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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
7 May 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 7 May 1982

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

1. Andean Group
- Request for observer status

The Chairman informed the Council that the Director-General had received a letter from the secretariat to the Junta of the Cartagena Agreement, that is, the Andean Group, formally requesting observer status at sessions of the CONTRACTING PARTIES and at the meetings of the Council of Representatives.

The Council approved of the request and asked the Director-General to respond favourably to it.

2. Trade restrictions affecting Argentina applied for non-economic reasons (L/5317, L/5319)

The Chairman said that this item had been placed on the agenda of the Council at the request of the delegation of Argentina, which had also circulated a communication in document L/5317. Subsequently, the delegations of the European Communities, Australia and Canada had requested the circulation of a communication in document L/5319.

The representative of Argentina said that the measures referred to in document L/5317 were not applied against Argentina for economic and trade reasons, that they were not covered by the normal rules of the General Agreement and that they involved principles for which no precedent existed in GATT. Furthermore, these measures had not been notified to the GATT by the countries concerned, although they touched upon various Articles and principles of the GATT with respect to the legal obligations assumed by contracting parties. He pointed out that the measures concerned were not identical, and that the countries and groups of countries had indicated various exceptions. In order to carry out an analysis of the situation, Argentina should be fully informed of the measures so that their compatibility with the obligations under the General Agreement could be determined, as well as the prejudice caused to Argentina's trade.

He said that the measures were based on reasons of a political nature and were meant to exert political pressure on the sovereign decisions of Argentina in order to intervene in a conflict in which only one of the countries concerned was involved. The other contracting parties which had intervened in this case were foreign to the conflict, but nevertheless were applying financial, economic and trade measures against Argentina. He added that measures were also taken by parties which were not fully sovereign in their international relations.

He expressed surprise at the manner in which the measures were alleged to be justified under the General Agreement since, in his view, they were unjustifiable. He asked that these measures, as far as they affected trade, be properly presented to the Council.

He also regretted that it was much easier for a group of developed countries to impose measures against a developing country which did not have any power of retaliation. This he considered to be a new type of colonialism. The considerations invoked were threatening the legal structure of the GATT and bringing into question the commitments taken on by the contracting parties under the General Agreement and respect of that instrument.

He mentioned that Argentina had received a number of declarations of solidarity by governments, particulary in Latin America, and by organizations which had reacted to the violation of rules governing international economic relations. Thus, the Latin American Integration

Association (LAIA), in a resolution dated 16 April 1982, had rejected the measures adopted by the EEC and had asked for their immediate suspension. Similar statements of support had come from the Permanent Secretary of the Latin American Economic System (LAES) and the Commission of the Cartagena Agreement. He said that the Organization of American States, which, at its meeting on 28 April 1982, had rejected the measures adopted by the member States of the EEC and by other States, had asked for their suspension, stating that the measures were not covered by Resolution 502 of the United Nations Security Council and that they were incompatible with the Charter of the United Nations and of the Organization of American States, as well as with the General Agreement on Tariffs and Trade. He stressed that sanctions could only be adopted expressly in conformity with Article 41 of the Charter of the United Nations, and that no country or group of countries could, by itself, invoke decisions of the Security Council and adopt measures in breach of the United Nations Charter itself.

He also mentioned the solidarity of member countries of the Latin American Group in Brussels, not associated with the EEC and, more recently, the declaration adopted on 5 May 1982 by the Latin American Group in Geneva in respect of this matter, which had been transmitted to the Director-General of GATT.

He characterized this situation as one of economic aggression which violated the rules which developing countries had been able to have included within the framework of the United Nations in order to have their interests protected, and he referred particularly to Article 32 of the Charter of Economic Rights and Duties of States.

He recalled that at recent high-level meetings between developed and developing countries, some countries had shown interest in a new type of North-South relationship. There had now occurred, however, an attack against the international system of economic and trade relations. He said that all contracting parties had assumed legal and contractual obligations which were of decisive importance and which should be fully respected by all. He believed that in this case a developing contracting party faced economic sanctions established on a concerted basis by developed countries, and he felt that this constituted a precedent with severe consequences for the future of developing countries.

He therefore believed that the Council should act within the framework of its competence and react to a problem which could destabilize the credibility of the General Agreement itself. Accordingly, his delegation requested the immediate suspension of the measures in order to resolve the situation and to prevent measures of this nature from being imposed in the future. He said that a rapid solution to this problem would enable the GATT to produce concrete results and would thus improve the rules applicable under the General Agreement. In referring to the forthcoming session of the CONTRACTING PARTIES at Ministerial level, he stressed that it was important to improve the efficiency of GATT in the light of what was, in his view, a

flagrant violation of the GATT rules. The GATT system should permit countries like Argentina to participate in international trade and in the international economy without being subject to threats.

In turning to the communication circulated by his delegation in document L/5317, he expressed surprise at there having been no reply from the countries mentioned therein. He stressed that Resolution 502 of the Security Council had not asked or authorized, either implicitly or explicitly, the adoption of any measures such as the trade sanctions taken. Nor, in his view, were the measures justified under the provisions of Article XXI in respect of the countries mentioned in document L/5317. The concerted coercive action taken by a number of economically powerful countries, in this case, violated both the letter and the spirit of the General Agreement. His delegation requested the Council to find ways and means for the immediate suppression of the measures, thereby strengthening the contracting parties' obligations and undertakings on the basis of principles acceptable to all.

