note of the Chairman's statement regarding normal GATT procedures and practices to be followed. Israel was ready to explore the Community's idea regarding vice-chairmen for the Working Party and wanted to participate in consultations on this matter.

The representative of China, speaking as an observer, recalled the various stages of China's request to resume its status as a contracting party, and that as a result of extensive consultations in the previous two months, terms of reference for the Working Party had been agreed upon and adopted. China considered this another step forward, and he expressed his delegation's appreciation to the Chairman, the Secretariat and delegations for their efforts and cooperation. He said that the text of these terms of reference could only be the product of mutual understanding and mutual accommodation. That text did not prejudge the outcome of the Working Party's work in any way; any substantive or procedural matter, as appropriate, could be addressed in the Working Party as set out in the terms of reference. His delegation was ready to work with all other delegations for the implementation of the terms of reference in letter and in spirit. Unfortunately, presiding arrangements were yet to be finalized, and China hoped that further consultations would soon lead to a satisfactory solution.

The Council took note of the statements and authorized the Chairman to continue consultations on presiding arrangements with a view to establishing a consensus on them.

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

The Chairman recalled that at its meeting in April, the Council had agreed to revert to this item at the present meeting, and that in the interim, he would consult with interested delegations. As a result of his contacts with delegations, he suggested that the Council revert to this matter at its next meeting should either of the parties so request.

The Council so agreed.

5. Implementation of Generalized System of Preferences (GSP) schemes - Communication from Brazil (L/6166)

The Chairman recalled that at the April meeting of the Council, the representative of Brazil, speaking under "Other Business", had requested the inclusion of this item on the agenda of the present meeting. He drew attention to the communication from Brazil in document L/6166.

The representative of Brazil pointed out that under the Generalized System of Preferences (GSP), developed countries acting individually had been authorized to grant preferential treatment to products originating in developing countries, provided the corresponding schemes or arrangements were of a generalized, non-discriminatory and non-reciprocal nature. Such schemes had to be as broad as possible in terms of product coverage. Concessions given on products included in the scheme could not discriminate among developing countries and had to be granted without any expectation of concessions from those countries. His delegation had reason to believe that in the implementation of GSP schemes, preference-giving developed countries were clearly moving away from observance of the basic principles established in the CONTRACTING PARTIES' Decisions of 25 June 1971 and 28 November 1979.[1] The fact that such schemes were of a voluntary character and did not constitute a binding obligation for the preference-giving countries did not, in his delegation's view, give those countries the right to ignore the legal GATT framework under which they had been authorized to implement such schemes. Developed countries were not obliged to grant GSP schemes to developing countries and could at any time revoke a decision to do so; however, as contracting parties they were bound to comply fully with the relevant Decisions of the CONTRACTING PARTIES while implementing a GSP scheme. As an example of the major deviations taking place, he referred to the most recent general review of the GSP scheme of the United States; according to an official announcement in January 1987, the US Government had decided to exclude from the benefits

[1] BISD 18S/24 and 26S/203 ("Enabling Clause") respectively.

of its scheme some developing contracting parties as well as a substantial number of products originating in others. The total exclusion of some developing countries from the schemes had been justified on the basis of criteria which had not been foreseen in the General Agreement, such as the observance of workers' rights requirements as unilaterally defined by the United States. Moreover, as criteria for the exclusion or maintenance of products in its GSP scheme, the US Government had reviewed beneficiary developing country practices in areas not related to GATT, e.g., intellectual property rights and access to services and investment sectors, thus establishing links which clearly affected the principle of non-reciprocity in a manner which also might imply discrimination. In view of those facts and in the light of paragraph (b) of the CONTRACTING PARTIES' Decision of 25 June 1971, and of paragraph 4(a) of their Decision of 28 November 1979, his delegation believed that preference-granting countries should notify to GATT any modifications in their programs which had already been introduced but not yet notified, and henceforth, notify in advance any modifications they might want to make, in a manner which would enable the determination of the conformity of such modifications with the Decisions of the CONTRACTING PARTIES. Furthermore, in accordance with the provisions of paragraph (e) of the Decision of 25 June 1971, Brazil asked that this issue be kept on the agenda of the next meetings of the Council in order to allow the CONTRACTING PARTIES to make appropriate recommendations as necessary.

