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C/M/159
10 August 1982
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GENERAL AGREEMENT ON TARIFFS AND TRADE

COUNCIL
29-30 June 1982

MINUTES OF MEETING

Held in the Centre William Rappard on 29-30 June 1982

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

1. Venezuela - Request for observer status

The Chairman stated that a note had been received from the Permanent Mission of Venezuela seeking to obtain the status of observer to the Council. The Chairman noted that Venezuela was already invited to be represented by an observer at the sessions of the CONTRACTING PARTIES. The objective of the present request was to enable the delegation of Venezuela to attend as well the meetings of the Council and the regular GATT working parties, as observer.

The Council agreed that the Director-General should respond favourably to the request by the Government of Venezuela.

2. International Trade Centre
- Reports of the Joint Advisory Group (ITC/AG(XIV)/75/Add.1 ITC/AG(XV)/81)

Mr. Rijpma (Netherlands), Chairman of the Joint Advisory Group introduced the Reports. He recalled that the Group reviews the activities of the ITC and formulates recommendations to the governing bodies of UNCTAD and GATT. Dealing first with the resumed fourteenth session (ITC/AG(XIV)/75/Add.1), he said that the Group had reconvened its fourteenth session in January 1982 in order to consider the ITC's contribution to the Medium-Term Plan for the economic and social sectors of the United Nations for the period 1984-1989. In its discussion the Group had underlined the need to foster trade and technical co-operation among developing countries, and the increasingly critical development assistance needs of the least-developed countries.

The Group had endorsed the ITC's contribution to the United Nations Medium-Term Plan 1984-1989, which had been submitted to the United Nations together with the Report of the Group. The ITC's own Medium-Term Programme covering 1983-1985 would be reviewed in 1982 and submitted to the Group at its sixteenth session in April 1983 for approval.

Turning to document ITC/AG(XV)/81 and the fifteenth session in March 1982, he stressed the importance attached by the Group to a number of recommendations made by it. He said that the ITC was faced with zero growth in its regular budget resources and, in most cases, a stagnation in contributions from traditional trust fund donors in dollar terms. The programme in 1981 had grown slightly in value terms (from US$14.9 million in 1980 to US$15.7 million in 1981), but resources available for supervision and backstopping had shown no increase. This lack of resources had resulted in the ITC being virtually unable to respond to new activities recommended by the Group in recent years. He said that the Group was satisfied that the ITC was doing all it could to maximize its existing resources and to achieve productivity gains, but emphasized the need for these resources to be strengthened through all available means.

The programme in 1981, as reflected in the Annual Report in its new result-oriented form, had met with the approval of the Group. It showed that the share of the total programme in all regions, except Asia, had regressed compared with 1980. The interregional share had increased slightly. He said that the main recommendations made by the Group in relation to future work were that increased resources should be channelled to Africa; that work on export market development should increasingly include manufactured products, priority attention being given to export potential of developing countries. Further, the Group noted several new areas requiring specialized trade promotion services. It also stressed the need to continue increased assistance to least-developed countries. It noted that activities on the follow-up on the Multilateral Trade Negotiations would be undertaken as part of other technical co-operation activities such as export market development, trade information and manpower development.

He said that the Group had decided to adopt new procedures for the work previously undertaken by the Technical Committee and its own deliberations as from 1983. These procedures would be reviewed after two years.

The representative of Turkey expressed his country's appreciation for the work performed by the ITC.

The representative of Pakistan expressed thanks to the ITC and stated that it was necessary for the contracting parties to respond to the concerns expressed in the Report, particularly in respect of the funding difficulties. He said that it was essential to support the ITC in its important rôle in promoting the non-traditional exports of the developing countries and in assisting them in their marketing efforts in non-traditional markets. In thanking those who had contributed financially, he urged that the contributions be enhanced significantly. He also suggested that this matter be considered during the preparations for the Ministerial meeting and if necessary, that the Ministers take note of the grave situation faced by the ITC in respect of its funding problems.

The representative of Cuba agreed with the statement of concern. She expressed appreciation for the assistance given by the ITC to Cuba in the field of trade promotion and shared the suggestion that the Ministerial meeting take into consideration whether the ITC should receive further resources for its tasks.

The representatives of Malta, Nigeria, Uruguay and Israel shared the concerns expressed in regard to the financial situation of the ITC and urged that more trust funds be made available to assist developing countries in their export efforts.

The representative of Finland, speaking for the Nordic countries, said that the Nordic countries followed the activities of the ITC with great attention and gave them their full support. He recalled the proposal made

by the Nordic countries to strengthen the ITC's possibilities to work for the developing countries in the framework of the preparations for the Ministerial meeting.

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

3. United States - Imports of certain automotive spring assemblies - Report of the Panel (L/5333)

The Chairman recalled that in December 1981 the Council had established a Panel to examine the complaint by Canada. In February 1982 the Council had been informed of the composition of the Panel. The Report of the Panel had been circulated in document L/5333.

Mr. Reed, retired Special Assistant to the Director-General, Chairman of the Panel, said that the Panel had met on many occasions between February and June 1982 and had held consultations with Canada and the United States. In these consultations both parties had expressed their views on the use of Section 337 of the United States Tariff Act of 1930 in cases of patent infringement, and on the question of the GATT compatibility of the United States action under that Section in the specific case before the Panel. He noted that, as far as the Panel was able to ascertain, this was the first time that a case of patent infringement involving Article XX(d) had been brought before the CONTRACTING PARTIES. The Panel had come to the conclusion that the exclusion order issued by the United States International Trade Commission against the importation of automotive spring assemblies fell within the provisions of Article XX(d) and was, therefore, consistent with the General Agreement. Since Article XX(d) had been found to apply, the Panel considered that an examination of the United States action in the light of other GATT provisions was not required. As regards the general issue of the use of Section 337 by the United States in cases of alleged patent infringement, he said that the Panel had focussed its attention on the possible conclusions it could draw from its examination of the automotive spring assemblies case, and drew attention to paragraphs 64-73 of the Report in this respect.

The representatives of Canada and the United States stated that since the Report had been issued very recently they considered it appropriate that consideration of this matter be deferred to the next meeting of the Council.

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

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

Ambassador McPhail (Canada), Chairman of the Preparatory Committee, said that the Committee had met in June and had reached the second stage of its work, i.e. the drafting of texts to be put before Ministers. It had also briefly touched on questions relating to the management and

administration of the Ministerial meeting. He mentioned that consultations had made it possible to prepare the "First Approximation to the Final Product" but that a great deal of further work would be required before this could be turned into a "First Draft" of the text to be considered by the Ministers. He pointed out that intensive informal consultations were in progress, in which attention was first being directed to proposals which were not being actively dealt with in other GATT bodies and then to the relevant work in other GATT bodies. He said that the Committee would hold its next meeting in late July to consider a "First Draft" which should reflect the state of play at that time. He expected that negotiations on that text would take place in September and October. The Committee had agreed that its first meeting after the summer break, which should be used for reflection, preparation and consultation, would be on 23 September.

The Council took note of the statement.

5. United States tax legislation (DISC) - Follow-up on the Report of the Panel
- Draft Decision proposed by the European Economic Community (C/M/157), C/W/384, L/4422)

The Chairman recalled that at the meeting of the Council on 7 May 1982 the representative of the European Communities had proposed that the Council adopt the decision contained in document C/W/384 and as set out in the Minutes of that meeting (C/M/157, page 16). The Council had agreed to revert to this matter at the present meeting.

The representative of the European Communities[1] recalled that at the meeting of the Council on 7 May 1982 the representative of the United States had stated that he believed that the DISC was in conformity with the United States' GATT obligations, but that he also recognized that the DISC could be "appropriately challenged" in GATT. The Community fully intended to make this challenge.

He pointed out that the Panel had found "that the DISC legislation in some cases had effects which were not in accordance with ... Article XVI:4", (L/4422, paragraph 74), and that this finding had not been altered in any respect by the Council Decision of December 1981 (L/5271). He recalled that the Council Chairman had noted at the December 1981 meeting that the Decision did not modify existing GATT rules in Article XVI:4 insofar as they related to the taxation of exported goods; consequently, the Panel finding was still valid. In December 1981 the United States had made a unilateral declaration on the interpretation of these GATT rules, which was contested by the EEC and Canada. This declaration by the United States did not affect the validity of the Panel findings.