The representative of Peru associated his delegation with the statement made by the representative of Argentina and expressed full support for Argentina. He recalled that Peru together with Bolivia, Colombia, Ecuador and Venezuela had supported Argentina in the Commission of the Cartagena Agreement in support of Resolution 14c/R adopted by the Latin American Integration Association (LAIA) in Montevideo on the same day, and the declarations made by the Permanent Secretariat of the Latin American Economic System (LAES) on 20 April 1982 as well as the statements made by the Latin American Groups in Brussels, Paris and Rome. Furthermore, he said that the Latin American Group of Geneva had drawn up a declaration upholding the statements made by other Latin American Groups. In all these resolutions and declarations the Latin American countries rejected and deplored the economic sanctions taken by the EEC and other contracting parties against Argentina, considering that they constituted retaliatory economic sanctions which were counterproductive and would only aggravate the dispute in question. He said that the Latin American countries had urged the EEC and the other contracting parties concerned to lift these sanctions immediately, thus reaffirming statements made in the Declaration of Panama in December 1981 concerning the solidarity of Latin American countries in their foreign economic relations vis-à-vis any type of economic aggression. This Declaration constituted, in his view, a solid front against violations in the trade field against these countries on the basis of principles that had inspired the creation of GATT and which underlay Part IV of the General Agreement. In conclusion, he called attention to provision 4 of the Declaration of the Latin American States in Geneva of 5 May 1982 in which mention was made of the dangers that the continuation of such economic and trade sanctions could create for the forthcoming session of the CONTRACTING PARTIES at Ministerial level.

The representative of Brazil said that Brazil's position of support for Argentina on the substance of its political dispute with the United Kingdom was known. He expressed his preoccupation with the effort to divorce GATT from discussion of real world issues. He pointed out that while the motives for the trade sanctions against Argentina were clear, the justification was not; and he felt that this type of action set a dangerous precedent. In his view, the trade sanctions had no basis in either the Charter of the United Nations, the General Agreement or in Resolution 502 of the Security Council. He said that this criticism, however, did not apply to the United Kingdom. In referring to document L/5319, sub-point (a), he said that since the Security Council had defined this as a "breach of peace", in a particular region, this was not, in his view, an international conflict involving the rest of the world. Turning to sub-point (b) of document L/5319, he wondered whether the authors of the document had been thinking of "natural rights" reflected in Article XXI of the General Agreement. He drew attention to sub-paragraph (b)(iii) of that Article and said that the present case could set a dangerous precedent if the measures in question were considered necessary for the protection of essential security interests taken in time of war or other emergency in international relations, because such interests had not been demonstrated. While it could be considered that this matter constituted an emergency in international relations, he stressed that this was the case only in respect of the region in question, as defined by the Security Council, whose action had a bearing on the GATT in the light of paragraph (c) of Article XXI. It was also difficult for his delegation to accept that the countries in question, except one, were taking this action in protection of their essential security interests. The Council should, therefore, not be indifferent to this matter. In conclusion, he said that his delegation would support any decision of the Council in support of Argentina's case in GATT.

The representative of Uruguay expressed his country's solidarity with Argentina in this matter. In stating his delegation's concern, he said that this case was important for countries with limited economic power, and that the measures imposed in respect of Argentina were neither justified nor did they have a legal basis. He expressed the wish that measures would be taken to re-establish the balance in GATT that had been upset by this case, and that the GATT as an institution would emerge considerably strengthened from its action on this issue.

The representative of Zaire said that his country had excellent diplomatic relations with all of the parties concerned in this conflict. However, his delegation saw a dangerous precedent for GATT, since trade and economic measures had been taken by a number of contracting parties against another contracting party for non-trade reasons. He pointed out that political matters should be dealt with in the appropriate fora and that it was up to the United Kingdom and Argentina to find an acceptable solution for these problems through discussions.

The representative of Colombia expressed serious concern that a number of developed countries had applied retaliatory measures of a trade nature in respect of a developing country, without legal justification and for political reasons. He stressed that if the measures were not lifted by the countries concerned, the credibility of the General Agreement would be threatened, together with the value of commitments made by all contracting parties to the GATT.

The representative of Spain, with reference to the trade restrictions applied by certain contracting parties against Argentina, said that he believed that the United Kingdom could find justification for its action under the provisions of Article XXI:b(iii) of the General Agreement. However, he expressed doubt concerning the action taken by other States which were not, technically speaking, in the same position vis-à-vis Argentina. He was concerned that the present multilateral dispute between a group of developed countries and a developing country constituted a very serious danger for future international economic relations and particularly in the North-South context.

The representative of the Dominican Republic expressed support for Argentina and associated himself with statements made by other speakers. He made an appeal that the economic and trade measures taken for non-trade reasons by a group of developed contracting parties be lifted immediately, as they constituted, in his view, a violation of the fundamental principles of the General Agreement which would weaken the GATT as an international forum. He appealed to the other developed countries which had not yet adopted such measures not to adopt them, thereby making it easier to find a rapid solution for this situation.

