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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
22 February 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 22 February 1982

Chairman: Mr. B.L. DAS (India)

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1. Australia - Article XIX actions on passenger motor vehicles and certain footwear
- Suspension of tariff concessions by the European Economic Community (L/4526/Adds.23-24, L/4099/Adds.25-26)

The representative of Australia said that the matter stemmed from measures taken by Australia under Article XIX and notified to the CONTRACTING PARTIES in the normal manner - to restrict imports of footwear and motor vehicles into Australia. Consultations between the parties had not led to an agreement;

and the European Economic Community had accordingly notified its intention to suspend tariff concessions granted to Australia. In his view, the Council had a thirty-day period from 5 February 1982 - i.e., the date of the EEC notification - to decide whether or not to disapprove of the action proposed by the Community.

He questioned the justification for seeking retaliation for a trade loss of up to ECU 50 million, and he considered that the course set by the Community had significant implications for its overall bilateral trading relationship with Australia, for the GATT and for other contracting parties, especially the small- and medium-sized members. Australia did not dispute the right of a contracting party with a substantial interest in a product subject to Article XIX action to suspend substantially equivalent concessions or other obligations, provided that the Council did not disapprove. In the present case, however, Australia disputed the basis used by the EEC to justify the proposed action, as well as the nature and extent of the suspension of tariff concessions. His delegation felt that the proposed action was not simply a technical, legal move, but that it was retaliation which was open-ended and constituted a continuing threat, as there was no indication of the duration or possible extent of the action. If the Council did not disapprove the proposed action, the EEC could increase the duties on those particular items, whenever and to whatever extent it wished. His delegation could not accept such an open-ended threat as a fair and reasonable suspension of "substantially equivalent concessions", and did not consider that such action was consistent with the language of Article XIX.

Furthermore, the EEC was seeking retaliation on terms which were not supported by a strict application of Article XIX:3(a), because although a contracting party was entitled to re-establish the balance of concessions, it was not entitled to calculate retrospectively and to take retaliatory action on alleged trade losses over a subsequent period of years beyond the original ninety-day consultative period.

His delegation also took issue with the basis used by the EEC for the calculation of the trade losses. Thus, in the case of motor vehicles, one single atypical year (1974) had been chosen as the base representative period, whereas the normal GATT practice was to use the three-year average, as the EEC had done in the case of footwear. Nonetheless, even when applying the EEC's method and statistical base, but using normal three-year base periods, imports of motor vehicles from the EEC in each year between 1975 and 1980 significantly exceeded the average levels achieved in the base periods. Also, the EEC's actual share of the Australian market in each of these years was higher than in either of the base periods. Thus, on the basis of either market shares or actual trade levels, the EEC had no basis on which to take retaliatory action.

Turning to footwear, he said that Australia had similar conceptual and practical problems. In addition, although Australia's Article XIX action on footwear had ceased on 31 December 1981, the EEC sought to take retaliatory action which was totally open-ended. His delegation rejected the notion that the EEC could, at any time in the future, impose a discriminatory tariff on one or all of the items listed in L/4099/Add.25 and L/4526/Add.23, at any level of duty, despite the fact that its rights under Article XIX had expired, and when the Article XIX action taken by Australia itself had expired. He suggested that this was not an act of equivalent retaliation, but was rather one of intimidation. His delegation strongly recommended that the Council disapprove the action proposed by the EEC.

He said that his Government - like any other government faced with such an act of retaliation - viewed this action by the EEC in the broader context of the overall balance of its concessions and trading opportunities with the EEC. He stated that as a result of the Community and the operation of its protective safeguards under the Common Agricultural Policy, Australia had lost valued markets in Europe. In this context he cited figures related to declining exports of wheat, sugar, butter, beef and veal. While in 1973 Australia had a balanced trade with the EEC countries, the EEC had subsequently enjoyed a steadily increasing trade surplus with Australia, amounting to $A 1.5 billion in 1980/81. Taking into account invisibles, this rose to about $A 3 billion. He was of the opinion that the EEC had singled Australia out for retaliatory action on an alleged trade loss of ECU 50 million which, on average, represented about 0.7 per cent of its annual trade surplus with Australia.