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[1]The text of the statement by the representative of the European Communities was subsequently circulated in document C/W/391.

He then recalled that the United States view had not always been that the DISC was consistent with GATT, and he cited the following examples:

(i) In six meetings of the Council in late 1976 and in 1977 the United States delegation did not on any single occasion contest the Panel findings on DISC.

(ii) In the MTN negotiations on the Subsidies and Countervailing Measures Code in 1978/79, the United States had accepted a change in item (d) of the 1960 Illustrative List which had the effect of specificially prohibiting tax deferral systems such as DISC. Furthermore, a footnote to the new List had been included specifically to cover the DISC and to permit the United States to sign the Code. This footnote envisaged a special procedure for the elimination of "measures incompatible" with this new text.

(iii) In mid-1979 a bilateral agreement between the EEC and the United States explicitly recognized that DISC, as presently conceived in the statute, was not consistent with the provisions of item (e) of the Illustrative List annexed to the Code.

(iv) Prior to the adoption of the Council Decision in December 1981 informal discussions had taken place with the United States in the second half of 1980 and throughout 1981. At no time in that period had the United States argued that the DISC was consistent with GATT. Indeed, in mid-1981 it had been willing to envisage a scenario under which the matter would have been referred to the Committee on Subsidies and Countervailing Measures which would then confirm that DISC was incompatible with the Code and would invite the United States to modify its legislation as necessary. Furthermore, nothing in the bilateral or multilateral discussions preceding the December 1981 meeting of the Council justified the claim that DISC was now to be considered as being in conformity with the GATT obligations of the United States. At no time did the United States delegation state at the Council meeting of December 1981 that DISC was in conformity with the GATT, nor did it contest declarations by other delegations that it was a prohibited export subsidy, that the Council Decision did not modify in substance the Panel Report on DISC, and that the United States was expected to take the necessary action to meet its GATT obligations.

(v) The United States had also stated at the Council meeting in May 1982 that it could not be claimed that only one of the tax practices was guilty or that the December 1981 Decision applied to all but one of the Panel Reports. The United States representative had argued that the economic approach on which the Panel based its conclusions had now been altered by the legal interpretation in the Council Decision of December 1981,

and that the Panel Reports, because they had analysed the DISC and other tax practices on an incorrect juridical basis, had come to flawed conclusions under the General Agreement.

While the United States continued to argue as if the DISC system was no different in form from the other practices examined by the Panels, he believed that they were substantially different and that the impact of the December 1981 decision would vary, depending on the relevance of its content to the different practices concerned. On important difference was that the Panel Report on DISC did not mention the taxation of "export activities" outside the United States whereas this was crucial in the other cases. He said that this had no significance when applied to the DISC case because the DISC system did not apply to export activities outside the territory of the United States. Unless this was contested, it was clear that the effect of the December 1981 Decision was to remove the basis upon which certain European tax practices were found by the Panels to be, in some cases, not in accordance with Article XVI:4 - and it was for this reason that the EEC and its member States had proposed a formula which did not in any way modify the essential basis for the Panel's finding in relation to the DISC.

He concluded that the Panel Report on DISC had not been based on an incorrect juridical basis, but that it was based on the provisions of Article XVI:4 - which had not been modified. The legal interpretation by the Council of December 1981 had not vitiated the Panel's approach, since it applied to a situation which did not occur in the DISC case. Consequently, it was the EEC's view that DISC was the only practice which remained inconsistent with GATT.

He said that the DISC had been introduced ten years earlier specifically to give United States exporters a tax advantage to offset a handicap they faced because the United States did not have a territorial tax system. In his view, it was designed to test Article XVI of the General Agreement. The European tax systems were not designed nor introduced for this purpose. Therefore, the DISC could no longer be maintained in violation of the GATT. The Panel had made a finding on this point, stating that it did not accept that one distortion could be justified by the existence of another one; if the United States considered that other contracting parties were violating the GATT, it could have had recourse to the remedies offered by GATT (paragraph 79 of the Report).

He recalled that the Council had decided in December 1981 that economic processes located outside the territory of the exporting country need not be subject to taxation by that country. This did not mean that a country which nevertheless imposed taxes on such activities was free to do so regardless of GATT provisions. Nor did it say that where a country decided to tax such activities, it could do so provided the level of taxation on exported products was at least equal to the level that would apply if it had a territorial tax system. He stressed that on the contrary, Article XVI:4 was applicable and required a comparison between

taxation on exported products and on domestically sold products. By this test the DISC was clearly illegal. He asked that the Council endorse this view in the strongest possible terms.

The representative of the United States[1] said that his Government opposed the adoption of the draft decision in the belief that the DISC programme operated in a manner which was consistent with the obligations of the United States under Article XVI:4. He said that the United States had never agreed that the DISC was not in conformity with the General Agreement, and that an effort to reach a settlement on an outstanding difference of opinion should not be taken as an admission of guilt. He stated that the December 1981 Decision (L/5271) applied to all four Panel Reports, and that while any contracting party could question the DISC under Article XVI:4, the programme could not be condemned under that GATT provision in the light of the qualifier contained in the Decision, and would be found to be in conformity with the GATT obligations of the United States.

He then turned to the specific elements in the United States federal taxation system which had led to the establishment of the DISC programme as a means of lifting the burden on his country's exporters caused by its essentially global system of taxation, which employed the tax credit rather than the tax exemption method. He said that the use of a DISC for export sales diminished the global United States tax burden by deferring from direct federal taxation a small portion of income attributable to export sales activities as though it were foreign source income. Thus, the United States viewed DISC as an approximation of how United States income from exports would be taxed under the internationally accepted territorial system.

He described in detail the percentage allocations in the programme from its inception in Title V of the Revenue Act of 1971 through the amendments in the Tax Reform Act of 1976, and stated that United States manufacturers currently using DISCs were able to defer federal tax on income equal to approximately eighteen per cent of the combined income of the DISC and its related supplier attributable to DISC export sales. He said that the net effect of the DISC was to place United States exporters in the same comparable position as exporters operating under a territorial tax system.

He said that the Panel which had examined the DISC legislation had found that the DISC had the effect of derogating from the global system of direct taxation, thereby increasing exports beyond those which would have existed under a purely global system. In effect, the Panel had taken the view that Article XVI:4 required that a country use a global system of taxation - in which taxes are collected not only on income generated within the territory of the taxing country (domestic source income) but also on income earned abroad by taxpayers (foreign source income). He said that to

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[1] A summary and the text in extenso of the statement by the representative of the United States were subsequently circulated in documents C/W/389 and C/W/389/Suppl.1, respectively.

avoid double taxation, a global system granted a credit for foreign taxes paid on foreign source income. Still, in a pure global system, there was no tax incentive to export since the taxpayers' burden would be the same whether the income resulted from products sold domestically or in foreign markets.

He stated that the Panel had cast doubt on the GATT legality of a territorial system of taxation, in which, theoretically, taxes are collected only on income generated within the territory of the taxing country. He said that in a pure territorial system, there is a tax incentive for a business to export to the degree foreign source income is generated in a country assessing lower direct taxes than does the country from which the export transaction originates. Based on economic theory, the Panel had taken the approach that territorial tax legislation would constitute a subsidy prohibited by Article XVI:4, while the DISC had also been found to operate as a subsidy, by virtue of its derogation from a purely global system.

He said that whatever the validity of the Panel's analysis as a matter of economic theory, it was evident in the understanding adopted by the Council in December 1981 that this analysis had been incorrect as to the interpretation which should be given to Article XVI:4.

He recognized that other countries' taxation systems were not at issue, but said that his authorities had some questions in this respect, and he referred to specific paragraphs in the Reports of the three other Panels which had examined the French, Belgian and Netherlands tax systems.

He stated that in its adoption of the understanding with respect to the four Panel Reports, the Council had acknowledged the legitimacy, for GATT purposes, of taxing income from exports in accordance with the principles of the territorial system of taxation, in which it is not necessary to tax foreign source income at all. The appropriate standard, therefore, with respect to which the DISC should be considered under GATT was whether the United States global system, as modified by the DISC, resulted in taxation of export income equivalent to that which would result under the principles of a territorial system. The DISC deferred a small portion of taxes on export income in a manner comparable to the exemption of the foreign source component of export income under the principles of a territorial system.