The representative of Chile said his delegation shared some of Brazil's concerns and views. Chile's traditional position on the GSP was that it could not and should not be discriminatory, and that reciprocity should not be expected. For these reasons, Chile supported Brazil's request that all modifications to the schemes be notified to GATT.

The representative of Mexico said his delegation fully supported the views expressed by Brazil and Chile, and had an additional concern with respect to the GSP in general. In the Punta del Este Declaration, the passage relating to standstill indicated that no trade measures should be taken in a manner that would improve the negotiating position of the country taking those measures. What had led to the inclusion of this particular sentence was well known; many preference schemes were currently in existence and some of them were discriminatory. In other fora, Mexico had voiced its discontent with the discriminatory nature of some of these schemes and with the way they had been implemented, but in the final analysis, the beneficiaries nevertheless hoped to use these schemes to strengthen and expand their export capacity. However, in January 1987, some important changes had been made in the US scheme. By altering its system and withdrawing certain products of interest to exporting countries, the United States would compel the beneficiary countries to negotiate the inclusion of these products in the Uruguay Round and on an m.f.n. basis. While this may not have been the express purpose of the United States in this particular case, it had nevertheless improved its position in the negotiations by compelling the beneficiaries to offer a form of reciprocity which altered the basis of the forthcoming negotiations. Mexico considered

that it was of the utmost importance to maintain this matter on the Council's agenda and that the Chairman, as necessary and appropriate, should hold consultations to clear up these misconceptions so as not to affect adversely the concepts in the Punta del Este Declaration.

The representative of Cuba recalled that at the meeting of the Committee on Trade and Development in November 1986, representatives of developing countries had addressed this topic, and the US representative had stated, inter alia, that she had taken note of the statements and would communicate them to her authorities for consideration. Notwithstanding the concern expressed on that occasion by developing countries, in particular those affected by the proposed measures, the US Government had announced in January 1987 the adoption of measures contrary to the basic GSP principles, without taking account of the injury that could be caused to developing countries' economies. The United States was attempting to invoke considerations alien to GATT as justification for excluding certain countries and products from its scheme, whereas it was the General Agreement which had allowed their implementation. This should not be permitted. The grave economic and international trade situation called for fulfilment of the principles and objectives of the GSP, which had been accepted by all countries, to allow the application of special and differential treatment for developing countries. The 25 June 1971 Decision stipulated that preferential tariff arrangements should be designed to facilitate trade from developing countries and territories and not to raise barriers to the trade of other contracting parties; governments granting preferences could not resort to unilateral action based on domestic legislation without taking account of GATT rules and obligations. Accordingly, Cuba supported Brazil's proposal that in accordance with the 1971 Decision, any countries granting preferences which wished to make changes in their GSP schemes should so notify GATT to allow for examination of their consistency with the Decisions of the CONTRACTING PARTIES.

The representative of India said that for two years, his delegation had been drawing attention in the Committee on Trade and Development to the disturbing developments mentioned by Brazil; its views had been fully reflected in that Committee's report. India fully supported the view that concessions on GSP products could not and should not be discriminatory, and was aware of the trend to move away from agreed principles. Although the schemes were unilateral, departures should not take place on a unilateral basis. His delegation was also concerned at the US implementation of its scheme and the introduction of extraneous criteria for inclusion of beneficiary countries. India fully supported Brazil's proposals concerning the advance notification of modifications of GSP schemes to GATT and keeping the matter on the Council's agenda.

The representative of Yugoslavia said that her Government attached particular importance to a consistent application of the principles upon which the GSP was based, as a legitimate and long-term element of the multilateral trading system itself, which was based on GATT principles and rules. Within the framework of the review and supervision of the operation

of the Enabling Clause by the Committee on Trade and Development, her delegation had emphasized the need for an objective analysis of the implementation of the stated GSP goals. Developments in world trade, in particular developing countries' trade, had confirmed the reasons for broader implementation of the GSP on the basis of non-discrimination, non-reciprocity, security, transparency, predictability and expanded coverage. The effects of the GSP on international trade, notably on the trade of some contracting parties, made it necessary to increase multilateral discipline in the functioning of GSP schemes.

The representative of Nicaragua said his delegation shared the concerns and viewpoints expressed by previous speakers and supported Brazil's request concerning the implementation of GSP schemes.