He mentioned that the two products at issue were subject to significant restraints by a wide range of contracting parties, including the member States of the EEC. On motor vehicles, certain member States limited imports from third countries by various special arrangements - ranging from government fiat to so-called industry arrangements - to levels in percentage terms which were well below the access afforded to imports of motor vehicles by Australia. His delegation was of the opinion that the Community's action raised many of the problems related to the GATT safeguard system which had been highlighted by numerous contracting parties, including Australia, as a priority issue for consideration at the forthcoming GATT Ministerial meeting. In conclusion, he requested the Council to disapprove the action proposed by the EEC.

The representative of the European Communities said that the action decided on by his authorities in respect of motor vehicles and footwear had its origins in 1974/75, with some interruption in the application of the Australian measures, in respect of motor vehicles, during the previous seven years. The Community had not remained inactive during this time, since it was one of the biggest suppliers of motor vehicles and footwear to Australia; and several consultations had been held with Australia since the restrictions were imposed, without a mutually satisfactory agreement being reached.

The Community recognized Australia's right to invoke the provisions of Article XIX. At the same time, it considered that the entire procedure provided for under Article XIX should be followed, which included the offer for compensation. In the absence of a mutually satisfactory agreement on the measures, the affected party could adopt retaliatory action, except if the CONTRACTING PARTIES disapproved.

He said that in the case of motor vehicles, Australia had set up a quota restriction as well as a customs surcharge of 12.5 per cent to be added to a 45 per cent duty, in order to ensure that 80 per cent of the Australian market would be reserved for local production. This had resulted in considerable injury for European producers during the previous seven years. He added that Australia now had the intention of continuing this action on motor vehicles for another three years.

Turning to the argument advanced by Australia, that its action in respect of footwear had ceased, he said that the injury which had actually resulted should be considered under Article XIX. In calculating the injury the EEC had used Australian statistics and had arrived at an injury in terms of trade loss of ECU 50 million during the period 1975/80. As no compensation was being offered by Australia, the EEC had sought a retaliation in principle, which was limited and reasonable. A much stronger action would have been justified. He stressed that the EEC measures did not apply to products which were essential to international trade and for Australian exports. The retaliatory action was limited to trade representing ECU 32 million in 1980, which was below the calculated injury, in order to obviate a discussion on the issue of equivalence. Furthermore, the principal aim of the suspension was to preserve the EEC's legal rights under Article XIX after many years of fruitless consultations.

He recalled that in June 1981 Australia had not been prepared to extend again the period for consultation, arguing that it was up to the Council to decide on the extension of the ninety-day period provided for in Article XIX:3(a). Australia had finally agreed to extend the time-limit for consultation, and subsequently had made an offer for compensation by making unilateral reductions in unbound duties. Australia's refusal to bind these duties, however, would have resulted for the Community in total uncertainty from a legal viewpoint. He said that the quality of the offer was such that it had not been acceptable to the Community, particularly since Australia had stated that the offer was limited to two or three years. The Community was, therefore, of the view that such an offer, of uncertain duration and insufficient value, did not compensate for the seven years of injury experienced by it. He said that in view of this situation, there remained no choice for the EEC but to exercise its rights under the provisions of Article XIX:3 to adopt retaliation measures.

He drew attention to a passage in the most recent communication from Australia (L/4526/Add.24) where it was stated that for a multiplicity of reasons, including that the action proposed by the EEC was not one in

respect of which there was agreement between the two parties, Australia disputed that the Community action constituted a suspension of "substantially equivalent concessions or other obligations" in terms of Article XIX:3(a). He pointed out that there was no requirement that there be a prior agreement between the parties in order for the affected party to take action under Article XIX. He said that the element of agreement concerned the compensation, and that if there were no agreement on this issue, the affected party was free to take retaliatory action as provided for in Article XIX, unless the CONTRACTING PARTIES disapproved.