The representative of Canada said that the bulk of the statement by the United States representative had earlier been taken into account, and that in any event the Council was dealing with the application of GATT rules and not with national tax laws. Nor did he see any connection with other countries' taxation systems. It was Canada's position that the United States had an obligation to commit itself to appropriate action without delay to bring the DISC legislation into conformity with its GATT obligations, and that the only open question related to the timing. His delegation therefore supported the draft decision submitted by the EEC and

could not accept the United States argument that the provisions of Article XVI:4 require that the level of taxation to be assessed upon exported products be at least equal to that level which would apply in the event that a territorial system of taxation were to be adopted. In his view, it was irrelevant whether or not the level of United States Federal taxation imposed on export activities exceeded the level which would be applicable if the territorial system were in effect, the sole issue being whether a given tax measure, irrespective of the level of resulting taxation, constituted a subsidy practice which was inconsistent with the General Agreement. He said that the Panel had found this to be the case in respect of the DISC, and emphasized that the Decision taken by the Council in December 1981 did not modify in any way the essential basis for the Panel finding in relation to the DISC legislation. That is, the understanding did not have any relevance to the DISC. Canada expected therefore that the United States would take the necessary action along the conclusions of the Panel Report in order to meet its obligations under the General Agreement.

The representative of Belgium said that it was incorrect to put on an equal footing the United States legislation on DISC with the French, Netherlands and Belgian legislations. His country's tax legislation did not involve export activities and it therefore did not violate the provisions of Article XVI:4. He said that this was the qualification with which the Council had accompanied the adoption of the Panel Report in December 1981 concerning Belgium's tax legislation. He said that the United States tax legislation on DISC, on the other hand, did involve export activities under Article XVI:4 and did violate this Article. The qualification did not alter this fact. Moreover, it was irrelevant and misleading to assert that the global taxation by the United States of export activities was as high or even higher than in Belgium. The United States taxes on the income of foreign subsidiaries of United States firms could not, in his view, be included in the global tax burden on export activities since they did not relate to export activities but to operations beyond the stage of exportation. The fact remained that the DISC legislation did not respect the provisions of Article XVI:4, while this was the case for the Belgian legislation.

The representative of France pointed out that the French tax practices were not on the agenda of the Council. Furthermore, as to substance, he said the notion of general level of taxation was unknown to the General Agreement. The qualification adopted by the Council in December 1981 covered export activities beyond the national borders and not activities within the national territory.

The representative of the Netherlands said that Article XVI:4 spoke of export subsidies, and that the only problem was the interpretation of the term "export activities" used in the Panel Reports. This question had been satisfactorily settled by the Council in December 1981, removing any doubts about the legality of the Netherlands tax system by making it clear that activities of foreign subsidiaries located outside the territory of

the exporting country fell outside the scope of Article XVI:4. Whilst determining how far the Council understanding was applicable to DISC, he said that it should be recalled that the "D" in DISC stood for "Domestic", which demonstrated that these corporations were dealing with export activities located within the United States. Their purpose was to provide a separate book-keeping of export earnings so as to benefit from tax facilities. It was this system which was at question in GATT, and not the treatment of foreign subsidiaries of United States companies, to which the representative of the United States had made repeated references.

The representative of Finland said that the Nordic countries were of the opinion that the DISC system was an export subsidy contrary to the provisions of Article XVI:4. Furthermore, he did not consider that the Decision taken by the Council in December 1981 had legalized the DISC system. The Nordic delegations therefore fully supported the draft decision. In his view, it was important to realize that the effect of the DISC legislation was not limited to cases where double taxation would otherwise occur.

The representative of Brazil recalled always having expressed the opinion that there should be clear-cut conclusions by panels and similar rulings or recommendations by the Council. Nevertheless, the understanding adopted in December 1981 by the Council with the Panel Reports on the French, Belgian and Netherlands' systems had caused difficulties for several delegations, including his own. He associated his delegation's views on DISC with those expressed by the representative of Canada.

The representative of India recalled that his delegation had already supported the draft decision at the meeting of the Council in May 1982. His delegation believed that since the Panel had found the DISC legislation not to be in accordance with the United States obligations under the General Agreement and since the Report of the Panel had been adopted by the Council, the DISC legislation and practices should be brought into conformity with the United States GATT obligations.

The representative of Australia said that his country's position on this matter was reflected in the minutes of the May 1982 Council meeting. The DISC was not in conformity with the United States' obligations under Article XVI:4 and was subject to the notification requirement of Article XVI:1. The adoption of the Panel Report had in no way qualified the findings of the Panel, the December 1981 qualification having been limited to clarifying the position in regard to the taxation of goods arising from economic processes located and incorporated outside the territorial limits of the exporting country. This was not the case in respect of the operation of the DISC, since such companies were domestically incorporated exporting units. He shared the views expressed by the representative of Canada in respect of the unilateral statement made by the representative of the United States that the rules of Article XVI:4 required that the level of taxation be equal to that which would apply were a territorial system of taxation to be adopted by the country in question. Australia could support the adoption of the draft decision.

The representative of the United States felt that the real issue in this matter was whether the United States assessed a sufficient amount of tax on the export income of corporations. In his view, it was irrelevant whether the DISC was a domestic corporation or not, since domestic corporations could have foreign source income just as a foreign corporation. He referred then to the French system, stating that it refused to tax domestic corporations for certain foreign source income but took advantage of foreign source losses. He said that the United States was not the only country to measure the entire amount of taxes of a transaction in order to determine whether there existed a subsidy or not. He mentioned the cascade tax system applied by some countries and said that the United States always looked at the total level of taxation.

The representative of Spain said that the discussion showed that the dispute settlement system did not seem to work, and that his delegation was beginning to have doubts about its effectiveness. As the representative of the United States had stated that the DISC system was similar to the cascade system, he pointed out that Spain used the cascade system and, as a consequence, had to make a reservation to that effect when it acceded to the Subsidies and Countervailing Duties Code because the cascade system did not conform to the provisions of Article XVI. He enquired whether the same would apply to the United States in respect of the DISC. His delegation associated itself with the Canadian statement and he supported the adoption of the draft decision.

The representative of Canada said that Canada's fiscal authorities had previously analysed all the points raised by the representative of the United States. He stated that Canada had a well thought out position, and that the time had now come for action by the United States.

The representative of the European Communities said that his delegation had the support of a large number of delegations in this matter. He argued that DISC activities did not take place outside the territory of the United States, and that the reason for setting up the DISCs was an internal matter of the United Staes, which did not entitle that country to take action inconsistent with the provisions of Article XVI. He said that if United States exporters felt that for some reason they had been disadvantaged, another way should be found to correct that situation.

His delegation was in agreement with other delegations in respect of the impact this matter could have on dispute settlement in general, on rules on subsidies and on the Ministerial meeting, whose objective was to reinforce and strengthen the GATT system. He stressed that if the United States were unwilling or unable to comply with its GATT obligations in this matter the other contracting parties had to draw their own conclusions. His delegation was of the opinion that if the Council could not reach a decision in this matter, the contracting parties themselves could decide to take appropriate action.

The representative of the United States said that the DISCs had not been set up to give his country's exporters an advantage, but rather to remove a disadvantage. He reiterated that the United States had acted in compliance with its GATT obligations.

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

6. Trade restrictions affecting Argentina applied for non-economic reasons (C/M/157, L/5317, L/5319/Rev.1, L/5336)

The representative of Argentina referred to his statement at the Council meeting on 7 May 1982 and drew attention to document L/5317, which cited the basic provisions of the General Agreement which had been violated by the measures taken by a group of contracting parties against Argentina. He stressed that trade measures should not be taken for political reasons as had been done by the member States of the EEC, Canada and Australia. He noted that some other countries had also instituted certain actions. He recalled that at the meeting of the Council on 7 May a large number of delegations had expressed concern about the measures taken and of the violation of specific provisions of the General Agreement which affected the credibility of the GATT at a time when efforts were being made to improve the rules applying to trade. In his view this was a concerted action against a developing country by a group of developed countries, of which only one was engaged in a direct conflict with Argentina.