The representative of Ecuador, speaking as an observer, said that her country had shown its solidarity with Argentina in the various international fora. She expressed the deep concern of her delegation against the trade measures applied against Argentina by a group of developed contracting parties, measures which had not been taken for economic reasons and which, in her view, violated specific provisions of the General Agreement. She expressed the wish that these measures be removed as soon as possible, in order not to affect the credibility of the General Agreement and in particular its Part IV.

The representative of Cuba said that the discussion of this matter in the Council challenged the credibility of GATT and the rôle for which it was designed. In referring to what he believed was the violation of the rules of the General Agreement, he said that in Resolution 502 of the Security Council economic and trade sanctions against Argentina were not mentioned, and that Article XXI of the General Agreement did not provide legal grounds for such measures. He expressed the hope that the measures would be removed and that confidence in GATT would be restored, adding that this would also be in the interest of avoiding a political type of discussion at the Ministerial meeting. He expressed his support for any decision in the Council favourable to the position of Argentina.

The representative of the Philippines referred to document L/5319 and said that the formulation of paragraph (a) gave the impression that the EEC, and to a lesser degree Canada and Australia, were at war with Argentina while Resolution 502 of the Security Council referred only to Argentina and the United Kingdom. In his view, paragraph 1(b) of that document gave the impression that the EEC and its member States and Australia and Canada had taken these measures as their inherent rights, of which Article XXI of the GATT was a reflection. Since the EEC was not a contracting party to the GATT, he wondered about its inherent rights.

The representative of India expressed his delegation's serious concern about this matter, as the obligations of contracting parties under the General Agreement were involved. He said that since other international fora were dealing with the broader aspects of this problem, the Council should deal only with the trade aspects for which, he hoped, solutions could be found.

The representative of Pakistan said that his country had supported the claims of Argentina. He was of the opinion that the spirit of GATT regulations did not permit the suspension of obligations under the General Agreement, except in cases of extreme urgency. As the situation that had been addressed by Resolution 502 in the Security Council was not an extreme emergency in international relations, the use of trade restrictions did not, in this case, establish a working precedent. Pakistan could not, therefore, support the action taken by some contracting parties in imposing trade sanctions against Argentina, and supported any steps that the Council would take for their removal.

The representative of Yugoslavia said that this matter raised questions of credibility of GATT obligations and merited the full attention of the Council, together with the use of the good offices of the Director-General. He said that this item should remain on the agenda of the Council if the bilateral efforts being undertaken should not lead to satisfactory results.

The representative of Singapore said that although the issue under consideration involved a developing country and a group of developed countries, this case should not be seen as an issue in North-South relations. In his view, the invocation of Article XXI and the imposition of trade restrictions as acts of a political nature should not induce the Council to bring extraneous factors into this case. His delegation considered that the wording of Article XXI allowed a contracting party the right to determine the need for protection of its essential security interests. His delegation none the less saw a danger in the broad interpretation which Article XXI permitted. He hoped that a speedy solution could be found for this matter.

The representative of Romania recalled that Romania had always taken a stand against trade restrictions applied for non-economic reasons. He was of the opinion that such measures would not contribute to the solution of

problems, but would create obstacles and could lead to a worsening of the situation, both bilaterally and multilaterally. He reaffirmed his country's opinion that problems between States should be settled by means of negotiations.

The representative of Indonesia said that his country had fully endorsed the decision of the foreign ministers of the non-aligned nations in 1975 and of the summit of these nations in 1979 in respect of this issue. The problem of trade restrictions, as raised by Argentina in document L/5317, should be considered within the framework of the GATT provisions. He expressed the hope that a speedy solution could be found for this problem.

The representative of the United States, in expressing the hope that the crisis would be rapidly resolved, said that, regrettably, contracting parties had in the past used sanctions involving trade in the context of their security interests as they perceived them. However, the GATT had never been the forum for resolution of any disputes whose essence was security and not trade, and that for good reasons, such disputes had seldom been discussed in the GATT, which had no power to resolve political or security disputes. He believed that trade measures could not be split off as if taken in a vacuum, since the specific justification of international measures could not be discussed in the context of broadly embargoed trade. Whether the parties were developed or developing countries did not change the basic character of the dispute or give GATT a rôle it would not otherwise have. He said that GATT, by its own terms, left it to each contracting party to judge what was necessary to protect its essential security interests in time of international crisis. This was wise in the view of the United States, since no country could participate in GATT if in doing so it gave up the possibility of using any measures, other than military, to protect its security interests. He said that the GATT could not resolve this dispute or help the involved parties, and that forcing the GATT, against its provisions and traditions, to play a rôle for which it was never intended, could seriously undermine its utility, benefit and promise for all contracting parties. In stating that this did not diminish either the value of the GATT or the gravity of concern that the United States and all nations felt regarding this subject, he emphasised that the matter lay outside the GATT's competence, while reaffirming the United States concern that a solution should be found as quickly as possible.