He summarized the EEC position as follows: the injury had accumulated for years, and in respect of passenger motor vehicles would continue; the compensation offered by Australia had been insufficient and uncertain from a legal point of view, there being no binding and no guarantee as to the duration. The EEC, therefore, had been obliged to reject this offer for compensation and had made known its intention to retaliate by adopting a measure that was modest and covered only a few products with limited trade value. He said that at the present stage the Community had no intention of imposing a customs surcharge or quantitative restrictions vis-à-vis Australia. The EEC had notified its intention of action on 5 February 1982 and would respect the thirty-day period. If the Council did not disapprove, then the Community would be entitled to take action when that period had expired.

In conclusion, he appealed to the Council not to mix various other cases previously before the Council, notably those dealing with agricultural trade issues, with the present case, which was very particular in nature, limited in scope, and related solely to Article XIX. He said that the present case could be resolved by an Australian offer of compensation equivalent to the damage the EEC had suffered.

The representative of Australia said that no offer of compensation had been made to the Community, but that it had been advised that Australia would be taking certain tariff actions which would be advantageous to the EEC. Australia, furthermore, had said that it would keep these open for seven years, after which Australia would be prepared to consult again. As this had been rejected by the Community, Australia had withdrawn this in terms of its being any sort of offer to the EEC. He said that as of 17 February 1982 Australia had, in fact, introduced the subject tariff reductions.

Furthermore, he stated that in June 1981 his delegation had no intention to undermine the rights of the Community for compensation. Instead, Australia had raised a serious question of principle as to how long the ninety-day periods could be extended under Article XIX. This question had already been presented by Australia to the Council some years earlier, but no decision had been taken at that time.

His delegation agreed with the representative of the European Communities that there was no need for a prior agreement for the type of action contemplated by the Community. Australia did not dispute the right of a contracting party to take action, but it disputed the nature and the extent of this action and whether or not there existed a substantial equivalence.

The representative of Canada said that the issues under discussion were important and in some respects new to the Council, since Australia was seeking action which the Council had never taken before. It was not clear to his delegation that the Council was in a position to take any action, which would be a possible precedent as regards Article XIX, at the present meeting. The issue was not whether compensation was due, but whether the contemplated measures were appropriate. He said that more time and information might be needed for an assessment of whether the countermeasures contemplated by the EEC consisted of "substantially equivalent concessions"; this was certainly so in respect of the calculation of the damage to Community trade. His delegation was concerned with the open-ended nature of the EEC suspension of bindings. Since the damage calculated by the Community referred to a time period, he felt that, therefore, countermeasures might also be expected to be limited in duration. He recalled that on the only previous occasion when the CONTRACTING PARTIES had decided not to disapprove a countermeasure - the 1952 case of Turkish countermeasures to United States Article XIX action on dried figs (BISD 1S/28) - the Turkish action was to be effective only for the period in which the United States continued to impose the increased duty on dried figs.

The representative of New Zealand said that a positive aspect of the discussion was that it represented a GATT exercise in transparency. He agreed that there was not much precedent in this area, and that as there was an issue of principle involved, in the form of the possible open-ended suspension of GATT bindings, the Council should consider this matter very carefully, using the most appropriate institutional or other means.

The representative of Hungary said that recourse to retaliatory measures should be fully in line with the full observance of the collective supervisory and authoritative rôle of the CONTRACTING PARTIES, as laid down in Article XIX:3(a), in order to avoid the possibility of unilateral, arbitrary actions being taken against any contracting party. His delegation was inclined to share the substantive view of the Australian delegation, taking into account that Australia disputed whether the action to be taken by the EEC was on the basis of substantially equivalent concessions or other obligations. He suggested a temporary disapproval of the measures of retaliation envisaged by the Community until the aspects subject to disagreement between the two parties had been examined by a panel or working party. He added that Hungary did not challenge the right of any contracting party to retaliate under the provisions of Article XIX:3(a), unless this was disapproved by the CONTRACTING PARTIES.