He said that as of 25 May 1982 the EEC had extended the measures without giving a date of expiry. This measure had also not been notified to GATT, on the grounds that there was involved a "natural right" which did not require notification. His delegation had therefore notified these measures in document L/5336. He said that on 21 June 1982 the EEC had decided to suspend conditionally these measures, but Argentina had rejected the conditions attached to the lifting of the measures, since they lacked any international legal basis and violated the Charter of the United Nations as well as the General Agreement. He added that his delegation saw the evolution of this matter in the North-South context.

Since there was reference in document L/5319/Rev.1 that these measures had been adopted by the EEC, Australia and Canada in the light of the Security Council Resolution 502, he pointed out that the substance of the problem had not been solved. He said that the conflict continued to exist on a diplomatic - political level and that negotiations between the two parties to allow for a peaceful solution, as requested by Security Council Resolution 502, had not begun.

He then spoke of the moral support Argentina had received from other developing countries, from the non-aligned countries, and particularly from other Latin American countries which had expressed their solidarity within the Latin American Economic System, the Latin American Integration Association, the Andean Group and the Latin American Parliament.

He pointed to the consequences which would flow from the sanctions in respect of the relations between the European Communities and Latin America, and which would require thorough reflection.

Turning to the specific obligations under the General Agreement and the impact of the sanctions on the trade of Argentina, he said that the measures had both directly and indirectly affected Argentina's maritime trade as well as services because of the non-fulfilment of insurance and reinsurance contracts, the limitation or non-renewal of credit facilities and the freezing of funds. He mentioned the distortion of export flows because some traditional customers had turned to other suppliers as a result of the instability created by the sanctions, with serious consequences for the balance of payments of Argentina in terms of Article XII of the General Agreement. While it was too early to draw up a balance sheet of all the effects of the sanctions, his delegation reserved all its rights under the General Agreement and the possibility to invoke in due course the provisions of Article XXIII in order to determine the prejudice caused by the sanctions.

He stated that an examination in great detail was necessary because this was not a normal dispute settlement matter but one which required an in-depth analysis of Argentina's rights as a contracting party. He believed that a different formula could be found for the application of Article XXIII and that document L/5319/Rev.1 did not seem to constitute grounds for consultation procedures. Furthermore, the basic requisites for the application of Article XXIII had been fulfilled by his delegation. Argentina had made a written representation to the CONTRACTING PARTIES, stating details on the effects, the impact of the measures, and the Articles of the General Agreement which, in the opinion of his delegation, had been violated by the sanctions. His delegation had furthermore presented a second notification indicating the measures imposed, in order to act within the framework of Article XXIII. He also said that in the first notification he had requested the good offices of the Director-General as a preparatory stage in the dispute settlement mechanism leading to the establishment of a panel or working party.

He then turned to Article XXI, and noted that the contracting parties applying the sanctions had stated that it gave them a "natural right" to adopt restrictions without the need for notification, justification and compensation. Accordingly, his delegation had researched the General Agreement and its interpretation, commencing with the Havana Charter, for any precedents for the invocation of Article XXI by a group of countries under similar circumstances when they were not involved in the conflict. His delegation had found that in order to justify restrictive measures a contracting party invoking Article XXI would specifically be required to state reasons of national security. He mentioned in this respect the Czechoslovakia-United States case wherein it had been stated that the products in question could be used for military purposes, with mention of a specific exception for national security purposes under Article XXI. He pointed out that this was not the case with the measures

under discussion, which were applied generally and without any reference to a specific clause under Article XXI. He said that no Article of the General Agreement could be applied in such a manner that it would be divorced from the General Agreement. In his opinion there were no trade restrictions which could be applied without their being notified, discussed and justified, and he believed that the contracting parties concerned had made a wrong interpretation of Article XXI.

He said that in view of the precedent this interpretation would create, it was necessary to examine in greater detail what the CONTRACTING PARTIES could do in such a case. His delegation had noted that Article XXV referred specifically to the possibility for the CONTRACTING PARTIES to decide on a joint action for the fulfilment of obligations under the General Agreement. He mentioned in this connection the Intersessional Committee, the predecessor of the Council, which, he understood, had drawn up notes on the interpretation of the General Agreement, which had, in his view, similar value as that derived from the General Agreement. The more recent practice in GATT was the adoption by the CONTRACTING PARTIES by consensus, acting through the Council, of the conclusions and findings of panels and working parties. Once approved by the CONTRACTING PARTIES, this created the necessary tradition and precedents. However, some cases had arisen recently where the conclusions, recommendations and findings of panels, even though adopted by the CONTRACTING PARTIES, were not considered obligatory by the contracting party in question. This meant, in the view of his delegation, that the value of the conclusions, recommendations and findings of panels and working parties were not of the same importance as that of the Interpretative Notes incorporated in the General Agreement and forming an integral part thereof.

In the present complex case, his delegation therefore considered it appropriate that the Council, acting by consensus, should pronounce itself in the form of a note interpreting Article XXI so that all contracting parties would know their rights and obligations under that provision of the General Agreement.

He then proposed that the Chairman of the Council be asked, assisted by the Director-General, to make an exhaustive analysis of all the relevant elements in connection with Article XXI, including the precedents that had arisen from previous use, the genesis of Article XXI and its origins in the Havana Charter, in order to determine exactly the extent, scope, possibilities and formal use of Article XXI. This should be done in a way which was specifically divorced from the present case. He said that as far as the present case was concerned, Argentina would reserve its rights to revert to this matter under Article XXIII.

He said that such a note by the Council would remove an element of uncertainty as far as the General Agreement was concerned, and the problem would be solved for the future. If, however, the draft note were not adopted by consensus, then the Council would have the second alternative of

establishing a working party or panel in order to clarify different points of view. If this alternative were used, the decision for such a procedure would have to be adopted at the level of the CONTRACTING PARTIES under the provisions of Article XXV.

In turning to various possible solutions he said that Article XXIII expressly mentioned that in the case of certain action that could give rise to differences of opinion between contracting parties the CONTRACTING PARTIES could consult, when necessary, with the Economic and Social Council of the United Nations and with any appropriate intergovernmental organization. In respect of the latter alternative he noted that Article 96 of the Havana Charter referred to the possibility to obtain an advisory opinion from the International Court of Justice. However, for the time being, he preferred that the CONTRACTING PARTIES interpret the GATT laws.

His delegation, therefore, requested formally that a note interpreting Article XXI be drawn up by the CONTRACTING PARTIES. That note would enable the contracting parties firstly, to know whether Article XXI exempted contracting parties from any obligation regarding notification and surveillance procedures when measures taken under its provisions affected the trade of another contracting party; secondly, to determine the natural rights which could be inherent for contracting parties and had been invoked in relation to Article XXI in general; thirdly, to establish whether any contracting party, including one not involved in a problem between two other contracting parties, could interpret per se that there existed an emergency in international relations as referred to in Article XXI:(b)(iii) and consequently take unilateral trade measures; fourthly, whether one or more contracting parties could take action under Article XXI(c) without the prior existence of a specific provision adopted by the United Nations authorizing the application of restrictive trade measures.

The representative of the European Communities recalled his statement at the Council meeting on 7 May 1982 in which he had spoken of "natural rights" under the provisions of Article XXI which was one expression of this right. He also drew attention to the second, third and fourth sentences in the paragraph reflecting that statement (page 10 of C/M/157) in which the EEC strongly confirmed that the measures were not taken in the context of relations amongst industrialized and developing countries. In the statement he had also expressed the wish that the Council abstain from political discussions which could be injurious to the non-political nature of the General Agreement. He said that while firmly reiterating that wish, the EEC and its member States wished to point out that the Council of the European Communities had decided to suspend the measures in question vis-à-vis Argentina as from 22 June 1982, on the assumption that no act of force would be committed in the South Atlantic in future. Should that not be the case, a new situation would arise to which the Ten would have to react immediately. In any event, the EEC and its member States shared the hope that hostilities had now finally ceased in the region.

The representative of Venezuela, speaking as an observer, said that his delegation supported the request made by Argentina for a detailed study of the scope of Article XXI of the General Agreement.