The representative of Colombia said that his country was among those affected by modifications in the US scheme, not only as a result of the criteria mentioned by Brazil, but also because of the introduction of the notions of graduation and competitiveness. For those reasons, his delegation supported Brazil's proposals regarding advance notification of modifications in the GSP schemes, keeping this matter on the Council's agenda, and consultations by the Chairman if necessary.

The representative of Korea said that his delegation shared the concern that, in the implementation of GSP schemes, there were increasing tendencies to deviate from the basic principles established in GATT, which resulted in a significant erosion of GSP benefits for the developing countries. Korea therefore supported the suggestion that this issue be taken up in the Council or other appropriate bodies in order to allow the CONTRACTING PARTIES to review the situation.

The representative of Hong Kong said that Brazil had raised some concerns which would be of interest to all GSP benficiaries. His delegation had been particularly struck by the statement that whilst donor countries were not obliged to grant GSP benefits and could revoke their schemes at any time, they were nevertheless expected to operate those schemes in accordance with the relevant decisions of the CONTRACTING PARTIES. One particular concern for Hong Kong was that these schemes be operated in a transparent, predictable and non-discriminatory manner. The criteria for including particular products for any particular supplier should be objective and not arbitrary or selective. The schemes should not be operated in such a manner as to introduce competitive distortions that would disadvantage the intended beneficiaries.

The representative of the United States said that he was taking note of the comments by Brazil and other delegations with respect to the implementation of GSP schemes, including the references to the unilateral program of temporary duty-free tariff preferences provided by the United States. As implementation of GSP schemes was one item considered by the Committee on Trade and Development at its sessions on the review of the implementation of the Enabling Clause, that body was the more appropriate

place to talk at length about GSP schemes. Nonetheless, he drew attention to the US notifications in L/4299 and Addenda and L/5153 and Addenda, which included the annual changes to the US program, a summary of the revised legislative authority, public notices seeking the participation and comments of interested parties on the program's administrative regulations and proposed modifications, and, most recently, a solicitation of views on the revision of the scheme in the light of changes resulting from introduction of the Harmonized System. These formal notifications supplemented the US practice of providing up-to-date statistical information and assistance on utilization of the US program through the GSP Information Centre in Washington, the information provided by US Embassies in beneficiary capitals and the United States' extensive participation in GSP seminars, including those organized by UNCTAD. He also noted that in developing the renewal legislation, the US had had a formal solicitation of views, including from beneficiaries. As the GATT notifications showed, the US program, which had been extended for eight and a half years in 1984, continued to be administered in a transparent manner. It provided full opportunity for beneficiaries to participate in improving the base of benefits available under the scheme and to consult on possible modifications to the zero-duty preference granted. This was in keeping with paragraph 4 of the Enabling Clause. Questions had been raised at the present meeting about the US scheme and the legislative mandate that Congress had provided in 1984, as outlined in GATT L/5153/Add.4. As one of the purposes of the program was to facilitate beneficiary countries' participation in the trading system, the legislation pointed to the need to take into account a variety of trade-related factors when considering a beneficiary's level of development and the degree of competitiveness it had achieved on a product-specific basis. Most of the beneficiaries that actively used the scheme were familiar with the changes because more than 50 bilateral consultations had been held after the program's renewal and prior to making any major modifications in it. The revised scheme continued the US policy of ensuring that the program was responsive to the changing needs and interests of beneficiaries. The least-developed beneficiaries now received unlimited duty-free access on all GSP-eligible imports. The US had improved its annual product review process, based in part on the suggestions received from beneficiary exporters and governments. The renewal legislation also required that a general review of the program be undertaken and completed by January 1987, with changes to be implemented by 1 July 1987. The purpose of the general review was to examine the operation of the program and all 3,000 GSP-eligible products from the standpoint of the competitiveness of beneficiaries with respect to individual products, their general level of development and the extent to which the beneficiary was becoming more integrated within the trading system. Such criteria were applied to all beneficiaries. These general principles had guided the United States' autonomous program from its inception. He stressed that the United States viewed the program as conforming with the Enabling Clause, which it had always argued required the application of special and differential treatment in a dynamic manner, i.e., a manner that took account of changing development levels in individual contracting parties.