The representative of Poland also referred to the broader implications of this case, including the fact that during the many extensions of the ninety-day period, the damage continued to increase. He expressed some hesitation as to whether the suspension related to substantially equivalent concessions and asked how this could be determined. While it was clear that the action did not have to be approved by the CONTRACTING PARTIES, basis was needed for assessing whether or not the action was just. His delegation favoured an examination of these questions of GATT principle in an appropriate body.

The representative of the European Communities said that his delegation had taken note that the Australian tariff measures taken on 17 February 1982 had not been an offer of compensation but rather autonomous tariff measures, taken in the interest of Australia, after the EEC's notification of retaliation of 5 February 1982. His delegation had also taken note that Australia recognized the EEC's right to take retaliation but that Australia disputed that the Community action involved substantially equivalent concessions or other obligations under the General Agreement. He referred to other representatives' statements to the effect that the Council would need more time and information on which to base its views of the Community action. In this respect, all the figures were available; and his delegation was ready to discuss with all interested parties whether or not the measures intended for early March were excessive or not. In his view, the suspension of concessions was temporary, since any EEC action would remain in force only for the time strictly necessary to compensate the damage. He said that the Community could have taken action with substantial effect, for example by imposing a surcharge for a specific number of years. This it had not done. Retaliation in this case was, therefore, well within the principle laid down in Article XIX. After the thirty-day period expired, the Community would be free to apply the procedures foreseen under Article XIX, unless the Council disapproved of the measures.

The representative of the United States welcomed the transparency that was evident in the discussion of this matter. He agreed that the right for EEC retaliatory action was not contested. In his view, it was for Australia to try to arrive at a mutually satisfactory agreement; but his and a number of other delegations were concerned about the open-ended nature of the retaliation proposed by the EEC. As the representative of the European Communities had indicated that no concrete action was to be expected in the near future, he proposed that representatives reflect further on the matter and that the Council revert to this item at its next meeting, perhaps with the guidance of a group of experts which could examine this matter in the meantime.

The representative of Brazil noted that the Council was not often called upon to deal with matters arising under Article XIX, and said that more information and time were needed before the Council could come to a decision on this matter. He considered that in addition to the statistical,

economic and legal aspects of this matter, the Council should examine whether the action envisaged by the EEC involved "substantially equivalent concessions". There was also the open-ended nature of the action. He suggested that both delegations, with the help of the secretariat, might circulate a document with additional information to assist the Council in considering this matter at its next meeting.

The representative of Chile agreed with previous speakers that the Council did not have a sufficient basis for taking an important decision which could create a precedent. He said that more information was needed and that, if necessary, use should be made of the good offices of the Chairman to help the interested parties arrive at an agreement before the next meeting of the Council.

The Chairman noted that representatives had made references to the element of transparency, to the uniqueness of the case, and to its possible implications for the future, including for dispute settlement. In his view, this was evidence that the Council was considering a very important and complicated case, which needed further examination. He suggested that the parties concerned might continue further consultations, with the assistance of the secretariat, and might make available more information on this matter in response to the statements by representatives. He proposed that the Council consider this item again at its next meeting, and offered his good offices to assist the parties in arriving at a positive conclusion of the matter.

The representative of Australia said that if the EEC proceeded with its retaliatory measures before the next meeting of the Council, Australia could not participate in the further discussions after 7 March 1982 because of the important issues of principle implicit in the proposed Community action. In the view of his delegation, the Council was faced with an important matter that involved far more than a statistical exercise.