The representative of Brazil recalled that at the Council meeting on 7 May 1982 he had stated the reasons for which his Government considered that the trade sanctions taken against Argentina were illegal, since they lacked a basis in the Charter of the United Nations, the General Agreement or in Resolution 502 of the Security Council. He also had expressed doubts about the interpretation of Article XXI by some contracting parties. Finally, he had requested to know whether the provisions of Article XXI were, or were not, outside the scope of "natural rights". He supported the proposal made by the representative of Argentina in respect of a note interpreting Article XXI.

The representative of Cuba said that her delegation shared the view expressed by the representative of Brazil and supported the Argentinian proposal.

The representative of India said that a clarification on the scope and content of Article XXI was of vital importance, particularly during times of crises. His delegation therefore supported the Argentinian proposal and looked forward to the speedy establishment of the appropriate machinery for this exercise.

The representative of Uruguay supported the proposal made by Argentina, which would have the effect of strengthening the General Agreement.

The representative of Colombia supported the Argentinian proposal for the preparation of a note interpreting Article XXI.

The representative of Ecuador, speaking as an observer, said that the Council should undertake the examination of Article XXI, which should not be considered in isolation but rather in close relation with other Articles of the General Agreement. It was important for Ecuador, as an observer which was interested in the GATT to know the rights and obligations stemming from the General Agreement.

The representative of Spain referred to the statement he had made at the meeting of the Council on 7 May 1982 pointing out that the politicizing of the issue under discussion constituted a danger in the North-South dialogue. He said that the implementation of Article XXI had given rise to doubts and that the time had come to study all the related aspects in order to achieve greater legal security in the multilateral trade system.

The representatives of Peru, Romania, Nigeria and Yugoslavia also expressed their support for the proposal by Argentina.

The representative of the Philippines said that the fact that one party to the present conflict was a developing country and the others industrialized countries did not make it a North-South issue. His delegation had noted that the parties concerned had made specifications of fact and of law but that the facts had been overtaken by subsequent events. He stressed that rights acquired should be respected, benefits should be assured and obligations assumed should be complied with faithfully. He raised the question of how the balance between GATT benefits and obligations could be restored in this case. He supported the request made by Argentina for a note interpreting Article XXI and hoped that the other parties to the dispute would not have objections to this proposal. As this case would set a precedent for the future, he asked the Council to proceed with caution.

The representative of the Dominican Republic supported the proposal made by Argentina and expressed support for the position of Argentina in this dispute.

The representative of Canada said that it was not pertinent to the Council's discussion to consider the degree of support or non-support outside the GATT for the Argentinian position on various trade and non-trade sanctions. So far as the Council's discussion was concerned, while it was correct that a number of contracting parties had expressed support for Argentina, his count was that an even larger number had another opinion and many did not take a definite position. He said that his statement at the meeting of the Council on 7 May 1982 had already reflected the points raised again by the representative of Argentina. He reiterated that this was not a North-South issue and that it would be a mistake to treat it as such. Canada's action was consistent with its obligations under international law and under the General Agreement. He said that this was not the first time that one or more contracting parties had taken the type of action to which Argentina objected. He noted again that what was innovative in GATT was the challenge to the situation and not the situation itself.

In turning to questions raised in connection with the use of Article XXI, he was surprised there had been no reference to the one comparable "generic" case in which Ghana had followed a similar course as that under discussion, i.e. whereby the notion of national security was interpreted in a broad sense by the government of that country. This was the only interpretation in the records and there had been no challenge to it. This appeared to him to be the only appropriate precedent for this case; and the Czechoslovakia-United States case mentioned by the representative of Argentina was clearly not. It was evident that Article XXI had been invoked previously and that there was a record of interpretation of Article XXI, which still stood. It was equally clear that the GATT had no rôle to play in such situations. It was common knowledge that many contracting parties - in Africa, the Middle East and elsewhere - had taken similar action. No notification had been provided or requested.

As for the latest proposal by the representative of Argentina, the representative of Canada said that any decision on the drafting of a note interpreting Article XXI had to be taken in the much broader context of the

current priorities in GATT, stating his belief that there were some other Articles of the General Agreement which required an examination, particularly as the actions in question had since been lifted.

The representative of the United States said that the evolution of events had not changed the position of his Government in this forum with regard to this matter. In his view, debate in the Council would not serve a purpose that was either useful to the resolution of this sort of issue or helpful to the effective functioning of the GATT. He stressed that the GATT had no rôle in a crisis of military force. The General Agreement left to each contracting party the judgement as to what it considered to be necessary to protect its security interests. The CONTRACTING PARTIES had no power to question that judgement. He said that even if the CONTRACTING PARTIES were endowed with such a power and the expertise to exercise it sensibly, the GATT would not have any capacity to sanction a judgement in a dispute involving embargoed trade.

His delegation strongly believed that the effort to inject GATT into political and security issues for which it had neither competence nor expertise could only undermine the ability of the GATT to deal with the important problems and challenges facing this economic organization for trade.

Furthermore, he said that the United States rejected any contention that this was a North-South issue for the GATT. This was a political-security matter. Moreover, there was no distinction in GATT or in international law between developed and developing countries in matters of security. As to the proposal to draft a note interpreting Article XXI, his delegation had doubts as to the utility of such an examination, given the nature and language of that Article. He said that the proposal would be examined by his authorities before a final position could be taken by his delegation.

The representative of Australia said that the position of his delegation remained as stated at the meeting of the Council on 7 May 1982 and in document L/5319/Rev.1. He stated that Argentina's stage of development had nothing to do with the measures taken and that this was not a North-South issue or one of developed versus developing countries. He informed the Council that, on the same basis as the EEC and Canada, the Australian Government had decided on 29 June 1982 to lift, with immediate effect, the economic restrictions applied against Argentina since 8 April 1982.

Turning to the request made by Argentina, he expressed the view that any contracting party had the right to seek an interpretation of a provision of the General Agreement. In this context, however, he agreed with the views of the representative of Canada, who had raised the question of priorities. Furthermore, only the CONTRACTING PARTIES acting jointly could interpret the GATT. Given the infrequent use of Article XXI thus far, his delegation expressed a doubt for the need for an interpretation of that Article.

The representative of the United Kingdom, speaking for Hong Kong, recalled the statement he had made at the Council on 7 May 1982 and said that Hong Kong shared the concern expressed by the representative of the European Communities that the Council should avoid political discussions which could put at risk the non-political nature of the GATT.

The representative of Japan expressed doubt as to the advisability of embarking upon discussions of a political nature. He said that the GATT was in the process of preparing the Ministerial meeting and that under these circumstances the introduction of somewhat controversial issues would not facilitate this task. His delegation had to refer this matter to its Government for a final decision.

The representative of Argentina expressed appreciation to those delegations which had supported his proposal. In reply to the Japanese remarks that this was not the time for political discussions, he stressed that his delegation had asked for a legal interpretation of an Article of the General Agreement. As to the question of priority raised by the representative of Australia, he recalled that there had been lengthy negotiations in GATT on certain Articles, such as Article XVI. Referring to the statement by the representative of the United States, he repeated that this was, in his view, a North-South problem. In respect of the lifting of the restrictions, he said that the EEC had done this conditionally, which constituted a threat directed against Argentina. He was nevertheless of the opinion that the lifting of the measures should make it possible for work on his proposal to proceed in a dispassionate way. He believed that all Articles of the General Agreement were on an equal footing and that all the countries which had supported his proposal had the right to know what were their legal rights and obligations under the provisions of Article XXI. He stated that the General Agreement did not exclude the possibility to turn to other international organizations; he preferred, however, that such an examination be done in the GATT instead of elsewhere. In conclusion, he requested that the Council take a decision on his proposal.

The representative of New Zealand said that in the view of his delegation the GATT was not the place to discuss political questions or the political reasons underlying certain trade decisions. The Argentinian proposal for an interpretative note on Article XXI required further reflection since it would mean that political factors would continue to occupy too paramount a place in the deliberations of the Council.

The representative of the United States reiterated that there was no distinction in GATT or in international law between developed and developing countries in matters of security.

The representative of Norway expressed doubt that providing for the preparation of a note interpreting Article XXI would lead to useful results. He said that this proposal was new and far-reaching and would have to be examined first by his authorities before he could give it further consideration.