The representative of the European Communities said that the number of statements on this subject perhaps illustrated the appropriateness of the present discussion. He drew attention to the GSP's surprising longevity, despite the storms, so-called protectionist measures, and affirmations, including those in the 25 June 1971 Decision, that these preferences were temporary in nature. He said that whether this matter was debated in UNCTAD or in the OECD, it was within GATT that the use, origins and functioning of everything related to the GSP should be reviewed and perhaps modernized. While these schemes were of an autonomous nature, they had a legal basis if only by the waiver from the m.f.n. clause. There were various guidelines for their application, not so much to impose a discipline, but rather to avoid the law of the jungle in the granting of preferences in order to ensure burden-sharing amongst the donor countries. This was the Community's understanding of the Decision of 1971. In the Community's view, autonomy did not mean arbitrary behaviour; the manner of operating the schemes was very important and this was perhaps the reason why certain schemes were misjudged. The concerns expressed could trigger consultations on how the system could be adapted to modern times and how this matter could be linked to the Uruguay Round. For the Community, it was inevitable that in any evaluation of concessions pertaining to the tariff negotiations, the impact of preferences could not be overlooked. What had been addressed to the United States could also be addressed to the Community; therefore, his delegation welcomed keeping this matter on the Council's agenda, and that consultations be held. He recalled that since the introduction of its GSP scheme in 1976, the United States had used the concept of competitive need and they had been logical in their own behaviour throughout. There was also some question as to who had reaped the benefits of the GSP and whether GSP schemes had accentuated the different levels of development among beneficiary countries. His delegation supported Brazil's request that this matter remain on the Council's agenda, however consultations would be necessary so that the question could be debated seriously within the GATT framework.

The representative of Singapore said that the importance of the GSP to the development process in developing countries was undeniable, but the GSP schemes had been perverted with numerous restrictions and safeguards. It was therefore imperative that these schemes be improved to ensure stablity and security of access for all developing countries. Singapore had noted with concern the non-observance of the basic objectives and commitments intended to afford non-discriminatory, non-reciprocal preferences beneficial to developing countries. Regarding the use of arbitrary and unrelated criteria to determine the continued eligibility of beneficiaries on a product or country basis, the donor countries should strictly observe GSP commitments to avoid any unilateral stripping or far-reaching withdrawals of GSP benefits. This resulted in the erosion of the fundamental principles of special and more favourable treatment for developing countries.

The representative of Nigeria said that his delegation shared the concerns already expressed and had voiced similar ones in other GATT fora. In Nigeria's view, consultations on the GSP should continue and the matter should be put on the agenda of the next Council.

The Chairman said that he had noted a request for keeping this matter on the agenda and that consultations should be held. He was not clear however as to the form of those consultations. He would keep in contact with delegations who had spoken on this and would respond to any proposal for any form of consultation prior to the next Council.

The representative of India suggested it might be appropriate to call on the Chairman of the Committee on Trade and Development to help in this matter.

The representative of the European Communities said that this matter should be dealt with in the Council as it was in that body that the CONTRACTING PARTIES had taken the 1971 Decision which was to be reviewed.

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

6. Israel-United States Free-Trade Agreement - Working Party report (L/6140)

The Chairman recalled that in October 1985, the Council had established a Working Party to examine the Israel-United States Free-Trade Agreement in light of the relevant provisions of the General Agreement and to report to the Council. As Chairman of the Working Party, he introduced its report (L/6140). The parties to the Agreement had stated that it created a free-trade area fully compatible with the General Agreement and, in particular, with Article XXIV. Some members of the Working Party had expressed difficulties in reaching a conclusion on the conformity of the Agreement with the relevant provisions of the General Agreement. These difficulties related principally to the Agreement's Article 6 on the maintenance of restrictions other than duties based on agricultural policy considerations, to the provisions of Article 18 on notice and consultation between the parties in regard to either party's trade practices towards third countries, and to various provisions on other restrictive trade regulations. Some members had expressed the view that the Agreement contained provisions which lay beyond the scope and jurisdiction of the General Agreement, and some had reserved their rights under the General Agreement. The Working Party had limited its report to stating the views expressed during its discussions, and had recommended that the CONTRACTING PARTIES invite the parties to the Agreement, consistent with normal GATT practice, to furnish reports biennially on the operation of the Agreement until such time as its provisions had been fully implemented (L/6140, paragraph 27).