The representative of Hungary expressed his delegation's serious concern about this matter, stating that the security considerations under Article XXI of the General Agreement were within the realm of the individual contracting parties. He said that this type of provision should therefore be handled with great care, which had not been the case in the present instance as questionable measures had been taken. He considered that the Council should, therefore, concentrate on this aspect of the matter.

The representative of Poland expressed the hope that this conflict would be resolved as soon as possible in a manner satisfactory to all. He said that his delegation was deeply concerned by a trend that had developed in GATT to use economic sanctions, including trade restrictions, for reasons which were not of an economic nature and for reasons which could, in his view, not be justified by the situation in question. He said that such sanctions could cause serious prejudice to international co-operation and could be adverse to the purposes of the GATT. His delegation could not accept that the measures in question could be justified by invoking the provisions of Article XXI, whose purpose was to give a contracting party the right to defend its legitimate interests in case of serious danger and not to punish another contracting party for actions which were hardly of an economic nature. He also expressed the view that the provisions of Article XXI were subject to those of Article XXIII:2.

The representative of New Zealand expressed doubts whether the GATT was the appropriate body in which the circumstances which had led to the imposition of economic sanctions should be debated. New Zealand had imposed economic sanctions upon Argentina for reasons similar to those advanced in document L/5319. He stated that New Zealand had an inherent right to take such action as a sovereign State and that, in his view, these actions were in conformity with New Zealand's rights and obligations under the General Agreement.

The representative of Czechoslovakia, after referring to the difficulty of insulating international economics from politics said that the possibility could arise that countries having an economically strong position could abuse their power. Since one purpose of the GATT was to reduce the danger and damage arising from arbitrary measures, attempts should be made in all cases, including the present case, to ensure the highest possible degree of adherence to the GATT rules. Furthermore, he felt that in GATT, as a matter of principle, political considerations should not outweigh economic and trade considerations; and he hoped that the present situation would be satisfactorily resolved.

The representative of Japan, in expressing his country's deep concern about this crisis, said that GATT was an international organization specializing in and dealing with economic matters such as reducing and eliminating tariffs and other trade barriers, through co-operation among the contracting parties. In his view, the interjection of political elements into GATT activities would not facilitate the carrying out of its entrusted tasks. He stressed that one of the most important contributing factors for the effective and efficient functioning of the GATT was that contracting parties had developed a working habit of dealing with trade affairs in a businesslike manner. It was therefore important that contracting parties remind themselves of the tradition of this pragmatic and business like approach; and he expressed the wish that based upon this tradition, the spirit of co-operation would prevail in GATT.

The representative of the European Communities said that, as indicated in document L/5319, the EEC and its member States had taken certain measures on the basis of their inherent rights, of which Article XXI of the General Agreement was a reflection. The exercise of these rights constituted a general exception, and required neither notification, justification, nor approval, a procedure confirmed by thirty-five years of implementation of the General Agreement. He said that in effect, this procedure showed that every contracting party was - in the last resort - the judge of its exercise of these rights. He stressed that the measures taken by the EEC and its member States were not an issue in the relations between developing and developed countries. It should therefore be the main wish of the Council to avoid political discussions, which could risk the non-political character of the General Agreement, and thus to contribute to the creation of a favourable climate permitting the re-establishment of normal commercial relations. In this spirit, he repeated the hope of the EEC and its member States that appropriate negotiations elsewhere would soon allow a satisfactory outcome to the situation which had led them to take the measures in question.

The representative of Norway said that his authorities were of the opinion that under the circumstances the EEC and its member States, together with Australia and Canada, in taking the measures referred to in document L/5319, did not act in contravention of the General Agreement. He stressed that it was the sincere hope of his Government that the efforts undertaken elsewhere would soon bring about a development which justified the discontinuation of those measures.

The representative of Canada said that his Government had taken certain action, including trade action, affecting Argentina in the light of Resolution 502 of the Security Council. These actions were consistent with Canada's international obligations, including those under the General Agreement. He considered that it was not up to the Council to debate alleged violations of Security Council Resolution 502, and noted that the term "economic aggression" was not contained in the General Agreement. He said that Canada's sovereign action was to be seen as a political response to a political issue, which was neither a North-South issue, nor in any way related to Argentina's status as a developing country. He reiterated Canada's support for the respect by all contracting parties for their obligations under the General Agreement, stating that Canada was convinced that the situation which had necessitated the measures had to be satisfactorily resolved by appropriate action elsewhere, as the GATT had neither the competence nor the responsibility to deal with the political issue which had been raised. His delegation could not, therefore, accept the notion that there had been a violation of the General Agreement. He also noted that Resolution 502 did not define the problem as a regional one, but dealt with a problem in a region of the world. As regards Article XXI of the General Agreement, he noted that it did not contain a definition of "essential security interests". While the trade effects of action taken

could be considered in GATT, he stated that different situations required different actions and solutions. Many contracting parties had taken the same and similar actions for political reasons, as was the case here. In this case, action had been taken for the purpose of encouraging a peaceful settlement by temporarily suspending the normal operation of some provisions of the General Agreement. He added that Article XXI did not mention notification. It appeared to him that the fact that the action had been taken was not really unprecedented, whereas the examination of the action in GATT was without precedent.