The representative of the European Communities noted that two issues appeared to need clarification for delegations: (1) the equivalence of the retaliation by the EEC as compared to the damage, and (2) the duration of the Community action. He recalled having spoken earlier of temporary measures, which implied that the duration of the action was, in fact, to be limited. His delegation was ready to discuss this matter with the delegation of Australia, with the help of the secretariat and with the good offices of the Chairman. He said that when the thirty-day delay had elapsed, the EEC would have the right to adopt the retaliatory action, which, in fact, would involve measures having no real effect on imports from Australia. He was, therefore, surprised that Australia could not participate in the discussions after 7 March 1982.

The representative of Australia said that his delegation was prepared to continue bilateral ddiscussions with the Community, using the good offices of the Chairman and of the Director-General. His delegation felt very strongly, however, that it would be inappropriate for the retaliatory measures proposed by the EEC to take effect pending the resolution of the very important issues raised. Otherwise, Australia would be faced with a situation whereby the EEC had retaliated prior to a determination by the Council as to whether it had the right to retaliate. He, therefore, asked the Council for a temporary disapproval in order to provide time for the CONTRACTING PARTIES, acting through a panel or a working party, to determine how they wished to proceed, i.e., to determine whether the Community measures constituted an equivalent retaliation. His delegation disputed that if the Council did not act, the suspension of tariff bindings could take effect when the thirty days had elapsed. In his view, the precedents did not show that this would happen automatically. He referred to the Turkey-United States case cited earlier, where the CONTRACTING PARTIES had actually taken a decision not to disapprove of the retaliatory action contemplated by Turkey, and stressed that the EEC would require a similar decision in the present case. He said that it might be appropriate to refer this matter to a working party or a panel, and underlined that it was important that the issue of whether the Community measures were equivalent or otherwise not be prejudged by the Council. He stressed that, in the meantime, the EEC could not put into effect its retaliatory action.

The representative of the European Communities said that his delegation was ready to discuss this matter with the delegation of Australia, but without any conditions being attached. He stressed that the provisions of Article XIX made it clear that without a disapproval by the CONTRACTING PARTIES, the Community measures could be taken after thirty days. He agreed that the Council could revert to this item at its next meeting.

The representative of the United States expressed disagreement with Australia as to the rôle of the Council on approving or disapproving the Community action. He wondered whether it was possible under Article XIX:3(a) for the two interested parties mutually to waive the thirty-day requirement until the next meeting of the Council. He noted that some representatives had expressed genuine concern about the nature of the Community's proposed retaliation, while not contesting its right to take action.

The Chairman said that the main issue before the Council was whether the action proposed by the Community should be disapproved. However, the discussion had shown that a number of delegations needed additional information and time to reflect on this issue. He suggested that this issue first be resolved, and that if, in the meantime, any contracting party would take action on 7 March 1982 or thereafter which another contracting party considered not to be in conformity with the provisions of Article XIX, or any other Article of the General Agreement, the Council would examine this.

In response to the question raised by the representative of the United States he said that Article XIX:3 indicated that a contracting party could not take retaliatory action before the expiry of thirty days or if it were disapproved by the Council. This did not mean that the contracting party was compelled to take such action at the end of the thirty-day period.

The representative of Australia said that if the EEC would agree to waive what it claimed to be its rights to take retaliation after thirty days, Australia was ready to discuss this matter further. If, however, retaliation was taken before the Council had taken a decision, this would not be acceptable to Australia, and Australia would then oppose a consensus in respect of the non-disapproval of the measure taken.

The representative of the European Communities said that his delegation could accept the Chairman's proposal and agreed that there was no compulsion that any of the parties take action at the end of the thirty-day period. The EEC could not, however, be asked to waive its rights. He supported the suggestion that this matter be discussed further at the next meeting of the Council.