The representative of Argentina disagreed with the statement by the representative of the United States that there was no distinction in GATT or in any other sector of international law between developed and developing countries in matters of security because major powers had permanent representation in some international fora. He also pointed out that his delegation had asked for a legal and not a political interpretation of Article XXI.

The representative of the European Communities said that not only in respect of Article XXI, the practice in GATT over the years had been that each contracting party was the sole judge of the exercise of its rights and obligations. He stated that each contracting party had the right to make proposals and that the others had the right to reflect. He felt that in this case, which was a decision of great importance, it was wise to take time for reflection. He added that if the Council were to contemplate the adoption of a decision, the proposal should have a chance of obtaining a consensus.

The Chairman noted that the representative of Argentina had reserved his country's rights under Article XXIII, and had also made a specific proposal for the preparation of a note interpreting Article XXI which would be unrelated to the specific matter under discussion. The representative of Argentina had suggested that this be undertaken by the Chairman of the Council, with the assistance of the Director-General and the legal advice of the secretariat. If the results were not acceptable to the Council, a working party or panel should be established to examine the matter. If subsequently there was not a consensus in the Council on the result of the deliberations of the working party or panel, the matter would be referred to the CONTRACTING PARTIES. He also recalled that the representative of Argentina had stated his preference for these steps being taken within the GATT framework rather than in other international fora. He suggested that the representative of Argentina communicate in writing to the secretariat the four points which were to be covered by his proposal.

He stated that through the discussion on this item, the Council had taken a very important step, in the light of the exceptions of a particular character contained in Article XXI. He said that there had been some statements by representatives supporting the proposal and according particular importance to it, although no specific comments had been addressed to the various steps in the preparation of a note interpreting Article XXI. Reference had been made to the right of a contracting party to such an interpretation of an Article of the General Agreement, and reference had also been made to precedents in this regard. There had also been some statements casting doubt on the utility of embarking on such an exercise of interpretation, and on whether the timing was opportune. Some representatives had stated that since the proposal was of far-reaching importance, they would have to seek guidance from their respective capitals.

He said that in the light of the foregoing there was scope for very detailed thinking on this matter. He suggested that representatives continue to give thought to it and, insofar as convenient and possible, engage in consultations, and that the Council revert to this item at its next meeting.

The Council so agreed.

7. Agreement between Finland and Czechoslovakia - Biennial Report (L/5315)

The Chairman drew attention to document L/5315, which contained information furnished by the parties to the Agreement between Finland and Czechoslovakia.

The Council took note of the Report.

8. United States - Import duty on vitamin B12 - Report of the Panel (L/5331)

The Chairman recalled that in June 1981 the Council had agreed to establish a Panel to examine the complaint by the European Economic Community, and had authorized the Chairman of the Council, in consultation with the parties concerned, to draw up appropriate terms of reference and to designate the Chairman and members of the Panel. In July 1981 the Council had been informed of the terms of reference. In September 1981 the Chairman of the Council had confirmed the composition of the Panel. The Report of the Panel had been circulated in document L/5331.

Mr. Pullinen (Finland), speaking on behalf of Ambassador Nettel (Austria), Chairman of the Panel, said that the Panel had taken quite a long time to arrive at its conclusions due, at least partly, to the transfer of one of the Panel members to his far-away capital in the course of the Panel's activities and the consequential problems of communication with him. He also said that about a month earlier the Panel had asked the two parties whether a course of action as suggested in paragraph (h) of the Conclusions could form the basis for a mutually satisfactory solution of the dispute. Although neither party had excluded a solution along those lines, it had not been possible to obtain a formal reply within the time available before the present meeting of the Council.

The representative of the European Communities said that the EEC had received the Report with circumspection and regret as concerned its conclusions. Since the Report had been circulated only recently, his delegation proposed that the Council revert to this item at its next meeting in order to provide all contracting parties with time for reflection. He wished, however, to draw attention to the danger of using a weighted average of tariffs for certain headings in a process of tariff modification, in cases of renegotiations under Article XXVIII. If such a system of weighted average of tariffs were to be used in the transcription

of existing concessions into the new harmonized nomenclature, each contracting party would be free to play with high and low tariffs and thus in essence to withdraw tariff concessions. He expressed the hope that each contracting party would give due thought to the consequences of the adoption of the Report. He also stated that the EEC had been surprised that the Panel, notwithstanding its finding that the United States had not infringed its commitments, had nevertheless recommended to the Council to invite the United States to advance the implementation of the Tokyo Round concession rate on feedgrade vitamin B12 to such an extent that imported vitamins could again attain their traditional competitive position in the United States market. He queried whether the Council was ready to extend such an invitation and whether the United States was ready to follow a Council recommendation which went beyond its legal obligations. He said that the EEC would like to have a reply to these questions of principle before adopting its position, and would reserve the right to make specific comments on the various paragraphs of the Panel Report.

The representative of the United States said that his delegation did not object to the request by the EEC that the Council revert to this item at its next meeting.

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

9. Uruguay - Import surcharges
- Request for extension of waiver (C/W/386, L/5335)

The Chairman drew attention to document L/5335 containing a request from the Government of Uruguay for a further extension of the waiver to enable it to maintain a surcharge on bound items. The text of a draft decision was contained in document C/W/386.

The representative of Uruguay recalled that in November 1981 Uruguay had applied for a six-month extension of the waiver, hoping optimistically for a solution to the problems faced in attempting to simplify all its import mechanisms into a single entity for the facilitation of trade. However, as a result of the international economic situation this process had been held up. His delegation therefore was obliged to request a further extension of the waiver by six months.

The Council approved the text of the draft decision and recommended its adoption by the CONTRACTING PARTIES by postal ballot.

10. United States - prohibition of imports of tuna and tuna products from Canada
- Draft decision proposed by Canada (C/M/157, C/W/378)

The Chairman recalled that in February 1982 the Council had adopted the Report of the Panel which had examined the complaint by Canada, and had taken note of the statements made thereafter by the representatives of

Canada and the United States. Subsequently, the delegation of Canada had submitted for the Council's consideration the text of a draft decision in document C/W/378, which had been discussed at the meeting on 31 March 1982. At the most recent meeting on 7 May 1982 the Council had agreed to revert to this item at the present meeting.

The representative of Canada said that since the last Council discussion, Canada had held further discussions with representatives of the United States in an effort to find a satisfactory solution to the problem posed by the possibility of further embargoes being imposed by the United States on other Canadian fishery products for reasons similar to those which had given rise to the tuna embargo. His Government had noted that the United States had not opposed the adoption of the Panel Report, and expected, in the light of the Council's ruling, that the United States would implement Section 205 of the Fisheries Conservation and Management Act in a manner consistent with its GATT obligations. He said that it was not Canada's intention to pursue this matter further at the present time, bearing in mind the responsibilty of the CONTRACTING PARTIES as set out in paragraphs 22 and 24 of the Understanding regarding Notification Consultation, Dispute Settlement and Surveillance (BISD 26S/210) to keep under surveillance any matter on which they had given rulings. However, given Canada's continued concerns in this matter and the implications this had for the maintenance of an effective dispute settlement system, Canada reserved the right to return to this question in future.

The representative of India recalled that the basic objective of the Canadian draft decision was that, pursuant to the findings and conclusions of the Panel Report on this matter as adopted by the Council, the relevant domestic legislation of the United States would be implemented in a manner consistent with its GATT obligations. He said that although the matter appeared to have been mutually settled by the two principally interested delegations, India wished to reiterate that contracting parties had an obligation to have their domestic laws and implementing procedures in accordance with the letter and spirit of their international commitments under the General Agreement. He said that India therefore reserved its position in order to protect its own rights insofar as they might be relevant to this case.

The representative of Peru recalled that similar import restrictions had been applied by the United States against Peru for the same reasons unrelated to trade. While the dispute between Canada and the United States had been resolved by bilateral agreement, the Panel had clearly found that the prohibition of imports of tuna and tuna products had been contrary to the GATT obligations of the United States, in particular Article XI. She said that for reasons of principle, Peru had supported the draft decision submitted by Canada, and expressed the view that the prohibition of imports of tuna and tuna products so as to bring pressure to bear on non-trade issues was also of relevance to the ongoing debate on the GATT incompatibility of trade restrictions applied for non-economic reasons. Her delegation regretted that no recommendation would be made on this

matter, while in a few months the Ministerial meeting would attempt to reaffirm the credibility of the General Agreement. Peru would follow with close attention the future development of this case, and reserved its rights to pursue the matter in due course.