The representative of the United Kingdom, speaking for Hong Kong, associated his delegation with the statement made by the representative of the European Communities. He said that the measures in question had originated from a political dispute involving an issue that went beyond the competence of the GATT and which could not be resolved in the Council. He expressed the hope that the political situation in question would soon be satisfactorily resolved by appropriate negotiations elsewhere.

The representative of Australia associated his delegation with the statements made by the representatives of the European Communities and Canada, and expressed serious concern and great regret at the situation that had resulted in the measures under consideration. His delegation agreed that it was inappropriate to enter into a debate on the political aspect of the issue. He stated that the Australian measures were in conformity with the provisions of Article XXI:(c), which did not require notification or justification. Quoting from Article I of the UN Charter, he said that one of Australia's obligations was to carry out the purposes for which the United Nations was created. He also emphasised that this issue had no bearing on North-South relations. He expressed the view that it might better be dealt with elsewhere, and the fervent wish that the problems would be peacefully resolved as soon as possible.

The representative of Argentina said that he had hoped earlier in the discussion that the contracting parties which had invoked the measures under consideration would make available to the Council the information that was not contained in document L/5319. However, the response had been that Article XXI did not require notification, justification or approval. He was of the view that the failure to notify trade restrictions was not only a failure to respect fundamental obligations stemming from the General Agreement, but also a failure of respect for the CONTRACTING PARTIES, who had the right to be informed of measures adopted by contracting parties. He regretted that the discussion had not dealt sufficiently with the substance of the matter, and in this case his delegation intended to notify to the GATT the measures in question, which comprised a total ban on imports. He wondered how a peaceful solution could be promoted in the conflict in question if economic sanctions were being imposed. He underlined that the measures also violated the Charter of the United Nations and the provisions

adopted by the Security Council. It would appear that trade restrictions could be adopted without having to be justified or approved and, on the basis that a reason of domestic security did not have to be explained, anyone could now have recourse to that magnificent safeguard clause. He said that Argentina had attempted to submit to GATT only the trade aspects of this case, showing the extent to which Argentina had respected the rules and traditions of the General Agreement. His delegation intended to hold consultations with the countries holding views similar to those of his Government in order to orientate effective action. The GATT Council had various ways of taking decisions; and to date, the CONTRACTING PARTIES had tried to abide by the rule of consensus. Nevertheless, that rule could also disappear because it was not the only way in which the General Agreement operated. He recalled that in his capacity as Chairman of the Council, he had endeavoured to maintain that rule of consensus wherever it offered the possibility of arriving at a serious agreement that was justified, legal, contractual and not imposed by force. In the light of the statements that had been made by representatives, he suggested that the Council revert to this matter at its next meeting in order to find suitable solutions to the problem.

The representative of Brazil said that this debate in the Council had served the double purpose of focusing on what were, in his view, illegal trade measures taken against Argentina, and of making a contribution to the work of the Preparatory Committee. He expressed reservations about what the representative of the European Communities had called "natural rights" not to justify its actions, and especially he objected to the interpretation given by the representative of Australia to the provisions of Article XXI:(c). He agreed that each contracting party had the right to define its essential security interests, but he felt that some justification should in fact be given when it was apparent that no essential security interests were involved. He considered that the Council should reflect more deeply about the interpretation of Article XXI as a contribution to the preparations for the session at ministerial level, and he raised in this connection the question of whether other natural rights were reflected in other Articles of the General Agreement, and whether actions taken under Article XXI were outside the scope of Article XXIII.

Following the discussion, the Chairman said that a wide range of opinions had been expressed on the subject under consideration. He noted that there were differing views as to whether the trade measures in question violated GATT obligations, as to whether the measures were based on inherent or natural rights and whether justification, notification and/or approval were necessary. It had been said that Article XXI, if invoked, should be applied with full care in view of the fragility of the situation; and various statements had been made regarding the content of that Article, particularly sub-paragraphs (b) and (c), as well as the content of United Nations Security Council Resolution 502. It had been stated that the measures in question would pose special problems, particularly for developing countries; whereas it had also been stated that this was not a North/South issue. There had been a few statements indicating that the

matter under consideration was purely political and not within the competence of GATT, whereas other statements had indicated that even though certain actions were political, the Council was fully competent to discuss issues related to the trade measures flowing from them. One particular strain of opinion running nearly throughout, was the expression of a wish and the keen desire that the matter be settled as quickly as possible. Technical questions had also been raised regarding the parts of the General Agreement containing natural rights, and the relationships between Articles XXI and XXIII.

He suggested that in the light of the utmost importance of the subject and the keen interest which had been shown in it, the matter should remain open and be kept on the agenda of the Council.

It was so decided.

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

Ambassador McPhail (Canada), Chairman of the Preparatory Committee, said that the Committee had moved from an exploratory phase into the second stage of its work, in which more precision would be given to ideas put forward for the consideration of Ministers. Following a decision by the Committee the preceding week (PREP.COM/R/5), a first series of informal consultations had in the meantime been completed, relating to the first part of the proposed "final product", i.e. the political declaration. The second series of consultations would take place the following week, concentrating on the substance of parts two and three.

He said that the Committee had passed the stage in which there had been rather different perceptions of what the Ministerial meeting might be; and he was encouraged by the convergence of concepts which he believed would enable the Committee to examine a first draft of a document at its next meeting.