He then made the following remarks, in his personal capacity as Chairman of the Working Party, on the procedures which had come to be applied over time in the operation of Article XXIV. A review of the long history of working party reports showed, in his view, that a tradition had emerged according to which, even before new agreements had been examined, there was a general expectation that conclusions would not be reached nor recommendations made; this tended to lead to a diminution in the weight generally accorded to the provisions of Article XXIV. He stressed that he was not making this comment specifically on the Agreement under consideration, in which it was the clear view of the parties to this free-trade arrangement that it did conform with the provisions of the General Agreement; his observation was a more general one. He also stressed that this question differed from that of differences of interpretation of the provisions of Article XXIV. He said that a useful way to address this matter would be a full examination in the Uruguay Round of the manner in which Article XXIV operated, and noted that this had already been proposed in other fora.

The representative of Israel expressed his delegation's appreciation for the constructive and pragmatic manner in which the Working Party's work had been conducted. The US-Israel Free-Trade Agreement was very important to Israel as it added a significant component to its foreign trade régime. Israel also had a free-trade agreement with the European Economic Communities; both of these Agreements had been negotiated and implemented in the context of Israel's policy of trade liberalization and economic integration, in accordance with the relevant GATT provisions. At present, over 65 percent of Israel's trade was governed by the provisions of the two agreements. While the US-Israel Agreement was, by its nature, fully reciprocal, it recognized clearly Israel's status as a less developed country. During the discussions in the Working Party, his delegation had expressed the view that the Agreement was a trade-facilitating instrument, and had explained in detail Israel's view that the Agreement met the requirements of the relevant GATT provisions, in particular that of Article XXIV. The Working Party's report made that position clear. His delegation could accept the recommendations in paragraph 27 and asked the Council to adopt the report as a whole.

The representative of the United States said that his delegation was satisfied with the Working Party's report, as it accurately reflected the views of all participants. The US view, as reflected in paragraph 26 and elsewhere in the report, remained that this free-trade agreement fulfilled all the criteria of Article XXIV and that it would significantly liberalize trade. His delegation would, of course, submit reports on the operation of the Agreement in accordance with normal GATT practice, and urged that the Council adopt the report at the present meeting.

The representative of Australia said that his delegation considered the Agreement to be an earnest attempt to meet in many areas the criteria of Article XXIV. However, Australia remained concerned that the Agreement was deficient in implementing free trade in agriculture; its Article 6 not

only sanctioned the maintenance of existing non-tariff restraints on agricultural trade, but also allowed for the application of additional barriers. Under this provision it was possible for both parties to exclude their entire agricultural sectors from the operation of the Agreement. This Article contributed to his delegation's inability to make a judgement on the Agreement's conformity with the provisions of Article XXIV. Australia saw as inappropriate the concept of treating agricultural trade as a general exception to free-trade principles and also in light of the terms of the Punta del Este Declaration on the need to achieve greater liberalization of trade in agriculture and bring all measures affecting import access under strengthened and more operationally effective GATT rules and disciplines.

The representative of India said that his delegation shared the views of those contracting parties who had doubted, in the context of the US-Israel Agreement's exclusion of agricultural trade, the full conformity of that Agreement with the provisions of the General Agreement. India had also expressed its views and reservations, reflected in paragraph 15 of the report, regarding other aspects of the Agreement in respect of which GATT had no jurisdiction. India reserved fully its GATT rights regarding the Agreement.

The representative of Brazil noted his delegation's concern, reflected in the Working Party's report, over a number of provisions of the Agreement, particularly regarding trade-related performance requirements related to investment, and trade in services, which lay beyond the scope and jurisdiction of the General Agreement. This was the reason Brazil had reserved its position on this matter.

The representative of Hong Kong drew attention to paragraph 9 in the report, and in particular to the fact that several members of the Working Party had enquired about the possible detrimental effects of the Agreement on third parties and on competitive relationships generally. Hong Kong was concerned over the proliferation of Article XXIV-type agreements and the long-term detrimental effect they had on the operation of fundamental GATT principles such as m.f.n. In this respect, his delegation agreed with the the Chairman's personal remarks at the beginning of this item and would follow closely the discussions on Article XXIV in the Uruguay Round.

The representative of Yugoslavia said that her delegation shared the views of those delegations which had reserved their rights. Yugoslavia reserved its rights regarding the issue raised in paragraph 15 of the report.