The representative of Australia said that, like Canada, Australia asserted rights over the taking of highly migratory species from its 200-mile fishing zone, and that Australia believed that this right was established in international law. His delegation saw the draft decision proposed by Canada as a strengthening rather than a weakening of the GATT dispute settlement procedure. He had taken careful note of Canada's expectation that the United States would take whatever action might be necessary to ensure that its Fishery Conservation and Management Act was implemented in a manner consistent with its GATT obligations. Australia would reserve any rights accruing to it in this regard.

The representative of the United States said that his delegation maintained the position that it had expressed at earlier Council meetings. He did not object to the noting of the views of Canada as well as those of other delegations that had spoken on this issue.

The Council took note of the statements.

11. European Economic Community - Imports of citrus fruit and products - Recourse to Article XXIII by the United States (L/5337, L/5339)

The Chairman drew attention to documents L/5337 and L/5339 containing communications from the United States and the European Communities, respectively.

The representative of the United States said that the United States had requested the establishment of a panel under Article XXIII:2 to examine the matter of tariff preferences granted by the EEC on certain citrus products from certain Mediterranean countries (L/5337). He said that numerous efforts to resolve this matter bilaterally over a number of years at all levels and consultations under Articles XXII and XXIII:1 had not been successful, and that the EEC had made quite clear that continued bilateral efforts would not produce any such resolution.

He said that his delegation had noted that in document L/5339 the EEC had stated that the request was "inadmissible". His delegation believed it was sufficient to state in reply that any contracting party had the right to request a panel with regard to a dispute under the General Agreement. There was no question in this case that this was a trade dispute, governed by GATT provisions and concerning which the GATT had competence.

He said that it was normal to find differences between the parties' interpretations of the relevant GATT provisions in any dispute for which a party requested a panel. Hopefully, a bilateral conciliation would be possible in the panel process. Both parties would have a full opportunity

to present their viewpoints to a panel. If a bilateral settlement was not achieved, there would be a full panel report, and the CONTRACTING PARTIES would have a full opportunity to review the panel's findings. He said that while all of the contracting parties would prefer to see bilateral settlements, these considerations had not led the Council to deny a contracting party's request for a panel. Smaller countries should perhaps be particularly alarmed at the idea that some requests for a panel in a GATT trade dispute might be deemed "inadmissible", which would be tantamount to telling the parties to disregard the General Agreement in resolving their trade problems. That was anarchy, which benefitted no one and was particularly dangerous for the less powerful. He expressed the hope that the EEC would not object to this request for a panel in this matter.

The representative of the European Communities said that he wished to give the United States representative the opportunity to reflect fully on the communication from the EEC (L/5339) before entering into what would promise to be a long debate.

The representative of Israel recalled that the Agreement between Israel and the European Communities formed the basis, as far as Israel was concerned, of the arrangements relating to citrus fruit and citrus products, providing for the progressive and reciprocal elimination of the barriers to substantially all the trade between Israel and the EEC. It was therefore in full compliance with the GATT provisions concerning the establishment of free-trade areas. The Agreement had been examined by a working party, whose Report (L/4365) had been adopted by the Council in July 1976 without making any of the recommendations provided for in Article XXIV:7. In his view, the Working Party had found the Agreement to be fully consistent with Article XXIV, and there was accordingly no need or purpose for the Council to re-open this matter nor, a fortiori, for the establishment of a panel.

The representative of Australia did not agree that the Agreement between Israel and the European Communities had been found to be fully in accordance with the provisions of the General Agreement. With regard to dispute settlement, he said that Australia had always regarded it as an inalienable right of a contracting party to seek the establishment of a panel in a situation where bilateral settlement of a dispute had not been possible.

In response to a question from the representative of the United States, the representative of the European Communities said that it was unclear to his delegation whether the United States sought to enter into competition with the citrus exports from the eleven Mediterranean countries, most of which were developing countries, or whether the United States sought to challenge the principle of special preferences enjoyed by these countries on the EEC market in the context of special agreements which had been concluded in conformity with Article XXIV of the General Agreement and which had more or less, tacitly or publicly, formally or informally received the blessing of the GATT.

The representative of Tunisia expressed his delegation's concern over the gravity of the problem being examined and its serious implications for GATT's contribution to expanding the trade of developing countries. Through a problem opposing the United States to the EEC, the interests of developing countries were at stake. The considerations put forward by the United States delegation were somewhat puzzling; if the comparative advantage lay with the Mediterranean countries that was not because of the minor advantages mentioned but because of the proximity of those countries to the European market and the traditional flows of the products concerned to that market, favouring exports from those countries.

He also expressed surprise at the time chosen by the United States for raising the matter, because the agreements under reference had already been examined in GATT working parties. The answer seemed to be linked to the process of preparing the Ministerial meeting. Whereas the developing countries were looking to that meeting as an occasion for the developed countries to confirm their readiness to implement the provisions of Part IV and all the advantages deriving from it for developing countries or those resulting from other agreements such as the preferential arrangements concluded between the EEC and the Mediterranean countries, the United States complaint was causing the Tunisian delegation to reflect with concern on United States intentions as regards support for the trade of developing countries.

In the view of the Tunisian delegation, the preferences granted to developing countries constituted a whole and were linked to one another. If one began to attack some of them, there was nothing to preclude or prevent any future attack on the rest of those preferences. Accordingly, the Tunisian delegation appealed to the United States delegation to withdraw its complaint which Tunisia considered unfounded.

The representative of Malta said that this issue was a very complicated one with wide implications for Part IV of the General Agreement. He urged that the Council not take any precipitous action.

The representative of Chile said that this matter was also of concern to his country, which had increased its exports of fresh lemons from US$158,000 in 1977 to US$3,094,000 in 1980. He said that 95 per cent of these exports were sold in the EEC (of which the Netherlands accounted for 73 per cent and the Federal Republic of Germany 22 per cent), even though Chile was not benefitting from any preferences on the EEC market for these products. He said that this was not only a matter of concern for the developing countries of the Meditteranean area but also for other countries who wished to increase their exports to a market as important as the EEC. He commended the EEC's idea of including citrus fruit into the Generalized System of Preferences so that Chile would find itself on an equal footing with other countries from the Mediterranean area.

The representative of Egypt said that his delegation had received the United States request (L/5337) only a few days earlier and therefore needed more time to examine this proposal.

The representative of Yugoslavia shared the opinion expressed by the representatives of the European Communities and Tunisia to the effect that the preferential arrangements were in conformity with the relevant GATT provisions. In the view of his delegation the United States request was therefore without foundation.

The representative of the United States referred to the statement by the representative of Tunisia and said that the United States was not opposed to other countries' exports to the EEC. One of the reasons why the United States was concerned about this matter was that it wanted to increase its own exports.

The representative of Morocco, speaking as an observer, expressed the concern of his Government on this matter. He appealed to the United States delegation not to attempt to reduce what had been achieved in this field and not to harm the advantages received by the Mediterranean developing countries.

The representative of Senegal expressed deep concern at the establishment of a panel which would be challenging special preferences and agreements which had already proved their efficiency as concerned trade between the EEC and certain developing countries. Though each contracting party had the right to have recourse to a panel, his delegation recommended that the secretariat gather the necessary documentation so as to allow the interested governments to be informed in time for this problem to be re-examined during the forthcoming Ministerial meeting.

The representative of Spain said that this subject was of the greatest importance for Spain in view of its wish to adhere to the European Economic Community. The bilateral agreement between Spain and the EEC of 1970 also included mutual tariff cuts for a series of products. His Government wished full reflection to be given to this matter and suggested that it be postponed to the next meeting of the Council.

The representative of Pakistan stated that his delegation would not contest the right of the EEC to grant preferences to developing countries so long as these were on a non-reciprocal and non-discriminatory basis. He supported the suggestion made by the delegate of Chile that these preferences be extended to all developing countries. He noted that his country also exported citrus fruits and therefore would be greatly interested in having these preferences extended to it.