The Council took note of the statement.

4. United States tax legislation (DISC) - Follow up on Report of the Panel (C/W/384, L/4422)

The representative of the European Communities referred to the communication in document C/W/384 containing his authorities' views concerning the United States tax legislation (DISC), as well as the text of a draft decision. He said that in view of the clearly recognized incompatibility of that legislation with the provisions of the General Agreement, the EEC requested in particular that the CONTRACTING PARTIES recommend, pursuant to Article XXIII:2, that the United States rapidly take appropriate measures in order to bring the DISC legislation into conformity with the GATT provisions.

The representative of Canada recalled that at the December 1981 meeting of the Council his delegation had indicated its expectation, in the light of the adoption of the Panel Report on DISC and the conclusions contained therein, that the United States would take the necessary action to meet its obligations under the General Agreement. Since that time there had been extensive discussion of this matter in the Committee on Subsidies and Countervailing Measures; and Canada had urged the United States to bring the DISC into conformity with its GATT obligations. He recalled that at the December 1981 Council meeting his delegation had expressed the view that the understanding (L/5271) which accompanied the adoption, inter alia, of the Report on DISC would not diminish rights and obligations under Article XVI:4, or those under Article XVI:1 in respect of notification of subsidies. Canada was concerned, therefore, that the United States appeared now to be taking the position that it neither had the obligation to notify the DISC under Article XVI:1 nor that it must do anything to bring the DISC into conformity with the GATT rules pertaining to export subsidies. He said that his delegation, therefore, fully supported the request by the EEC that this item be kept on the Council's agenda with a view to determining whether the United States took remedial action shortly, and for any appropriate follow-up.

The representative of the United States said that his delegation could not agree to the adoption of the draft decision in document C/W/384, the basis for which was the Council's adoption of the DISC Panel Report. He recalled that while the Report did conclude that the DISC in some cases had effects which were not consistent with United States obligations under Article XVI:4, the same panelists had come to the identical conclusion with respect to the examined tax practices of France, Belgium and the Netherlands. He quoted from the text of the understanding on which all four Panel Reports had been adopted (L/5271), and said that it was fundamentally different in important respects from the basis on which the Panels had examined the four sets of tax practices and had come to their conclusions. He said that the economic approach on which the Panel had based its conclusions in each case was not the same as the legal interpretation contained in the first sentence of the understanding. At the December 1981 Council meeting, his delegation had stated that Article XVI:4 required that the level of taxation to be assessed on exported products be at least equal to the level which would apply if a territorial system were applied. In the United States' view, the Panels had come to fundamentally flawed conclusions under the General Agreement because they had analysed the practices in question on an incorrect juridical basis. He referred to territorial tax systems, the greater burden imposed on exports by global tax systems such as that of the United States, tax haven rules, auditing control and arm's length pricing, stating that these were all complex concepts which were important and relevant to an understanding of the tax practices that were at issue in relation to the GATT rules, and said that his delegation would be prepared to discuss these matters in detail at the next Council meeting or at any other time. He emphasized that the complexity of this issue cou not be waived aside by the vigour of the accusations, nor could it be claimed that

only one of the tax practices was guilty or that the understanding applied to all but one of the Reports. There was not one set of rules for the United States and another for others.

He said that the United States believed that the DISC was in conformity with its GATT obligations, and had also noted that the adoption of the Reports with the understanding did not bar an appropriate challenge of any of the practices in question, including the DISC. He did not believe that any contracting party should lightly give an opinion at the present meeting without a thorough understanding of the issues. Acknowledging that these disputes had tried the patience of all contracting parties, he could not agree to accept a hurried condemnation whose premise he believed was wrong and whose conclusions were not substantiated.

The representative of the European Communities said that, in view of the statement made by the representative of the United States, it was very important at this stage to clarify certain facts. Nearly eleven years earlier, in November 1971, his delegation had made its first statement in GATT on the DISC legislation at a session of the CONTRACTING PARTIES. Thereafter, five years had elapsed before the Council had been called upon, in November 1976, to consider the DISC Panel Report. Then, a further five years had elapsed, during which the Council had discussed this issue on several occasions; and only in December 1981 had the Council finally been able to adopt the Report. He said that the understanding (L/5271) accompanying this adoption, as well as the adoption of the Reports of the three other Panels, the fate of which had been artificially linked by the United States to the fate of the DISC Report, in no way changed the contents of the latter. He added that, on the contrary, the Council in December 1981 had established that the practices of the three EEC member States were not a breach of the provisions of Article XVI, and this decision had not altered the situation as regards the DISC Panel Report.

He said that throughout the long discussions and negotiations with the United States to find an acceptable settlement of the matter, the United States had itself recognized the incompatibility of the DISC legislation with the General Agreement and the question of bringing that legislation into conformity with the GATT provisions. In that connection, he pointed out that an understanding had been reached in June 1979 between the EEC negotiators and the United States negotiators; that understanding had been drafted at Geneva in the presence of witnesses and it confirmed the situation. The EEC regretted that the United States administration had not pursued the appropriate efforts undertaken in the past with a view to repealing the DISC or bringing it into conformity with the General Agreement.