The Chairman repeated that if any contracting party considered that some action had been taken by any other contracting party which was contrary to either Article XIX or any other Article of the General Agreement, that matter being duly brought before the Council would also be a subject matter for consideration. Specifically, if the delegation of Australia felt that certain inappropriate action had been taken, that could be brought before the Council. He suggested that the two interested delegations conduct bilateral consultations, with the help of the secretariat and with the help of the Chairman, if needed, and also, before the next meeting of the Council, have consultations with other interested delegations on this matter. The two interested parties, if they so wished in the light of the present discussion, could also circulate further information to contracting parties, for consideration at the next meeting of the Council.

The representative of the European Communities said that at no point in the discussion had he stated that the EEC was going to take action on 7 March, but simply that under Article XIX it had the right to do so on 7 March, at the end of the thirty-day period. The Chairman's proposal had the great merit of keeping intact the rights of the Community - which had the right to take action after thirty days, without having stated that it was going to do so -, of Australia - which would have the right to protest if action was taken and to bring the matter before the Council - and of the Council - which would have the right to examine the situation again at its next meeting. The interests of everyone were safeguarded, and the provisions of Article XIX were in no way affected.

In summing up the discussion, the Chairman stated that the Council was not yet ready to take a position on the matter. His proposal for further consultations and the provision of any further information by the parties, involved no pre-judging of the rights or obligations of any contracting party. The Council would then be in a position, at its next meeting, to continue its consideration of the issue of disapproval or otherwise. He said that the rights of both parties were protected, and if prior to the next meeting of the Council, any contracting party either considered that its rights had been infringed, or regarded as inappropriate any action taken by another contracting party, then the Council would consider that matter.

The representative of Australia said that if the Chairman's summing up were to be interpreted as not prohibiting the European Economic Community to act after the expiration of the thirty-day period, he wished to make it clear that any such action by the Community would not be acceptable to Australia, since the Council had taken no decision on the issue. Australia would therefore regard any action taken by the EEC in this matter as invalid. In the hypothetical situation that the EEC were to suspend concessions before the Council had acted on this matter, Australia reserved its right to take counter-retaliatory measures of a similar kind.

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

2. Agreements between the EEC and Austria (L/5238 and Corr.1), Finland (L/5244), Iceland (L/5237), Norway (L/5242), Portugal (L/5285), Sweden (L/5249) and Switzerland (L/5275)
- Biennial reports

The Chairman drew attention to documents L/5238 and Corr.1, L/5244, L/5237, L/5242, L/5285, L/5249 and L/5275, which contained information furnished by the parties to the Agreements between the European Economic Community and the member States of the EFTA and FINEFTA.

The Council took note of the reports.

3. Accession of Thailand
- Establishment of Working Party (L/5287)

The Chairman recalled that in July 1978 the Council had established a Working Party to examine the request by the Government of Thailand to accede provisionally to the GATT. Subsequently, the Government of Thailand had informed the CONTRACTING PARTIES of its decision to apply for full accession to the General Agreement pursuant to Article XXXIII thereof (L/5287).

The Council agreed that the earlier Working Party would be replaced by a new Working Party with the following terms of reference and membership.

Terms of reference

"To examine the application of the Government of Thailand to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which may include a draft Protocol of Accession."

Membership

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

Ambassador O'Brien (New Zealand) was designated Chairman of the Working Party.

The Council further agreed that in addition to whatever further documentation it would require to pursue its functions, the Working Party was invited to make use of the documentation and other information which had already been made available or was in preparation for the earlier Working Party set up to deal with Thailand's application for provisional accession.

4. United States - Prohibition of imports of tuna and tuna products from Canada
- Report of the Panel (L/5198)

The Chairman recalled that in March 1980 the Council had agreed to establish a Panel to examine the complaint by Canada, and had authorized the Chairman of the Council to designate the Chairman and members of the Panel in consultation with the two parties. In June 1980 the Council had been informed of the composition of the Panel, and in November 1980 about a change therein. The Report of the Panel had been circulated in document L/5198.