The representative of the United States recalled that the issues raised by India, Brazil and other delegations had been discussed at length in the Working Party. He drew attention to paragraph 16 of the report, and to the record of the 1960 examination of the Latin American Free-Trade Agreement, which contained provisions on investment and services as well. The US view, shared by others, was that none of the provisions referred to

by India and Brazil in any way affected the compatibility of this free-trade agreement with Article XXIV or any other provision of the General Agreement. He also noted that in the Working Party, his delegation had addressed Australia's concern over agriculture, and recalled the point made in the report that Article 6 of this Agreement was not intended to, nor did it, exclude agriculture.

The representative of the European Communities said that the report adequately presented the divergence of views expressed in the Working Party. Regarding the Chairman's remarks at the beginning of this item, the present discussion demonstrated that if a tradition had emerged regarding the consideration of agreements under Article XXIV, it was perhaps justified. In the present case, as in all others involving Article XXIV agreements, the parties to the agreements -- and often some other contracting parties -- considered the agreements to be compatible with Article XXIV, while unfortunately others did not. This applied in the present case as in many others. It seemed to be a fact of life that all contracting parties might not share the same view. The Community would not oppose this matter being addressed in the Uruguay Round and would follow that discussion with great interest, even if it did not share the views of all those who had spoken on this item.

The representative of Israel said that regarding the concerns raised by India, Brazil and other delegations that provisions of the US-Israel Agreement were outside the scope of the General Agreement, Israel's position was clearly stated in paragraph 16 of the report where it noted that the provisions in question did not affect the compatibility of the Agreement with the relevant provisions of the General Agreement, in particular Article XXIV. He reiterated Israel's position that Article 6 of the US-Israel Agreement did not exclude agriculture.

The Council took note of the statements, adopted the report (L/6140) and agreed to add the Israel-United States Free-Trade Agreement to the calendar for the examination, every two years, of reports on developments under regional agreements.

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

The Chairman recalled that at the Council meeting in April, the European Community had raised this matter under "Other Business", and drew attention to the Community's request for a panel in L/6153.

The representative of the European Communities recalled his delegation's statement at the April Council meeting that the measure in question was clearly discriminatory in that it gave certain tax advantages to purchasers of certain aircraft manufactured in the United States, and

not to purchasers of similar imported goods. The particulars of the measure, which was a clear violation of Article III:4, were detailed in document L/6153. The Community was again requesting that a panel be established under Article XXIII:2 to examine this matter.

The representative of the United States said that the Tax Reform Act of 1986 did contain a transition rule intended to benefit some companies with general aviation, commuter and business aircraft operations located in certain states, but only under certain conditions and only during the last quarter of 1986. This provision was now a thing of the past; the United States had no intention of reviving it. He reiterated that imports of this class of aircraft were clearly on the uptrend in the US market. The objective that a panel could be expected to achieve -- the elimination of the measure in question -- had already been achieved. A satisfactory adjustment of the matter had therefore been reached.

The representative of Canada said that his delegation supported in principle the right of a contracting party to have a panel established when it was so requested. Canada shared the Community's view that the measure in question was inconsistent with the General Agreement. However, the main purpose of dispute settlement in such cases was to secure the removal of the violating measure. As the United States had already indicated that it had terminated and would not renew the measure, Canada saw little merit in establishing a panel.

The representative of Japan said that his delegation had taken note of the US statement. Japan had shared the Community's concern and its view that the measure in question was inconsistent with Article III. However, his delegation was reassured by the US statement that the Administration did not intend to revive the measure, and hoped that it would succeed in its efforts.

The representative of Sweden, on behalf of the Nordic countries, expressed their concern over this now lapsed legislation.

The representative of the European Communities said that the major objective of the Community's request for the establishment of a panel was that GATT send a clear message to the US Administration and to Congress that such measures, even if of a transitional nature, could not escape GATT scrutiny, and that they could and did affect, even if of limited duration, other contracting parties' trade. This was especially true for high-value trade such as in aircraft.

The representative of the United States said his delegation had taken note of the statements and would report them back to the Congress and to Administration officials.

The representative of the European Communities said his delegation had taken note of the statements made, including the US statement that the Administration did not envisage the re-enactment of this or similar types

of measures. In the light of that statement, the Community would not insist on the establishment of a panel at the present stage. However, should this or any similar provision be re-enacted by the Congress, the Community would expect to have a panel promptly established so that a ruling could be promptly made and damage to trade prevented.