In spite of the adoption of the Panel Report and in spite of the provisions of the Subsidies/Countervailing Measures Code and the whole history of the negotiations in the matter, the United States had intimated in a communication of 19 April 1982 (SCM/19) that it did not believe the DISC to be a subsidy. Also, the United States had just stated that the DISC was in conformity with its GATT obligations.

In his opinion, the attitude of the United States could not be taken seriously. He asked whether it must be concluded therefrom that the Community, the other contracting parties concerned, which had been associated with the final drafting of the Council's decision in December 1981, and finally the Council itself, had intended by that Decision to give their approval to the DISC export subsidy. That legislation had been clearly recognized by the Panel as incompatible with the relevant provisions of the General Agreement, and its incompatibility was confirmed even more clearly by the Subsidies/Countervailing Duties Code (paragraph (e) of the Illustrative List of export subsidies annexed to the Code). The EEC could not accept the United States' attitude, which was designed to bury the DISC case in the complexity of the international fiscal system. Furthermore, the DISC legislation had been enacted for the sole purpose of increasing American exports.

He confirmed that the Council's Decision of December 1981 (L/5271) in no way affected the content of the DISC Panel's Report (L/4422), for the following reasons: (1) In the case of the DISC, the bodies in question were export subsidiaries expressly set up on United States national territory, whereas in the cases examined by the other three Panels, the bodies considered were establishments operating abroad whose activities did not come within the sphere of exports. In the case of the DISC, therefore, it was a matter of export activities within the meaning of Article XVI:4 which concerned the taxation of exported products as compared with that of national products. (2) When the Decision had been adopted, the Chairman of the Council had also noted that it did not affect the existing rules stated in Article XVI:4 of the General Agreement, in so far as they concerned the taxation of exported goods.

Accordingly, his delegation requested that the Council adopt the decision proposed in document C/W/384, as follows:

"1. In view of the findings and conclusions of the Panel, and of the statements made to the Council by other contracting parties equally concerned by the DISC subsidy, the CONTRACTING PARTIES recommend, in accordance with the provisions of Article XXIII:2, that the United States take appropriate action without delay to bring the DISC legislation into conformity with the provisions of GATT; and,

2. Furthermore, as the DISC legislation has been enforced since 1972, and as the United States, in spite of the adoption of the DISC report by the Council, does not consider that the DISC programme constitutes a subsidy, the CONTRACTING PARTIES recognize that the circumstances characterizing this infringement of the provisions of GATT are very serious and that the question should be kept on the Council's agenda, with a view to ascertaining whether the action shortly to be taken by the United States is likely to remedy the situation, and with a view to any appropriate follow-up."

In conclusion, he said that considering the history of the case the EEC had shown great patience. On the other hand, he wished to point out that in the case of American complaints, the main characteristics of the United States attitude were impatience and the constant wish to speed up the process of settlement of disputes, even beyond any reasonable limit.

The representative of Chile said that his delegation was aware that the GATT compatibility of the DISC legislation was a very complex issue. None the less, on the basis of available information, his delegation was of the opinion that the DISC legislation was a subsidy not in line with GATT provisions. He therefore supported the substance of the proposal made by the EEC. He stated that this matter should be kept on the agenda and that the Council should have a more in-depth discussion on it with a view to reaching recommendations which would meet the concerns expressed by various delegations.

The representative of Australia recalled his delegation's having gone into this matter at some depth at the December 1981 meeting of the Council. In Australia's view, the DISC was a subsidy subject to the provisions of Article XVI:1 and had been found not to be in conformity with the United States obligations under Article XVI:4. Australia was furthermore of the view that the Panel Report on DISC had been adopted by the Council without modification in respect of DISC and that, as a result, there was now an obligation on the United States to bring the DISC into conformity with the provisions of the General Agreement. He said that against this background, Australia could support the adoption of a Council decision along the lines proposed by the representative of the European Communities.

The representative of Argentina said that the text of the December 1981 Decision had been based on a gentlemen's agreement aimed at solving a problem that had been preoccupying GATT for a number of years. He recalled his and other delegations having made express reservations so as to safeguard their rights and not to prejudge the interpretation of the understanding with respect to Article XVI. He invited the contracting parties to act accordingly.

The representative of Brazil recalled that his delegation had been among those with serious difficulties with the understanding approved by the Council in December 1981. He thought, however, that the Panel finding on the incompatibility of the DISC legislation with the provisions of the General Agreement had been clear, and said that he could therefore support the recommendation as proposed by the representative of the European Communities. In view of the complexity of the subject matter, however, he was prepared to respond favourably to the United States request to defer action on the proposed decision.

The representative of India stated that his Government supported the substance of the proposals made by the representative of the European Communities. He recalled that the Panel had found the DISC legislation not to be in accordance with the obligations of the United States under the

General Agreement. As the Council had adopted the Panel's Report, his delegation, like the others whose views had been expressed earlier, expected that the DISC legislation and practices of the United States would be brought into conformity with its GATT obligations.