Mr. Williams (United Kingdom), Chairman of the Panel, drew attention to the four main chapters of the Report. He refrained from repeating the conclusions of the Panel, which had been reached unanimously, so as to avoid the risk of unintentionally interpreting texts which had been carefully worded by the Panel. He mentioned, however, that the Panel would stress that its findings and conclusions were relevant only for the trade aspects of the matter under dispute and were not intended to have any bearing whatsoever on other aspects, including those concerning questions of fishery jurisdiction. In its work the Panel had tried to follow established practice as closely as possible and had consulted regularly with the parties and encouraged them to reach a mutually acceptable solution. The United States had lifted the prohibition on imports of tuna and tuna products from Canada, and in July 1981, the two parties had ratified a Treaty on Pacific Coast Albacore Tuna Vessels and Port Privileges.

The Council adopted the Report.

The representative of Canada noted, with reference to paragraph 4.8 of the Report, that Canada did not consider it sufficient for a trade measure to be publicly announced as such for it to be considered not to be a disguised restriction on international trade within the meaning of Article XX of the General Agreement.

He then recalled the terms of reference for the Panel, and said that since the Panel had made its findings, it was now up to the CONTRACTING PARTIES to decide on what recommendations they might wish to make to the United States in light of the Panel's Report. Canada continued to be concerned about the possibility of future actions by the United States, analogous to the measures taken during the summer of 1979 and found by the Panel not to be in conformity with the General Agreement. In Canada's view, the possibility remained that the administration of the United States Fishery Conservation and Management Act of 1976 could lead to United States trade action against Canada for non-trade reasons which were incompatible with the General Agreement. He said that his Government would ask the Council at its next meeting to recommend to the United States to ensure that Section 205 of the United States Fishery Conservation and Management Act of 1976 was implemented in a manner consistent with United States GATT obligations. To this end, his delegation could circulate in the next few days the text of a draft decision.

The representative of the United States recalled that the United States import embargo against Canadian tuna, as stated in the Panel Report, had been one action in a much wider context of fisheries policies and disputes. He recalled that during the course of the Panel's deliberations, the United States had lifted the embargo in September 1980, which was followed in July 1981 by a treaty preventing recurrence of the situation. He noted that prevailing GATT practice in such circumstances was for a panel to issue a report summarizing the case and noting that the parties had reached a settlement, the theory being that the GATT mechanism was to settle disputes rather than to render hypothetical judgements. He said that such a course of action would have been particularly appropriate in the present instance, where the settlement did not involve a compromise but rather the lifting of the challenged measure, where a treaty had then been concluded between the parties to prevent recurrence of the measure, and where the dispute involved particularly difficult issues related to Article XX, on which the CONTRACTING PARTIES should be especially hesitant to pass unnecessary judgements.

He said that the United States had stated its reservations about the wisdom and practical value of the Panel's continuation of its examination of the GATT conformity of the eliminated measure, at the insistence of Canada, but had not wished to block the work of the Panel or to fail to continue co-operating with it. Similarly, the United States had not objected to the adoption of the Report. On the other hand, it was the view of his

authorities that it would be inappropriate and wholly gratuitous for the Council now to make a recommendation concerning a measure lifted a year and a half earlier and the recurrence of which was subsequently prevented by a treaty. He added that the Panel's conclusions referred to a particular use of Section 205 authority in particular circumstances, whereas the recommendation proposed by Canada would create the impression, carefully avoided by the Panel, that Section 205 had been broadly addressed in the Report.

He concluded by stating that the United States did not consider that any GATT purpose would be served by further action in this case. Apprehension by Canada that the United States might take some future action would be speculative in nature and not appropriate for consideration by the Council. Any such action thought to be inconsistent with the General Agreement could be brought by Canada before the CONTRACTING PARTIES for appropriate action; but in the present instance, the treaty between the two countries rendered the question moot.