The Council took note of the views of the European Communities, Canada, Japan and Sweden on behalf of the Nordic countries that the US tax measure in question was inconsistent with Article III and that the US representative had agreed to report these views to the US authorities. The Council also took note of the US statement confirming that the measure had been intended to benefit some US companies, but that it was no longer in effect and that the United States did not envisage that it would be revived. In view of the US statement, the Community representative had indicated that he would not insist on the establishment of a panel at the present stage, in the expectation that a panel would be promptly established should this measure be revived. The Council took note of these points and of all statements made on this item, noting as well that all contracting parties who had spoken on this matter reserved their rights under the General Agreement.

8. Algeria - Decision to apply for Accession

The representative of Algeria, speaking as an observer and under "Other Business", noted that his Government had recently informed the Secretariat of its decision to apply for accession to GATT and its wish to participate in the Uruguay Round negotiations in accord with Section F, Article 3 of the Punta del Este Declaration. This decision was based on Algeria's wish to participate more actively in the realization of GATT's objectives and to develop its trade in a multilateral context. Since independence, Algeria had applied the General Agreement on a de facto basis. In addition to its observership at Sessions of the CONTRACTING PARTIES and, since November 1984, in the Council, Algeria had participated in the Tokyo Round Negotiations and in the 1982 and 1986 Ministerial meetings. His Government would take all the steps necessary to negotiate with the CONTRACTING PARTIES the terms of its accession in the course of the new round of trade negotiations.

The Council took note of the statement.

9. Integrated data base proposal

The Director-General, speaking under "Other Business", noted that a number of GATT Committees and Groups had expressed a desire for the Secretariat to develop an integrated data base that would bring together information on trade flows, tariffs, quantitative restrictions and other non-tariff measures. Proposals for the creation of an integrated data base for use in the Uruguay Round negotiations had also been made by individual

delegations. In response to those requests, the Secretariat had been working on a draft proposal for creating a fully integrated trade and trade policy data base. Interested delegations could obtain a preliminary version of this proposal from the Secretariat. The draft proposal in its present form was intended to serve as a basis for a discussion with delegations, with a view to developing and elaborating a document to submit to the Council for a decision before the summer break. He said that it would be helpful if, in further elaborating this proposal, the Secretariat could consult with delegations in an informal advisory group, and he invited all delegations wishing to do so to participate in such a group. He added that the Secretariat saw the integrated data base as an activity which, if approved, would involve a large number of contracting parties. Consultations on this matter, therefore, should be of interest to many delegations.

The representative of India said that his delegation had followed with interest the suggestions by a number of delegations regarding the proposal for an integrated data base, and had participated in informal consultations on this matter. India had raised several questions and would participate in the group suggested by the Director-General in order to clarify the range of functions such a data base would cover, and particularly its relevance to the Uruguay Round negotiations and how it would involve developing countries such as India.

The Council took note of the statements.

10. Deputy Director-General post - Renewal of appointment

The Director-General, speaking under "Other Business", noted that the present term of office of Mr. Mathur, Deputy Director-General, was due to expire at the end of 1987. In accordance with the procedures approved by the Council in April (L/6161), which provided that such consultations would start not less than three months before the expiration of a Deputy Director-General's term of office, he informed the Council that he had begun consultations with a view to renewing the Deputy Director-General's contract for a further three-year period. Also in accordance with these procedures, he would inform the Council of his decision at the end of those consultations, and hopefully prior to the summer break.

The Council took note of the statement.

11. 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. Those consultations were continuing and when they were concluded, he would inform representatives of the results either by a document or by an announcement at the next Council meeting.

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 established a Panel to examine this matter 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. Those consultations were continuing, and when they were concluded, he would inform representatives of the results either by a document or by an announcement at the next Council meeting.

The Council took note of this information.

13. Japan - Trade in semi-conductors
- Panel composition

The Chairman, speaking under "Other Business", recalled that at its April meeting, the Council had established a Panel to examine this matter and had authorized him, in consultation with the two parties concerned, to designate the Chairman and members of the Panel. Those consultations were continuing and when they were concluded, he would inform representatives of the results either by a document or by an announcement at the next Council meeting.

The Council took note of this information.