The representative of Sweden, speaking on behalf of the Nordic countries, fully concurred with the conclusions in the Panel Report that the DISC was to be considered as an export subsidy. It was therefore self-evident that the DISC legislation should be notified under the procedures of Article XVI:1. The Nordic countries definitely did not interpret the Decision of December 1981 as an acceptance of the DISC system, nor did they consider that it changed the substantive conclusions of the Panel Report on the DISC legislation.

The representative of Switzerland stressed that the normative context had changed since the beginning of the case. In the Subsidies/Countervailing Measures Code and particularly its Note No. 2 (Annex, paragraph (e)) the CONTRACTING PARTIES disposed of elements which should remove any possible doubts that might have remained before agreement was reached on the adjustment of the tax system in question to bring it into conformity with the provisions of the General Agreement, on the basis of the conclusions adopted by the Panel.

The representative of Japan recalled that in 1976 the DISC Panel had submitted its Report in which it concluded that the DISC legislation in some cases had effects which were not in accordance with the United States obligations under Article XVI:4 of the General Agreement, and that in December 1981 the Council had adopted unanimously that Report, together with the understanding reproduced in document L/5271. He said that his delegation was in agreement that this question should remain on the Council's agenda, and expressed the hope that appropriate follow-up action would be taken.

The representative of the Philippines said that the issues raised were rather complex and that there was a need to look at them further. His delegation therefore preferred to keep this item on the agenda for future discussion in the Council.

The representative of New Zealand stated that his delegation concurred with the conclusions of the Panel Report on the DISC legislation, and could also accept the Council Decision of December 1981 in spite of the opaque language of the understanding. Referring to the statement by the representative of Switzerland, he expressed serious doubts that the Subsidies/Countervailing Measures Code had in fact dissipated uncertainties with regard to interpretations in Article XVI of the General Agreement. The continuation of this issue also highlighted the inadequacy of the present GATT dispute settlement system in this regard.

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

5. Switzerland - Review under paragraph 4 of the Protocol of Accession - Report of the Working Party (L/5311)

The Chairman recalled that in December 1981 the Council had established a Working Party to conduct the fifth triennial review of the application of the provisions of paragraph 4 of the Protocol for the Accession of Switzerland, and to report to the Council. The Working Party had carried out its examination and had submitted its Report in document L/5311.

Ambassador Inan (Turkey), Chairman of the Working Party, said that the Working Party had held two meetings in February and March 1982. The discussion had covered both the general question of trade liberalization by Switzerland in the agricultural sector and the need for the CONTRACTING PARTIES to keep under constant review those cases where derogations exist from the application of GATT rules, as well as specific questions relative to the actual methods of application of the measures maintained by Switzerland in accordance with its negotiated exemption under paragraph 4 of the Protocol. He added that the slightly greater length of the Report derived from its having been conceived as a reference for similar reviews in the future.

The representative of Australia said that the active participation of his delegation in the review conducted by the Working Party had been due to Australia's concern that a highly industrialized country like Switzerland continued to use the unique reservation on agricultural products in its Protocol of Accession to exempt it from obligations and disciplines in such a major sector of world trade, significantly undermining efforts to integrate agriculture more fully into the GATT framework for world trade. Australia questioned the necessity for this privileged position, and also had a certain reservation in respect of using the Report as a model for the future in view of the fact that the Working Party had been unable to reach any conclusions. Australia was also concerned that Switzerland had not shown any disposition to liberalize its import régime for agricultural products. He said that while Australia had appreciated the furnishing of extensive information by the Swiss delegation, his Government would be closely examining that additional information in the course of the coming months.

The representative of Chile stated that the views of his Government were very well reflected in the Report and that the work of the Working Party had proved to be a useful and well-run exercise.

The representative of New Zealand agreed that the Report did not break new ground. While it exhorted Switzerland to be somewhat more transparent in future, in particular with regard to the details of bilateral and plurilateral agreements involving quotas, there was still something anomalous in Switzerland's having a permanent derogation from the GATT in regard to agricultural products at the very time of the preparation for a GATT session at ministerial level, the purpose of which was to strengthen the GATT rules and the commitments of GATT contracting parties.

The representative of Argentina confirmed that Argentina's statements and concerns were clearly reflected in the Report, and expressed his thanks to the Swiss delegation for its additional information as regards its import régime.

The representative of Switzerland expressed satisfaction that most delegations were of the opinion that the answers given by his delegation to the Working Party had been exhaustive. He said that discussion on the present item of the Council Agenda should not go beyond the terms of reference of the Working Party, which had been unambiguous. He said that he had taken note of the opinion of the representative of Australia, but did not think that it was either the place or the time to appreciate the balance of rights and obligations of the contracting parties. He also thought it unnecessary to repeat what Switzerland had already stated on several occasions, namely that paragraph 4 of the Protocol of Accession represented neither a reservation nor a waiver but was a recognition of a particular situation which implied no commitment with respect to its modification or abolition in the future, and for which Switzerland had paid amply in its negotiations for accession. He added that his delegation continued to be at the full disposal of any delegation wishing to have further information.

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

6. United States - Prohibition of imports of tuna and tuna products from Canada
- Draft decision proposed by Canada (C/W/378)

The Chairman said that he had been informed that the two principally interested parties wished to reflect further on this matter.

The Council agreed to revert to this item at its next meeting.