The representative of the European Communities said that the previous statements made it possible to foresee the size of the problems raised by the request of the United States. He continued to believe that the request was technically unjustified and politically inadvisable. He said that the EEC could open up its market in a generalized manner in favour of all developing countries and also accept more citrus fruits from the United States, to the extent permitted by the capacity of absorption in the EEC; however, the EEC's capacity for consuming citrus fruits had limits. In

conclusion, he said that it was not merely a matter of citrus fruits but rather a question of principle, and he drew particular attention to the second paragraph of the communication from his delegation in document L/5339.[1]

The representative of Jamaica said that this matter should perhaps be withdrawn from the agenda of the Council as it did not constitute a complaint indicating that damage had been done to a particular country. He had noted the statement of the Chilean delegation that Chile's exports of fresh lemons to the EEC had grown, although Chile was a developing country with a smaller comparative advantage than certain territories or parts of a country to which allusion had been made. He said that if the matter were to be brought to the Council it should be submitted in the appropriate manner.

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

12. United States - Agricultural Adjustment Act (L/5328)

The Chairman recalled that under the Decision of 5 March 1955 (BISD 3S/32) the CONTRACTING PARTIES were required to make an annual review of any action taken by the United States under the Decision on the basis of a report to be furnished by the Government of the United States. The twenty-fourth Annual Report had been circulated in document L/5328.

The representative of the United States said that the Report covered the period from October 1980 to October 1981. It contained additional information requested by the GATT Council as well as information related to recent developments as follows: on 5 May 1982 the flexible import fee system for sugar had been modified, the principal change being a shift in the statistical price series used as the basis for calculating the fee. The change had been a necessary concomitant of another action, taken simultaneously under separate authority, placing sugar imports under quota. Concerning dairy products, he said that no changes in Section 22 quotas had occurred. The President had accepted the finding of the International Trade Commission that casein imports were not interfering with the support programme for milk. The Administration was continuing its efforts to bring milk production into better balance with commercial demand and was currently seeking additional legislative authority for measures to discourage excess production.

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[1] The text reads as follows: "The European Community recalls that these arrangements are one element of a series of agreements between the Community and a number of Mediterranean countries which have been examined in GATT under the procedures of Article XXIV. Paragraph 5 of this Article stipulates: 'the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation ... of a free-trade area or the adoption of an interim agreement necessary for the formation ... of a free-trade area'."

The representative of New Zealand said that the report did not really provide justification for the retention of the measures, notably in the dairy section. His delegation did not agree that suggestions and criticisms of contracting parties had been taken into account in the report, or that normal GATT safeguard provisions would be inadequate to prevent interference with United States policy aims in those farm sectors where the waiver provisions applied. In his view, the United States had been sheltered behind a GATT waiver for over 25 years and had never really put so-called normal GATT provisions to the test or been obliged to test or embark upon alternative approaches to the attainment of policy objectives, which could be summarized as one hundred per cent self-sufficiency in the dairy sector. It was the view of his Government that the purpose of the waiver was not to grant a permanent derogation from Article XI, nor was it to enable the United States to pursue policy objectives that might permanently nullify benefits of concessions negotiated under GATT in the products in question. He suggested the establishment of a working party, as had been done before, to examine all the relevant factors, including the overall adequacy of the present notifications, the changed circumstances since the invocation of the waiver, the nature of domestic United States policies that had been adopted, in particular the most recent ones, and any other options available to the United States authorities.

The representative of the European Communities supported the proposal to establish a working party as quickly as possible. He mentioned that the international market in dairy products had moved into a delicate phase so that supply and demand for these products was seriously out of balance in the United States, which would have a negative effect on traditional supplies of these products. He mentioned that the EEC had taken a series of measures in order to promote domestic consumption of these products and for market stabilization, notably on the international market, and expressed concern that this could now be jeopardized. As far as sugar was concerned, he asked why there had been no notification stating the reasons for this development, and requested that the United States make such a notification as soon as possible.

The Representative of Australia shared the concern expressed by New Zealand and supported the establishment of a working party.

The representative of Chile supported the establishment of a working party.

The representative of Brazil said that his delegation followed very closely and with concern the developments reported on by the United States under the waiver and particularly those in respect of sugar, which affected Brazil more directly. Brazil reserved the right to revert to this question at a later stage. He also supported the establishment of a working party.

The representative of Pakistan said that as an important exporter of cotton his country had a special interest in that commodity. He supported the establishment of a working party.

The representative of Canada supported the establishment of a working party.

The representative of India said that the waiver had been in existence for a very long time and that India expected the United States to modify its legislative procedures so that it would not be necessary to continue the waiver. He supported the establishment of a working party.

The representative of Hungary, in supporting the establishment of a working party, said that Hungary had sought unsuccessfully for more than two years a quota for the exports of Hungarian cheese to the United States in accordance with the provisions of Article XIII. Hungary wished to raise this question in the working party in the belief that quotas maintained under this waiver should be administered in accordance with the provisions of the General Agreement.

The Council agreed to establish a working party with the following terms of reference and membership:

Terms of reference: The Chairman of the Council was authorized to decide on appropriate terms of reference in cosultation with the delegations principally concerned.

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

Chairman: The Chairman of the Council was authorized to designate the Chairman of the Working Party in consultation with the delegations principally concerned.

13. Administrative and financial questions
- Report of the Committee on Budget, Finance and Administration (L/5324, L/5298)

Mr. Harding (United Kingdom), speaking on behalf of Mr. Williams (United Kingdom), Chairman of the Committee on Budget, Finance and Administration, introduced the Report of the Committee (L/5324).

He drew attention to the final position of the 1981 GATT budget (L/5298), which showed that some Sw F 186,000 was overspent due to decisions taken by the United Nations General Assembly regarding staff allowances after the GATT budget had been approved. However, overspending was quite considerably less than originally anticipated by the Committee, thanks to the efforts made by the Director-General.

With regard to the outstanding contribution situation he pointed out that the Committee had expressed great concern because of the marked deterioration compared with previous years. The situation was so serious at 31 December 1981 that a very substantial withdrawal of over Sw F 1.6 million had to be made from the Working Capital Fund. The

Committee had decided to reconsider the whole question again, and the secretariat had been requested to intensify its efforts in connection with the collection of contributions. He appealed to all representatives to request their own governments to pay promptly, in order to set an example for all contracting parties with contributions in arrears.

He said that in May 1982 the Committee had also examined the question of remuneration for staff in the General Service category. The only recommendation acceptable to the Committee was that made by the International Civil Service Commission rejecting a possible 3 per cent salary increase. The Committee had decided to examine a proposal with regard to the improvement of employment conditions on the basis of a recommendation to be made by the Director-General.

He also mentioned that the Committee had been informed that the owner of the Centre William Rappard - FIPOI - had decided to increase the annual rent payable by GATT for the period 1983-1986. He said that several members of the Committee had raised questions in this connection and that the matter was still under consideration.

He said with regard to GATT's contributions to the International Trade Centre UNCTAD/GATT that, although the final level of over-expenditure for 1981 was not as bad as had been originally feared, the situation for 1982 continued to give rise to concern. The average market rate for payments to the ITC in 1982 so far largely exceeded the revised ITC budget rate for 1982, and Swiss franc payments in 1982 could therefore be expected to exceed the provision in the 1982 GATT budget.

The Council approved the recommendations of the Committee contained in paragraphs 7 and 8 of document L/5324.

The Council adopted the Report.

14. European Economic Community - Subsidies on canned peaches, canned pears and raisins
- Composition and terms of reference of the Panel

The Chairman recalled that in March 1982 the Council agreed to establish a panel to examine the complaint by the United States and had authorized the Chairman of the Council, in consultation with the parties concerned, to decide on appropriate terms of reference and to designate the Chairman and members of the Panel.

He informed the Council that following such consultation, the composition and terms of reference of the Panel were as follows:

Composition

Chairman	:	Mr. J.L. MacNeil (Canada)
Members	:	Mr. Bo Henrikson (Sweden) Mr. Shi-Hyung Kim (Republic of Korea)

Terms of Reference

"To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by the United States relating to production aids granted by the European Economic Community on the production of canned peaches, canned pears, fruit cocktail and dried grapes (L/5306), and to make such findings as will assist the CONTRACTING PARTIES in making recommendations or rulings as provided for in Article XXIII".

The Council took note of this information.