The representative of Peru welcomed the Council's adoption of the Panel Report, which had implications for other contracting parties prejudiced by arbitrary measures by the United States of a similar nature, in this case Peru. In February 1980, the United States had applied the embargo to Peruvian exports of tuna and tuna products as retaliation for the seizure of boats which had been illegally fishing in Peruvian territorial waters. Although Peru had allowed the boats to go free once they had paid for the licence and the boats continued to fish in Peruvian waters, the embargo had subsisted and had not been lifted in the ensuing two years. For this reason the Peruvian delegation supported the request by the Canadian delegation that the CONTRACTING PARTIES make a recommendation to the effect that the United States Fishery Conservation and Management Act of 1976 be implemented in conformity with the provisions of the General Agreement.

The representative of Canada stressed that although settlement had been reached, the United States action had been found contrary to the United States' GATT obligations. He considered that the continued existence of the law in question could affect other products in circumstances the same or very similar to those in the tuna case.

The Council took note of the statements.

5. Preparations for the Ministerial meeting
- Progress report of the Preparatory Committee

Ambassador McPhail (Canada), Chairman of the Preparatory Committee, speaking under "Other Business", informed the Council on the progress of preparations for the forthcoming Ministerial meeting in November 1982. He said that the Preparatory Committee had held three meetings thus far, and would meet again late in March 1982. The discussions of the Preparatory

Committee were reflected in the documents issued in the PREP.COM/R/- series. He said that the most significant point to be mentioned was the existence of a work programme which set out some targets for the progressive phases of the preparation of the agenda and documentation for the Ministerial meeting. In this context, the Committee had considered proposals and justifications for possible elements of the agenda. He said that the stage of general debate was now behind the Committee, and that after the next progress report, the Council might want to discuss at some length several matters for possible inclusion on the agenda and perhaps some of the other preparations as well. The Committee had begun the activity which would permit the commissioning of documentation, if necessary, and to discuss informally the contribution which the various standing GATT bodies might make in this respect. He concluded by stating that the Committee was now well launched and should have a relatively substantial report to submit to the Council following the next meeting of the Committee.

The Council took note of the statement.

6. Accession of Tunisia
- Designation of the Chairman of the Working Party

The Chairman recalled that at their thirty-seventh session in November 1981 the CONTRACTING PARTIES had agreed to establish a working party in relation with the decision by Tunisia to engage in the relevant procedures with a view to full accession to the GATT, and had authorized the Chairman of the Council to designate the Chairman of the Working Party in consultation with the delegation of Tunisia and other interested delegations.

He informed the Council that following such consultation, Ambassador JARAMILLO (Colombia) had been designated Chairman of the Working Party.

The Council took note of this information

7. United States - Imports of certain automotive spring assemblies
- Composition of the Panel

The Chairman recalled that in November 1981 the Council had considered the complaint by Canada concerning United States imports of certain automotive spring assemblies, and had agreed that if consultations between the two parties did not lead quickly to a mutually satisfactory solution, a panel would be established, with the composition and terms of reference to be determined in consultation with the two parties concerned. In December 1981 the Council had been informed of the terms of reference for the Panel.

He informed the Council that following such consultation, the composition of the Panel was as follows:

Composition

Chairman: Mr. H. Reed (Retired Special Assistant to the Director-General)

Members: Mr. S. Haron (Malaysia)
Mr. D.M. McPhail (United Kingdom, Hong Kong Affairs)

The Council took note of this information.

8. Australia - Negotiations under Article XXVIII

The representative of the European Communities, speaking under "Other Business", recalled that at the meeting of the Council in December 1981, following an Australia statement, the EEC had expresssed its concern about the procedures used by Australia in negotiations under Article XXVIII. The EEC had thus far been unable to obtain adequate Australian trade statistics and other data, making it impossible to arrive at a speedy conclusion of the negotiations. The EEC expected Australia not to implement higher rates of duty on the withdrawn concessions until a satisfactory solution had been reached.

The representative of Australia said that his delegation would respond as soon as possible to the Community questions.

The Council took note of the statements.